

# Land Dispute Redressal: A Plea for Reforms

*Edited by*

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## Concept of the Workshop

Land is a fundamental asset and a primary source of livelihood for rural India, which comprises a majority in country's demography. In a study it has been found that more than 28 million households of rural India owns land but without any security as they do not possess title right, possessional right or entry in records. Therefore land number of rural households are vulnerable as far as ownership right is concerned.

It is estimated that about two percent of land in rural areas, five percent in urban areas and 28 percent in peri-urban areas are affected due to land disputes, and to settle these dispute, litigants spend more than 7.5 billion rupees per annum. It means that the nature and extension of land dispute is very higher in nature. There are so many reasons of dispute involved in it. As, in India, we have a system of registered sale deeds and not land titles. Under the Transfer of Property Act, 1882, anyone has the right to transfer or sold property (land) only by a registered document which are registered under the Registration Act, 1908. Therefore, the transaction gets registered, and not the land title. This implies that even bona fide property transactions may not always guarantee ownership, as earlier transactions could be challenged. Unclear land titles begets land dispute. Land dispute can be of many forms, either by boundary fixation, Right of Way dispute, Succession/Partition dispute, Boundary related disputes and many more.

Department of Land Resources, MoRD had initiated the programme called DILRMP to decrease title dispute by computerize land records and fresh survey of land parcels. The programme has also put equal importance to reform on dispute mechanization. Though after 10 years of completion of programme, land dispute matters are still alive. Land dispute should encounter from several dimensions, computerization of land records is just a beginning part. It is also require to improve

mechanism of our age old judiciary system, as dispute redressal is very much interlinked with revenue courts and justice delivery system.

To implement a robust Land dispute redressal system in India, it requires decent involvement from political and bureaucratic institutions. Some state has implements Acts so that dispute redressal should be much faster. Some best practices on the issue of dispute redressal is like Bihar has implemented it's own Land Dispute Resolution Act-2009, state of Maharashtra has been mandtaed that Disputes related to land to be adjudicated within 1 year as per amendment of Maharashtra Act No XI of 2016, land dispute information are available in web-portal of Delhi etc. but the extent should be much more than the existence.

In the Draft National Land Reforms Policy (18th July 2013) prepared by Department of Land Resources, it is clearly mentioned that dispute redressal mechanism followed by the states are not enough, therefore they need to develop their own dispute resolution Act like Bihar. Dispute redressal is also found an important factor for ease-of-doing business index as it hampers largely on country's development agenda. Therefore, India needs a dynamic and robust judiciary system which will handle dispute matters more faster and in an efficient way.

## **Objectives of the Workshop**

Major objectives of the workshop are as follows:

- Understand different kinds of land disputes and the current practices of their redressal.
- To understand the current practices of land dispute redressal mechanism followed by the States and their challenges
- Highlight judicial and revenue related issues vis-a-vis redressal of land disputes.
- Understand different Best practices prevailed in the country and assess it's effectiveness

- Understand Role of technology in reducing land disputes
- Preparation of policy suggestions which would be beneficial for DoLR and state governments in tackle the land disputes.

### **Major Themes of the Workshop**

- Overview of different land disputes (Title, Right of way, Succession/partition dispute, boundary dispute etc.), and their challenges
- Reforms required for better redressal of land disputes.
- Different models for redressal of land disputes.
- Role of Technology and real-time integration with revenue courts and district revenue department for faster dispute redressal

### **Participation of the Workshop**

As the workshop is diversified in nature, and has a large impact on all the sections of our society, therefore it is expected to be attended by practitioners from diversified fields. State Head, State/District practitioners, Senior bureaucrats, Senior Judges and Advocates, Civil society organization, Academicians etc. will participate in the workshop.

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## Welcome Address - Shri Niranjana Kumar Sudhansu<sup>1</sup>, IAS



Dr. Sanjeev Chopra, Director, LBSNAA, Prof. K.B. Saxena, distinguished faculty Council for Social Development, Shri Manoj Ahuja, Special Director, LBSNAA, all the participants of the workshop of “Land Dispute Redressal: A Plea for Reforms”

and my faculty colleagues from the Academy. First of all a very good morning and a very warm welcome to all the participants of the workshop to Mussoorie as well as the Academy, with clear sky and a lot of sunshine this is the best time to come to Academy and Mussoorie and I hope that your journey to Academy was pleasant and I ensure that your stay at the Academy will also be very comfortable and fruitful. The topic of the workshop “Land Disputes Redressal: A Plea for Reforms” is a very relevant and important one, it is especially important in the current context when the country needs to grow at a double digit rate. Macangey world report few years back estimated that India loses nearly 1.3% of the GDP because of the land market distortions and a large part of the 1.3% it loses is because of the land related dispute which prevents efficient use of land across sectors. Another study by World Bank from 2007 estimated that land related disputes account for 2/3 of all the pending court cases in the country, which is a huge figure and a NITI Aayog paper suggested that land disputes on an average takes about 20 years to get cleared and roughly about 5 million revenue related cases are currently pending in various states and courts, it is a huge burden not only on the courts but also huge waste of time and money for the people. Recent survey of 2016 by DAKSH tells us that per day expenditure on land litigation is about Rs 500 and loss of business because of litigation is about Rs 850 per day and there are various reasons for land disputes and most important are related to faulty land records, mutations, disputes relating to mutations, boundary

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<sup>1</sup>Centre Director, B.N. Yugandhar Centre for Rural Studies, LBSNAA, Mussoorie

disputes and lack of transparency all translates into land administration, more important observation in this context is that land dispute redressal does not seem to be on top of agenda for most of the state governments, though it directly affects millions of people in the states specially poor people. In this context it is important that in the next two days we are going to deliberate on various aspects of land disputes, it's reasons, redressals, some models, needed reforms, experiences of other states and the role of technology in solving land disputes. We hope that the discussions in the workshop will lead to greater understanding of the subject and also better design and implementation of redressal measures. The topic of the workshop is divided into four sub themes which will be discussed in separate sessions. The fifth session will be a group exercise and it's a group discussion session, all the participants will be divided into three groups and they will deliberate on the topic given to the groups and making a list of recommendations and presenting in the final session. There have been a large number of presentations and papers that we have received, but because of the scarcity of time we have not been able to accommodate each and every presentation and paper, but we have circulated the compendium of all the papers that we have received, I hope this compilation will surely benefit you as a useful resource. All of us in the academy and the staff of the B. N. Yugandhar Centre for Rural Studies will be available with you for any assistance required in the campus, once again I welcome you all to the workshop and wish you for a fruitful and interactive participation. Now I request Shri Sanjeev Chopra, Director LBSNAA to address the participants, sir is a 1985 batch IAS officer and has worked extensively in the field of agriculture and has a keen interest in land related issues.

## Address – Dr. Sanjeev Chopra<sup>2</sup>, IAS



First of all a very warm welcome and I should use the word warm because just before coming here in my room we were looking at temperatures in different cities of the country and I was telling Alankrita that look if somebody sees that we are all dressed in a

coat and a neck tie and shawl and temperatures are soaring to 43 degrees in parts of the country already and let's say a cool welcome to Mussoorie. I talked to Prof. K.B. Saxena member of the Council for Social Development, New Delhi and one of the persons who keeps inspiring everybody that neither age nor a particular post is the determinant for your mission to do things in life and to accomplish things, so thank you very much sir for accepting our invitation to be here, Manoj Ahuja, Speical Director and all my colleagues infact there are several members of the service who are here and there are several institutions which are present here which include the TISS, the CPR, NABARD, Govt. of Rajasthan, the department of administrative reforms Telangana, Madras, LANDESA, infact I am glad that Pinaki is here Pinaki was my probationer in Musheerabad district so it is nice to see him coming here for this workshop, Centre for Economic and Social Studies, Hyderabad, Institute of Social and Economic change, Bengaluru, Govt. of Maharashtra and Doon University which is also very good that we are now establishing connections with the local communities as well.

Sudhansu is right to and extend that I have spent most of my time in agricultural cooperatives but I have not spent much time on land and the way agriculture department looks at land is slightly different from the way land department looks at land and every department looks at land differently for the right reasons because so far as agriculture is concerned, my concern has been that a lot of

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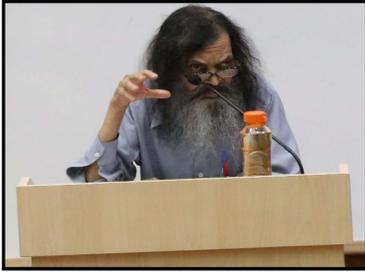
<sup>2</sup> Director, LBSNAA, Mussoorie

land is not under the plough because of land disputes and it is causing a major problem and is affecting the agricultural growth, productivity, decisions on what to grow and how to grow are also a function of how confident you are about the land that you hold. Anecdotal evidence and it's again something that the BNYCRS may perhaps look into, infact everybody advising BNYCRS to do this and that so I am slightly wary of giving most suggestions to Sudhansu because he has a small team and we need to strengthen that team but the fact is anecdotally in two extreme parts of the country that is Kerela and Punjab a lot of land is not being ploughed because of land disputes. There are many issues of land disputes in the country and in order to ensure that there is no dispute on my land you are not ploughing that land, so when the land is not being ploughed you are not using the natural resources which are available to you and also not letting employment happen on that particular plot of land because we are not very confident of what will happen if my land is under tenancy and that is also an issue that we need to look at in terms of what is happening to the productive resources of the country. I would like to compliment Mr. B.N. Yugandhar the father of the nucleus for this and initiated the study on land reforms in the country and the similar role that land reforms will play in the future of this country and he was able to point out that in each state what were the factors responsible for the success in some cases and the reasons for the failures of land reforms and land settlement in most cases and even the study that Pankaj has done and which Pinaki has done on how land disputes happen all of you are aware so I don't need to repeat that, but the fact is that I was looking at West Bengal for example, that is the state that is my cadre you see the acts were not made by the left front regime, the left front regime only implemented the acts which had been done, so it is not the legislation that matters and in fact a lot of problems has nothing to do with legislation we as Indians produce the finest legislation anywhere in the world, our legislation on anything is almost perfect we are very good craftsmen, we are very skilled and we know that and there are skills that we can train you here in LBSNAA but when it comes to implementing and when it comes to getting things done, because

land is the source of conflict and unless people are mobilized, unless sensitive administration is done not much will happen.

We, as administrators, have to innovate to ensure access to those who need our access the most and I am glad that this subject is coming up and I hope to learn more about this because frankly I have not had much exposure to the land department. Ever since the DLLRO has been set up in West Bengal many of us did not get the opportunity to work in the land settlement or management aspect, though as a district magistrate you don't get an overview of what is happening but because there is a regular DLLRO in each of the districts in West Bengal, there are pros and there are cons. Cons is that the intricate knowledge of land which a collector is supposed to have, that sort of knowledge of land is not available to a lot of people who do not get posted in the specific land management sections. I look forward to hearing from you for the next two days I'll be sitting for as many sessions as I can attend, but I must say one thing that we must understand that the nature of agriculture is changing, India has become more self sufficient in all the major agricultural commodities with the exception of oilseeds, so we have to look at land in a manner because new employment generation will not happen only from agriculture. I have been convinced that we have to look at various options and those options must be the discussed including possibly the establishment of funds for farmers to be able to acquire lands in a manner so that the basic unit of the land holding becomes functional and viable. For the next two days we hope to listen, learn and engage with all of you and I am very glad that the BNYCRS has taken this initiative, all of us at the Academy took forward to these deliberations, thank you very much and welcome to Mussoorie again.

## Inaugural Address - Prof. K.B. Saxena, IAS (Retd.)<sup>3</sup>



Distinguished chairperson, Director B.N. Yugandhar Centre for Rural Studies and colleagues many of them are very known cases, we meet and for others I look forward to meet them. I was indeed looking forward to a relaxed participation in the

seminar listening to the scholars and officers until I received the programme that I was tasked to deliver, inaugural address it's only then I realized that in the market economy that we are operating there is no free lunch. I am greatly attached more than usual to this Centre because I was the one who established it, because I thought that young IAS officers are not properly oriented towards the land reforms and that's how the Land Reforms Unit converted to B.N. Yugandhar Centre for Rural Studies. Land is so pervasively underpleased that land disputes can occur anywhere in the world, therefore it is not true that the land disputes only in our society they are pervasive depending on various circumstances and also varied scale and size of the conflict and failure to address land issues leads to instability and leads to conflict spillover to violent and also perpetuates poverty, but land issues are far more pervasive in agrarian societies because land is central to economy, politics and state and it involves a lot of competition between a large number of groups. It is also very important because land is not merely a livelihood asset but it is also an identity, social legitimacy, you can't get anything if you don't have an address and land provides that address. See the example of homeless people in big cities they can't even get PDF because they don't have an address, now land grievances, disputes and conflicts are a kind of continuum, when you don't take into account grievances it results in disputes and when disputes are not addressed to it converts to conflicts and when conflicts are not timely managed, then violence occurs so it

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<sup>3</sup> Professor , Council for Social Development (CSD), Sangha Rachna, 53, Lodhi Estate, New Delhi

is important that even before grievances lead to conflicts that our officials must try to get the information and try to address and resolve them. The roots of most if not all conflicts lie in the colonial time, in the pre colonial society land was communally managed and even when there were central authorities they did not try to control land use and ownerships, they were mainly concerned about rents and as we all know that the rent was paid by the community that was perfectly fine, therefore community centric land management was very autonomous, but it was certainly managed in a very decentralized manner and therefore land disputes occurred at a very minimal level. When britishers came the entire thing changed and it created several dichotomies were created like dichotomy between customary law and formal law, between ownership and use, between commoditization and identity of land, between individual centric and community centric, they are all consequences and you will find various kinds of conflicts are all related to the kind of agrarian structure, the kind of agrarian transformation which colonial government imposed on the Indian soil and they did not even realize that kind of systems already existed and therefore a lot of conflicts were generated, even in the colonial times only in tribal areas there were as many as 200 conflicts and when this very iniquitous and very transformative land structure was super imposed on a highly unequal society it created havoc, so we are suffering land conflicts as a result of the collision between an iniquitous colonial land structure which we are continuing and also guarding and the highly unequal hierarchical society. There are large number of factors which cause conflicts, I will list the major factors not all of them:

1. Land scarcity, as we all know land is scarce and demand is high and supply is low
2. Insecurity of tenure, for example when migrants come from rural areas to urban areas in search for work they have no place to live and they must live somewhere so they squat on land and therefore conflicts arises.

3. Lure of valuable resources, infact the colonial occupation of Indian territory was based on lure of valuable resources, one resource was capital which helped in generating revenue, mineral resources, they wanted it for industrialization and also used forest resources, water resources, when you find that during the colonial period all colonial countries occupied different territories because they we very resourceful.
4. Historical grievances, I have told you that most of the problems if not all the problems are rooted in colonial structure, if time permitted I will give you all the details.
5. Normative disownence which is very crucial, like for example difference between customary law and formal law, Indian system operates on the basis of formal law, it gives certain rights but people still operate on the basis of customary law, these customary laws were not recognized by the colonial government, it still is not recognized by the Indian government except in one case recently that is the Forest's Right Act.
6. Globalization of the economy, it has created new demands for agricultural products, bio-fuels, etc. because of that land has become gold and it became gold after the financial crisis, so the investors are looking for land because it is an appreciable asset, even if the land they don't use for example in SEZ Act nearly 44% of the land was not used, land has now become gold and investors are very interested in it as it is a valuable asset.
7. Conflicts between policy, between growth and poverty alleviation, between national interest and entitlement of the poor, between conservation and development, these are three major areas causing land conflicts.
8. Seeking market centric solutions to land related problems, land issues are rooted in social structure and the legal structure that has been created, markets cannot solve this problem because of the unequal social structure and therefore what is happening , Dr. Haque committee report of the NITI Aayog which has tried to marketise land and abolish tenancy revolution so that land becomes a freely available commodity and anyone interested in land can obtain it, what happens in an

unequal society that it's always the rich and the large land holders who can afford land and the poor who need land cannot be able to get it and the worst is that modern laws which has been framed on this basis has played havoc, fortunately it has not been applied by the state if implemented it would be detrimental for the poor as the land holder would not like any tenancy to be recorded, the kind of solution that we are seeking is absolutely contrary to the tradition of land reform, we were talking about land to the tiller now we are seeing land to the owner and if these types of conflicts are imposed then we will see many more future conflicts than that are at present.

9. Insufficient and poor implementation of existing law and particularly lands relating to the poor and FRA is classical in this respect, entire forest bureaucracy has implemented FRA which came after a lot of struggle.
10. Outdated land records.

These are the main reasons which have caused conflicts I will add three more which have come in recent times

1. Communal polarization in areas of communal sensitive territory because recent communal oriented politics there is a huge conflict between the minority community and the majority community on use of land.
2. Failure to understand tribal land system, I will come later to the Land Watch statistics which prove this point.
3. Land use changes.

These are three new factors that have occurred recently. There are various kinds of land disputes both on private and public property, only on private property, only on common property and only on government land. A very interesting data has been provided by Land Watch and the details my young friend will tell in the next session and in his report it collected data of about 273 conflicts and the number of conflicts has risen to 700 and the startling fact is that  $\frac{3}{4}$ th of the conflict are on common land and this is because the community land is a subject of land grab, what the government does that they think whatever is controlled by them is completely

free form encumbrance but people have customary rights over these lands and it is because of that very large number of conflicts arise. POSCO case in Odisha is a classical example where the people used land for various purposes and they also had documents, but the government denied their plea and said to give the land to the companies and a startling fact that has come forward is that this entire thing is concentrated in central and eastern tribal concentrated areas in India, 40% of the conflicts are related to the forest alone and nearly one and a half times more conflicts are in scheduled areas and tribal areas. Tribal areas have become the major victims of land dispute because they are in naxalite area and are also located where there is a lot of common land and they are also among the largest community to be displaced from land that's why the social dynamics impacts politics, growth and economy. I will come to two last points the resolution of disputes, a number of simple things which can be done one is simplification of law, I was discussing yesterday with someone here that even a reasonable literate person cannot feel comfortable reading a law and integration of law is required, integration of courts and integration of agency is required. Second is which I find and was discussing with Sudhansu is that DMs and collectors are disinclined to do revenue work because court work requires sitting, reading, application of mind and then trying to interpret it while development work is easy that is why I find that courts are not attended to and frequent adjournments are given, therefore we need to change this and it will continue to happen as long as revenue work is combined with development because less time is made available for revenue work, there is no pressure with regard to revenue work. I remember Ugandar committee report on tribal land and alienation has used a very sharp language pointing out that our revenue courts dealing with land alienation cases are "kangaroo" courts which explains the poor understanding of laws. Also we need sufficiency of ground staff which has suffered on the account of two reasons one division between planned and non planned expenditure, revenue work was considered non planned expenditure while development work was planned expenditure so development went well, this is the major reason why land records

were not updated because you require huge resources, no states were ready to expend huge resources. Technology can provide tools but it cannot provide standard, no technology can tell you how rules are implemented, so the social and political dynamics behind land will not be mediated but overlooked by technology. I conclude particularly in the context of Land Watch data which has underpinned that social justice is central to resolution of land dispute, not merely disposal of cases. In order to pursue social justice state is central to you, state alone can provide social justice, not only knowledge upgradation but also social sensitization is required. Social support to the rural and poor is required because they are not able to take benefits of laws and empowering the poor and marginalized must be done, the Andhra Pradesh model must be implemented in other states.

## Technical Session- I

### Overview of different kinds of Land Disputes and challenges

Chairperson: Dr. C. Ashokvardhan, IAS (Retd.)

#### Shri Kumar Sambhav Shrivastava<sup>4</sup>



He started his presentation by showing two documented videos. The first video of 31 st August 2018 depicted how Santal Adivasi women of the Mali village of Jharkhand's Godda district, fell at the feet of Adani Power Limited personnel, begging them not to acquire their land. The other video of depicted how four villagers were killed due to police firing on an anti-mining protest in Hazaribagh, Jharkhand. The videos provided credible evidence of the on ground situation of the land conflicts and disputes in India. He then referred to the organization called the Land Conflict Watch. He mentioned how a team of 35 researchers/journalists, spread across India, documented the on ground situation of the land conflicts by going to the affected places and engaging in conversation with the affected people. The researchers/journalists kept in consideration the key points like location, reasons of conflict, sector, parties involved, etc. during documentation. He showed how the website [www.landconflictwatch.org](http://www.landconflictwatch.org) mapped different kinds of land conflicts in India on a satellite map and further how a filtered search can be done on the website to find the number of conflicts, number of people affected, area affected and investment affected in a particular state or district due to land conflicts.

He discussed the methodology of the Land Conflicts Watch for collecting data. The field correspondents used multiple sources to find land conflicts like regional newspapers, documents/records, resource persons, local non-profit organizations etc. He

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<sup>4</sup>Contributing Editor, Business Standard, D-21, GK-II, New Delhi

mentioned that verification was a very important part of this exercise and the information of the conflict was taken from various credible sources like court papers, public records, public hearing recordings, resolutions passed by village authorities etc. Right to Information (RTI) applications are being filed to get official responses and the data about each conflict. Land conflicts were categorized on the basis of sectors, types of land etc. Regional distribution of sectors affected by land conflicts, especially the Naxal districts and Scheduled areas, were also highlighted. According to him the main reasons for land acquisition related conflicts are insufficient compensation and absence of consent of the affected people. The study showed that majority of the land conflicts involved common land or government land and not private land. Regarding the caveats and limitations of Land Conflicts Watch he mentioned that it is an ongoing exercise and the numbers in each state only partially reflect the ground situation because data are still being collected. Better picture about the spatial patterns of conflicts will emerge only when more data is gathered. The number of people affected, land area, and investment figures are indicative and based on the best available estimates.

## Dr. Namita Wahi<sup>5</sup>



She presented her presentation on “Land litigation in India: how to reduce Land Disputes”. She first explained the nature of land disputes in India, classified them into Litigation/Disputes against state and Litigation/Disputes among private parties. She then

mentioned the existing studies on land disputes and conflicts. She mentioned that DAKSH Access to Justice Survey provided some lessons. According to the survey, 66% of civil cases are land/property related disputes and two-third (67%) of the petitioners are inclined to appeal further in case of loss. 47% of the petitioners are agriculturists, majority (53%) of petitioners are from OBC class, majority (53%) of the cases are inter-family and 90% of the petitioners have less than INR 3 lakh of annual income. She then highlighted the limitations of DAKSH Survey referring that the survey was non-comprehensive and did not indicate sub categories of litigation. She also mentioned the findings from the Land Conflicts Watch and also its limitations. The findings from the CPR LRI Land acquisition study was also mentioned by her. According to it, the average pendency of a case from notification of land acquisition to HC decision was 15 years, and Supreme Court decision was 20 years. Most litigation was urban in nature and more than half of all petitions came from 20 districts in India. She also mentioned the CPR LRI Study on “Land Rights of Scheduled Tribes in Scheduled Areas of India”. She pointed out that the ongoing CPR LRI study has estimated over 1,400 land laws for only 8 states, namely Andhra Pradesh, Assam, Gujarat, Bihar, Jharkhand, Punjab, Meghalaya and Telangana. She highlighted that long pendency of cases is because of evidentiary requirements under the Indian Evidence Act and the Civil Procedure Code. Other Evidentiary requirements under Indian laws were also mentioned by her. She then mentioned some solutions for solving land disputes

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<sup>5</sup>Director, Centre for Policy Research .Land Rights Initiative, New Delhi –21

1. Need more comprehensive, reliable studies of land litigation at level of
  - Civil courts
  - High Courts
  - Supreme Court
2. Streamline existing land laws
  - Need comprehensive compilations of land laws at the level of every state and analysis of how these laws relate to each other within each state, and vis-à-vis state and centre
3. Remove conflicts at the level of legislation,
  - And not create new ones, e.g. proposed amendments to Indian Forest Act, 1927, that will conflict with the Forest Rights Act.
4. Need surveying of all land where it hasn't been carried out (e.g. northeast states) and revised surveys and updating of land records.
  - Computerization will only work to reduce disputes if the record on the ground is accurate. Otherwise it will be a case of “garbage in, is garbage out”.

## Dr. D. Ravindra<sup>6</sup>



He started his presentation by mentioning a few facts about land and also said that reforms and disputes go together. He mentioned that the redistribution of land for development purposes like building of roads, infrastructure etc. and distribution of

surplus amount of land by the government to the poor gave rise to disputes relating to land. He highlighted the fact that out 6.7 million acres of surplus land 5.1 million acres has been distributed and the progress has been nominal from 7th Five Year Plan. He mentioned that the implementation of land ceiling acts in the states other than Kashmir and Bihar took place in 60s and 70s, which was after the implementation of the land ceiling acts of Kashmir and Bihar. Due to this, some landlords transferred their surplus land to other names causing disputes. He specifically mentioned that one of the main reasons for land disputes was inadequate or delayed compensation. According to him, many state projects got delayed due to compensation issues. He then highlighted that due to the unavailability of resources the lands acquired by the poor led to the formation of wastelands. He also mentioned the disputes related to ownership transfer. The main disputes under this category are lack of clear title which is a major dispute, other minor disputes related to title, possession issues even with right title, disputes of right to use and disputes related to demarcation/boundaries. He highlighted the land leasing act of NITIAayog. He also mentioned some other issues of land disputes like mutations which is the biggest challenge faced by farmers. Farmers always prefer to stay away from mutation process as manual handling of such changes are cumbersome. Some other issues highlighted are the following. a) Lack of titles make farmers ineligible for credit and insurance, b) poor coverage of farmers under institutional credit, c) longer time taken for producing and

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<sup>6</sup>General Manager, Corporate Planning Department, NABARD ITO, Mumbai –400 051

verification of land records, d) dependence of farmers on informal credit, e) inadequate inputs, lower yields and incomes, etc. He then mentioned the progress of the Digital India Land Records Modernization Programme (DILRMP):

- GoI has roped in all states as land is a State subject.
- Eight states could complete digitization of records.
- Six states could give viewing rights to banks.
- Three states could give mortgage provisions.

He then provided some proposals for better redressal of land disputes. They are

- Dedicated machinery to finish the redistribution task & clear titles
- Model tenancy laws by all states & addressing of the disputes
- Fast tracking of land records digitization
- Sensitization of the all stakeholders
- Capacity building of staff for handling digitized environment
- Digital Infrastructure at village level to facilitate access to farmers
- Expeditious linking of digitized land records to banks
- Facilitation of Direct Benefit Transfer
- Tenancy records - digitized mode & Expanded coverage
- Revisiting of Recent Tenancy Act with reference to period of lease
- Penalty provisions if tenant farmer fails to leave the land
- Facilitating changes under digitized land recording system

**Shri Modu Dan Detha, IAS<sup>7</sup>, Shri Onkarlal Dave and  
Shri Purna Shankar Dashora**



He started his presentation by mentioning that in Rajasthan even before the enforcement of Rajasthan Tenancy Act there was tenancy in the whole state with exception of some areas of Sri Ganganagar where malikana haq was prevalent. Tenancy title is

accrued by two reasons; however, this is not simple as evident from various litigations which ultimately defined the nuances forming the base of to accrue the tenancy. He then mentioned various reasons for land disputes like disputes arising by process of operation of law, possession, tenancy, resettlement, succession, etc. He then mentioned how Section 9,10 and 16 of Rajasthan Land Reforms and Resumption of Jagir Act, 1952 created confusion among local acts and section 9 created lots of litigations because every princely state had its own land laws and local terminology regarding cultivators/tenants. However, most of the cases are settled now, but some cases are still pending before Jagir Commissioner. Section 13, 15, 19, 30 (of Chapter III-B), 193, 194 of Rajasthan Tenancy Act and the Ceiling Law, 1973 was also mentioned by him. He also mentioned in detail the disputes arising due to act of parties, applications under Section 9, 10, 16 of Rajasthan Land Reforms and Resumption of Jagir Act, 1952, applications under Section 13, 15, 19, 193, 194 Rajasthan Tenancy Act, 1955, by the transfer of possession in compliance of legal act of parties i.e. Bequest, gift, sell and by Act of God Misunderstanding or non-compliance of personal law and evacuee agriculture lands rule 5A. Disputes regarding possession like names of tenant not entered in record in bandobast-bar-awal, no regular regularisation meetings, putting up of incomplete cases and dispute arising from rule 5A of evacuee agriculture lands rules 1963 were also discussed. He also mentioned the disputes arising

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<sup>7</sup>Member , Board of Revenue, Todharmal Marg , Government of Rajasthan

due to tenancy, there is a legal concept that newcomer by way of sell is a stranger and stranger can get possession by way of division of holding. This creates litigation. Sometimes co-tenant wants land of weaker co-tenant for them and then they oppose the outside purchaser and sometimes they try to get temporary injunction and permanent injunction not to sell the particular portion of land and not to give possession of particular piece of land. He mentioned disputes regarding right to way these disputes fall in three categories: Right of way and other private easement, opening of new way, enlarging of existing way and lying of underground pipelines and Right to construct or alter watercourse or to create a right of way or to construct a village road. Boundary disputes between private parties and state, between private parties, due to mis-matching in jamabandi and map, due to non-tarmeem (marking in map) and analogous in pre and post settlement entries. Dispute due to resettlement; change in right title instead of change in soil classification and rent, non-preparation of complete and self-speaking khasra i.e. Field book, using only min rather than mentioning area in figure and change in class of tenant and right title. Ejectment dispute; Result of Section 44 of RTA, Section 183 of RTA, Section 183-B and 183-C of RTA, Law of limitations, Section 183-A of RTA, Section 175 of RTA, Law of limitations, Section 177 of RTA. Dispute regarding succession; Hindu Succession Act- Female successors, tribes living in plain area of state, peasantry's customary practices, remarriage by woman, etc. He also suggested that the pendency of cases in revenue courts can be addressed to by revision, effective management and use of Information Technology.

## Technical Session- II

### Reforms required for better redressal of land disputes

Chairperson: Prof. K.B. Saxena, IAS (Retd.)

#### Smt. Vakati Karuna<sup>8</sup>, IAS



She spoke that the need to have single verified data came up when different departments had different figures on farmer's land holdings and the state could not implement the Rythu Bandhu Scheme and then the Land Record Updation and Purification (LRUP) program was taken up. For this, teams were formed, trained and placed in the villages. These teams went to each house and provided the family with the records of their lands. Updatations and corrections, if needed, were done and all the objections and the issues were taken up on the spot or appropriate arrangements were made to take care of those issues. This helped in updation of land records, linkage to Aadhaar, and in identifying the disputed and non disputed land in the state. The Govt. of Telangana then issued high security enabled Pattadar Pass Book cum Title Deed. The Govt. then took an initiative to design, develop & maintain a new web based Integrated Land Records Management Information System (ILRMIS) on the lines of core banking system by integrating: Revenue Records, Registration documents and Survey Records.

She said the steps leading to Dispute Resolution were-

- Creation of enabling environment for dispute resolution.
- Legislations for settling land rights which otherwise would have been disputes.
- Para-Legals as a means of dispute resolution who could identify the land disputes and bring them in the notice of

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<sup>8</sup>Director, Land Administration, Hyderabad –01

concerned authorities and they can act as bridge between the community and official machinery.

- Special teams have been formed with revenue, forest and survey officials for joint survey and resolution.
- Fast Tracking of Courts

## Shri V. Srinivas<sup>9</sup>, IAS



According to him, the area of Justice Delivery Systems is in dire and drastic need of improvement. Delays in adjudication of cases in Revenue Courts sometimes forced litigants to take law into their own hands. The Board of Revenue for Rajasthan has the

largest number of members and handled the highest number of revenue cases and before his tenure it was a technologically obsolete institution where few arguments were heard and disposed per month. So the Institution was in need of radical reforms and transformational governance. In his tenure he discovered that the simple principle of good governance that could make a huge change in a litigant's journey was timely case disposal. They disposed nearly three times the cases per month as was done earlier. The Board of Revenue for Rajasthan became a fully digitalized institution providing universal access to its court work. Good governance practices were implemented based on deeper examination of issues of jurisprudence, expediting decision making, deepening the technology impact, enhanced capacity building initiatives and stronger administrative/ judicial processes. The e-Courts Mission Mode Project was implemented in Rajasthan which placed case data of thousands of courts online. Other steps taken by the Govt. were, strengthening Judicial Academies, Lok Adalats and Training of Judges. He spoke about the Nyay Mitra Scheme which helped in indentifying the delayed cases and the speedy dispute resolution. He also shared some instances of his years on the Bench as Chairman of Board of Revenue.

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<sup>9</sup>Additional Secretary, Department of Administrative Reforms & Public Grievances, New Delhi-01

## Shri Ratan Singh<sup>10</sup>



He spoke of a need for an integrated dispute resolution mechanism that understands people's positions, interests and motivations, and facilitates a peaceful state of human co-existence to bring about greater social stability. He suggested

ADR- Alternate Dispute Resolution Mechanisms which are aimed at reducing the delays and costs resulting from protracted court litigations; ensuring party autonomy; preserving personal and business relationships; and ultimately ensuring over all better outcomes. He mentioned that the first step towards the resolution of land disputes lies in the identification and analysis of the conflict. Land disputes are mainly related to boundary, partition, ownership, inadequate compensation, eviction, trespassing, destruction of property, value & use of land and dispute over rights of collective land. And once the identification is done, ADR mechanisms like Mediation, Conciliation, Arbitration and Negotiation can be brought into force through trained individuals who possess the knowledge of Land related matters, participate voluntarily. They should be neutral, impartial, and practice confidentiality & inclusivity. All this will save time, cost and improve communication. It provides an opportunity to separate facts from emotions and improve community relationships. He said that each land conflict is unique in its own and requires its own individual solution. Improving the efficiency and timelines of the dispute resolution mechanisms has become the need of the hour in order to avoid the risks of social instability. He suggested that since law derives its authority from the obedience of the people, it is incumbent upon the policy makers to create awareness of the different alternative forums available to the people for a quick and efficient resolution of their disputes. Distribution of knowledge and relevant skills for avoidance and effective resolution of land disputes amongst people in different strata of the society would serve the real object of such legislative reforms.

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<sup>10</sup>Shri Ratan Singh, Advocate & Arbitrator, New Delhi – 48

## Shri M. Thangaraj<sup>11</sup>



He spoke about the examination of land disputes after the implementation of land reforms provisions in Tamil Nadu. These disputes were related to ceiling on land holdings and Tenancy reforms. Two types of data were collected, to understand the

magnitude of land disputes. Data for initial period were taken from a study conducted by Sonachalam and data relating to the latest period were collected from the Commissionerate of Land reforms in Tamil Nadu. The earlier study classified land disputes relating to tenancy into four categories, i.e. eviction cases, resumption cases, lease continuation cases and restoration cases. The study gives the statistics of total number of cases filed, disposed, pending and other parameters for each district of the State. The study further stated that the process leading to the declaration of surplus land was slow and cumbersome. After receiving the statement issued by the Authorized Officer, the landowners put in their objections leading to wastage of time and caused delay. Of the total number of applications filed and disposed under the tenant protection, the highest number of cases, both filed and disposed, was under eviction of tenants by landlords till June 1967. Comparison of latest data on land dispute with the initial period shows that number of disputes have increased both for disposed and pending cases. It is depressing to note that a large number of cases are still pending even after so many years of implementation of Land Reforms Acts and establishment of several Revenue Courts. Even Bhoodan land is also facing problem while distribution to the beneficiaries. About 26% of the Bhoodan lands are under disputes.

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<sup>11</sup> Former Professor, Chennai – 600 004

**Technical Session- III**  
**Different Models for Redressal of Land Disputes**  
**Chairperson: Dr. Nivedita P. Haran, IAS (Retd.)**

**Dr. C. Ashokvardhan, IAS (Retd.)**



He pointed out two important enactments in Bihar that were made during 2008-13. First was the Bihar Land Disputes Resolution Act, 2009. They created almost a Revenue court in the Revenue hierarchy itself so people instead of going to Civil

Courts are taking reserve to this court called the DCLR court, DCLR is a competent authority. This Act is betoken to six Revenue Acts, under which the rights of people are determined, and whenever there is any infringement of the legitimate rights of people, whose rights have been established under these six Acts, it is determined by this court. If dispossessions happen on any of the two types of lands, assigned or *ryati*, the person, allottee or assignee can move to this court. This Act empowers the DCLR in certain respects like partition of land holdings, correction of entries made in survey, settling record of rights including maps and survey maps, declaration of the right of the person, disputes regarding boundary and unauthorized constructions. Powers of Civil court has been given to this competent authority like admission of evidence by affidavits, compelling the production of documents, award of cost, and call for report through local authority or Commissioner. These are the powers of competent authority, including the execution. Earlier, the execution part was not there in the Act but later through an amendment, the execution powers were also given. The proceedings have to be summarily disposed off. Protection is also there under this Act and there was and is a clause that if the complex question of title arises then the DCLR authority will simply close the file and advice the involved parties to move to a competent civil court. Then there is a time

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<sup>12</sup> Dr. C. Ashokvardhan, IAS (Retd.), Member Bihar Land Tribunal, Patna -01

limit of 90 days so that the cases do not linger unnecessarily. The Collector can inspect the proceedings and send a report to the Govt. He explained how this Act helped in disposing over one lakh cases in Bihar. Then they created Bihar Land Tribunal. The tribunal is constituted as per the following; a person who was a HC judge and he can be the Chairman, two administrative members (retired IAS officers) and two judicial members who are district judge rank officers.

## **Dr. Atulya Misra<sup>13</sup>, IAS and Shri Meghanatha Reddy J., IAS**



He started with the classification of major Land disputes in the following manner; Updating Registry Scheme (UDR), Transfer of Registry (Patta Transfer Appeal), various Abolition Acts and disputes concerning Government Land. Then he stated

that the survey of all the Govt. land in the State was completed in 2016 and now the records and various land related services are managed through various online platforms like – Nilam software, 'Anytime Anywhere' Land Services. The Transfer of Registry is also completely online now. He then gave an overview of the Revenue set-up in the state. The previous Updating Registry (UDR) Scheme, to update the land records, caused disputes because of wrong/error entries and at that time the power to make the corrections was vested with the Zonal Deputy Tehsildar. But now, the District Revenue Officer (DRO) would hear these appeals.

A large number of disputes were under Transfer of Registry which also happened because of wrong/error entries in the Patta of a land holder. Patta Transfer orders are passed by Tehsildar/ZDT and in the event of a dispute, appeal to the concerned Revenue Divisional Officer (RDO) is made, for which the revision lies with DRO and if further remedy is needed, the aggrieved can approach the Civil Court. Disputes pertaining to the Govt. land are a major cause of concern to both the people and the Govt. as there is a massive increase in the litigation over such land on encroachment and other issues. He mentioned some problem areas which need to be resolved, like, under UDR scheme the appeals are still being filed and there is no clear picture of number of cases pending or any set time mechanism to resolve these cases. More importantly there is

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<sup>13</sup> Additional Chief Secretary, Revenue and Disaster Management, Secretariat, Chennai –09

<sup>14</sup> Joint Commissioner III (i/c) Land Administration Department, Chennai –05

no monitoring mechanism. He said that they are committed to speed up and bring transparency to deal with these issues. They're trying to make filing of cases online and a committee is formed to look into the TNLE Act of 1905 which is a very old Act. They are trying to bring down the appeal and revision to the district level itself and not to the Govt. to save time and energy, not only for the Govt. but also for the common man.

## Shri Pinaki Halder<sup>15</sup>



He first mentioned that in West Bengal the digitization of both the textual and the spatial records are almost completed, merely 0.5% remains to be digitized. Online applications for all the mutation cases, conversion cases etc. are available and facilities such as

checking your land records are also available. These advancements are definitely contributing towards dispute resolution. He briefly mentioned some categories and sub categories of land related disputes. He said that during land acquisition for Singur project, the state Govt. allowed compensation for both registered and unregistered tenants. And since the RFCTLARR Act came into being there has not been any land acquisition in the state. He mentioned various the applicable Laws and Acts for the resolution of land related disputes. There are formal and informal bodies, at different levels, in the State to address these land disputes. He mentioned that due to proximity to Bangladesh, special resolutions and amendments to the existing laws are made, to settle the boundary related issues with the neighbor country. Special measures were taken by West Bengal government, by amending the provisions of various Acts/ Rules to resolve various cases and by waiving land revenue for agricultural land and inheritance related mutation fees in 2018, for pre-empting land disputes

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<sup>15</sup>State Director, LANDESA, Kolkata –53

## Shri K. Yadagiri<sup>16</sup>



He started his presentation by mentioning that a Society for Elimination of Rural Poverty was created by the Ministry of Rural Development of Andhra Pradesh. SERP carried out field work and research to find out land related disputes in rural areas. He then

mentioned that the Union and State governments in India have taken up several land reform measures and passed several progressive and pro-poor land laws since independence to secure land to all the landless poor in the country. Still, a significant percentage of the poor are either landless or have insecure rights to land. He further mentioned that landlessness or having insecure land right is devastating for the rural families, especially for the poor and tribals who are doubly vulnerable. Poor people are unable to resolve their land problem due to lack of legal awareness, absence of legal assistance and inaccessible adjudicating systems. He specially mentioned that land is the “status” of an individual. He then provided some objective to examine existing support mechanisms including Paralegal and Community Resource Persons programmes in various states. He urged to search for an effective community-based support mechanism to resolve land problems of poor and tribal. He then proposed the expected outcomes of these objectives. He said that a blueprint for the implementation of community-based support mechanisms models across the country can prepared. He then mentioned that the experiences in the states of Andhra Pradesh, Telangana proved that facilitating support to the poor, coupled with building capacity of adjudicating officers, can help the poor gain secure rights to land with minimum cost. These experiences offer valuable learning for designing legal assistance models that resolves land problems of the poor across the country. This attempt of study primarily aims at drawing a mutual platform and

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<sup>16</sup>Research Fellow (ICSSR), Center for Economic and Social Studies, Begumpet, Hyderabad-16

developing an effective community-based involvement models to address land problems in rural India with the involvement of officials from departments of land administration, rural development, tribal welfare, members of legal services authorities, representatives from civil society, academicians and others involved in poverty eradication / land administration / legal aid (assistance) programmes for the formation of land policies.

He then mentioned that the distribution of government wastelands was most vigorously implemented in the State of Andhra Pradesh which has a high percentage of landless laborers. The State has distributed 1.7 million hectares of government wastelands, followed by Uttar Pradesh which distributed about one million hectares of government land to the landless poor. He mentioned that in 2004, to help rural poor families who are landless or lack secure legal rights, the government of Andhra Pradesh launched a legal assistance programme for land (initially called the Non-Land Purchase Programme and now called the Land Access Programme) to provide free legal assistance in resolving land problems. The programme was launched with World Bank support and with technical assistance from Landesa. The Land Access Programme is part of a large state rural livelihoods programme called Indira Kranthi Patham (IKP), implemented by the Society of Elimination of Rural Poverty (SERP), which is part of the state government's Rural Development Department. He strongly mentioned that Paralegals have emerged globally as a cost-effective solution to the problem of access to justice for rural communities. Community-based paralegals are less expensive and more accessible than lawyers, and can often resolve problems faster than existing formal legal structures or administrative bodies. He further added by saying that Community paralegals were initially tasked with securing land rights of the rural poor by identifying the land issues of the poor at the village level and facilitating the resolution of those issues through legal analysis, case investigation, land surveys and coordination with the Revenue Department (responsible for land administration in Andhra Pradesh). He then gave a brief view on the Paralegal

Volunteers Program of the Legal Services. He mentioned that the Andhra Pradesh Mahila Samatha society had also adopted the same model as that of the Telangana and it was successful. He also highlighted that a transparent and accountable land administration system has been set up due to the efforts of the state government. He then showed in his presentation, with the help of diagrams, the hierarchy and inter-connectivity of various government and non-government organizations for a possible schematic of Justice Centers and Land Adjudication. At last he mentioned the limitations for land distribution programmes. He suggested the following reforms while going forward; land Rights and Legal Assistance Centre should be setup, support by Paralegals must be taken and law students can be given some field work relating to this, training and Capacity Building Programme should take place, spreading Legal Literacy must be done among the masses and Convergence Committees must be set up.

## Prof. M. G. Chandrakanth<sup>17</sup>



He started his presentation by mentioning some facts about BHOOMI - Land Records management system in rural areas of Karnataka. Data from 30,000 villages, for 2.5 crore farmers with 1.7 crore RTCs (Record of Rights, Tenancy and Crops) all in soft form was collected under BHOOMI. For submission of land records, farmers can obtain records from 1000 kiosks established in all Hoblies – Nada Kacheris, Bhoomi office (Taluk) and Kaveri (Sub registrar office, Taluk level). He mentioned that farmers are now not under the mercy of Village Accountants. With computerization, all RTCs are digitally signed. Farmer can obtain RTC from any Kiosk or from internet with a modest fee. Land records data are now available for general public, all departments, banks etc. He also mentioned unique facts about BHOOMI and its impact on land transactions. He highlighted that for land with multiple owners, for selling a portion of land, for selling land to multiple buyers, 11E or PM sketch is compulsory by law. Right now 11E sketch is not required only when entire piece of block of land is sold to buyer. There are restrictions on selling of lands of SC/ST categories. Surveyor will indicate and will not allow transaction of such lands. Land which are under legal disputes will not be sold. He emphasized that there were a lot of successful outcomes due to the integration of BHOOMI, KAVERI and MOJINI. He mentioned the 'Buyer Beware' concept in which he portrayed how after registration of land, purchaser could verify location, survey number, extent of land available for sale, the neighboring farmers/ owners, limitation on sale of land such as Government allotted land due to the integration of BHOOMI, KAVERI and MOJINI. The 11E sketch is a buyer - beware concept. This renders Buyer to be extra careful, since buyer has information on the seller, his/her land, which portion of land is

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<sup>17</sup> Director, Institute for Social and Economic Change (ISEC), Professor VKRV, Bengaluru – 560 072

being sold, whether encroachment exists, whether land is granted by Government, extent of uncultivable land (Kharab A), the extent of Government land (Kharab B, such as area for roads, cart way, foot path etc.).

He provided information on the benefits of integration of BHOOMI, KAVERI and MOJINI. Under manual system, land sale was not reported back to Tahshildar from Sub Registrar. Hence RTC continued to show original extent of land, and same land could be sold to many owners. Sub Registrar will only register any document, and has no role verifying what the document contains. The linkage of BKM reduces the land disputes as land sold once cannot be sold again. Due to integration of BKM, extent of land sold after registration in KAVERI, is automatically electronically reported to BHOOMI and correspondingly RTC will have less land. A new RTC will be created for new buyer of land and for the seller the new extent of reduced land will be shown in the RTC. He highlighted that overall benefit per farmer is Rs. 1085 of which the opportunity cost of labour in availing RTC formed 23 percent, the rents paid formed 23 percent, the benefits forgone due to RTC (which is saved due to BHOOMI) formed 45 percent. The Citizen Registration Platform was also mentioned by him and also highlighted that BHOOMI is also linked with Farmer Registration and Unified beneficiary Information System and K KISAN.

## Shri S.S. Bhuyan<sup>18</sup>



Taking many landmark measures from time to time, the Government of Odisha have successfully envisioned and implemented policies relating to land use and its ownership. Land reforms have been made to achieve the objectives of; social distributive justice, socio-economic equality and uplifting the landless poor and the downtrodden in rural India. He said the massive investments initiated by the Indian State to develop the so-called 'smart cities' in order to make them emerge as engines of growth, have brought up the hitherto unexplored subject of urban property rights and records.

In India, he quoted the study done by CPR, there are more than 1000 land laws and laws alone are not enough for a proper redressal but the procedural lines of it are more important.

He mentioned that the land reforms programme in the State of Odisha focuses on three major areas-

1. Abolition of intermediaries.
2. Security of tenancy and regulation of rents.
3. Imposition of ceiling and redistribution of ceiling surplus land among the landless.

He explained the relevant provisions of Orissa Land Reforms Act, 1960 and then gave examples of ceiling and fraud cases, what judgments were made on these cases and what lessons can be learnt from the loopholes to make amendments in the existing provisions.

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<sup>18</sup> Director, PG, Public Grievance cum Additional Secretary, Department of General Administration & Public Grievance, Govt. of Odisha, Bhubaneswar

**Technical Session- IV**  
**Role of Technology in dispute redressal**  
**Chairperson: Shri V.K. Agrawal, IAS (Retd.)**

**Shri V.K. Agrawal<sup>19</sup>, IAS (Retd.)**



The topic of the discussion was ‘Anatomy of Land Disputes’. Why do land disputes arise? Land disputes arise because of the factors which are beyond the government; but lots of land disputes also arise because functions of government

functionaries. 70% to 80% of land disputes arise because of improper land records. There are basically three types of records i.e graphical records, textual records and registration records. In graphical records the boundaries become indivisible by operation of law after some time. In future when dispute arises there is no need to go to possession you just verify these records and rename the record on the ground. But in many of the states when property gets divided this division of property is not incorporated in the records. Sometimes it is because there is no practice and sometimes it is because there is no law. 85% of the work of revenue department or Tehsildar is non revenue based other works. All the other works are urgent works. So the urgent works takes precedence over the important works and the important works gets neglected. When the tehsildar is in charge of elections, he will not bother whether the surveyor is doing his work or not. In many states it is virtually impossible to get demarcation petition sorted out on time. Karnataka has started a process wherein if you are selling a part of your property, when you go for registration, part of property of selling must be clearly demarcated. On records the part of the property should be assigned a separate number. Unfortunately, this procedure is not present in any other state; not

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<sup>19</sup> Hyderabad – 500 110, Telangana

even in Maharastra and Andhra Pradesh. Another big issue is that of urban property records. Most of the states do not have a proper system to maintain urban property records. The situation is alarming as two third of our property is in urban records and we do not have unique ID for Urban Property Records.

## Shri S. Chockalingam<sup>20</sup>, IAS



The presentation was about use of technology to prevent disputes. First, he discussed about the use of drones for updating land records. During the British period, only the agricultural part of the land was surveyed. The abadi lands were not surveyed. Drones were employed for surveying abadi lands. The process followed a mechanism to make it as accurate as possible so that the disputes related to certain issues like measurement, location can be prevented. To establish some ground control points the locations of which will be fed into drones. 40 drones will be procured and within 3 years 40,000 abadis will be covered. Gram panchayat method is used for the survey. All the boundaries will be marked using lime. Public places have to be done by public people and private lands have to be marked by people themselves because first surveys are factum of possession. So normally 2 to 3 people complain come so in the pilot I have undertaken so we have given line powder to the people then there is some technical which is done we have an MOU with survey of India the work will be done by them like ortho rectification, image alignment, stitching of images and then the survey is done by just connecting the lines. Connect the chuna lines seating in the labs by drawing the lines your survey is done to latlong area can be taken to the accuracy of 5cm at the ground level to the map level as 10 cm this is what we have achieved every factor you want to know is available. Our accuracy we are expecting 1.5 cm horizontal and 20 cm vertical that is for gram panchayat purposes. 5 to 10 plots will be measured through ETS to cross verify. There are certain areas which are foliage which cannot be covered by optical thing. We have to do the survey through ETS. Finally we follow the procedure of issuing notices. He also discussed about the single window mechanism for property registration developed by the state government of Maharashtra. The portal is called ‘mahabhumi’ (<http://registeringproperty.mahabhumi.gov.in>).

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<sup>20</sup>Settlement Commissioner, Govt. of Maharashtra, Pune

## Shri Ramesh C. Sharma and Shri Om Prakash Bansal<sup>22</sup>



The presentation was on Revenue Court Management System of Rajasthan. Earlier, the manual processes resulted in duplication of work. Work flow system was not available and case life cycle is very long. There are 1329 courts in the state right from the naib

tehsildar court to revenue court. When the system was designed, these points were taken into consideration. It should be end to end solution for sharing the data but non acceptance at the field level. System must be very secure and scalable and assurance amongst stake holders and the phased incrementation approach. The stakeholders are revenue courts, advocate, higher authorities, citizens and the technocrats. The system has been integrated with the standard building blocks in Rajasthan. E-sign, SMS gateway, e-Mail Gateway multiple deskboard etc. have been created as per the requirement of user. Right from the case registration to case disposal every process has been taken care of. All the processes in the system have been properly mapped. All revenue courts have been covered in the system and one important thing is that we designed an unmanned machine in the Rajasthan called the e-mitra plus. Any information pertaining to the system is taken from the e-mitra plus. Total cases registered on the system are 917388 and the pending cases are 578203. Benefits of the system are faster, effectively and timely services to citizens. The status of a case and any other information pertaining to it can be viewed anywhere and anytime. The impact of the system was that the decisions of the revenue courts were made available online. Also the disposal of cases increased and the life cycle of cases began to decrease.

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<sup>21</sup> Additional Director, Dept. of Information and Technology, Govt. of Rajasthan

<sup>22</sup> Joint Director, Yojana Bhawan, Rajasthan

## Shri Mohit Pandey<sup>23</sup> and Shri Mohit Mayank



Their presentation was on the scope of block chain in land dealings and dispute redressal in India. They said that under this block cycle land dealing will originate from buyer to seller determining prices by demand

and supply force and thus eliminating middle parties who promote corrupt practices like tax evasion, and this will eventually foster revenue growth by stamp duty collection. It will create a mechanism where a single unified rating of land can be determined to fill the gap between the market and circle rates. This technology democratises the ability to validate transactions, which was previously restricted to central, mainly, national financial systems. This technology therefore encourages new ecosystems to exchange financial and non-financial assets. They also mentioned the experiences of other countries with block chain. Then they gave a detailed explanation of the forgery removing mechanism with block chain and the concept of *smart contract*, which brings the end to end security for all the processes, whether it is for payment or for the digital notarization. For dispute redressal, they explained the process of compensation determination through block chain mechanism which will reduce the cost and time.

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<sup>23</sup>Doon University, Dehradun

**Session V (Sub-group Presentation)**  
**Group Exercise for Policy Recommendations**  
**Chairperson: Dr. Nivedita P. Haran, IAS (Retd.)**

**Group I: Types of Land Disputes and different challenges**

The group discussed about some of the types of land disputes and challenges faced

**1. Disputes arising by process of operation of law including land acquisition**

- Lack of legal awareness
- Complaint regarding compensation
- Rehabilitation and resettlement
- Non maintenance of fact of land acquisition in revenue records
- Claimants of compensation not recorded in revenue Records
- Tenancy
  - Recording of tenancy
  - Recording of tenancy rights/titles/ownership/interests
- Ceiling
  - Wrong facts reflected Draft Statement issued by competent authority showing ceiling surplus land and retainable land
  - Challenge to ceiling surplus land allotment in favour of ineligible persons
  - Breach of allotment conditions
  - Reopening of dropped ceiling cases
  - Possession of C.S land not delivered to beneficiary

**2. Disputes arising by act of parties**

- Act of parties claim legal rights
- Whose name is not recorded in a register but he was a tenant
- Tenants in those areas where tenancy law/ revenue record was not prepared on the prescribed date

### **3. Disputes regarding possession**

- Application of revenue laws on agricultural land after the re-appeal of evacuee laws
- Many claimants for possession

### **4. Dispute arising by joint tenancy**

- Difficulty to take possession by a new (stranger)/ purchaser in respect of portion of land sold by a co-tenant/ co-sharer
- Difficulty in assertion of easementary rights between co-tenant
- Difficulty in land reforms
- Protection of crop
- Digging of well
- Improving irrigation facilities

### **5. Dispute regarding right to way**

- Way recorded in the revenue records not correctly
- Way apply creation of new way on payment of cost
- Demarcation of existing way not recorded in revenue record
- Temporary and seasonal paths recorded in map by dotted line and but the area is not recorded
- Demarcation of new water channels due to change in irrigation system

### **6. Boundary dispute**

- Two types – (i) Pathargadi
  - Between Private persons
  - Between State and Private Party
  - Between Private persons/ State/ Panchayat
- (ii) Non Compliance as per jamabandi entry by allotting separate full number and boundary demarcation in map.

## **7. Dispute due to resettlement**

- Change in right title without any court order
- Non-mentioning of area of old survey no. (Khasra)
- Settlement employees acted on the field merely on the basis of factum of possession during resettlement

## **8. Ejectment dispute**

- After expiry of lease period, difficulties crop up to restore possession of true owner
- Non- Ejectment of certain trespassers on the basis of adverse possession
- Mortgagee with possession not delivering back the possession to true owner after expiry of time prescribed by law
- Ejectment on basis of breach of condition

## **9. Disputes regarding surrender, abandonment and extinction of tenancy**

## **10. Disputes regarding succession**

- Hindu Succession Act provides succession to female successors but Female claimant sometimes not recorded in revenue records
- Tribal of a plain area do not come within the purview of Hindu Succession Act

## **11. Cases arising from higher court's decision compliance**

- Cases of execution
- Conversion of water bodies

## **12. Disputes on Forest Land**

- Forest land being used for non-forest purpose.
- Forest Dept. is filing cases in various courts (Latest judgement of SC during feb '19 directing eviction of forest dwellers who have not applied under FRA 2006 before competent authority)

### **13. Disputes on Govt. Land**

- Land dispute arising out of manufactured Hath-patta (hand written document by ex-intermediaries / jamindars) created/ concocted by ex-intermediaries and filing of cases in courts. under Estates Abolition Act in favour of unscrupulous persons before the prescribed statutory dates.
- Govt. land settled by virtue of ex-parte civil court decrees and Govt. filing cases under Order 9 Rule 13 of Code of Civil Procedure 1908

### **14. Disputes arising by absence of continuous consolidation**

#### **Group II: Models and Workable Options for Land Dispute Redressal**

##### **Legislative reforms :**

1. In many state revenue laws, which determine rights, there is no dispute resolution mechanism. Hence a common platform for the resolution of disputes with regard to the foresaid rights need to be created with regard to an appropriate act which will take into its fold existing revenue laws.  
(Ref. Bihar Land Dispute Resolution Act, 2009)
2. An independent land tribunal in accordance with the provisions of the constitution of India should be set up in every state by an Act to that effect which will adjudicate cases coming from revenue courts below where cases have attained finality.
3. There is a plethora of land laws some of which run at cross purposes with each other. Eg. Somewhere unauthorised occupations are regularised whereas somewhere they are treated as encroachments. There could be conflict of jurisdiction also within the laws and laws inter se. An expert review of anomalies like these is the need of the hour so that legal provisions are harmoniously synchronized.
4. Effective electronic synchronisation of textual, spatial and registration of land records

5. Physical verification of the land to be sold by licensed surveyors is a prerequisite for registration as in Karnataka (Ref Karnataka model of licensed surveyors). This is in view of the ground situation that mutations do not automatically follow registrations and subdivisions are not automatically carried out despite mutations which lead to lack of clarities and disputes.
6. Tamil Nadu Model of approved layout plan as prerequisite for registration by legislation may be looked into.
7. Settlement of Identified land disputes through the process of arbitration.
8. Mandatory and time bound mediation (Court annexed or otherwise)/conciliation before commencement of adjudication of any land related proceeding.
9. Creation of a pool of trained mediators and arbitrators having expertise in relation to land dispute at every level.
10. Creation of legislative mechanism for enforcement of mediated settlements under a stand-alone mediation process, in other words, where mediation happens without intervention of the court

### **Administrative Reforms :**

1. Strengthening Boards of Revenue on Rajasthan Model
2. Introduction/Strengthening/Revival of Camp Court system
3. *Nyay Aapke Dwar* model of Rajasthan may be emulated elsewhere taking care of mutation, partition by mutual consent, correction of entries in *Jamabandi*, *Tarmim*/ demarcation in maps and the like.
4. Quality of judgements often a question of concern. Similarly the execution of judgements is also a question of concern. Inordinate delay in adjudication is also a question of concern. Training of revenue officers/ judges for judgement writing. It is recommended that quasi judicial authorities at various levels may be attached with State Judicial Training Academies on refresher/orientation courses on land issues and adjudication thereof.
5. Strengthening Boards of Revenue on Rajasthan Model

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Discussion relating to paralegals was done in which they came forward with the following points:

1. Creation of a cadre of paralegal resource persons with respect to land disputes.
2. Creation of awareness about mechanisms of Alternate Dispute Resolutions (Mediation, Conciliation, Arbitration etc.) at all the levels starting from Gram Panchayats.
3. Convergence committees – Formal/informal
4. Accreditation of mediators, arbitrators and paralegal resources through recognised institutions.

They also discussed and made some miscellaneous points and some points on people:

1. Creation of citizen registration platform to recognise any occurrences to land transactions towards dispute redressal.
2. Legal literacy – Capacity development of SHGs/PRI in the area of women land rights, common land related issues and disputes and the nearest redressal mechanism available.
3. Setting up of land rights and legal assistance centres. It will be up to the state government to decide whether to run these centres through C.B.Os/NGOs.

4. The Telangana model of community based support/ community based paralegals who coordinate with government, community surveyors is worth studying. The community surveyors receive 2 months training at AP Survey Training Academy on survey related themes.
5. Create and support research and outreach pertaining to legal, social, economic and institutional aspects of working of land laws and resolution of land disputes for each state.
6. Create a comprehensive website to display land records, land rights, land bank data and community resources accessible to all stakeholders
7. Creation of FAQ booklets in vernacular language in order to demystify land laws and adjudicatory processes for the given state and uploading of such booklets on online platforms.

### **Group III: Using Technology for Faster Dispute Redressal**

They discussed and came to some conclusions:

1. Every property must have a unique identity
2. Textual and spatial records for every property, rural-urban, vertical.
3. Link land/property identity with unique identity of owner.
4. Database should be accessible online to public.
5. Allow online application for correction of errors in land records. Monitor their resolution.
6. Robust common database of all land attributes: Textual, Graphical and Registration
7. Identify existing best practice models for various activities that have worked successfully in other states.
8. Implement them in other states.
9. Aim for a robust ILIS to move towards conclusive land titling.

## Valedictory: Dr. C. Ashokvardhan, IAS (Retd.)



I may kindly be allowed to address you from here, I personally do not believe and hopefully you also do not believe in lunch upon lunch and lecture upon lecture. I am here only to thank each one of you, we learnt a lot from our mutual discussions. Many things we did not know and many things we knew and we wanted to share and we have shared and learnt from each other. We have benefited from this and ultimately I think that all these recommendations should go to the Government of India. They will give thoughts to it and definitely it will be circulated among the states. It will crystallize, maybe, in due course after some time after some deliberations in crystal clear policies some decisions will be take that whether if it is circulated. Somebody talked about model bill and most of the things that are missing in state laws, we are here discussing about these issues and we know about them, but if a model bill taking care of the lace which is affecting the land administration and triggering land disputes it will be circulated. I know Shri Vinod Agrawal he drafted a land title bill and it was circulated in the government. So many workshops took place I think two years back we had a workshop/get together here in the academy. It was one of the best bills that have yet come out was he has applied his mind, robust experience, heart and soul into it. Government of India is free to circulate model bills, long ago DR. N.C. Saxena had called me and asked me what shall tribal tenancy rights be dealing with models on tribal alienation and taking cue from Uganda report of to which I too was associated, so Government of India reserved their right to circulate bills. It is ultimately for the benefits of the state governments only so in any case I believe we have learnt from each other educated ourselves and definitely I will thank Director of the Academy, Joint Directors of the Academy, Deputy Directors and last but not the least Shri Sudhansu for untiring efforts day and night and infact day before yesterday we sat till 9'O clock I also was there so just joined them and all his staff all his officers they have worked tirelessly to make this event a success and I hope you agree with me that it was a success. Thank you very much Sudhansu ji and do remember us anytime you feel free.

## **Workshop Articles**

### **Block Chain in Land and Property Dealing**

**Mohit Mayank and Mohit Pandey**

#### **Abstract**

This paper envisage future of land and property dealing through block chain under this block cycle land dealing will be originate from buyer to seller determining prices by demand and supply forces hence eliminating middle parties which promote corrupt practices like tax evasion, this will foster revenue growth by stamp duty collection. Over the counter trading will generate transparent mechanism in favour of the people and will subsequently reduce miss-information speared between dealer and seller in future land trading Indian market. The study present intrinsic pattern of land and property dealing with idea of modern mechanism.

#### **1.1. Introduction**

##### **Scope of Block chain in Land dealing and dispute Redressal in India**

Block chain technology was originally created to solve two of the problems inherent to digital currency. The first is double spending, a result of how easy it is to reproduce an identical copy of any digital file. This means that in electronic financial transactions, the usual <copy-paste> takes a sinister turn when the copied information is a monetary exchange value, as this encourages fraud and transfers of amounts that do not exist .

The second problem lies in the need for a central authority to validate payments. Legal currency always has a central authority (National banks) to issue currency and guarantee its authenticity. Money transfers are governed by a financial authority that makes sure that the transfer of assets is properly recorded. In such cases,

we place our trust in both the issuing authority and the reputation of the intermediary service . When new platforms on the internet result in an exponential increase in the number of transactions, and the risk of interacting with unknown parties, how can we ensure that the intermediary service is efficient while still meeting our need for direct and reliable transactions .

Satoshi Nakamoto, a pseudonym that still remains anonymous, published the answer to these questions, and how to safely transfer funds digitally, in 2008. That solution was block chain, and its name is a direct description of what it is: a chain of data blocks ordered in a way that is both dependable and immutable . From a broader perspective, block chain is a Distributed Ledger Technology, or DLT, that allows networks of databases to be developed. In these networks, members of a given community can create, validate, store and share information in a safe and efficient way, at any time and without geographic limitations. These networks operate without a central governing body (or with one if they so choose), and can show the full transaction history (or decide to keep it hidden). However, modifying the details of the transaction history, or some of its records, is practically impossible, which means the information stored there is highly reliable .

This means block chain democratises the ability to validate transactions, which was previously restricted to central, normally national, financial systems. This technology therefore encourages new ecosystems to exchange financial and non-financial assets. Block chain made Bitcoin possible, the first ever encrypted digital currency, or crypto currency. Using cryptography, Bitcoin identifies the parties on a network and encrypts the messages sent between them. It then uses consensus to build a confirmed record of their interactions .

## **1.2 Block Chain in Property and Land use**

Block chain can help one of the foundations of the metropolitan economy: land and property development. It guarantees that

property ownership is recorded and lists the transactions, obligations and impositions of the real estate market with their corresponding finances. This allows an ecosystem to develop around property value that includes all the stakeholders involved: the general public, the people or organisations that own the land, related companies in the sector, certifying bodies, property appraisers, tax authorities, and planning or urban administration authorities.

Block chain shows real estate property rights as digital assets, and keeps records of their registration and certification, any construction or urban development rights, and the collateral used for financing. It also makes it easier to access public knowledge on the origin, transactions and obligations related to a property. Block chain make it easier to carry out real estate transactions: holding, selling, buying, mortgaging real estate and using other financing instruments; authenticating, certifying, assessing, taxing, planning and managing their value, keeping track of use, and transferring ownership. Records relating to land, land tenure and the official land registry will make it possible to take a location-based approach to development and mobilise the real estate market to ensure the taxation and funding needed for sustainable urban planning.

### **1.3 Countries Experience with Block Chain**

In June 2016, the Ghana Lands Commission asked Ben Ben to produce a national information system for land and a property tax platform, which was first implemented in the metropolis of Accra. This is a prominent example of youth entrepreneurship, as it was founded in 2014 in a block chain student association at the University of Michigan. It has received acknowledgements from the United Nations Sustainable Development Solutions Network, and meets SDGs (sustainable development goals, Ghana) 9, 10, 11, 15 and 16 . The system takes advantage of block chain to provide local authorities, financial institutions, real estate agents and the public in general with information on real estate, as well as making it easier to pay taxes, annual income tax and mining royalties digitally, among other uses.

Similarly, Dubai government land department is responsible for optimising the property market. The United Arab Emirates government will launch Block chain Strategy by 2021, which aims for 50% of all government transactions to be carried out over block chain purview by using a unique citizen identification number, with secure data protection and immutable, track able records. This knowledge platform also opens up an ecosystem of business opportunities in the real estate, fin-tech, banking, health, transport, urban planning, energy, e-commerce and tourism sectors .

Whereas in Australia, New South Wales, the government has sold management rights to its land title registry, placing the ownership mechanism for the state's residential real estate in the hands of a hedge fund .

In Canada, both Ontario and Manitoba have leased management of their registries to Toronto-based Teranet, though privatization in Canada saw a steep increase in registration .

#### **1.4 Changing real estate Picture by Block Chain**

To understand the potential of a block chain land registry system, analysts argue one must first understand how property changes hands. When a purchaser seeks to buy property today, he or she must find and secure the title and have the lawful owner sign it over. This seems simple on the surface, but the devil is in the details. For a large number of residential mortgage holders, flawed paperwork, forged signatures and defects in foreclosure and mortgage documents have marred proper documentation of property ownership. The problem is so acute that Bank of America attempted foreclosure on properties for which it did not have mortgages in the wake of the financial crisis.

Recall the rise of NINJA (No Income, No Job or Assets) subprime loans during the Great Recession and how this practice created a flood of distressed assets that banks were simply unable to handle. The resulting situation means that the property no longer has a

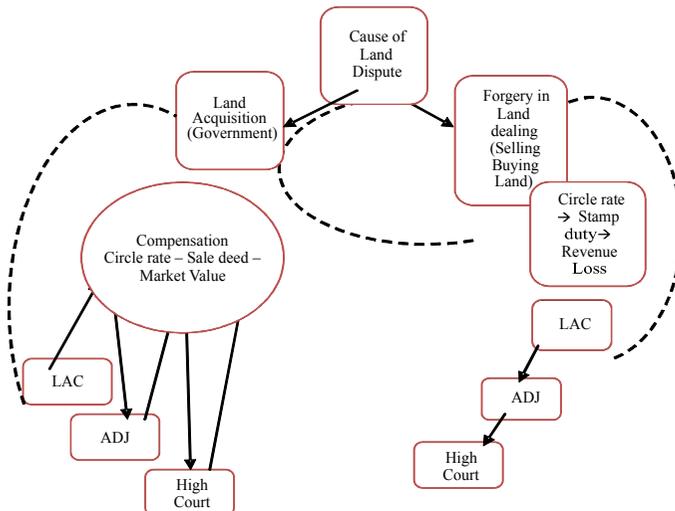
'good title' attached to it and is no longer legally sellable, leaving the prospective buyer in many cases with no remedies .

### 1.5 Cause for Land Dispute

The origin for land dispute split in two broad ways one is by Land Acquisition by the Government and second is intrinsically land holding and selling it, from Post-Independence Government acquire land for installing hand pumps and well within a ambit of benevolent and social welfare but gradually government started acquire land for leasing the private firms or industry this heated up debates across Indian courts for fair compensation to the land holder starting from LAF-ADJ-HC studied how unfair compensation (by LAF based on circle rate) increase the project completion time and litigation in courts. This also indicate need for future approach to revitalise compensation process under one rating class form different (circle rate, sale deed and market value) rating paradigm. Whereas studied how Land Acquisition Rehabilitation and Resettlement Act LARR will compensate more as compare to Land Acquisition 1894.

The figure A1 depicts land dispute cycle with two main causes.

**Figure A1**



The figure A1 depict how the Land dispute originate from two main causes Land Acquisition by Government 'with unfair land compensation based on circle rate which compel claiming party to approach higher courts to acquire compensation on sale deed or market value bases these hurdles are time consuming and delaying development process , Forgery in Land Dealing is a cheating based on partial information about previous land ownership which lead parties to approach to higher courts and tax evasion while selling and buying land is common this is because while land exchanges parties deposit stamp duty on circle rate which is less as to sale deed and market value'.

“The case study by on Haryana and Punjab High Court suggest that at initial level LAC compensate less due to evaluating land on circle rate bases than ADJ which evaluate land cost in sale deed the Table 1,2,3 show some glimpse of study”.

**Table 1: Percentage increase in the compensation by ADJ over LAC**

Cases adjudicated in 2011	
Number of Cases = 523	
Mean	205.10
Standard Deviation	279.66
Min	0.00
Max	2493.09

**Table 2: Percentage increase in the compensation by HC over ADJ**

Cases adjudicated in 2011	
Number of Cases = 523	
Mean	48.25835
Standard Deviation	278.4299
Min	-48.1618
Max	5205.85

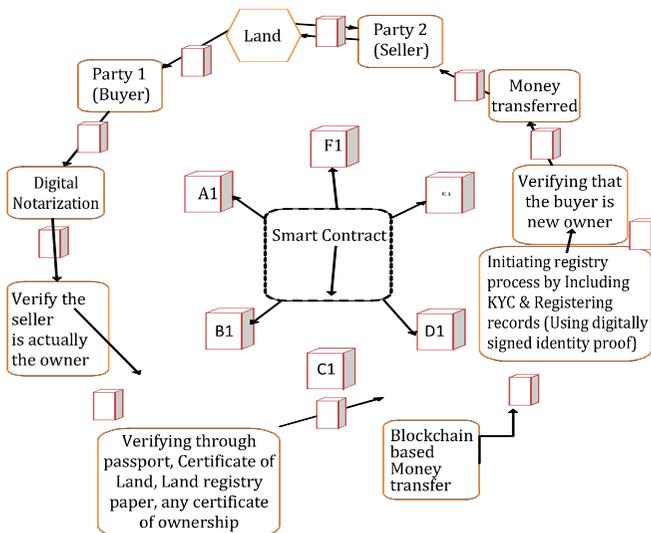
**Table 3: Percentage increase in the compensation by HC over LAC**

Cases adjudicated in 2011	
Number of Cases = 517	
Mean	363.0225
Standard Deviation	1657.334
Min	0.0
Max	36810.26

The table depicts that compensation (mean Value) increase by ADJ over the LAC and HC over LAC is higher. This suggests that the LAC (Government unable to fairly compensate) practice not only increases courts burden but also halts various development projects under land Acquisition and hence demand fast hassle free Redressal.

### Block chain based dispute redressal mechanism

#### 1. Forgery removing mechanism by Block chain

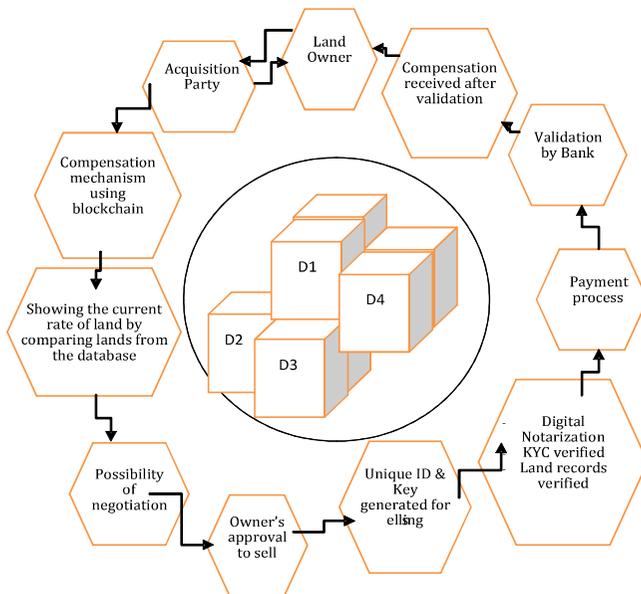


**Figure 1: Showing hassle free and secured mechanism of land dealing using block chain**

Forgery is one of the main reason of dispute considering the cases of land. We developed mechanism by which this can be removed. In the figure 1 which shows anti forgery mechanism by using blocks chain. Block chain will be very useful in providing a peer to peer network of information with a decentralised mechanism. In the case of land it can be used as a system of storing the records of land and providing a secured database for storing the records. One main benefit of storing the records of land using block chain is the smart contract. This smart contract will provide the access of only the user whose data has been stored on the database with a high encrypted *hash – function*. Considering figure 1 which is basically a prototype of the idea of removing forgery by using block chain . For say, there are two parties, one is the buyer and seller is the other. Party 2 wants to sell his land and he generated a block naming cell of his land using block chain application function. Parties will get the notification on the channel of block chain application. And, suppose a Party 1 is interested in buying that land, then he/she has to book the block and the seller party will generate a new code which will only be shared between the two parties. Now, the buyer will follow the process of digital notarization and in this digital notarization buyer would verify his documents, KYC and other things. The next thing will be the process of registry, note the process of registry will start after the process of payment and if the successful payment ID will be generated then the process of registry will move further. After payment the process of registry will include registration of land records, KYC, Identity proof and these will sign by using the block chain based digital signature that will authenticate the new owner. The money will be transferred to the seller and both will get a digital authenticated receipt. The main thing is that all the process will be bounded by *A1, B1, C1, D1, E1, F1 - smart contract*, which brings the end to end security for all the process, whether it's for payment or for the digital notarization, it will secure all the process on its block chain based cloud database network and no third party will get the access to control it. This system is more secured and can provide benefits at a large scale, some benefits are listed below:

- This system will remove intermediary which usually incurs too much expenditure for the parties and also more time consuming
- Any owner or buyer can interact on the same platform by using block chain based application and no third party needed
- The process will save money and time for both the seller and party
- All the records will be uploaded to the block chain based peer to peer database and no any chances of fraud by any party
- The tax will be paid to the digital notarization process which will be a government body and this will be performed by a highly secured smart contract using block chain
- Any third party apart from the buyer and seller cannot breach the network because if a third party will try to add an extra block with a different code then he/she would have to follow the process from the starting which cannot possible. A single block cannot perform the full transaction.

### Dispute redressal mechanism using block chain



**Figure 2: Compensation by using block chain mechanism**

- This block chain network will help during the time of disaster and natural calamities, like due to some reason the records will be lost then she/he can verify using their digital signature (like signs of identification)
- And, the main thing is that no other party will occupy the land without having the owner's record.

Considering Land dispute, the main reason of dispute of land is the acquisition and not getting the satisfactory compensation. Therefore, Dispute Redressal mechanism by using block chain plays a crucial role in maintaining this. In this block chain system, the peer to peer network is concentrated towards the Land owner and the Acquisition party who wants to acquire the particular land. Earlier for say, if government wants to acquire a land then the owner will get the compensation according to the Circle rate and if the circle rate is very low compare to the market price then the owner knocks the door of Court. But, this process was too tedious and the owner has to incur so much time and cost for it. And, the process of decision from the court side was also too lengthy. Now, using block chain mechanism there is a way to reduce the time and cost for both the government and the owner of land. In this mechanism government has to upload a database of all the records of the land of that area which they want to acquire then this data will be guided by a block chain based peer to peer network and smart contract. By using the block chain based application mechanism, government will notify the owner of a particular land for acquisition. The party will give the proof of work of land and if willing to sell to government then he would have to negotiate but there is a mechanism which automatically displays the price which will include the (value of land, current price, probable increase in price in coming years and other). Then the owner can send this proof of work to the government by using the block chain network and government will agree to pay the price then the transaction will go further. Note the block chain mechanism will also help in deciding the price by calculating some factors like, type of land (agri/rural/town etc.), roadside, industrial, location wise etc. And, this will give an option for the seller to pick the price at which the most favourable and the application will also

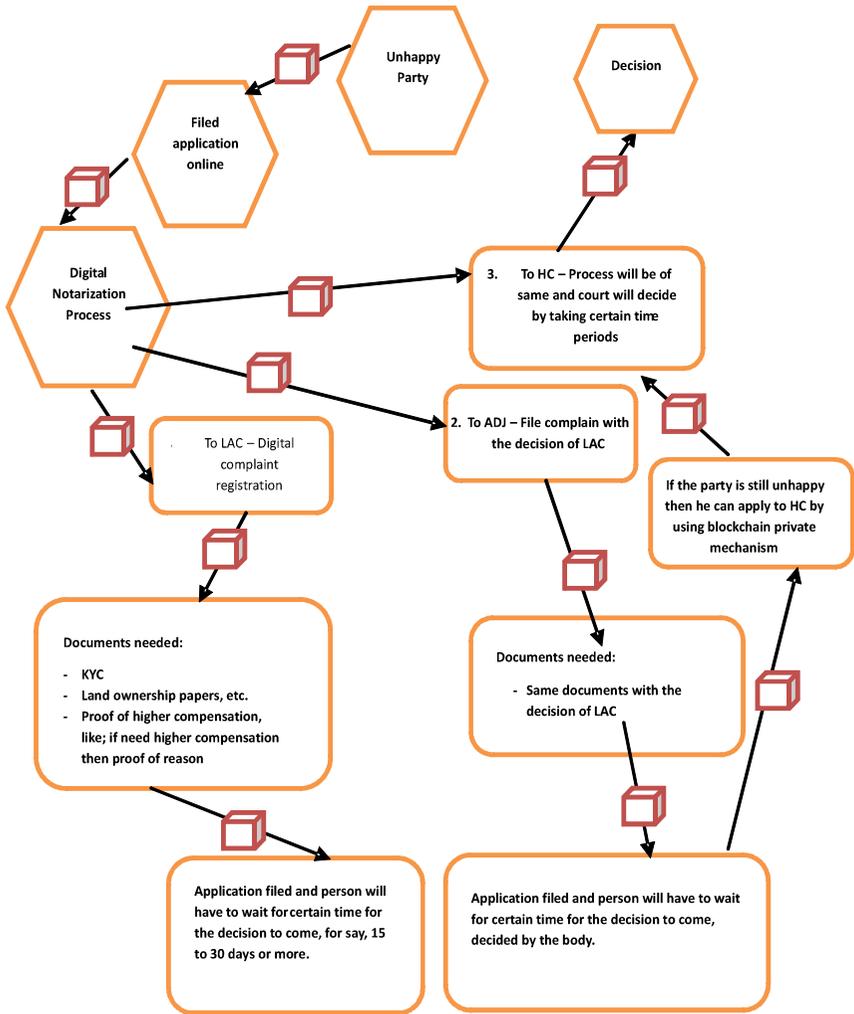
check the price of lands sold or bought nearby that land and the status of land. Finally, after the negotiation if both parties will agree then he can sell at the desired price and get the desired compensation by following the same block chain based transaction process.

### **Benefits of using block chain dispute Redressal mechanism**

- This system will help both the government and the owner of Land to save time and extra cost
- Land owner will get the compensation according to the block chain based mechanism of price comparison by looking the status of land
- There will be no any Circle rate or Market rate, but only one rate that would be the actual rate which will be calculated by checking the status of land, rural/urban, comparing the price of land nearby which are bought and sold till a specific period of time
- The compensation would go directly to the account of owner and no any other third party will involve in this procedure.
- The database will follow the block chain based peer to peer mechanism which will include smart contract between the owner of the land and the acquisition party and no third party will involve.
- The notarization will be digital and will be through block chain based peer to peer smart encryption mechanism and this system will be free from any breach of third party.

The next important part of the Redressal will be the appeal and justice procedure using block chain mechanism. For say, there is a party which is unhappy about the compensation he bought or notified by the acquisition party. Then, there is a process by which he can apply and get the justice by investing less time and money. Figure 3 is showing the prototype of appeal and justice procedure using block chain. The process starts with the first Body which is LAC where the party would appeal first, and it will be a digital process because we are here on the block chain peer to peer

### 3. Appeal and justice procedure by using block chain



**Figure 3: Showing the appeal and justice procedure using block chain**

network and by appealing the party will get a unique code/ID and after that he will have to show the proof of work in which he has to declare his KYC, Ownership papers, compensation proofs that has offered etc. These records will be uploaded to the LAC's database system and application will be filed. After a period which

will depend upon the authority the owner/party will be notified by the decision. Suppose the party/owner is still unsatisfied about the decision then he will move further to appeal and then he will proceed towards ADJ, therefore, using block chain the process will follow by using digital notarization in which the owner/party will open the block of ADJ's database where he wants to appeal, but he will only appeal after the judgement from LAC otherwise no actions will be recorded. In ADJ the documentation process is not too much but the owner/party will have to show only the decision of LAC and then appeal with a reason of proof. And, by uploading all these necessary file will secured in the block chain database server of ADJ. After some time (depending upon the ADJ) the results will be out and the party will be notified. And, in the last step for the party which is still unhappy from the decision of ADJ, then he will move further towards the HC and the process of application will be same and just a proof of judgement will be attached by the party from the earlier body and also the reason for dissatisfaction should be given in application for the HC. After uploading all the files to the block chain based server. The party will have to wait for the decision and then decision will be notified to the party and that's all.

## **1.6 Benefits**

Land registry block chains seek to solve these problems:

- By using hashes to identify every real estate transaction (thus making it publicly available and searchable), proponents argue issues such as who is the legal owner of a property can be remedied .
- Land registry records are pretty reliable methods for maintaining land records, but they are xpensive and inefficient.
- It easier to locate nuisance properties, such as properties seized on tax liens, abandoned properties and properties without 'good titles'—all likely targets for fraud .

- Land registry on block chain can reduce paperwork and fraud and also, helps in strong audit-ability for transactions with a time. There is a scope for transparency by using this method “*The block chain is not a panacea, but it is the best tool we have to fight corruption and inefficiency,*” - Frederick Reese.

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## **Lessons of Land Reforms and Overcoming Hurdles of Fraudulent Land Grabbing Cases**

**S. S. Bhuyan**

*“We don't say mother air, or mother sky. We say Mother Earth.  
We don't say mother trees, or mother water.  
We say Mother Land”.*

Such is the motherly care each child of humanity gets from the earth in form of land that, the subject land becomes all the more important for all of us living in this planet earth or for that matter in our mother land India.

Quite natural to infer and understand the value of land thinking and land management in our constant pursuit to make our mother land more virtuous and glorious in the estimation of each of its child and in this case each of Indian citizen. With this fundamental in mind, many leaders, visionaries, reformers and Governments have been trying to take measures from time to time that will ensure judicious land use for maximum utilities.

The feeder land, in other words, the agricultural land and its best use has been the focus of the Govt. of Odisha. Taking many landmark measures from time to time, the Government have successfully envisioned and implemented policies relating to land use and its ownership.

In a country like ours, where about 70 per cent of the population depends on agriculture, agrarian reforms occupy a pivotal position. Land reforms have been accorded high priority in the agricultural development strategy in achieving the objective of uplifting the landless poor and the downtrodden in rural India. Effective implementation of Land Reforms, which are being looked upon as part of the rural development strategy for poverty alleviation would go a long way in changing the agrarian scenario ensuring social distributive justice, socio-economic equality and

uplift of the rural masses. In fact, a small piece of a land restores to the rural poor their dignity besides providing social status to them.

In recent years, questions pertaining to land in India have become more relevant and critical for policy planners, bureaucrats, civil society activists and academics than ever before. Earlier and revenue was a critical factor for the consolidation of the British Empire. In the post-colonial period, the contribution of the land revenue to the national exchequer has lost its central place. Yet the importance of land ownership/land tenure/land rights as the basis of the Indian State's vision for a just and democratic social order continues to be an important concern. Land questions / issues in India can be said to have appeared, disappeared and reappeared in the policy agenda of the Indian State since the 1990s than to the neoliberal economic reforms. Demographic pressure, massive and uncontrolled changes in land use, conversion of agricultural and irrigated land for non-agricultural purposes and related sustainability issues, vanishing common property resources, changing agrarian relations, marginalisation of landless agricultural labourers and tenants, growth of landlessness across all social categories, decline in per capital landholding size, rise of the rich agrarian classes, continuities and change in tenancy, gender issues in land, forest rights to tribals and other forest dwellers, are some of the indicators of the importance of re-emerging land issues in India. The State in India, in the contemporary political economy, has virtually abandoned its redistributive agenda of land reform and instead is pursuing land titling regime in a "reform by stealth" approach. Land management issues have taken the place of land reform agenda.

India's rural-agrarian scene is undergoing massive changes. Urbanisation and peri-urban growth, the rise of the so-called urban phenomenon and urban villages, point towards important short term and long-term policy implications. In urban areas, massive investments initiated by the Indian state to develop the so-called 'smart cities' in order to make them emerge as engines of growth, have brought up the hitherto unexplored subject of urban property rights and records. The commodification of urban land

and rapid growth of real estate sectors in the Indian cities have created the problems of the urban commons, right to city and inclusive city.

The Centre for Policy Research-Land Rights Initiative (CPR-LRI) made on marathon analysis of different land laws being operationalized across 8 States in the Country. The findings were presented at the India Land and Development Conference at New Delhi on 12.03.2019 the findings centered around “**1000 Land Laws: Mapping the maze of Land regulation in India**”. It was revealed that there are over 1200 land laws in effect across 8 States i.e. Andhra Pradesh, Assam, Bihar, Gujarat, Jharkhand, Meghalaya, Punjab & Telengana of the Country which makes legal recourse a veritable mess. The more the number of legislations, the more at the complications for the public to get proper redressal. If there are less legislations, it is easy to give solutions on land grievances to people. Laws alone are not adequate but the procedural lines of it are more important. Historically, there has been knows systematic effort to popularise the laws or raise awareness among people to use these laws. This makes the complex nature of land laws inaccessible to people. There is also a lack of synchronisation among panchayat at legislations and state legislations.

### **Forests are crucial to Tribals**

Land is the most important at most divisive factor asset. For tribals, it is their lifeline and the State owes it to them to protect their interest in land and forest. Said Raghav Chandra, Former Secretary of the Government's National Commission for Scheduled Tribes.

Forest Rights Act, 2006 appeared to be a revolutionary leap forward along the line of asserting land rights of the tribals throughout the country. Latest analysis form the data of Ministry of Tribal Affairs revealed that out of 42.24 lakh claims for land under the Forest Rights Act, only around 18.94 Lakh claims have been given title deeds, while around 19.39 lakh claims have been

rejected. Hon'ble Supreme Court passed order on 13.02.2019 asking State Governments to evict those whose claims under the FRA have been rejected. This has been a bolt from the blue for the tribal community. One activist of the Regional Centre for Development cooperation (RCDC), an NGO working for forest rights, says organisations are now in the process of weighing various options, including filing a review petition in the Supreme Court. Some conscious and active field organisations championing the cause of tribals apprehend that this Supreme Court order would sound the death knell of the historic FRA. They describe the SC order as unconstitutional, as it ignores the centrality of gram sabha and its constitutional agency in matters of forest rights recognition, including rejection of claims. They argue that Rule 12(A) of the law states that “no committee except the gram sabha or the Forest Rights Committee shall be empowered to receive claims or reject, modify, or decide any claim on forest rights.”

Prafulla Samantra, who led the Dongria Kondh tribe in Odisha's Niyamgiri Hills to win a 12-year-long legal battle, says that it's the FRA that protected the tribes from losing their livelihood to a mining project of multinational bauxite giant Vedanta. Samantra later won the Goldman environmental prize for his efforts. “The Niyamgiri mining was stopped because of FRA and the gram sabha.” Says Samantra. “The Dongria Kondh tribe is prepared to fight the battle this time too”. Some others opine that implementation of FRA on the ground is slow in most States, the order will only derail it further it is to be worried that in the process of claiming and reclaiming, the forest right law becomes dysfunctional. Some activists opine that “Tribes actually living in interior parts of the State who should be benefited through FRA have been left out in large numbers. The last Government had not played a pro-active role in getting the forms filled.

In this fashion, there are many a slips between cup and lips in the system while implementing different land laws in different States. Legal awareness of land laws should be diffused and disseminated among teeming millions by way of massive

awareness campaign, full-fledged training imparted to all Officers and all staff dealing with different nuances and aspects of land laws. For this there should be strong political and administrative will resulting in well-orchestrated plan and strategy. Uniform Revenue Code in a simplified and commonly intelligible form should be introduced.

Now let us focus on the land reforms scenario of the State of Odisha.

**Our land reforms programme has been focusing on three major areas.**

- i. Abolition of intermediaries.
- ii. Security of tenancy and regulation of rents.
- iii. Imposition of ceiling and redistribution of ceiling surplus land among the landless.

After 66 years of independence, when we hark back, the Land Reforms scenario obtaining in the state of Odisha compels to concede that our efforts have not yielded the desired result. Among the main reasons attributed for the present state of affairs are lackadaisical approaches, prolonged litigation, absence of updated land records, ideological gap, absence of security of tenure, concealed tenancy, cumbersome procedure of the corporate sector etc.

Land issue is central to poverty. Social audit of land policy and its implementation is an empowering process. Entitlement of a person in respect of land comes from law. There is a process and procedure enshrined in different statutes or land legislations. In Orissa, there are two progressive land legislations such as Orissa Land Reforms Act, 1960 and Orissa Estates Abolition Act, 1951. Vast tracts of land of ex-intermediary estates vested with Govt. by way of operation of different provisions of O.E.A. Act, 1951. However at the outset we will discuss about the implementation of different provisions of Orissa Land Reforms Act, 1960.

## **Relevant Provisions of Odisha Land Reforms Act, 1960**

Ceiling Chapter came into force as Chapter - IV i.e. ceiling and disposal of surplus land in the O.L.R. Act, "1960.

Section - 37 - A defines ceiling area.

Section - 40-A deals with submission of return. A ceiling surplus land holder submits return under this section before the Revenue Officer.

Section - 43 deals with preparation and publication of Draft Statement showing ceiling and surplus lands.

Section - 44 deals with final statement of ceiling and surplus lands. Draft statement becomes final and conclusive under Section 44 (3) and the surplus lands vests in Government under Section 45 of the O.L.R. Act, 1960. As envisaged in Section 45-A. "It shall be the duty of the person in possession of the surplus lands to deliver possession thereof to the Revenue Officer within fifteen days from the date of vesting of the lands in the Govt."

Section 51 of the Act deals with settlement of surplus lands i.e. seventy per centum of the surplus land vested in the Govt. under Sec. 45 shall be settled with persons belonging to the S.T. or S.C. in proportion to their respective populations in the villages in which the lands are situated.

Rule-38-A of Orissa Land Reforms (General) Rules 1965 deals with the procedure for settlement of ceiling surplus lands under Sub-Sec. (2) of section 51 of the Act and definitions. As per this rule, "Landless person or landless agricultural labourer shall mean any person the total extent of whose land along with the lands held as a raiyat or a tenant by any member of his family living with him in one mess is not more than 0.7 standard acre and who has no profitable means of livelihood". Applications for settlement of surplus lands are invited from poor and eligible persons. Ceiling Surplus Land Settlement (C.S.L.S) Cases are initiated in Tahasils. The Revenue Officer following statutory formalities settles the land with eligible persons. The land allotted is demarcated and possession is delivered to the person.

Section 53 of the Act under Chapter V i.e. "Administrative machinery for implementation of land reforms" envisages constitution of Land commission for review of progress of land reforms. Section 54 of the OLR Act, 1960 provides for "**Function of Land Commission**" as follows:

**The Commission shall review the progress of land reforms from time to time, publish report at least once a year and shall advise Government in all matters relating to Land Reforms.**

Section 55 of OLR Act, 1960 provides for constitution of District Executive Committee and Local Committee. Annual report of the Land Commission from the year 1990-91 to 1998-99 on progress of land reforms has been published by Board of Revenue, Orissa. Cuttack but the Land Commission has become defunct since 1999. However Govt. is contemplating for reconstitution of the Land Commission.

By virtue of Orissa Land Reforms Amendment Act, 1973, the ceiling cases were initiated in different Tahasils of the State of Odisha in the year 1975. That was the time of emergency Smt. Nandini Satapathy was the Chief Minister of Odisha. His father Sri Kalandi Chandra Panigrahi was an eminent novelist and writer of Odisha. His uncle Sri Bhagabati Charan Panigrahi was the founder and propounder of Communist ideology in the State of Odisha. Being imbued with this spirit of socialism, the then Chief Minister, Smt. Satapathy galvanised the state administrative machinery for implementation of land reforms which gave jolt and deathblow to landed gentry class. The Ceiling cases were finally heard and disposed of by Revenue Officers declaring thousands of acres of land as ceiling surplus and the ceiling surplus land was settled with landless persons and landless agricultural labourers throughout different Tahasils of the State of Odisha.

But the practical experience shows that good number of ceiling cases in different Tahasils of the State were not finally disposed of by the Revenue Officers. The ceiling surplus land holders adopted

manipulative tactics to frustrate the vesting of their property in the State Government. Learned Advocate having taken advantage of the flaw in the law impressed upon the Revenue Officers to protract the ceiling proceedings indefinitely resulting which ceiling surplus land could not be identified and could not be distributed among landless and landless agricultural labourers. Positive and magnum size fraud was acted upon to defeat the operation of ceiling law.

Some of such important cases and glaring instances of fraud are quoted below:

### **Ceiling Cases relating to Puspalak family of Puri Tahasil of the District of Puri in the State of Odisha.**

Seven Ceiling Cases bearing No. 101,102,132 and 149 to 152 of 1975 were instituted against Gadadhar Puspalak and his family members residing in Manikarnika Sahi of Puri involving 1368 acres of land in village-Sipasurubali, an adjoining village of Puri Town.

One Revenue Officer published Draft Statement Under Section-43 of OLR Act,1960 in all the seven ceiling cases in the year 1976. Against this order of the Revenue Officer seven writ applications No. OJC No. 1057 to 1063 of 1976 were filed by ceiling surplus land holders in Hon'ble High Court.

It is pertinent to mention here that Section 40-A (2) of O.L.R. Act. 1960 provides that in any case where on the date of submission of the return under Sub-Section (1) any proceedings for partition in a Civil Court (instituted prior to the 26<sup>th</sup> day of September, 1970) in respect of any land forming subject-matter of the return is pending, the person shall submit a revised return on the basis of the result of such proceeding within 30 days from the date of final disposal of proceedings for partition. The Puspalak family had a Partition Suit bearing no. 65 of 1966 i.e. prior to Dt. 26.09.1970 in respect of 1368 acres of land. Preliminary decree was declared in 1967. But final decree proceeding was not finalised till 1994. In the

year 1975, the ceiling cases were started. In 1976, one Revenue Officer published Draft Statement against the ceiling surplus land holders in all the seven ceiling cases. Against this order of the Revenue Officer, the land holder filed seven writ applications No. OJC No. 1057 to 1063 of 1976 in Hon'ble High Court. On 29.3.1977 Hon'ble High Court observed that "the parties are directed to take prompt steps for final disposal of the final decree proceeding. However the ceiling proceedings are stayed in view of the Section-40-A(2) of the OLR Act, 1960". Despite this order dtd. 29.3.1977 of Hon'ble High Court, the Lower Civil Court did not show any promptitude in hearing and disposal of the partition suit. The partition case and ceiling cases rolled on parallel till 1992. Since sizable chunks of ceiling surplus lands (more than one thousand acres) were involved, the Collector, Puri advised Government Pleader, Puri to file a petition in the Civil Court to be impleaded in the partition suit since state has a stake in the matter. However, unfortunately the Sub-Judge, Puri rejected that petition of the State Government. Then the Revenue Officer at the instance of Collector, Puri contacted the Advocate General, Odisha and two Misc. cases were filed in the Hon'ble High Court to give a dateline to the Civil Court for final disposal of the partition suit. Those cases were rejected by High Court in the third Misc. Case, the then Revenue Secretary requested Advocate General to personally appear and impress upon the urgency and importance of the matter before Hon'ble High Court. Two earlier Misc. cases were rejected but in the third Misc. case, Hon'ble High Court directed the state to file a fresh writ application. Accordingly Collector, Puri filed OJC No.1738/93 before the Hon'ble High Court for fixing a dateline to Civil Court for final disposal of the partition suit. The Revenue Officer personally contacted the Deputy Director, Social Forestry, one Indian Forest Service Officer and collected the sale proceeds of usufructs (cashewnut and casuarina trees) standing over Ac.1368 of sandcast land of village Sipasurubali stretching along the Puri-Brahmagiri coastline beginning from Puri, the holy land of Lord Jagannath. The sale proceeds were to the tune of Rs.70,000/- per hectare (2.5 acres) in five years. Hence, on calculation and computation the cost of the usufructs was to the tune of some crores since 1966 till 1993 which has been plundered

by the Ceiling Surplus holders who was indiscriminately felling casuarina trees, cutting the big logs of wood and transporting clandestinely through bullock carts for decades . The jungle was known in Puri popularly as “Puspalak Jungle” This information was made an annexure to the plaint of OJC No.1738/93 so that Hon'ble High Court could be impressed upon that usufructs worth crores have been plundered from the anticipated ceiling surplus land by the land holders since 1996 till 1993. The State of Odisha got a favourable order from Hon'ble High Court who vide order dated 22.4.1994 directed to dispose of the partition suit by 31.7.1994. Hon'ble High Court further observed “notwithstanding pendency of the partition suit, the ceiling proceeding will continue after 31.8.1994”. This was like a bolt from the blue for the land holders since no other plea or pretext will work for protracting and dillydallying the partition case and the ceiling cases.

Then they engineered costly tricks with sinister designs to frustrate the vesting of their properties in Govt. They picked up twenty fake persons /strangers and got filed 20 Title Suits covering 880 acres (44x20) in the Court of Civil Judge (Senior Division) Puri on the plea of adverse possession since 1958 to avoid ceiling. The landholders made compromise with 20 persons and Civil Judge (Senior Division) Puri in a Lok Adalat held in Bhargabi High School at Chandanpur 12 Kms. away from Puri Town disposed of 20 Titles Suits in terms of compromise. Keeping in view these 20 compromise decrees, the Additional Sub-Judge, Puri excluded 880 acres from the purview of partition suit and prepared allotment sheets among co-sharers with the balance land of 497 acres. Then the landowners and 20 set-up persons filed revised returns in the Court of Revenue Officer with petitions to be implemented in ceiling cases.

The Revenue Officer passed an interim order in the ceiling cases that **“on verification of the entire Record of Rights of village Sipasurubali it was found that there are no notes of possession (illegal or forcible) in favour of those 20 persons in the remarks columns of the ROR. Apparently those 20 persons are unconnected with on the suit land. Hence to dispel the doubt**

**from the court's mind, let the 20 persons make personal appearance in this court”.**

Five Advocates representing the 20 fake persons/strangers/ third party intervenors, after going through interim order attacked the Revenue Court with hectoring invective. They opined that as per the provision of Advocate Act, they have been given Vakalatanama by those 20 persons and quite lawfully they have been representing them in this revenue court. Hence why the court is insisting on personal appearance which should be dispensed with.

The Senior Advocates representing the land holders opined that “You are a Revenue Court. You cannot sit upon the judgement of Civil Court you are bound to accept the compromise decrees”. But Revenue Officer remained adamant, never flinched inch and politely expressed his views that “if Learned Advocates are aggrieved by this interim order, they are at liberty to move Hon'ble High Court of Odisha to quash the same.

In the meanwhile the land holders being the powerful landed gentry class got the Revenue Officer transferred to Paralakhemundi, a very distant place in the district of Gajapati of State of Odisha. With this transfer order hanging over the head of the Revenue Officer, the Revenue Officer on 23.12.1995 entered into the Casuarina jungle to verify the veracity of the statements of the 20 persons which were recorded by the Revenue Officer during personal appearance of 20 fake persons and ascertained the factum of possession(which was completely non-existent) over 20 parcels of land (one parcel comprising 44 acres). The memorandum of spot enquiry was prepared in presence of advocates of the land holders and the 20 fake persons. After completing the spot visit on 23.12.1995, the Revenue Officer ransacked every nook and cranny of the Tahasil Office, the Record Room, the ROR of entire village and all relevant papers and documents. He engaged his Amins and field staff to prepare a Group Trace Map of 880 acres (44X20). He called for reports regarding antecedents of 20 fake persons from the Revenue Inspectors and verified the voter list of the village. Then the

Revenue Officer passed a bulky order running into 100 pages on 20.01.1996.

Brief notes on Puspalak Ceiling Cases involving 1368 acres of Sand Cast land in village Sipasurubali are given below for better appreciation of the sequence of events and developments.

- 1) Seven Ceiling cases bearing No. 101, 102, 132, 149, 150, 151, 152, of 1975 were filed against Gadadhar Puspalak and others in Puri Tahasil in respect of 1368 acres. These lands were recorded in favour of Gadadhar Puspalak and others in finally published settlement R.O.Rs of village Sipasurubali of the year 1977.
- 2) One partition suit bearing T.S. No. 65 of 1966 was instituted in the year 1966 in the court of Sub-Judge, Puri. The preliminary decree was declared in the year 1967 but the final decree proceeding was not finalised till 1994 deliberately to avoid ceiling having taken advantage of the provision in Section 40-A(2) of O.L.R. Act, 1960.
- 3) Collector, Puri filed O.J.C. No. 1738/93 for giving a dateline to the Civil Court for disposal of the partition suit.
- 4) Hon'ble High Court vide order dated 22.4.1994 in OJC No. 1738/1993 fixed dtd.31.7.1994 as the dateline for disposal of the partition suit.
- 5) This order dt.22.4.1994 was like a bolt from the blue for ceiling holders. To avoid ceiling, they picked up 20 strangers and got filed 20 Title Suits No. 236 to 255 of 1994 in the Court of Sub-Judge, Puri in respect of about 880 acres (44 acres in T.S. x 20).
- 6) These 20 Title Suits were disposed of by Civil Judge(Senior Division) i.e., Sub-Judge, Puri in Lok Adalat on a single day i.e. on 31.7.1994 basing on compromise.
- 7) These 20 compromise decree holders were impleaded in the T.S. No. 65/66 pending in the Court of Addl. Sub-judge, Puri who excluding 880 acres disposed of the T.S. No.65/66 preparing allotment sheets in respect of balance 497 acres of land among the members of Puspalak family.

- 8) The ceiling holders U/s. 40-A(2) of O.L.R. Act. 1960 filed revised returns in the Court of Revenue Officer-Cum Addl. Tahasildar, Puri.
- 9) Again the 20 compromise decree holders filed petitions in the same Revenue Court to exclude the properties covered in aforementioned 20 T.S. No. 236 to 255 of 1994 from the initial returns filed by ceiling holders in 1975 in the seven ceiling cases
- 10) These 20 persons/strangers/3rd party intervenors were made to appear in the Revenue Court who were examined and cross examined by Govt. pleader, Puri and other Advocates. Their statements were recorded and Revenue Officer made spot enquiry on 23.12.1995 which exposed the commission of magnum size fraud in glaring details in orders dtd.20.1.1996 of the Revenue Officer in and 22.1.1996 in Ceiling Case No.150/75.
- 11) The Revenue Officer rejected the revised returns of ceiling holders and the petitions of 20 strangers vide his order dt. 20.1.1996 in Ceiling case No. 150/75 and published Draft Statement on 14.2.1996 showing 1312 acres as ceiling surplus and 54 acres as retention land of ceiling surplus landholders.
- 12) Against this order of Revenue Officer, the 7 ceiling holders and 20 set-up persons filed 27 OJCS i.e. 1525/96 and 26 others in Hon'ble High Court casting aspersions on the Revenue Court that the Revenue Officer has opened up the floodgates of Judicial anarchy.
- 13) Elaborate common counter was filed on behalf of state on 23.7.06.
- 14) On the other hand, as per the advice of Advocate General, Orissa, 21 Title Appeals were filed in the Court of Dist. Judge, Puri numbering T.A. No. 66 to 85 of 1995 and T.A. No. 54 of 1995 against the order dated 31.7.1994 of Sub-Judge, Puri passed in so called Lok Adalat at Chandanpur and order dated 17.10.1994 of Addl. Sub-Judge, Puri in T.S. No. 65/66.

- 15) Learned Dist. Judge, Puri vide order dt. 27.6.2002 in all 21 Title Appeal Cases set aside the order 31.07.1994 of the Sub-Judge, Puri. Special Counsel and Senior Advocate of Odisha High Court Sri B.H.Mohanty represented State Government during hearing of 21 Title Appeals in the Court of District Judge, Puri on 20.06.2002.
- 16) Govt. in Revenue & Law Dept. Engaged Sri B.H.Mohanty as Spl. Counsel for conducting the cases arising out of Puspalak ceiling cases in Hon'ble High Court.
- 17) The Learned Dist. Judge, Puri vide his order dt.7.4.2000 granted leave to the state and condoned the delay in filing appeal in 21 Title Appeals Being aggrieved by the order dt.7.4.2000 of Dist. Judge, Puri, the ceiling holders filed Civil Revision No. 198,200,217 and 218 of 2000 in Hon'ble High Court. High Court vide order dt. 3.10.2001 dismissed those civil revisions and remanded the case to Dist. Judge, Puri for hearing on merit. Dist. Judge, Puri heard those 21 Title Appeals on 20.6.2002 and set aside the compromise decrees on 27.6.2002 observing that “The Civil Judge(Sr. Division), Puri under questionable circumstances has disposed of 20 Title Suits in a hurried manner without any visible reason misusing Lok Adalat.”
- 18) Against this order dt. 27.6.2002 of Dist. Judge, Puri, the ceiling holders and 20 set-up persons filed 21 Second Appeals i.e. Regular Second Appeal No. No. 22/2002 and 20 other Second Appeals in Hon'ble High Court.
- 19) On 6.11.2002, Hon'ble High Court analogously heard the aforementioned 27 writ applications and 21 Second Appeals.
- 20) All the Second Appeals were dismissed but Hon'ble High Court modified the order of Revenue Officers allowing one single ceiling unit to the extent of 5 ceiling units ( 45x5=225 acres) to be retained by the Puspalak family and ordered **to take immediate possession of the balance land of 1143 acres.**
- 21) Thereafter the ceiling holders filed restoration application Misc. Case No. 155/03 in R.S.A. No. 22/02 for stay of further

proceedings in connected Puspalak Ceiling cases pending before the Tahasildar, Brahmagiri. Hon'ble High Court vide orders dt. 9.5.2003 in Misc. Case No. 155/03 arising out of R.S.A. No. 22/02 have stayed further proceeding in the connected ceiling cases.

- 22) Then one Misc. Case No. 297/04 arising out of R.S.A No. 22/02 was filed by Sri B.H. Mohanty during August, 2004 for vacating the stay so that the ceiling proceeding can continue paving the way for vesting of 1143 acres of land in Government.
- 23) In the meanwhile, the two ceiling holders one namely Gourimani Devi, the writ petitioner on OJC No. 3123 of 1996 filed review petition case No. 141 of 2003 for claiming another ceiling unit beyond 5 ceiling units and another ceiling holder Sri Jayadurga Thakurani, the writ petitioner in OJC No.3129 of 1996 filed a review petition case No. 142 of 2003 claiming another ceiling unit beyond 5 ceiling units. The counter affidavit drafted by Special Counsel Sri B.H. Mohanty denying retention of extra 2 ceiling units have been filed in Hon'ble High Court on 17.7.2006.
- 24) The ceiling holders filed 21 Misc. Cases in Hon'ble High Court for recalling the order dated 6.11.2002 on the plea that the advocates of High Court Bar Association were observing "cease work agitation" for which no body appeared for the appellants in the Second Appeals as well as in the writ applications. And the Hon'ble Court High disposed of the case in the absence of the lawyers for the appellants in the Second Appeals and petitioners in the writ application.
- 25) Hon'ble High Court in view of the statutory embargo prescribed in Order 41, Rule-17 of the Code of Civil Procedure, 1908 vide order dt. 7.11.2003 recalled the order dt. 6.11.2002 of Hon'ble High Court passed in 21 Second Appeals and specifically ordered for listing of the 21 Second Appeals to be heard on merit shortly.
- 26) On the other hand, 27 Misc. Cases were filed by Special Counsel Sri Bhaktahari Mohanty for recalling the order dt.

6.11.2002 of Hon'ble High Court allowing five ceiling units. Fortunately on 12.9.07 Hon'ble High Court's order went in favour of the Govt. and order dt. 6.11.2002 was recalled. 27 OJCs and 21 Second Appeals will be heard afresh by the Hon'ble Court. A caveat was filed in Hon'ble Supreme Court through Sri Jana Ranjan Das, the then Advocate-on-Record of Supreme Court.

Unfortunately those 27 writ applications and 21 Second Appeals have not yet come up before Hon'ble High Court of Odisha, though Special Counsel and Senior Advocate of Odisha High Court Sri Bhaktahari Mohanty has been filing plethora of memos since 2007 till today for fresh hearing of those cases.

In this chequered history of spurious litigations, important judgements of Hon'ble High Court of Odisha in favour of the Govt. (Some of the extracts) are given below:

Hon'ble High Court vide order dtd. 03.10.2001 passed in Civil Revision No. 198& 200/2000 and Civil Revision No. 217&218/2000 have observed as follows:

XXX XXX XXX

**On the basis of the compromise decree obtained in the Lok Adalat as well as the final decree passed in T.S. No. 65/66 the 20 petitioners filed petitions before the Addl. Tahasildar, Puri, seeking to be impleaded as parties to the ceiling cases initiated against the Pupalak family and claimed exclusion of their land covered by the aforesaid 20 decrees from the purview of the ceiling cases.**

XXX XXX XXX

**Nowhere in the plaints of the aforesaid twenty suits and the schedules of property appended thereto, I could see the description of the boundary of the property over which the plaintiffs claimed their right by way of adverse possession. All these plaintiffs belong to the age group of 16 to 23 years**

**describing therein that all of them came to possess the lands in the year 1957. The suits were filed on one single day and were compromised on the basis of stereo-typed applications. This leaves no room for doubt that the sole purpose of filing the suits and getting the compromise decrees is to defraud the state from getting the ceiling surplus lands vested in it.**

Further it was observed by Hon'ble High Court in Para-13,” In view of the discussions made above, I find no merit in these revision application and the impugned order passed by the Learned District Judge granting leave to file appeal and condoning the delay in filing such appeal is legal and correct. The Civil revisions are accordingly dismissed.

The Hon'ble High Court of Odisha observed in Para-6 of order Dtd.6.11.2002 passed in 27 writ applications such as OJC Nos.1525, 1526,3073,3074,3075,3076,3077,3079, 3080,3 081, 3082, 3123,3124, 3125, 3126,3127,3128,3129,3130, 3131,3132,3133,3134,3135,3136 and 3137 of 1996 that “In the result, these writ petitions are allowed in part, and modifying the finding of the authority that the family is entitled to retain only one unit of ceiling, we hold that the family is entitled to hold five units as ceiling area. The identity of the lands to be retained and to be taken possession of by the State will be determined. No further claim in respect of any portion from any one will be entertained. Actual possession of the excess land thus identified will be taken possession of”.

Hon'ble High Court of Orissa have further observed vide order dtd. 6.11.2002 passed in Regular Second Appeal No. 48 of 2002 as follows:

xxx    xxxx    xxxx

Para-10, As regards the first question, the State was not given an opportunity to file its pleadings in the trial court because the State was not impleaded. What was done was to make a clearly collusive attempt to defeat the obligation of the Puspalak's family

to surrender lands in excess of the ceiling area. Young gentlemen in the age group of 16 to 23 years were attempted to be put forward as persons who had taken unauthorised occupation of the lands in the year 1957 when they were babies.

XXX XXX XXX

Para-12, The facts of this case disclose a blatant attempt to defeat the provisions of the Act, that too, a belated attempt. The attempt has been made some 24 years after the date of the obligation to surrender crystallised. Therefore, the tell-tale facts and the circumstances available in the case clearly justify the decision of the lower appellate court. The lower appellate court cannot be said to have committed any substantial error of law justifying interference by this court.

Para-13, In the light of the conclusions as above, we find no merit in this Second Appeal. Hence, we confirm the judgement and decree of the lower appellate court and dismiss this Second Appeal with costs."

Sd/-P.K. Bala Subramanyan  
(Chief Justice)  
Sd/- A.S. Naidu, (J)

Thus here is a case where about 2000 landless persons or landless agricultural labourers were deprived of settlement of ceiling surplus land with them in gross transgression of the mandate of a progressive legislation i.e. Orissa Land Reforms Act, 1960.

***Ceiling Case No. 205/76 and 34 S.C. persons of village-Sandhapur of Puri Tahasil in the District of Puri in the State of Odisha.***

In this Ceiling Case, Ac. 122.26 dec. of land was involved. The case was instituted against Bahubalendra Chandra Sekhar Rayasamanta, a Paralakhemundi- based landlord having aforesaid land in village- Sipasurubali, 10 K.Ms. away from Puri Town.

Revenue Officer, Puri passed orders declaring Ac. 34.26 as Ceiling Surplus land in Ceiling Case No. 205/76 on Dt. 28.01.1986. Possession was delivered to 34 S.C. poor landless persons of village-Sandhapur on Dt. 4.6.1986. One Janamangala Mahila Samiti helped the beneficiaries for plantation of casuarina trees by utilizing funds from Swedish International Development Agency (SIDA) meant for social forestry programme. Since 1986 till 1991 and onwards till today, the 34 S.C. poor persons are in physical possession of Ac. 34.26 of Ceiling Surplus land and the trees. But the suit land of the ceiling case was involved in series of litigations beginning from the lower Revenue Court to the Court of Member, Board of Revenue at periodic intervals. At one point of time, Member, Board of Revenue remanded the case to the lower court (Revenue Officer, Puri Tahasil) for fresh trial of original Ceiling Case vide his orders dtd. 11.4.1989 in O.L.R. Revision Case No.138 of 1987. The case was taken up by the then Revenue Officer on 5.9.1989 for fresh trial. The Revenue Officer relying on affidavits submitted by the sons and widow of late Chandra Sekhar Ray Samanta of village Machhumara, P.O. Upuluda, P.S. Paralakhemundi, Dist-Ganjam, sworn in the court of Executive Magistrate, Paralakhemundi and Bhanjanagar allowed 3 ceiling units and consequently the area of Ac. 34.26 dec. was devested vide illegal order dtd. 2.4.1991 in Ceiling Case No. 205/76. This devesting order of Revenue Officer created a furore in Print media and Electronic media and the plight and predicament of 34 poor S.C. ceiling surplus allottees was highlighted and internationalized in an Article **“IS NO ONE LISTENING”** published in a Swedish Magazine, **“Forest, Trees and People”**. The then Collector, Puri delved deep into the matter and made roving enquiries regarding actual state of affairs of the landowners who had 45 acres of land in two villages i.e. Machhumara and Totagumuda of Paralakhemundi Tahasil of Gajapati District of the State of Odisha. Ownership of this land was intentionally suppressed by the land holders in the entire stretch of the ceiling proceeding. Report of Tahasildar, Paralakhemundi was procured regarding joint living and messing of the landholders and the report gave a lie to the unregistered family partition deed of 1963(a manufactured document) which

constituted solitary plank of the ceiling holders. Collector, Puri moved Member, Board of Revenue U/S 59 (2) of O.L.R. Act. 1960 to set aside the order Dtd. 2/4/1991 of Revenue Officer, Puri in Ceiling Case No. 205/76 and to communicate orders for reopening and fresh enquiry.

Member, Board of Revenue vide order Dtd. 19/11/1994 in O.L.R. Revision Case No. 119/1993 observed that a perusal of the case records discloses that landholders transferred lands in Villge Sipasurubali to the extent of Ac. 122.26 in favour of 3<sup>rd</sup> parties-interveners 5 to 9 (all are the relatives of Sri Brundaban Panda, the power of attorney holder of Raisamanta family of Paralakhemundi) on 30.4.1991 by R.S.D No. 7378 dtd. 30.4.1991, 7375 dtd. 30.4.1991, 7377 dtd. 30.4.1991, 7379 dtd. 30.4.1991 and 7376 dtd. 30.4.1991. The sale was effected after conclusion of the ceiling proceedings on 02.04.1991. The report of the Revenue Inspector dtd. 3.10.1991 discloses that an area of Ac. 34.26 distributed earlier to the landless beneficiaries (which is part of the lands sold by land holder to purchaser) were restored to the power of attorney holder of the land holder in presence of witnesses. The interveners 5 to 9 have thus acquired substantial interest in the land as the sale was effected after conclusion of the ceiling proceedings and is valid in the eye of law. Lastly Member, observed in Para-20 of his judgement that “ In view of the analysis above, the Revision is allowed in part in so far as it relates to vesting in Government and taking possession of the lands to the extent of Ac. 36.528 in Machhumara and Totagumuda village in the Palalakhemundi Tahasil (at present in the District of Gajapati of the State of Odisha) which had escaped inclusion in the ceiling proceedings earlier.”. This pronouncement of the order of Member, the highest authority in the revenue echeleon of state of Odisha went against the interest of 34 S.C. poor landless persons.

This order of Hon'ble Member could not give any relief to the 34 Ceiling Surplus allottees (poor landless persons). Hence Govt. in Revenue Dept. directed Collector, Puri to file writ application against the order of Member, Board of Revenue. Accordingly in consultation with Learned Advocate General, Odisha, the order of

Member, Board of Revenue was challenged before Hon'ble High Court in OJC No. 8545/95. Ceiling holders Sri B.B.K.C. Ray Samanta and others filed O.J.C. No. 832/95 in Hon'ble High Court and the 34 ceiling surplus allottees represented through Janmangal Mahila Samiti filed O.J.C No. 7666/95 in the Hon'ble High Court. Counters have been filed on behalf of the State in 1995 and the application has been filed for analogous hearing of the aforesaid three Writ Applications. Plethora of memos has been filed since 1995 till date for expeditious listing of those cases for final hearing and disposal.

Even the publication of this story of harassment in different vernacular newspapers of Odisha and the debate in Odisha Legislative Assembly has not paid any dividends.

However, in the year 2011, one Special Cell was constituted in Revenue & D.M Department of State of Odisha vide Resolution No. 14122/R&DM, dt. 28.03.2011 with a mission to detect Government land fraudulently /irregularly settled in favour of different persons and for restoration of such land to Government. The Officers of Special Cell doggedly pursued the pending cases in Orissa High Court. Discussions were held with Advocate General, Odisha for listing of these cases for finally hearing and disposal. Sri Sidhartha Mishra, Additional Government Advocate fought out the case and the all the three cases are disposed of in the year 2015 i.e. after 20 years since the OJC No. 832/95 was dismissed, the earlier stay order of High Court on the order of Member of Board of Revenue to takeover possession of 55 Acres of land in Paralakhemundi Tahasil stood vacated. In the meanwhile Collector & DM, Gajapati and Tahasildar, Paralakhemundi have taken over possession of 45 Acres of Land, But the OJC No. 8545/95 (Collector, Puri Vrs-Member, Board of Revenue) was allowed in part in which High Court directed Member, Board of Revenue to hear all the parties concerned i.e. beneficiarlies and the transferees and to give relive to the 34 S.C poor persons. But the case is still pending in Board of Revenue.

Hencehere is a case where the human rights of 34 S.C. poor persons have been mindlessly violated and infringed upon. Systemic constraints and bottlenecks throttle the human rights of these poor innocent, hapless and defenceless persons in such a cavalier fashion that since 1986 till- 2019, they are languishing in utter anguish getting stuck up in the quagmire of obnoxious litigations.

**(3) Ceiling Case No. 203/76 of Puri Tahasil of District of Puri of the State of Odisha instituted against Bangalore-based Kapoor family.**

This Ceiling Case involves 506 acres of land in villages Sipasurubali and Sankarpur. This was instituted against Bangalore-based Mohanlal Kapoor and others in 1976. A good number of authorized agents and power of attorney holders stalked on the scene due to absence of original landowners residing in far-flung place of Bengaluru in the State of Karnataka. However in 1983, about 371 acres of land were declared ceiling surplus and applications were invited for settlement of ceiling surplus land from 213 poor persons who deposited salami and 213 Ceiling Surplus Land Settlement (C.S.L.S.) cases were instituted in Puri Tahasil for 213 acres of land at the rate of one acre of land for each beneficiary. Just prior to delivery of possession of land to 213 allottees, one O.J.C. No. 449/85 was filed by landholder through a fake power of attorney holder in High Court and delivery of possession was stayed. In 1989, two sets of beneficiaries/ salami depositors filed O.J.C. No. 1994/89 and 1595/89 for getting the ceiling surplus land.

All these three writ applications were taken up together and disposed of by Hon'ble High Court vide common order Dtd. 11.09.89. Hon'ble High Court remanded the matter to the Revenue Officer for fresh adjudication. Revenue Officer vide Order Dt. 17.04.1990 allowed 270 acres of land to be retained by landholders and Ac. 179.77 was declared ceiling surplus.

In the meanwhile, another set of beneficiaries filed O.J.C. No. 1482/91 (Madan Pradhan and others Vrs-State) which was disposed of on Dt. 5.1.1994 with a direction to distribute the Ceiling Surplus land among 213 persons within 3 months from the date of communication of the order.

One O.L.R. Revision Case No. 32 of 1990 was pending in the court of Additional District Magistrate, Puri who vide order Dt. 30.4.1994 made a roving enquiry and exposed the all-encompassing fraud engulfing 506 acres of land involved in Ceiling Case No. 203/76. A.D.M remanded the matter to Revenue Officer for fresh trial by taking oral evidences of landholders who have never appeared in any Revenue Court so far. I was deputed to Bangalore by Government in Revenue Department, State of Odisha for holding camp court in the office of Bangalore North Taluk for taking oral evidences and for recording the statements of Mohanlal Kapoor, Ravi Kapoor, Sashi Kapoor, Kamal Kapoor, Kanti Kapoor, and Inder Kapoor. One Sterling Holiday Resorts Pvt. Ltd. Chennai-based hotelier company purchased 16 acres of land out of the retainable portions of land holders share.

This hotelier company filed O.J.C. No.5393/94 and the purchasers filed another O.J.C. No. 8294/94 against the order dtd. 30.4.1994 of A.D.M. Puri. On Dt. 01.05.2002 Hon'ble High Court quashed the order of the Revisional Authority (A.D.M.) observing that A.D.M. has acted perversely and exceeded his jurisdiction. However Civil Review No. 43/2004 and 58/2004 have been filed in High Court for review of order Dt. 01.05.2002 of High Court of Odisha. High Court in an interim order in O.J.C. No. 5393/94 imposed stay on the ceiling proceedings in Ceiling Cases No. 203/76. Hence the order dtd. 5.1.1994 of High Court in O.J.C No. 1482/91 for distribution of the ceiling surplus land among 213 landless persons/salami depositors within three months could not be carried into execution.

The 213 C.S.L.S. cases are still pending in Puri Tahasil (Now Brahmagiri Tahasil) since 1989 till 2014. Though the poor landless persons have deposited salami to the tune of Rs. 89 each

since 1989, for one acre of land allotted to each of them, the land has not been settled with them in a typical situation warranted by systemic constraints and bottlenecks.

### **Success story of restoration of 400 acres of land in Puri-Konark Marine Drive Area**

During mid-1950s land of ex-intermediary estates were to be vested with the Government, under Orissa Estates Abolition Act (OEA), 1951. In some cases, favourable orders were passed under Section 5 (i) of the Act, by setting aside the manufactured lease deeds. While in some other cases, illegal orders were passed against the Government. The Collectors can file motion of reference before the Member, Board of Revenue under Section 38-B of the Act for setting aside the illegal orders, as there is no period of limitation.

In one such case, the Tahasildar of Nimapara settled 400 acres of land of Konark Area by an order under the Act on 17<sup>th</sup> June, 1964. Through this order, the land was registered in the name of three Bengali persons in the year 1964. Two of them died in 1958 and 1961 respectively. This fraud was detected in 1988 when Ceiling Case No. 4/75 was being adjudicated upon.

Nityananda Satpathy and others of Puri town purchased 275 acres of Land out of the aforesaid 400 acres from the Bengali landholder, prior to initiation of Ceiling Case No. 4/75. During the case, it was learnt that two landholders have died before the year 1964 when Tahasildar of Nimapara passed the order.

The Collector, Puri filed Revision Case 19 under the Act, in the Court of Member, Board of Revenue in 1989. In response to this, Member, Board of Revenue set aside the orders of Tahasildar of Nimapara on 1<sup>st</sup> January 1992. Against this order of the Member, Board of Revenue, Nityananda Satpathy and others filed a writ application i.e. OJC No. 215/92 in Orissa High Court, they had purchased 275 acres of land out of 400 acres. The Government of Odisha lost the case as per the High Court's verdict on 22 July

1996. The High Court observed, “We have no hesitation to hold that the entire proceedings before the Member, Board of Revenue culminating in the final order at Annexure-4 are liable to be quashed on the ground that the revisional authority has failed to exercise the power in reasonable manner within a reasonable time.”

After the High Court's verdict, the Government of Odisha filed Civil Appeal No. 7670/97 in Supreme Court against the High Court's order. On 31<sup>st</sup> July 2003, the Supreme Court affirmed and confirmed the order of Member, Board of Revenue date 1<sup>st</sup> January 1992 and the order of High Court of Odisha was quashed. As the Government of Odisha won the case in the Supreme Court, 400 acres of land were restored to Government of Odisha in 2003. In Para-6 of the judgement, the Supreme Court observed, “once a notification under Section 3 of the act is issued, the lands of the intermediaries ceased to have any rights there under.”

This verdict is often quoted by Revenue Officers and Superior Revenue authorities in Odisha to protect Government land, especially the land that is irregularly / fraudulently settled in favour of unscrupulous persons under O.E.A Act.

The plot in question being admittedly, 'anabadi' land must be deemed to have vested in the State Government subject to any right which the intermediaries could have claimed thereupon. Under Section 5 of the Act, the intermediaries although might not have been physically dispossessed, but they would be deemed to have gone out of possession and it was open to the State to exercise its right of possession.

Since Ex-intermediaries are the landed gentry class, they resort to manipulative tactics by way of manufacturing antedated papers and documents. During mid-50s, when lands of ex-intermediary estates were to be vested with Govt, Deputy Collectors under Orissa Estates Abolition Act, 1951 in some cases passed favourable orders under Section 5 (i) of the O.E.A. Act, 1951 by setting aside the manufactured lease deeds. In some other cases,

they have passed illegal orders against the Govt. Since there is no period of limitation, Collectors can file motion of reference before Member, Board of Revenue under Section 38-B of OEA Act, 1951 for setting aside the illegal orders.

Then Govt. filed Civil Appeal No. 7670/97 in Supreme Court against High Court's order. On dt. 31.07.2003 Govt. won the case and 400 acres were restored to Govt. in 2003. This case State of Orissa Vrs. Nityananda Satapathy and others was decided on July 31, 2003 which has been reported in **(2003) 7 Supreme Court Cases 146 (Copy of the Judgement appended as Annexure-'A')** In this famous judgement of Supreme Court, the order dtd. 22.07.1996 was quashed and the order dt. 1.1.1992 of Member, Board of Revenue Odisha was affirmed and confirmed. In Para-6 of this judgement, Hon'ble Apex Court observed that once a notification under Section 3 of the Act is issued, the lands of the intermediaries vested in the State of Orissa. Section 5 provides for the consequences of the vesting of an estate in the State in terms whereof all the rights of the nature specified therein shall stand transferred to the State. As vesting takes place free from all encumbrances, the intermediaries ceased to have any rights thereunder. The plot in question being admittedly, 'anabadi' land must be deemed to have vested in the State Government subject to any right which the intermediaries could have claimed thereupon. Under Section 5 of the Act, the intermediaries although might not have been physically dispossessed, but they would be deemed to go out of possession and it was open to the State to exercise its right of possession.

Practically this decision of the Apex Court is being quoted by Revenue Officers and Superior Revenue authorities in Odisha to protect Govt. Land irregularly/fraudulently settled in favour of unscrupulous persons and greedy land sharks in OEA Cases.

Another practical problem which enjoins upon amendment of the statute i.e. Section 6-A of Orissa Land Reforms Act, 1960 which provides for **Temporary ban on transfer of land settled by Government.** Really it is happening that after the temporary ban

(a period of ten years) on transfer of land is over, the ceiling surplus allottees are selling out the land and are being reverted back to the state of landlessness. Unless the ceiling surplus land settled with beneficiaries is made non-transferable for the entire lifetime, the purpose of the statute is defeated.

(4) A practical field experience of myself when I was working as Additional Tahasildar, (Land Reforms) is given below:

One LG Naronia came from Goa to Puri in 1942 and purchased more than 500 acres of land along the bank and confluence point of Chilika Lake and the Sea (Bay of Bengal). That is near Arakhakuda, village of fishermen community. In 1975, 5 Ceiling Cases were instituted against the Members of Naronia family. After observance of statutory formalities as per the OLR Act, 1960 and OLR General Rules, 1965, the Ceiling Surplus lands in those cases were distributed in 1977, 1979 and 1983. The balance 69 acres were locked up in litigation because of writ applications filed by Chhauni Matha and Balaram Kote Matha of Puri who purchased land from Naronia family. During my spot visit in the year 1992 to 1994, I found that the Ceiling Surplus allottees of the year 1977, 1979 and 1983 have sold out the land to white elephants of Cuttack and Bhubaneswar who have set up farm houses over the Ceiling Surplus land making a mockery of land reforms.

(5) The case of Harapriya Bisoi involves 53.95 Acres of Land in Village Gadakan of Bhubaneswar Tahasil in the district of Khurda in the State of Odisha. This vast patch of land was executed by Hatapatta dated 25.01.1933 by erstwhile intermediaries i.e. Chakradhar Mohapatra and Ramakrushna Mohapatra. Orissa Estate Abolition Case No.4 of 1970 was registered. The case has traversed a blind alley of spurious and obnoxious litigations which has been delineated in glaring details in the Supreme Court Judgement i.e. Civil Appellate Jurisdiction, Civil Appeal No. 2656 of 2009 (Arising out of S.L.P (C) No. 10223 of 2007) State of Orissa and Ors. .... Appellants Vrs Harapriya Bisoi. Respondent (With Civil Appeal 2657/ 2009 @SLP (C) NO. 11960/2007)

Judgement rendered on 20.04.2009 (**The Judgement is appended as Annexure-'B'**).

The General Administration Department engaged a Special Counsel of Repute Sri Subir Palit to fight the case on behalf of Government. Though about 10 years have elapsed, several attempts to list this case for hearing failed miserably. Just imagine the influence of vested interest groups: However in the year 2018 the case was keenly contested. Hon'ble Division Bench heard the case afresh. But the judgement has not yet been delivered. In the meanwhile, one of the Judges of the said Division Bench attained the age of superannuation. Sri Subir Palit has been requested to take steps for listing the matter afresh before any Division bench of Hon'ble High Court.

(6) The Case of Brundaban Sharma – Decision of Hon'ble Supreme Court in State of Orissa V. Brundaban Sharma (1955 Supp (3) SCC 249). It was clearly observed in Brundaban's case (supra) that the order of the Collector under Section 5(i) of the Act is required to be confirmed by Board of Revenue even if Collector upholds genuineness of the lease. (**The said judgement is appended as Annexure – 'C'**).

(7) The Case of Fakir Charan Sethi in Hon'ble Supreme Court– Civil Appeal Nos-1812-1815 of 2010 State of Orissa & ANR – Vrs- Fakir Charan Sethi (Dead Through LRS) & Ors. This relates to 4 acres of Land in Village-Chandrasekharapur which forms a portion of land out of 10 acres of land leased out in favour of Bombay Cardio Vascular Surgical Pvt. Ltd. headed by famous cardiologist of our country Sri Ramakanta Panda. The litigation, as in previous cases, emanates from Hatapatta (Manufactured lease deed) and getting it legalised and regularised in the proceeding of Orissa Estate Abolition Act. The matter went up to the Apex Court. Sri Subir Palit, Special Counsel of General Administration Department for this case on behalf of Government of Odisha along with Advocate- on- Record fought this case. Hon'ble Supreme Court vide order dated 09.10.2014 set aside the unfavourable orders passed by High Court in W.P No. 7434 and

7962 of 2008 which was a great victory of the State apparatus and the 4 acres of Land have been handed over to the Health Institute. The story of litigation encompassing the instant case does not end there.

One Sadhu Charan Biswal engineered spurious litigations in respect of Acers. 3.60 of Land of Village Chandrasekharpur which is a part of the leased out 10 acre of Land given to the Heart Institute. This litigation also emanates from a proceeding initiated under the Orissa Estate Abolition Act, 1951. Recently the matter was sub-judice in the court of Civil Judge (Junior Division), Bhubaneswar who imposed a stay order on construction activities of the Health Institute. Our Special Counsel a Subir Palit and Sidharta Mishra, Advocate, Orissa High Court obtained a dateline from Orissa High Court for disposal of the Civil suit. However, due to lack of pecuniary jurisdiction, the case abated and thus the stay order stood vacated. The construction activities were taken up. Again 144 CrPC case was filed by Sri Biswal before the Police Commissionrate. Subsequently that was dropped as Sri Palit convinced the Adjudicating Authority regarding falsity of the case. Caveats were filed by General Administration Department before the Court of Civil Judge (Senior Division), Bhubaneswar and in Hon'ble Orissa High Court. Despite the Caveat, the case was admitted by the Civil Court. Unfortunately, the status quo order was passed and the construction work was stalled. One appeal has been filed by Government in the Court of District Judge, Khurda at Bhubaneswar. Thus the litigations are continuing till date.

Here is a case where Ramakanta Panda, the famous Cardiologist of India deposited premium to the tune of 2.5 Crores in the year 2006 for 10 acres of Land. Unfortunately, the total allotted area has not yet been free from litigations.

(8) The case of Gopal Suar involving acre 520.38 in Villages namely Gadabangara, Dopada, Badagaon, Alanda and Bhuan in Puri-Konark Belabhumi Area. This land fraud involving vast chunks of land also originated from a OEA Case No. 134 of

1955/56 under Section U/S-5(i) of the Orissa Estates Abolition Act, 195. In that OEA Case vide order dated 21.05.1959, the Deputy Collector in-charge (Vested with the power to exercise the power of Collector U/S 5(i) of the OEA Act) set aside the manufactured lease deed (Unregistered Pattas) U/S-5 (i) of OEA Act and Tahasildar, Nimapara was directed to issue notice under Section 5 (h) of OEA Act on the lessee to give up possession of the land (Ac. 520.38) and to direct the Tahasildar, Nimapara to take possession of it accordingly (**The said order dated 21.05.1959 is annexed as Annexure-'D'**).

Without getting any relief from the Revenue Court, Gopal Suar filed a Title Suit No. 1/1964 before Sub-Judge, Puri who conferred occupancy rayati status on Sri Suar by an order passed in 1964. The then Collector, Puri filed an appeal before District Judge, Puri in 1966 which was rejected as time-barred. Then none has filed Second Appeal in Hon'ble High Court. Thereafter transactions clandestinely took place in respect of the disputed land.

This fraudulent lease of 520.38 Ac. of Government land in Puri-Konark Marine Driver was detected in the year 1998 and was reflected in the CAG report which described this as a clear case of fraud observing that “the Civil Court cannot sit upon the judgement of the OEA Authorities” CAG directed Collector, Puri to take steps for restoration of Government land. It was decided by the Government to file Second Appeal against the orders of the District Judge, Puri before the Hon'ble High Court. Accordingly, the Collector, Puri was directed to file the Second Appeal in consultation with the Advocate General. But it took eight years for filing of such Second Appeal i.e. RSA (Regular Second Appeal No.215/2006 before Hon'ble High Court). Sri S.P. Mishra, Sr. Advocate has been appointed as Special Counsel to conduct the Case. Sri S.P. Mishra is now Learned Advocate General of the State of Odisha. Mention memos have been filed and the Second Appeal case is moving from one court to another. Here is a case where 44 years of delay has to be condoned. After condonation of delay, the Second Appeal will be admitted and then only it could be heard on merit.

The Special Cell of Revenue & DM Department took up the matter with the Special Counsel and the case was ultimately listed for hearing on admission and condonation of delay. The case was heard on 13.05.2011 and the Hon'ble High Court held as follows:

“This is an application seeking leave to prosecute the Second Appeal against the Respondents No. 1 & 2 who are legal heirs of the sole deceased plaintiff, who was the Respondent in the Court below. It is stated that the sole respondent died after passing of the order by the Lower Appellate Court and before filling of the Second Appeal. Considering the above facts, leave is granted to prosecute the appeal against the legal heirs of the sole deceased plaintiff, who has been impleaded as Respondent No. 1 & 2 in the Second Appeal.”

In the meanwhile Ac. 29.60 of land out of Ac. 520.38 has been fraudulently and surreptitiously settled in favour of one Nirupama Rath who managed to get a Stitiban Patta from Settlement Authorities vide Settlement Appeal Case No. 593/07 and sold the land to religious organisation of world famous “International Kriya Yoga Institution” headed by Paramhansa Pragyanaananda Giri. For the passing of this illegal order, a State Government Revenue Officer was dismissed from Government service. Collector, Puri filed a revision case i.e. O.S.S Case No. 123/2011 before the learned Member, Board of Revenue for setting aside the illegal order of the Additional Sub-Collector, Puri (Additional Settlement Officer, Puri) settling the land in favour of one Nirupama Rath, Cuttack. Learned Member, Board of Revenue who passed order in this revision case directing to take the entire land into Government Khata against which the religious organisation has filed a writ application in Hon'ble Odisha High Court and obtained stay on the operation of the Order of Member.

In this fashion, the case has traversed through the labyrinth of litigations, the original job of restoration of Acres 520.38 as per the CAG report having been relegated to background.

(9) The case of Dr. Debendra Nath Dutta involving 100 Acres of land Village of Khalakata Patna in Puri-Konak Belabhumi area

under Gop Tahasil covered in OJC No. 3962 of 1994 which was abated due to non-substitution. Previously Commissioner Land Records and Settlement vide order dtd. 18.02.1994 in aforesaid revision cases directed the Additional Settlement Officer to revert back the suit land to Government Khata. Being aggrieved, Sri Dutta filed OJC No. 3962/94. After the disposal of the writ application on 20.03.2008, the earlier stay order of Hon'ble High Court stood vacated and the settlement authorities under the guidance of Sri S.S. Bhuyan, the then Charge Officer, Puri Settlement took the entire land to Government Khata on 07.04.2008 and the Tahasildar, Nimapara took over possession of the entire land on 16.04.2008. However, Hon'ble High Court have ordered that “the nature and character of the land shall not be changed”.

(10) The case of Sri Prafulla Chandra Muduli, OJC No. 3422/95 (Ac. 222 of Village Bhuan in Puri-Konark Belabhumi Area). The area Ac. 222.00 was settled in favour of Prafulla Chandra Muduli and others in one O.E.A case in the year 1958-59. During preparation of ROR, the settlement authority ignored the order of O.E.A Collector & recorded the same land in Government Khata. Being aggrieved, Sri Muduli filed O.J.C No. 3422/95 which was disposed of by Hon'ble High Court observing that the Settlement Authority cannot sit upon the judgement of O.E.A Collector. Hon'ble High Court quashed the order of the Settlement Officer. According to the opinion of Advocate General, Odisha, under the relevant provisions of O.E.A Act, the Collector, Puri filed three motions of reference U/s-38-B of O.E.A Act 1951 before the Court of Member, Board of Revenue, Odisha praying for setting aside the illegal order passed by the then Deputy Collector in the OEA Case of the year 1958-59. Member, Board of Revenue heard the three revision cases and held that the cases filed by Collector, Puri are maintainable in the eyes of law. Being aggrieved by the interim order of Hon'ble Member, the land holders filed three writ applications i.e. W.P (C) No. 16329/2003, No. 16269/2009 and No. 16316/2007 which were filed on the point of maintainability and are still pending in High Court.

(11) The case of Jambeswar Dalai involving 200 acres of Land of Village Bangara in Puri- Konark Belabhumi area. One Jambeswar Dalai, claims 200 acre of land on the basis of hatapatta. The Sub-Collector cancelled the lease under Section 5(i) of the OEA Act. The party filed appeal before the ADM, Puri. During the pendency of the appeal, the party filed a Title Suit before the Sub-Judge, Puri which was subsequently transferred to the Court of Sub-Judge, Nimapara. In the mean while, possession of the land was taken over under Section 5 (h) of the OEA Act. The appeal which was filed before the ADM, Puri has since been dismissed. The Tahasildar, Gop was advised to make boundary pillars and put up boards displaying “Land belongs to Government”. Trespassers will be prosecuted.

W.P (C) No. 12026/2010 (Maruti Estate Pvt. Ltd. Vrs-State of Odisha and others) involving Acres 85.860 in Puri-Konark Belabhumi area. This was fraudulently settled by the OEA Collector-cum-Tahasildar, Nimapara in OEA Nijadakhhal Case No. 480/59-60. It is pertinent to mention that 400 acres of land involved in OEA Nijadakhhal Case No. 481/59-60 has been already taken over by Government pursuant to the order dated 31.07.2003 of Hon'ble Supreme Court in Civil Appeal No. 7670/97.

In the instant case, the Collector, Puri had filed a revision before the Member, Board of Revenue under Section 38-B of the OEA Act. The Member, Board of Revenue quashed the order of the Tahasildar, Nimapara and directed to restore the land to Government Khata. In the mean while M/s. Maruti Estate India Pvt. Ltd. represented through its Director has filed a W.P (C) No. 12026/2010 in Hon'ble High Court and the Court had passed orders to maintain status quo. The facts are symmetrical as in the case of 400 acres of land. The Advocate General, Odisha has been requested to make a special mention and place the citation before the Hon'ble High Court. But despite such efforts, the case is pending and rolling on.

The village wise analysis of 8 villages namely Bangara, Gadabangara, Sutan, Madhipur, Konark, Khalakatapatana, Bhuan

in Puri-Konark Belabhumi was done by the Officers of the Special Cell, Revenue Department, State of Odisha. The analysis revealed that the culprits are the Revenue Inspectors who manufactured false jamabandi and made fraudulent entries in the Tenants Ledger which were not supported by the Jamabandies filed by the ex-intermediaries after abolition of the estates and the Asst. Settlement Officers who accepted the antedated fake receipts granted by the ex-intermediaries and recorded the claimants as Stitiban Raiyats. There is no such legal provision under the Act to accept their claim on the basis of ante-dated receipts given by the ex-intermediaries. Of late, it is difficult to take action against the officials who have created the mischief since most of them have retired or expired.

It has come to the notice of the special cell that the settlement operations in these areas have been continuing since 1962. All these villages are in not-final stage and Appeals and Revisions are being heard by Appellate and Revisional Authorities. A large number of cases are pending before the Addl. Settlement Officer and Member, Board of Revenue for disposal. The Addl. Sub-Collector, Puri has been delegated with the powers of Addl. Settlement Officer. The disposal of cases is very poor. Disposal of cases is not being reviewed by any higher authorities. A special effort is to be taken for disposal of all these appeal cases on priority basis to make these villages appeal-free. The Special Cell has already advised the Standing Counsel, Member, Board of Revenue to take steps for expeditious disposal of the cases pending in the Court of Member, Board of Revenue. It has also come to the notice of the Special Cell that in some cases appeals are not yet filed by the Tahasildars before the Addl. Settlement Officer. The Tahasildar, Gop and Nimapara are suitably instructed to find out those cases and file appeals before the Competent Court.

Recently, Gop Tahasil has been created being bifurcated from Nimapara Tahasil. The Tahasildar, Gop has been kept in Charge of the Addl. Tahasildar, Konark, Executive Officer, Konark, NAC

and Sub-Registrar, Gop. He has been managing the Tahasil with two Clerks and one Amin. Most of the areas where frauds have been committed come within Gop Tahasil. During the visit of this Tahasil, it is noticed that a vast tract of Government land is under encroachment. Unless timely action is taken by the Tahasildar, it is difficult to evict them from these lands.

During the visit of Nimapara and Gop Tahasils, it is noticed that large number of cases are pending in the Civil Courts for disposal. Verification of records shows that in many cases ex parte orders have been passed. No register has been maintained for Civil Court cases as a result of which the Tahasildars are not able to ascertain how many cases are pending in different courts. On the top of this, the Advocates engaged to defend Government cases in several Courts have not seriously contested the cases.

The Special Cell found that though orders have been passed by different courts for restoration of Government land irregularly / fraudulently settled in favour of different persons, no sincere attempt has been taken to take over possession of such land. The Special Cell have identified nearly one thousand acres of such land, possession of which is to be taken over. Due to inadequate staff, the Tahasildars are not able to take over possession of these land. It is therefore suggested for immediate posting of Officers belonging to Orissa Revenue Service (ORS) Cadre having settlement and consolidation background and four competent Amins to complete the exercise within a time bound manner.

The village sipasarubali, 8 K.M away from Puri, the Holy Land of Lord Jagannath, was affected by a Mega Land Scam involving 2823.53 acres of Government Land illegally settled in favour of 66 fake persons during settlement operation (1962-77). This fraud was detected in the year 1994 and the then Member, Board of Revenue convened a high level meeting involving all Officers concerned and directed the then Collector, Puri for restoration of the aforesaid entire land. At that time, consolidation operation under the provisions of Orissa Consolidation of Holdings and Prevention Fragmentation of Land Act, 1972 (OCH & PFL Act,

1972) was started in the year 1988. Collector, Puri filed 537 objection cases before the Consolidation Revenue Court under relevant provisions. In the meanwhile, State Government have taken all possible steps for unearthing the fraud and restoring the land to Government Khata. Till today, 2220 acres out of 2823.54 have been restored. The balance area is under litigations at High Court Level.

The Sipasarubali Village became the cynosure of eyes of land experts, Advocate and General public when Hon'ble High Court filed a suo-motu P.I.L. registered as OJC No. 11406/96. High Court deputed Sri Subir Palit as Commission of Enquiry raising 3 separate issues one regarding construction raised by several hoteliers and other persons in contravention of the provisions of the Notification issued by the Central Government creating CRZ-2, second is pollution of the coastal area and the third is grabbing of public land by certain individuals. Sri Palit submitted his elaborate report in the year 1997 which is commonly known as **Palit Commission Report**. The then Hon'ble Chief Justice Sri P.K. Balasubramanyan and Hon'ble Justice A. S. Naidu passed order in the year 2003 in this PIL for punishing the erring officials involved in the mega land scam. Then this PIL came before Hon'ble High Court on 07.11.2008 when Hon'ble High Court constituted a three men committee and directed the committee to submit this report to Hon'ble High Court within 4 months from 07.11.2008 (**The said order is annexed as Annexure-'E'**). More than a decade has elapsed in between, the report has not yet been submitted to Hon'ble High Court.

### **Special Tourism Area project of Village Sipasarubali in the vortex of litigations**

Sipasarubali Village has been engulfed in the labyrinth of obnoxious litigations arising out of operation of different Revenue Acts such as O.E.A Act, 1951. O.L.R. Act, 1960. OSS Act, 1958, OCH&PFL Act, 1972 and the Land Acquisition Act, 1894.

Land Acquisition proceedings have been initiated for acquiring land of village Sipasurubali for the Special Tourism Area Project. The details of land covered under acquisition and amount deposited in the Civil Court are indicated below.

Name of the Village	L.A. Case No	Area involved (in Acres)	Amount deposited to the Civil Court	No. of cases pending in Civil Court
Sipasurubali	1/97	364.85	1,96,03,334	40 Misc. Cases
-do-	6/01	410.50	3,64,32,986	6 Misc. Cases
-do-	2/06	621.69	4,60,05,060	12 Misc. Cases
		<b>Total - 1397.04</b>	<b>10,20,41,380</b>	

In the year 1997 it has been decided by the Government as follows:

“Keeping in view the pending litigations, it has been decided that even though we may proceed with the acquisition of land on the L.A. Act, in order to protect public interest, compensation should not be disbursed under the Act to any claimant in respect of the area locked up in litigation until right, title and interest over the same are finally determined under law.”

It may be indicated here that the Land Acquisition Act does not contemplate or provide for the acquisition of any interest belonging to the Government in the land on acquisition, but only it acquires such interest in the land as does not already belong to Government. The Apex Court in the case of Collector of Bombay Vrs. Nusserwanji Rattanji Mistri reported in 1955 (1) SCR 1311 held as follows:

“When Government possess an interest in land which is the subject of acquisition under the Act, that interest is itself outside such acquisition, because there can be no question of Government

acquiring what is its own. An investigation into the nature and value of that interest will no doubt be necessary for determining the compensation payable for the interest outstanding in the claimants, but that would not make it the subject of acquisition.”

This principle was followed in catena of decisions, viz Special Land Acquisition of Rehabilitation Officer, Sagar Vrs. M.S Seshagiri Rao & Anr. [(1968) 2 SCR 892], Ramanarain Singh & Others Vrs. State of Bihar [ AIR 1972 SC 2225]. Union of Inida Vrs. Prafulla Kumar Samal & Others [ (1979) 2 SCR 229] etc. Hon'ble Supreme Court in their decision reported in 1995 Supp. (3) SCC 249 (State of Orissa and others Vrs. Brundaban Sharma and another) relating to one Land Acquisition case of Jharsuguda have clarified the position as follows:

“It is settled law that the Government, being an owner of the land, need not acquire its own land merely because on an earlier occasion proceedings were mistakenly resorted to acquire the land and later on while realising its mistake obviously withdrew the same and published a fresh notification in which admittedly the land was omitted for acquisition and thereafter proceeded to lay the road on its land.”

### **Suggestions in light of loopholes in the laws and procedural lacuna**

These cases have shown pattern of change in landownership of Ceiling Surplus cases. One of the foremost lessons learnt regarding misuse of Ceiling Surplus land is that the dropped Ceiling case are not scrutinised and reviewed by the Board of Revenue on regular basis. Therefore, Ceiling surplus land is resold, not reverted to the government.

Through both laws have necessary provisions for reverting the Government land or preventing fraudulent land transaction, that is, section 59 of Orissa Land Reforms Act, 1960 and under section 38-B of Orissa Estates Abolition Act, 1951, not many cases are under taken by the Collectors where motions of reference have

been made by before Member, Board of Revenue. In absence of using both these provisions, most of the land cases and their adjudication take place at the level of the High Court and the Apex Court. This is lengthy and cumbersome process. If the entire process is taken care of by the Revenue Department as mentioned, litigation could be prevented and series of complicated petitions and writs could be reduced drastically.

Moreover, decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable – time causing delay- international or otherwise – has become a routine. Government at appropriate level should constitute Legal Cell to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment. The Government also needs to look into whether vesting necessary authorising power to the designated officers to take a decision or give appropriate permission for settlement would expedite the process. In the event of decision to file appeal needed prompt action should be pursued by the Officer responsible to file the appeal and he should be made personally responsible for lapses, if any.

Having defunct Land Commission is a major handicap. It is difficult to keep track of the progress of land reforms and the implementation of different sections of Orissa Land Reforms Act, 1960, disposal of Ceiling cases and distribution of ceiling surplus land in all the 30 districts of the State of Odisha in absence of such authority.

In absence of updated land record, availability of ceiling surplus land, its redistribution and its uses are not clear.

Adverse possession is one of the most critical problems. Most of the Civil Suits pending in different Courts relate to declaration of title over Government property by adverse possession. Recently, in one of the cases 23, Supreme Court observed remarked about how the existing law is harsh for the true owner and a windfall for

a dishonest person who had illegally taken possession of the property of the true owner. “This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.” This observation actually indicates a need to amend the law on 'Adverse Possession' at the state as well as the Centre level. Such amendment in the law of adverse possession could minimise litigation in the Court of Law.

The Officers of the Special Cell visited different parts of the State and found that there have been large-scale encroachments of land belonging to Government, local authority and religious/ charitable institutions. It has also noticed that some unscrupulous persons without having any lawful entitlement are trying to create illegal tenancy or lease in respect of Government land.

Land grabbing is increasing. This means that the state and its instrumentalities including the local authorities are not as vigilant as they should have been. The land grab in form of encroachments and unauthorised occupation of Government land by unscrupulous elements taken place because. The unscrupulous elements are succeeding, as they are able to manipulate the state apparatus for vetting possession and regularisation of construction because. The connivance of land grabbers with the authorities to raise illegal constructions and regularisation of their illegal possession could be curbed with.

It is pertinent to mention here that as per the information of Revenue & D.M. Department around 40,000 acres of the State Government Land are in the clutches of encroachers. The increasing land encroachment calls for a stringent law. Giridhari Das an expert in Revenue Laws of Orissa and an author's good numbers of books on Revenue matters. Opined that “It's high time for the Government to enact a stringent law to deal with land encroachment. The existing law in the state does not have teeth to deal with land-grabbers.”

Orissa Prevention of Land Encroachment Act, 1972, only deals with Government land and the revenue and civil courts can only evict an encroacher.

Land encroachment is not a cognisable offence punishable under the law. The courts do not have criminal powers.

On the other hand, the Andhra Pradesh Land Grabbing (Prohibition) Act, enacted in 1982, has been effective in curbing encroachment. Under the Act, land grabbing in any form is an offence punishable by law. Such an offence is punishable with imprisonment for not less than six months, which may extend up to five years with a fine of up to Rs. 5,000.

The Andhra law also provides for constitution of special courts for speedy inquiry and trial of these cases. The special courts are headed by a high court judge or a district judge.

Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 is seen as an instrument to curb land grabbing. Since enactment of this statute, the grabbing of land and encroachment of Government land has considerably reduced in Andhra Pradesh. There is a wide spread consciousness and awareness among all citizens and denizens including people belonging to the lowest strata of society not to encroach upon even an inch of Government land in the vicinity of their plot. This 1982 Act has paid good dividends so far anti land grabbing and anti-encroachment expedition of the state apparatus is concerned. In this connection the famous judgement of the Apex Court i.e Mondal Revenue Officer –vrs-Goundla Venkaiya reported in should be taken note of.

The State of Odisha have seriously contemplated enactment of Orissa Land Grabbing (Prohibition) Act since 2011 and the framing of Act and Rules was entrusted to the Special Cell of Revenue and D.M Department. The draft Odisha Land Grabbing (Prohibition) Bill prepared by the Special Cell was sent to the Learned Advocate General, Odisha for his views. The Advocate General opined to bring up such legislation immediately in order

to prohibit land grabbing in this State. The draft Odisha Land Grabbing (Prohibition) Bill was sent to Law Department for vetting. After vetting of the same Odisha Land Grabbing (Prohibition) Act, 2015 and the rules framed there under were sent to Hon'ble President of India. In view of ensuing simultaneous elections to Lok Sabha and Odisha Legislative Assembly, the act could not be laid before the Assembly floor. After formation of the new Government the act will be fully operational.

## **Suggestions**

1. Dropped Ceiling cases can be reviewed by Board of Revenue so that ceiling surplus land would be available consequent upon vesting of the land in Govt.
2. Motions of reference could be made by Collectors before Member, Board of Revenue under section 59 of Orissa Land Reforms Act, 1960 and under section 38-B of Orissa Estates Abolition Act, 1951 so that vast tracts of land could be made available to Govt. after some years of the process of adjudication from the Court of member to High Court and ultimately to the Apex Court.
3. Land Commission should be reconstituted to review the progress of land reforms and the implementation of different sections of Orissa Land Reforms Act, 1960, disposal of Ceiling cases and distribution of ceiling surplus land in all the 30 districts of the State of Odisha.
4. Excess Gochar Land available in a revenue village should be dereserved for availability of land for distribution as house site.
5. Indira Awas Yojana houses should be allotted to the poor persons and ceiling surplus allottees where Block Administration and Tahasil Administration can work conjointly. Revenue Officers should make spot verification of the proposed land to see that it is encroachment-free and litigation-free and the revenue agencies with the help of block agencies should examine the antecedents of the chosen beneficiaries coming within the eligibility criteria. Collectors and Project Directors, DRDA of each district can organise

land distribution mela and IAY house distribution mela in each Block and Tahasil in public places with wide publicity so that corruption in choice of beneficiaries and distribution of spoils in Block Apparatus could be assiduously avoided.

It is noteworthy to mention that in the State of Odisha a Special Cell has been constituted in the Revenue & Disaster Management Department vide Resolution No.14122/R&DM, Dated 28.03.2011 with a mission to detect Government land fraudulently/ irregularly settled in favour of different persons and for restoration of such land to Government.

- **Powers and functions**

1. To detect the cases of irregular/fraudulent settlement or transfer of Government land particularly the land vested with Government under the provisions of Orissa Estates Abolition Act, 1951 and Government waste land leased out for agricultural purposes.
2. To inspect and call for records of any Revenue Office including Tahasils/Sub-Divisions/District Offices and Settlement and Consolidation Organisations.
3. To examine records, collect evidences for restoration of such land to Government.
4. To make appropriate recommendations to the Government.

- **Performance of the Special Cell.**

The Officers of the Special Cell visited different Tahasils of Puri, Khurda, Cuttack, Jajpur and Dhenkanal Districts and found large scale irregularities in settlement of Government land. Keeping in view the massiveness of apparent fraud involved, the Special Cell have decided to concentrate their activities in the districts of Puri, Cuttack, Jajpur and Khurda in the first phase. The Officers of the Special Cell examined the case records, made field visits and detected **Ac.15841.158½** of Government land irregularly/ fraudulently settled. Out of the above, an area measuring

**Ac.9122.585** of Government land has been taken over/ restored to Government. The details of Government land irregularly/ fraudulently settled and the extent of land recovered are indicated below.

## **RECOMMENDATIONS**

### **(a) Amendment to the law on Adverse Possession.**

Most of the Civil Suits pending in different Courts relate to declaration of title over Government property by adverse possession. Recently, Hon'ble Supreme Court in Civil Appeal No.1196 of 2007 (*Hemaji Waghaji Jat Vrs. Bhikhabhai Khengarbhai and others*) have held as follows:

“.....We deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to lose its possession only because of his inaction in taking back the possession within limitation”.

The Apex Court have recommended the Ministry of Law & Justice, Department of Legal Affairs, Govt. of India to seriously consider and make suitable changes in the law of adverse possession. Law Department has been requested to ascertain whether steps have been taken by Govt. of India for making

suitable changes in the law of adverse possession. The State Government may consider making State amendment in the law of adverse possession to minimise litigation in the Court of Law.

**(b) Enactment of the Odisha Land Grabbing (Prohibition) Act.**

The Officers of the Special Cell visited different parts of the State and found that there have been large scale encroachments of land belonging to Government, local authority and religious/charitable institutions. It is also noticed that some unscrupulous persons without having any lawful entitlement are trying to create illegal tenancy or lease in respect of Government land.

The Apex Court realised the alarming situation of land grabbing by way of encroachments and held as follows: (Civil Appeal No. 1569 of 2001 Mandal Revenue Officer Vrs. Goundla Venkaiah and another).

“In this context, it is necessary to remember that it is well neigh for the state and its instrumentalities including the local authorities to keep everyday vigilance/watch over the vast track of open land owned by them. No amount of vigil can stop encroachments and unauthorised occupation of Government land by unscrupulous elements, who act like vultures to grab such land, raise illegal construction and, at times, succeeded in manipulating the state apparatus for getting occupation/possession and construction regularised”.

Scrutiny of the provisions of the Orissa Land Encroachment Act, 1972, shows that there is no such provision to decide the bonafide dispute relating to title of land raised by the occupant. These disputes are now being adjudicated by the regular Civil Courts. The Hon'ble Supreme Court have also held that Government cannot take unilateral decision that the property belongs to it and then take recourse to summary remedy under the Encroachment Act for eviction of the occupant.

In view of the aforesaid development and keeping in view the fact that there has been large scale grabbing of land belonging to Government, Local Authorities, religious/charitable institutions, it is imperative to go for a special legislation to prohibit such activity akin to the Andhra Pradesh Land Grabbing(Prohibition) Act, 1982. The draft Odisha Land Grabbing (Prohibition) Bill prepared by the Special Cell was sent to the Learned Advocate General, Odisha for his views. The Learned Advocate General opined to bring up such legislation immediately in order to prohibit land grabbing in this State. The draft Odisha Land Grabbing (Prohibition) Bill has been sent to Law Department for vetting. Immediate steps may be taken to bring up such legislation. If necessary, ordinance may be promulgated to give effect to the proposed enactment.

### **(c) Formulation of State Litigation Policy.**

The Hon'ble Supreme Court in Criminal Appeal No.484 of 2005(State of Nagaland Vrs. Lipok AO and others) have observed that decisions are taken by officers/agencies proverbially at a slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable - time causing delay-intentional or otherwise- is a routine. The Apex Court have therefore advised that Government at appropriate level should constitute Legal Cells to examine the cases whether any legal principles are involved for decision by the Courts or whether cases require adjustment and should authorise the officers to take a decision or give appropriate permission for settlement. In the event of decision to file appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any.

Keeping in view the above observations of the Hon'ble Supreme Court, Government may consider formulating a Litigation Policy in the lines of National Litigation Policy and Haryana State Litigation Policy-2010.

In keeping with the letter and spirit of the mandate of the Special Cell, the paramount and gigantic challenging task of detection of land fraud and retrieval of Government land is going on in a phased manner. Curiously enough, the golden triangle i.e., Puri(The Holy Land of Lord Jagannath)Konark(The famous Sun Temple) and Bhubaneswar(The Holy land of Lord Lingaraj) has been detected by the Special Cell to be the **golden triangle of land fraud**. The cases of fraud in 8 villages of Puri-Konark Marine Drive Area and places near Goddess Ramachandi and the village Sipasurubali along Puri-Brahmagiri Coast line up-to Goddess Bali Hara Chandi and the 65 Revenue villages of Bhubaneswar Municipal Corporation area have been detected gradually and appropriate legislations have been suggested to provide permanent remedy to the permanent malady i.e., mindless land grabbing by greedy land sharks.

Talking tough on the incident of land grabbing, the Supreme Court has recently cautioned the judiciary to be careful in granting title to the claimants on ground of adverse possession of such land. The court also took a note of the connivance of land grabbers with the authorities to raise illegal constructions and regularisation of their illegal possession.

Setting aside Andhra Pradesh High Court order, a bench comprising Justice GS Singhvi and Justice AK Ganguly said: “No amount of vigil can stop encroachments and unauthorized occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the state apparatus for getting their occupation/ possession and construction regularized.”

It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the court is duty bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the state to immovable property and give upper hand to the encroachers, unauthorized occupants or land grabbers,” said

Justice Singhvi writing the judgement for the bench. The High Court had granted title to the successor of the occupant who was in illegal possession of government land for over 50 years on the ground that the authorities had not taken any action for eviction. Keeping in view this Apex Court judgement, some of the important decisions of different High Courts and Supreme Courts on fraud are given below:

## FRAUD

**Reference: 114(2012)CLT 1133(SC)**

☞ **In S.P. Chengalvaraya Naidu (dead) by L.Rs. V. Jagannath(dead) by L.Rs. & others: AIR 1994 SC 853 this court commenced the verdict with the following words:-**

“Fraud avoids all judicial acts, ecclesiastical or temporal” observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non-est in the eyes of law. Such a judgment/decree-by the first court or by the highest court has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings.

☞ In the said case it was clearly stated that the courts of law are meant for imparting justice between the parties & one who comes to the court, must come with the clean hands. A person whose case is based on falsehood has no right to approach the Court. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If a vital document is withheld in order to gain advantage on the other side he would be guilty of playing fraud on court as well as on the opposition Party.

☞ **In Smt. Shrist Dhawan V. M/s Shaw Brothers: AIR 1992 SC 1555**, it has been opined that fraud and collusion vitiate even the most solemn proceedings in any civilised system of jurisprudence. It has been defined as an act of trickery or deceit. The aforesaid principle has been reiterated in Roshan Deen V. Preeti Lal : AIR 2002 SC 33. Ram Preeti Yadav V. U.P. Board of High School & Intermediate Education & others: (2003) 8 SC 311 and Ram Chandra Singh V. Savitri Devi & others: (2003) 8 SCC 319.

- ☞ In State of **Andhra Pradesh & another V.T. Suryachandra Rao: AIR 2005 SC 3110** after referring to the earlier decision this court observed as follows:

“In *Lazars Estate Ltd. V. Beasley: (1956) 1 QB 702* Lord Denning observed at pages 712 & 713, 'No judgement of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.' In the same judgement Lord Parker L.J. observed that fraud vitiates all transactions known to the law of however high a degree of solemnity.”

- ☞ Yet in another decision *Hamza Haji V. State of Kerala & Another: AIR 2006 SC 3028*, it has been held that no court will allow itself to be used as an instrument of fraud and no court, by way of rule of evidence and procedure, can allow its eyes to be closed to the fact it is being used as an instrument of fraud. The basic principle is that a party who secures the judgement by taking recourse to fraud should not be enabled to enjoy the fruits thereof.

- ☞ Though the decree was passed in 1973 wherein it was alleged that the Defendant was already in possession, she lived up to 1992 & expired after 19 years. It is a matter of record that the possession was not taken over and inference has been drawn that possibly there was an implied agreement that the decree would be given effect to after her death. All these reasonings are absolutely non-plausible and common sense does not even remotely give consent to them. It is fraudulent all the way. The whole thing was buttressed on the edifice of fraud and it needs no special emphasis to state that what is pyramided on fraud is bound to decay. In this regard we may profitably quote a statement by a great thinker:

'Fraud generally lights a candle for justice to get a look at it; & rogue's pen indites the warrant for his own arrest.'

## Reference:-114(2012)CLT 1089

- ☞ Before I part with the case record, I feel tempted to quote the observations of the **Apex Court in the case of Dalip Singh V. State of Uttar Pradesh & others (2010) 2 SCC 114.**

“For many centuries Indian society cherished two basic values of life i.e., “Satya”(truth) & “ahimsa”(non-violence). Mahavir, Goutam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, the post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos & the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation & suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have from time to time, evolved new rules & it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

## Reference:- 102(2006)CLT 696(SC)

- ☞ **It is true, as observed by De Grey, C.J., in R. Vrs. Duchess of Kiongston, 2 Smit LC 687 that:**

“Fraud’ is an extrinsic, collateral act, which vitiates the most solemn proceedings of Courts of justice. Lord Coke says it avoids all judicial acts, ecclesiastical and temporal.”

☞ **In Kerr on Fraud and Mistake, it is stated that:**

“In applying this rule, it matters not whether the judgement impugned has been pronounced by an inferior or by the highest court of judicature in the realm, but in all cases alike it is competent for every court, whether superior or inferior, to treat as a nullity any judgement which can be clearly shown to have been obtained by manifest fraud.”

☞ **It is also clear as indicated in Kinch Vrs. Walcott, 1929 AC 482: 1929 All ER Rep 720: 141LT 102 (PC) that it would be in the power of a party to a decree vitiated by fraud to apply directly to the Court which pronounced it to vacate it. According to Kerr:**

☞ “In order to sustain an action to impeach a judgement, actual fraud must be shown; mere constructive fraud is not, at all events after long delay, sufficient.... but such a judgment will not be set aside upon mere proof that the judgment was obtained by perjury.”

☞ **In Corpus Juris Secundum, Vol. 49, para 265, it is acknowledged that:** “Courts of record or of general jurisdiction have inherent power to vacate or set aside their own judgments.”

☞ **In para 269, it is further stated:**

“Fraud or collusion in obtaining judgment is a sufficient ground for opening or vacating it, even after the term at which it was rendered, provided the fraud was extrinsic and collateral to the matter tried and not a matter actually or potentially in issue in the action.”

☞ **It is also stated:**

“Fraud practised on the Court is always ground for vacating the judgment, as where the Court is deceived or misled as to

material circumstances, or its process is abused, resulting in the rendition of a judgement which would not have been given if the whole conduct of the case had been fair.”

☞ **In American Jurisprudence, 2<sup>nd</sup> Edn., Vol. 46, para 825, it is stated:**

“Indeed, the connection of fraud with a judgement constitutes one of the chief causes for interference by a Court of equity with the operation of a judgement. The power of Courts of equity in granting such relief is inherent, and frequent applications for equitable relief against judgments on this ground were made in equity before the practice of awarding new trials was introduced into the Courts of common law.

Where fraud is involved, it has been held, in some cases, that a remedy at law by appeal, error, or certiorari does not preclude relief in equity from the judgement. Nor, it has been said is there any reason why a judgment obtained by fraud cannot be the subject of a direct attack by an action in equity even though the judgment has been satisfied.”

☞ **Ramjas Foundation and another, Appellants Vrs. Union of India and others, Respondents reported in 113(2012) CLT 632 (SC) relying on a catena of decisions have held as follows:**

☞ “The principle that a person does not come to the court with clean hands is not entitled to be heard on the merits of his grievance and, in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Articles 32, 226 and 136 of the Constitution but also to the cases instituted in other courts and judicial forums. The object underlying the principle is that every court is not only entitled but is duty bound to protect itself from unscrupulous litigants who do not have any respect for truth and who try to pollute the stream of justice by resorting to falsehood or by making misstatement or by suppressing facts which have bearing on adjudication of the issue(s) arising in the case.”

☞ **According to Story's Equity Jurisprudence, 14<sup>th</sup> Edn. Vol.1,Para-263:**

“ Fraud indeed, in the sense of a Court of Equity, properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another or by which an undue and unconscientious advantage is taken of another”.

☞ **The Apex Court in Badrinath Vrs. Government of Tamil Nadu and others reported in AIR 2000 SC 3243** observed that 'once the basis of the proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically'.

Lord Denning in Lazarus Estates Ltd. Vrs. Beasley reported in (1956) 1 All ER 349 have held that “no judgement of a court, no order of a minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything.”

☞ **In the State of AP Vrs. T. Suryachandra Rao (2005) 6 SCC 149 - the Hon'ble Supreme Court** after referring to a catena of decisions held that suppression of material document would also amount to a fraud on the Court.

☞ **State of Orissa and others Vrs. Harapriya Bisoi reported in 2009(1) CLR (SC) 1100 have observed as follows:**

“In the background of the massiveness of apparent fraud involved, effective and participative role of officials of the State cannot be lost sight of. Without their active and effective participation manipulation of records, tampering with documents could not have been possible. The State would do well to pursue the matter with seriousness to unravel the truth and punish the erring officials and take all permissible actions (including criminal action) against everyone involved.”

In Odisha Chief Secretary had undertaken a review meeting on 04.12.2014 to review pending cases in Revenue Revisional Courts. The cases pending in Revisional Court's are as follows:-

Sl. No.	Court	Pendency	Disposal	Balance
1	Member, Board of Revenue	5352		
2	Revisional Courts dealing with settlement revision cases	53935	1940	51995
3	Revisional Courts dealing with consolidation revision cases	34072	2002	32047
<b>Total</b>		<b>93359</b>	<b>3942</b>	<b>84065</b>

The mutation, O.L.R, encroachment, lease, OEA/ Bebindobast/ gramkantha/ khasmahal/ Nazul etc. cases, regulation 2 of 1956, Bhoodan cases, Certificate Cases under Orissa Public Demand Recovery Act relating to 30 districts of the State and the pending Consolidation and Settlement cases of 15 Revisional Courts under the Board of Revenue and the RDCs were also reviewed by Chief Secretary. The disposal figure was abysmally low. For quick disposal of cases Chief Secretary advise computerization of all Court Cases, Installation of additional computer in Revisional Courts, preparation of Litigation Management Software from NIC, 13 vacant Presiding Officer's to be filled up by immediate posting of Commissioners.

The State of Odisha have made pioneering efforts by enacting The Odisha Special Survey and Settlement Act, 2012 and the Odisha Special Survey and Settlement Rules, 2012 to provide for undertaking survey and settlement operations in the State by adopting modern technology to minimize the time span without compromising quality transparency and grievance redressal and for matters connected therewith and incidental there to. The State Government have also made suitable amendments in Orissa Government Land Settlement Act, 1962 keeping in view the larger interest of landless and homestead less persons.

Computerization of land records has been taken up throughout the State since 2002 and it has become a resounding success any land record entries, sought for by anybody, is easily available in Bhulekh website. Modern Record rooms have been set up and Orissa Registration Computerization project has been taken up since, 2004 and Collectors of the State have submitted **Draft Reports on Target Envisioning and Gap Assessment Report**. Thus the computerization of registration had resulted in effective service delivery to the citizens of Odisha.

The Government of Odisha have embarked upon massive training programmes for Revenue Officers working in the field. the Gopabandhu Academy of Administration and Revenue Officers Training Institute (ROTI) are the institutions where land experts and resource persons having experience and expertise in Revenue & Civil matters impart training to Tahasildars, Addl. Tahasildars and other field level Revenue Officers. Doubts clearance sessions are taken up so that the process of dispossession of Justice to common citizens would be expeditious.

The Civil & Revenue cases pending adjudication in different Revenue Courts and different Civil Courts have been subjected to delay. The old adage goes like this: Justice delayed is Justice denied. There are around 21.3 million cases currently pending in various Courts in India including the Supreme Court. The problem of delay in Indian Judicial System has been studied extensively by Indian Law Commission over the years. In these studies, infrastructural deficiencies have frequently been blamed for the delay. Accordingly more Courts and more Judges are seen as a solution.

Solving the infrastructural deficit by itself would not reduce delays unless a simultaneous effort is made at reforming this jurisprudence of delay that has been allowed to take root. With over 21 million cases pending, treating procedural law as the equal partner rather than a handmaiden of justice would be a better way forward through the crisis.

# Over view of Land Reforms and Disputes – Bank Credit Perspective

**Dr. D. Ravindra**

## **Introduction**

1.1 Land is an important resource for an individual, community or and nation as a whole. Historically all the wars waged, be it is Mahabhart or the recent Kargil war, revolved around land disputes. In modern times land has become very important for ensuring individual prosperity and also for the overall development of the nation. Further, for a country like India, considering limited land resources and growing population, land has become the focal point for all the stakeholders. The basic needs of the people like food, clothing and housing are dependent on land and thus it has become a critical issue while allocating the Community or Govt. lands for the purpose of development activities and infrastructure creation. Since land is valuable and imperishable source which provides livelihood, food security and dignity, the land issues including expected disputes have to be given utmost importance while formulating policy on land allocation and its use.

1.2 According to CSSO data on land usage, it comprises of 46.3% net sown area, 22.2% forest area, 13.3% uncultivable land, 8.2% fallow land, 5.1% waste land and 3.3% pasture & grazing land. Further the area under non agriculture use is 8.5%. In comparison to 1950-51 figures there is an increase in net sown area, forest area, area under non agriculture use from 41.8%, 14.2% and 3.3% respectively leading to corresponding reduction in other areas from 40% to 20%. The strong economic growth potential of our country lays more importance on land for additional livelihood generation, infrastructure (transport, power), industrialization, urban growth and housing.

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<sup>24</sup> The view expressed in this paper are of the Author only and not of the organization he represents

1.3 Land distribution in India is uneven and few people hold lion share of land. NSSO (2003-04) land holding pattern analysis envisages that more than 60% of people own only about 5% of land. This fact was recognised after independence and steps were initiated by various State Governments as well as GoI.

1.4 After independence and abolition of Zamindari and property rights measures like Land Ceiling Acts by different state governments, Bhoodan social movement and consequent Bhoodan Acts, Tenancy Acts, Ownership Transfer Acts were taken-up as a part of land reforms and to address various disputes associated with them. Thus land reforms spectrum can be classified into three broad categories viz., redistribution, tenancy, ownership. The land reforms, which were initiated led to plethora of problems, often leading to disputes as well as long standing litigations in court of law.

An attempt to map these disputes across the various categories of land reforms is made in this paper, with possible solutions and suggestions for even distribution of livelihood opportunities, thereby facilitating development of the country at a faster pace.

## **2. Redistribution reforms and related disputes**

2.1 Redistribution of land has got two connotations; one is allocation of land for development requirements and the other is allotment of land to poor, weaker sections of the society. The former is done through acquisition by government from private owners or from its pool of land. Such allocation for development may often result in state versus individual disputes. The later was undertaken through Land Ceiling Acts by various State Governments and by taking away the surplus land. Land redistribution is expected to legitimize tenancy with the ceiling limit, remove rural poverty, increase productivity of agriculture and finally to see that everyone has a right on a piece of land.

2.2 In addition to the above, remarkable redistribution effort was initiated in 1951 by Shri Vinoba Bhave, known as Bhoodan

movement, with an objective to collect 5 million ha by 1957 from land lords as land available with the State Governments was inadequate to meet the demand for redistribution. After 1957 the movement began to wane. All the states had enacted Land Ceiling Acts by 1970. According to an article of Dr K Venkatasubramanian, Member Planning Commission, the land declared as surplus till the beginning of the Seventh Plan by various State Governments was 7.2 million acre; the area taken over by the Governments 5.6 million acres; area distributed is 4.4 million acre leaving 2.8 million acre surplus land undistributed. Of this 16 lakh acres is reserved for public purposes. According to latest figures available as of December 2015, land declared “surplus” (meaning, it could be taken away from landlords) across India stood at 6.7 million acres; the government took over 6.1 million acres; and distributed 5.1 million acres. It is interesting to note that west Bengal alone account for 21% total land distributed.

2.3 Thus during 25 years ending 2015, the progress under this reform was observed to be nominal. The reason for such tardy progress is lack of dedicated administrative machinery and political will. The other reason is Jammu and Kashmir and Bihar implemented land ceiling laws along with laws abolishing intermediaries as early as the 1950s, but all the other states implemented these laws very late, in the 1960s and 1970s. By that time, all the landlords became alert and had transferred their land under benami names, which became a reason for the failure of land reforms in many states. Problems arising out of disputes of redistribution added to the woes of slow progress. A brief account of these disputes are presented in the following paragraph.

2.4 Inadequate compensation paid by the Government on acquisition of land from private owners resulted in approaching the owners to court leading to protracted legal battles. It was further complicated by the delayed payment of compensation due

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<sup>25</sup>Ref:<http://planningcommission.nic.in/reports/articles/venka/index.php?repts=m-land.htm>

<sup>26</sup><https://www.rediff.com/business/special/special-land-reforms-fail-only-5-of-indias-farmers-control-32-land/20160518.htm>

to budgetary and administrative constraints. The disputes between the State and individuals hindered the development process and intended economic growth. Many times land donated either under Bhoodan movement or land declared under Land Ceiling Acts was found to be either unproductive or uncultivable wasteland. Poor resource base of assignees further added to the problem as they could not develop such lands. This constitutes another type of dispute between the State and individuals, which may not stand before the court of law but defeat the very purpose of land distribution resulting in persistent social conflict or otherwise contextual dispute. Another kind of dispute is declaration of litigated land as surplus and owners of such litigant land preventing the taking of possession of the land by allottee. This is mainly on account of absence of careful and transparent processes. Other disputes encountered by the assignees are lack of clear boundary demarcations for the distributed land with lands of original land lords or surrounding farm lands of others. This dispute is further aggravated by the encroachments by powerful landlords or neighbouring farmers

### 3. Tenancy reforms and related disputes

3.1 All States have passed laws to abolish intermediaries like Zamindari, Mahalwari and Ryotwari systems paving way for 20 million cultivators coming into direct contact with State and 58

Issue	Tenancy terms	States
Total banning	Land can't be leased	Kerala and Jammu & Kashmir
Only certain categories can lease	a) Disabled, Widows and Minors b) Only Servicemen	a) Bihar, UP, Chhattisgarh and HP b) Karnataka
Provisions are almost prohibitive	a) Leaving 50% of land to tenant on termination of lease b) Tenant right to purchase the land after certain lease period	a) Andhra Pradesh b) Maharashtra, Punjab, Haryana and Gujarat
Getting ownership	After 12 years of lease	UP

lakh ha were distributed to landless agriculturalists by 1972. However, many landlords managed to retain ownership of considerable land areas and rent receiving class continued to exist. Thus intended benefits could not reach the tenants and share croppers. Therefore, many states have passed tenancy laws in 60's and 70's with an objective to protect tenants from the view point of tenancy tenure and lease rent as well as conferring ownership. Many of such laws are restrictive in nature and the summary of the same is given in the following table:

In view of the above restrictive tenancy laws, land owners are apprehensive of losing their land on giving lease to lessee farmers. Therefore, land owners prefer to keep their land fallow or lease out in an informal manner. Currently, 25 million ha land lying as fallow on account of fear of losing lands in the minds of landowners. Such fallow lands if cultivated, boost the agriculture production by at least 50 million tonnes.

3.2 The most common disputes under tenancy farming, either under informal or formal leasing, observed are as under:

- i) Difficulty in taking back the possession when lease period is expired. Sometimes land owner wishes to take back possession due to nonpayment of rent and for finding alternative solutions but finds it very difficult to do so.
- ii) Changing of tenancy is considered by landowners, to protect their lands either in case of informal leasing or formal leasing under tenancy acts. In case of formal leasing, to obviate legal provisions enabling tenant rights to occupy the land as in the case of UP. However, some wily tenant farmers hinder giving back the possession leading to a legal dispute and protracted legal battles.
- iii) Lack of credit facilities to farmers who are cultivating lands under informal tenancy or oral tenancy create mental agony among tenant farmers resulting in one or other type of dispute.
- iv) Lack of access to insurance (the most convenient risk mitigation measure for small and marginal tenant farmers) is the biggest challenge, which ultimately incapacitates them to

pay lease rent in times of droughts and other natural calamities. This gives rise to disputes with regard to continuation of lease.

- v) Under oral tenancy, because of insecure environment, investment in livelihood and development of land fails to take place and may precipitate in social unrest and thus consequent larger disputes.

Thus a proper tenancy ecosystem is the need of the hour, to give impetus to enhancing productivity of the agriculture and thereby to double the farmers' income.

#### **4. Ownership and related disputes**

In India transfer of ownership in the event of sale of land property is governed by the Transfer of Property Act, 1908 and Registration Act, 1908. In case of disputes with regard to ownership transfer on sale / purchase events, evidences in courts are governed by Evidence Act. Registration deeds are not proof of ownership of the land and it can be contested, causing a dispute. Further, such registration deeds may be accepted by banks for security purpose, however, as the ownership is not guaranteed, and if someone challenges in the court of law about ownership of the land, then the bank credit also gets into dispute leading to much larger damage to banking system.

The other types of disputes with regard to ownership can be stated as under:

- i) Sale deeds that are not reflected in cumbersome revenue records, which are beyond the understanding capacity of not only illiterate farmers but also educated who are not exposed to revenue recording system, leads to clear title dispute
- ii) Wrong entries as regards nature of acquiring title, age of title holder, extent of land, type of land, boundaries of land, survey no., khata no. etc., result in infructuous titles especially while availing host of benefits from Govt. schemes and also credit and insurance facilities

- iii) The possession issues mostly can be seen when the land is distributed to weaker sections, even with clear title, mainly on account of obstacles created by vested interest people to frustrate the efforts of allottees.
- iv) The other issues like lack of clear boundary even though right kind title is there often causes dispute.
- v) Powerful landlords also often resort to ownership disputes with weaker section people, who got land allotted, which is declared surplus under Land Ceiling Acts and prevent them from cultivating the allotted land.

Thus, in order to avoid ownership related disputes, it is high time to move from presumptive titles under Registration Act to conclusive titles with appropriate laws.

## **5. Ownership resolution mechanisms**

5.1 Even in case of smaller land disputes, litigants are approaching courts as land administering authorities have inadequate human resources and time as they are entrusted with host of development works rather than administering the land record system - for example loan waiver, development schemes like Rythubandhu in Telangana in recent past. Property cases account for two-thirds of total pending cases in the courts. Currently, more than 2.2 crore property-related cases are pending before all courts in India.

5.2 There are many cases in which the judgment comes after decades, sometimes after the death of the litigant. Few examples of inordinate delay are:Ref

- a. The Delhi High Court was unable to find a solution regarding a property dispute even after deliberating on it for 30 years and passing it through as many as 75 judges. By the time the case was finally disposed off in 2016, the petitioner who filed the appeal in 1985 had already died.

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<sup>27</sup>Ref3:<https://www.nayidisha.com/six-property-disputes-that-show-snails-pace-of-justice-in-india/>

- b. The Delhi Development Authority filed a petition before the local court seeking the ownership of a wasteland on which residential properties already existed. After 54 years of legal battle, the judgment was finally announced in 2015 in favour of the residents.
- c. Ten acres of prime land worth ₹ 800 crore in North Delhi was subjected to a four-decade-long legal battle before the judgment could be delivered.
- d. The longest property dispute before the Bombay High Court has remained pending since 1969. According to reports, the documents related to the case are missing and the CBI is conducting an inquiry into the matter.
- e. In January 2018, the Rajasthan High Court finally disposed of a 59 years old land dispute. The case was considered to be the longest unsolved civil matter of the country. Three generations of the litigating family passed away during the proceedings in the case.

However, silver line to quote here is, a woman sarpanch in rural Bihar solved a property dispute in a family within six days in 2017. The case had been pending in the local civil court for 20 years.

5.3 According to Daksh, a Bangalore based think-tank, an average litigant spends about ₹500 per day on court hearings. Another study conducted by Daksh revealed that, most of the civil litigants belong to the lower-castes background and earn an annual income of less than ₹3 lakh. The average time taken by the Hon'ble Supreme Court to resolve land acquisition disputes is around 20 years.

5.4 The excessive pendency of property cases in courts has created an artificial scarcity of land in the country and invariably increasing the cost of housing and business. It also hampers the creation of jobs in the country as industries find it hard to get land near major cities. The judicial system should be urgently strengthened, so that all cases filed before the courts could be quickly resolved. We cannot take away the right of citizens to seek timely justice, particularly in cases involving limited resources.

## 6. Recent initiatives on tenancy reforms

6.1 Niti Aayog has come out with Model Land Leasing Act to replace restrictive tenancy laws passed in 60s and 70 by states with the objectives to benefit small farmers by liberalizing and legalizing land leasing system and to motivate owner to opt for land leasing. The Act suggests simple written agreement, where in the tenant and owner can mutually agree on rent and period of leasing and it will be attested by person in responsibility like the gram pradhan (village head), an advocate or a revenue officer. The document need not be registered with the revenue authorities<sup>Ref.</sup> Such an arrangement not only gives assurance to the owner that the land leased is safe but also makes tenant eligible for credit, insurance, subsidies / incentives and distress relief schemes.

6.2 Response on Model Act came from few states like Uttarakhand, UP, MP, Maharashtra and Telangana. Uttar Pradesh has just deleted the clause which allowed the tenant to occupy land after operating on it for more than 12 years, whereas Uttarakhand has done it quite comprehensively. It included business people, traders, people in services - who would now be eligible to lease out their land along with the disabled. Further, they have prescribed maximum lease period of 3 years which should have been left to owner and tenant farmer. Madhya Pradesh and Maharashtra have passed a new law on the lines of model law and also added a penalty clause that the tenant could be punished with imprisonment, if he does not return the land after the lease period is over <sup>Ref4</sup>.

6.3 If model tenancy law of Niti Aayog is enacted by all states, most of the disputes that arise out of oral tenancy are easily addressed. This can result in several benefits to economy through reduction in fallow lands, enhanced Agriculture Production and increased Productivity through better inputs. These in turn ensure improved farm incomes and also lead to farm distress mitigation.

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<sup>28</sup>Ref4:<https://www.indiaspend.com/land-reforms-have-failed-formalising-tenancy-only-option-to-address-farm-distress-62357/>

## **7. Initiatives for conclusive titles and land record digitization**

7.1 The other issues plaguing the Indian Agriculture are mutations i.e. transfer of title to descendants after death of the land owner and it was stated to be the biggest challenge faced by farmers. This often leads to compounded disputes due to disagreements among family members. Manual handling of such changes are cumbersome and the passive farmer prefers to stay away from such cumbersome processes. A comprehensive land management ecosystem needs to be developed immediately.

7.2 Lack of titles makes farmers ineligible for credit and insurance which ultimately results in to poor coverage of farmers under institutional credit. The region wise analysis of the agri households and agri short term loan accounts envisages that the coverage is very poor in states belonging to North Eastern, Eastern, Central and Western regions.

7.3 Further, the farmer has to undergo ordeals of obtaining land records from existing manual system of record keeping and the banks are also spending lot of time on verification of manual land records. Lack of clear titles and cumbersome land record system are also partly pushing the farmers to informal credit channels. As pointed out earlier, these factors are also contributing to lower yields, meagre incomes and inadequate risk mitigation leading to farm distress.

7.4 In view of the above, GoI has launched Digital India Land Records Modernization Programme (DILRMP), an automated updating of land records and mutations. The DILRMP also aims at integration between textual and spatial records, inter-connectivity between revenue and registration, replacing the present deeds registration and presumptive title system with conclusive titling & title guarantee.

7.5 The GoI is roping in all states, for implementation of DILRMP as it is a State subject. According to informal sources, so far, eight states have completed digitization of land records, six states have given viewing rights to banks and three states have given

mortgage provisions. Still we have to walk a long way for addressing various issues related digitization of land records.

## **8. Way forward**

8.1 A dedicated machinery needs to be established for finishing the task of redistribution of surplus lands with proper title and boundary demarcation to make the process free of disputes. The suggestion on evolving proper tenancy ecosystem needs immediate attention of the states, which are yet to adopt model tenancy act suggested by Niti Aayog. The above suggested dedicated setup may also address the disputes in such a way that the burden on civil courts come down and disputes are resolved in a reasonable time frame.

8.2 In view of gigantic task of digitization of land records, it is necessary to initiate necessary interventions for ensuring successful implementation of it. The measures, that need immediate attention are sensitization of the all stakeholders, capacity building of staff for handling digitized environment, providing digital Infrastructure at village level to facilitate access to farmers, expeditious linking of digitized land records to banks, facilitation of Direct Benefit Transfer on the lines of PM KISAN of GoI and Rytubhandu scheme of Telangana, provision for tenancy recording under digitized land records and expanded coverage of legal tenant farming.

8.3 The states like UP, MP, which have adopted tenancy laws akin to Model Leasing Act have to revisit them, to make necessary alignment with the model act so as to win over the landlords as well as tenants. Penalty provisions may be considered, if tenant farmer fails to leave the land, as in the case of MP and Maharashtra, as it may infuse confidence among the land owners. However, while considering penalty provisions, it is necessary to incorporate adequate safeguards for protecting tenant framers from exploitative attitude of landlords. The digitization initiatives must focus on enabling provisions under digitized land recording system for facilitating changes that are going to happen over the time.

**Improving Justice Delivery Systems in Land Dispute  
Redressal -Transformational Governance in the Board of  
Revenue for Rajasthan**

**V. Srinivas, IAS**

Respected Shri K.B.Saxena, IAS Chairman of the session,  
Respected Director LBSNAA, Mussoorie,  
Distinguished Director, Centre for Rural Studies,  
Hon'ble Chairmen and Hon'ble Members of the Boards of  
Revenue from various States, Senior Advocates and District  
Collectors

I am grateful to the Director Lal Bahadur Shastri National Academy of Administration and the Centre for Rural Studies for inviting me for the National Workshop on “**Land Dispute Redressal: The Plea for Reforms**”. I dedicate this lecture to Shri B.N.Yugandhar, IAS former Director LBSNAA, the man who inspired me to pursue the cause of land reforms and work with farmers, litigants, revenue officials and advocates in my years as a Sub-Divisional Officer, District Collector and as Chairman Board of Revenue for Rajasthan. “*The Torch of Justice must burn Brightly*” was what he always said. It was listening to him in these pristine halls that I learnt “*Revenue Law is a subject of great beauty, and it has tremendous spiritual strength*”. I also wish to thank Shri Onkarlal ji Dave for coming to LBSNAA Mussoorie and addressing us today, singlehandedly in his 50 years of legal practice he has been a role model on constitutional values for thousands of young advocates of Rajasthan. I would also like to congratulate the Centre for Rural Studies, LBSNAA Mussoorie for emerging as India's foremost repository for Land Reforms and publishing 13 volumes on the status of Land Reforms in India. The pioneering work done by the Centre for Land Rural Studies has enabled knowledge dissemination on the cross cutting challenges faced by Revenue Courts of India in expediting disposal of court work.

## Introduction

Successive Governments have spoken about Improving Justice Delivery Systems. This is one area in need of dire and drastic improvement. I had noticed with incredulity and amazement that it takes over 15 years for second appeals to be decided in the Board of Revenue. Most of the criminal litigation emerges from delays in adjudication of cases in Revenue Courts where the litigant is forced to take law into his own hands. The interminable delays have become unfair to the litigant. Rajasthan's Revenue Courts had 5.74 lac cases upto SDO Courts and nearly 10 lac cases upto Tehsildar Courts. Revenue case work was far higher than case work in civil courts.

I was appointed as the 47<sup>th</sup> Chairman Board of Revenue for Rajasthan, Ajmer in July 2017. The Board of Revenue for Rajasthan was one of the State level institutions established at Ajmer at the time of formation of Rajasthan. The Institution had a 70-year legacy as a Temple of Justice. It was amongst the oldest Boards of Revenue in India along with Uttar Pradesh, Bihar, Madhya Pradesh, Tamil Nadu and West Bengal, established in 1949. It had the largest in terms of number of members and handled the highest number of revenue cases. It was technologically obsolete institution with digitalization practices virtually non-existent. Manual supervision of the case status of thousands of files was an impossibility. Every day litigants and lawyers attended the 14 functional benches in the Board of Revenue. Few arguments were heard, and disposal norms were about 450 cases/ month. The Institution was in need of radical reforms and transformational governance.

In my tenure as Chairman, the Board of Revenue adjudicated a decadal high of 13500 cases, bringing down the overall pendency to 63250 cases, disposal reached 1250 cases/ month. I had decided 725 cases in this period in Double Benches with 76 worth reportable judgments. “*A Chairman who conducts bench every day*” was what I was often told. I discovered the simple principle of good governance that can make a huge change in a litigant's

journey – *timely case disposal*. Everywhere I travelled in Rajasthan, 8000 kms covering 32 districts, thousands of litigants and advocates met me who reinforced this belief. The Board of Revenue for Rajasthan became a fully digitalized Institution providing universal access to its court work. Capacity building measures were adopted across Revenue Administration. Several issues of complex jurisprudence were addressed. Good Governance practices along with cordial and constructive relations between Bench and Bar are essential features for “*Land Dispute Redressal*”. “*The Plea for Reforms*” that this National Workshop seeks, has to be based on, deeper examination of the issues of jurisprudence, expediting decision making, deepening the technology impact, enhanced capacity building initiatives and stronger administrative/ judicial processes. The blue-print for Improved Justice Delivery Systems essentially rests in improved jurisprudence and greater understanding of Revenue Law.

### **Improved Justice Delivery Systems – A National Perspective**

The Government convened the Joint Conference of Chief Ministers and Chief Justices of High Courts on April 5, 2015 to discuss the pressing issues relating to the administration of Justice in the country. India had 2.64 crore cases pending in Subordinate Courts and 42 lac cases in High Courts. The agenda for the conference included development of infrastructure, undertaking judicial reforms, ICT enablement of courts and specific steps required for reduction of arrears and ensuring speedy trials. The Justice Delivery System has an important role in improving the ease of doing business. The e-Courts Mission Mode Project was implemented with an investment of Rs. 600 crores which placed case data of thousands of courts online. The National Judicial Data Grid covering a majority of High Courts was available to the judiciary for improving case and court management and judicial performance. Amongst the other steps taken by the Government were strengthening Judicial Academies, Lok Adalats and Training of Judges.

In 2017, Government launched a series of legal aid and empowerment initiatives for expediting judicial reforms. The 3 legal aid and empowerment initiatives launched were 'Pro bono legal services', Tele law service and 'Nyaya Mitra Scheme'. Government also stated that the Nation's justice system would be digitally transformed as digital inclusion holds the key to the country's march to Digital India. The 'Pro bono legal services' initiative is a web based platform through which interested lawyers can register themselves for volunteer pro bono services for the underprivileged litigants who are unable to afford it. Tele Law was aimed at facilitating delivery of legal advice through an expert panel of lawyers stationed at State Legal Services Authorities (SLSA). The Nyaya Mitra scheme envisaged employment of a retired Judicial or Executive Officer with legal experience designated as Nyaya Mitra and deployed at the Common Service Centres with responsibilities to identify delayed cases through the National Judicial Grid and enable speedy dispute resolution.

Government has operationalized the e-Courts portal (<http://www.ecourts.gov.in>) through websites of individual districts and also through the National Judicial Data Grid. The portal provides online services to litigants such as details of case registration, cause list, case status, daily orders and final judgments.

## **The Roadmap to Reforms in Revenue Courts**

Let me take up each of the areas of reforms, I had mentioned above, individually.

### **I. Issues of Jurisprudence:**

It was important to decide the critical cases in the Board of Revenue on a priority basis. The first task on my agenda was to address the issues in the Larger Benches. Hearings and judgment writing in 7 Larger Bench cases were completed as also 1 Full Bench case. There were a number of important legal issues

decided in Double Benches which have important systemic implications. Let me list some of the cases.

**Protection of Nadi/ Nallah/ River Bed/ Tank Bed Lands:** The Board of Revenue in a Larger Bench Judgment in case of Ali Sher vs State of Rajasthan held that the Hon<sup>ble</sup> High Court Judgment in the case of Abdul Rehman vs State of Rajasthan is binding on the Board of Revenue. The Larger Bench interpretation resulted in disposal of 6500 reference cases pending in the Board of Revenue thereby resulting in Protection of Rajasthan's common lands. This represented a big step forward for protection of common lands of Rajasthan.

**Protection of the Rights of the Girl Child:** A progressive democracy needs to protect Women's rights and implement the progressive legislation in this regard. In a half a dozen worth reportable judgments, the Board of Revenue decided on rigid implementation of inheritance rights of women under the provisions of Hindu Succession (Amendment) Act 2005 giving khatedari rights to the girl child.

**No Khatedari Rights shall accrue on grounds of Adverse Possession:** Sarju Ram vs Amrit Lal and others was the Board of Revenue's First Full Bench Judgment since 2011. The Full Bench of Board of Revenue held that no khatedari rights shall accrue on grounds of adverse possession. This judgment acts as a critical benchmark for deterring the might is right tendencies in tenancy practices in large agrarian districts of Rajasthan. Further the Full Bench Judgment has paved the way for disposal of large number of suits and appeals pending in Trial Courts and Board of Revenue.

**Streamlining Review processes:** In the worth reportable judgment of Double Bench, Giridhari vs Koyali, the Board of Revenue has outlined the scope of Review under Section 229 of the Rajasthan Tenancy Act 1995. A review is permissible if there are errors on the face of record, if the judgment and decree is obtained by fraud, if the court has become functus officio in deciding the case, or if prayers are allowed beyond pleadings.

Further the Board has advised all Members and Subordinate Courts to complete hearings in review applications during the tenure of members/ officials.

**Protection of Temple Lands:** The Board of Revenue has 5500 reference cases from District Collectors where Temple Lands have been transferred from the Deity to Khatedar Tenants. Intensive efforts were undertaken to bring these cases to a completion stage where they were been listed before the Single Benches for regular hearings. The Deity as a perpetual minor needs all the protection from Revenue Courts.

**Partition of Holdings – Mandatory Oversight of Tehsildar:** The Board of Revenue has held that the Tehsildar must visit the site for partition of holdings under Rules 18-21 of the Board of Revenue Rules. In cases where partition of holdings has been done without the Tehsildar visiting the site, the Board of Revenue held that the judicial processes have not been complied with and set aside the judgments of subordinate courts and remanded the cases for fresh preparation of partition of holdings proposals.

**Streamlining Revision Cases:** The Board of Revenue had identified and disposed 1650 cases of Revision Applications which were filed for transfer of cases from one court to another. In many cases Presiding Officers have long been transferred making these cases infructuous. The exercise of Revisional jurisdiction by the Board of Revenue remains an area where considerable improvement is possible.

## **II. Measures to Expedite Disposal**

There are 2 ways of expediting disposal in the Board of Revenue – (a) Members achieving higher disposal following streamlining of internal governance processes and (b) Advocates cooperating with the Bench in expediting disposal.

**(a) Streamlining the Registry:** As part of improving its own internal governance model for better service delivery, the Board

of Revenue streamlined the work of Registry. The number of completed cases which the Registry sends to the Bench for arguments was enhanced from 8 cases/ day to 30 cases/ day. The total number of completed cases in the Registry reached 22000 cases with campaign for service of summons. Despite such a major campaign, the Registrar court continues to handle 41000 cases where the processes are not completed indicating the sheer volume of case work building up in Revenue Courts.

**(b) Reconstitution of the Benches of the Board of Revenue:** The Bar and the Bench reached a consensus on the reconstitution of the Benches of the Board. Admission and Reference cases were distributed over 5 Single Benches resulting in systemic efficiency. This has been a long standing demand of the Rajasthan Revenue Bar which was been resolved. The Double Benches were listing 130 cases/ day and the Single Benches were listing 80 cases/ day with 30 cases listed for arguments. The Board of Revenue with 12 Hon'ble Members has decided 1200 cases/ month which represents a massive increase from the historical average trends of 450 cases/ month.

**(c) Capacity Building of Young Lawyers:** The Rajasthan Revenue Bar had a number of Young Lawyers. Most of the Young Lawyers have post graduate degrees and have high positive energy. There is fierce competition amongst the young lawyers who handle disproportionately small share of case work. The Board of Revenue is witnessing a rapid increase in admission cases, and the litigation explosion provides multiple opportunities for career advancement of Young Lawyers. The Reforms in expediting land dispute redressal has to accord priority to young advocates cases and adequate time for hearings was given. In future it would be incumbent on young lawyers to take up greater share of litigation. “*Young Lawyer Capacity Building Conferences*” were conducted to empower young lawyers for future. In addition, the Chairman's official interactions with District Revenue Bar Associations can pave the way for a comprehensive empowerment of Advocates and bring significant efficiency to functioning in Revenue Courts.

### **III. Impact of Technology on Revenue Courts – A Force Multiplier**

The National Agenda for Governance accords high priority to ICT in Justice Delivery Systems. As I initiated efforts to digitalize the Board of Revenue and subordinate Revenue Courts, I was often confronted with numerous officials, pointing out the difficulties in the use of technology in litigation. There were fears expressed that there would be 2 classes of litigants – the “*information rich litigants*” and the “*information poor litigants*”.

The decision to provide universal access to judgements and decrees of Revenue Courts from Trial Court to the Board of Revenue in November 2017 represents a significant step forward in use of technology in Revenue Courts. The dissemination of the RCMS on “*e-mitra plus*” meant that judgments could be downloaded in over 10,000 Gram Panchayats of Rajasthan. Not only were judgments of every Revenue Court available on a technology platform, the case status for all the 570,000 cases listed in Revenue Courts was available. SMS facility for advocates in new admission cases, E-signatures of judgments, RCMS mobile app, Online monitoring of performance of Revenue courts were all commenced. The RCMS platform provides a bird's eye view of the performance of every Revenue Court of Rajasthan in terms of number of sittings, cases heard and judgments & decrees pronounced. In the Board of Revenue, Hon'ble Members were informed of the status of judgments & decrees status on a daily basis.

**Rajasthan's RCMS adoption and dissemination happened because thousands of advocates and revenue officers responded to the Board of Revenue's call for adopting digitalization practices. The Rajasthan experience indicates that digitalization processes after giving careful consideration to each of the elements contributes significantly towards simplifying a litigant's journey in Revenue Courts.**

**Capacity Building - A Critical Felt Need**

The capacity building needs at SDO level represent a significant challenge for Improved Justice Delivery Systems in Revenue Courts. The Board of Revenue conducted 33 capacity building workshops at District Level and 5 workshops were conducted at the Board of Revenue Ajmer. The Board of Revenue invited a number of Senior Advocates to present the salient provisions of the Rajasthan Tenancy Act 1955, the provisions of the Rajasthan Land Revenue Act 1956, and Civil Procedure Code 1908. I had chaired 5 workshops for SDO's from IAS cadre, SDO courts with highest litigation over 2500 cases/ court, ADM's & Additional Divisional Commissioners, RAA's and SO cum RAA's and found the discussions were very constructive. In these workshops 332 Sub Divisional Officers, 40 Assistant Collectors, 37 Additional District Collectors, 24 Revenue Appellate Authorities and Settlement Officer cum Revenue Appellate Authorities and 7 Additional Divisional Commissioners participated.

The workshops with SDO's and Assistant Collectors had 4 listed agenda for discussion – organization of Court work, Important Judgments on Salient Provisions of Rajasthan Tenancy Act and Rajasthan Land Revenue Act, Interactions between the Bench and the Bar and Digitalization. The workshops with the Additional District Collectors deliberated on the provisions of Rajasthan Land Revenue Act with regard to land allotment rules and the provisions of appeal, revision and review. The importance of the Bar and Bench relationship and the need for courtesy and cordiality in building a strong and sustainable relationship was also discussed. There were significant improvements in the quality of judgment writing in pursuance of the capacity building initiatives and it resulted in lesser number of appeals being filed.

### **Administrative/ Judicial Processes**

**(a) The Chairman must conduct Bench regularly:** For the torch of justice to burn brightly in Revenue Courts of Rajasthan, it is imperative that Chairman of the Board of Revenue stays in Ajmer and conducts Bench regularly. I conducted Court every day, for 5 days a week, for 21 days a month and 310 days in my 510-day

tenure. In conducting the Double Bench/ Full Bench/ Larger Bench sittings the Chairman must adhere to the basic principles of Good Governance – adherence to Court timings, discipline in conducting Court proceedings, reading files before coming to the Bench, writing timely judgments and maintaining a positive energy in the Court Room. In the Board of Revenue, the Chairman's foremost task is to listen to arguments and give well-reasoned speaking judgments. If Rajasthan is to establish a justice delivery system of global standards in Revenue Courts, a synergy has to be established between the Chairman, the Hon'ble Members, the Senior Advocates, the Registry Officials and Young Advocates to take the Board of Revenue forward.

**(b)The Chairman and Hon'ble Members should undertake annual inspections on a regular basis:** The Chairman represents the Chief Controlling Revenue Authority for all enactments in force in Rajasthan. The Chairman exercises vast powers of general superintendence and control over all subordinate courts. There is immense value addition from a serious inspection including meetings with District Bar Association and the District Revenue Officers. Areas of concern in terms of strengthening infrastructure in Collectorates and SDO courts, additional budget allocations could be addressed. Further there were improvements seen in the continuous updation of land records – mutations, tarmeem, correction of entries, demarcation of village paths on agriculture lands. The Board of Revenue published a guidelines booklet which has been placed on the website of the Board.

### **Humour in the Board of Revenue**

There are moments of humour in the intense arguments in crowded Court Rooms. Let me recollect some moments of humour of my years on the Bench as Chairman Board of Revenue.

Shri Onkar Lal ji Dave is a role model from whom much can be learnt. The case details are well studied and presented followed by case law, citations, complex interpretations of tenancy, always presented in a cogent and coherent manner. The Bench has to take

lot of notes and the opposite counsel is always under pressure to match Shri Onkar Lal ji Dave's eloquence and erudition. I am reminded of a Senior Advocate's intervention after one extensive argument by Shri Onkar Lal ji Dave that the '*The Bench should not be intimidated by the eloquence and erudition of Shri Onkarlal ji Dave*'.

Advocates were keen to press for arguments in cases where they were respondents. An Advocate once mentioned “*Sir; I came prepared for arguments in case no 3 where I am a respondent. In case nos: 1 and 2 where I am an appellant, I could not see the files*”.

Not all arguments are interesting or evoke passionate arguments. A Senior Advocate who is a master of oration once noticed an Hon'ble Member had dozed off in the midst of a prolonged argument. He paused, waited for the Hon'ble Member to open his eyes, and asked “*Your Honor, Aapne Kya Suna Hain?*”.

I remember an interesting argument where a Senior Advocate argued the case for an hour, with tremendous passion and was informed by fellow advocates after he completed his arguments that he did not file the vakalatnama in the case.

A Senior Advocate came to me and said “*Sir, you are giving only 40 minutes per case, it's not enough for me, kindly increase the time allotted to me for arguments by another 20 minutes*”. I said I would be delighted to hear him for a longer duration, and thereafter till date, he never argued a single case in my Double Bench since and only sought adjournments.

This is my all-time favourite. A Senior Advocate argued a case intensely and passionately in my Double Bench for protecting women's rights, and presented a 200-page citation after the case was reserved. “*Huzoor, citation alag se de raha hoon*” he said while filing it. When the citation was read it was the Supreme Court Judgment in the late Prime Minister Indira Gandhi

Assassination case and had nothing to do with the Hindu Succession Amendment Act 2005.

A Young Advocate appeared in my Double Bench with a stubble and dishevelled look, when I enquired if all was well, he said “*You Honor, I have spent the whole night preparing for the arguments before your Bench*”.

### **The Board of Revenue – The Greatest Institution of Rajasthan**

I have said many times, in many forums, that the Board of Revenue is Rajasthan's greatest institution and it was my privilege to contribute to institution building activities in the Board. I tried my utmost to bring efficiency, honesty and moral principles to Governance in the Board of Revenue. My continued belief that the moral principles outlined in the Constitution have to be lived in Governance and the Revenue Courts must act as Temples of Justice. I have learnt immensely from the Institution's legacy and interactions with the Hon'ble Members and Senior Advocates in the Rajasthan Revenue Bar. I have seen the immense happiness in litigants when cases are disposed in a fair and just manner. I am convinced that a strong and functional Board of Revenue can ensure “Improved Justice Delivery Systems in Revenue Courts of Rajasthan.”

To conclude, let me thank the Director LBSNAA, the Director of Centre for Rural Studies for giving me an opportunity to address the National Workshop today. I also wish to congratulate all officials who have strived relentlessly to make this National Conference a success.

### **AUTHOR INTRODUCTION: V.Srinivas, IAS**

V.Srinivas has a post graduate degree in Chemical Engineering from College of Technology, Osmania University, Hyderabad, he joined the IAS at 22 and in his 3-decade career has held a number of important policy making positions in Government. He is currently posted as Additional Secretary to Government of India,

Department of Administrative Reforms and Public Grievances, Ministry of Personnel. He has served as Chairman of the Board of Revenue for Rajasthan, Chairman of the Rajasthan Tax Board, Deputy Director (Administration) All India Institute of Medical Sciences, New Delhi, Director General National Archives of India, Joint Secretary to Government of India in the Ministries of Textiles and Culture. He has served as Advisor to Executive Director (India) at the International Monetary Fund (2003-06), Private Secretary to the Finance Minister, Private Secretary to the External Affairs Minister in Government of India and District Collector at Jodhpur and Pali in Rajasthan. He has delivered 25 orations on several areas of public policy, and published 112 articles and papers.

His first book “India's Relations with International Monetary Fund 1991-2016, 25 years in Perspective” was pursued with a fellowship from the Indian Council of World Affairs in 2017-18. His second book “A March to New India – India's Welfare State 2014-19” is under publication by Konarak Publishers. He has travelled extensively across India and the World.

# **Universalization of Institutional and Legal Based Land Disputes Redressal Mechanism: Constraint and Challenges**

**K.Yadagiri**

## **Abstract**

Access over and rights to land are of critical significance for the vast majority of Indians.

The national and state government of India have taken up several land reform measures and passed several progressive and pro-poor land laws since independence to secure land to all the landless poor in the country. In spite of these efforts, a significant percentage of the poor are still either landless or have insecure rights to land. Landlessness or having insecure land right is devastating for the rural families, especially for the poor and tribal's who are doubly vulnerable. The poor are unable to get their land problem resolved due to lack of legal awareness, absence of legal assistance and inaccessible adjudicating systems. The experiences in the states of Andhra Pradesh, Telangana proved that facilitating support to the poor, coupled with building capacity of adjudicating officers, can help the poor gain secure rights to land with minimum cost. These experiences offer valuable learning for designing legal assistance models that resolves land problems of the poor across the country.

## **1. Introduction**

Access over and rights to land are of critical significance for the vast majority of Indians. The national and state government of India have taken up several land reform measures and passed several progressive and pro-poor land laws since independence to secure land to all the landless poor in the country. In spite of these efforts, a significant percentage of the poor are still either landless or have insecure rights to land. Landlessness or having insecure land right is devastating for the rural families, especially for the poor and tribal's who are doubly vulnerable. The poor are unable

to get their land problem resolved due to lack of legal awareness, absence of legal assistance and inaccessible adjudicating systems.

## **Objectives**

- To examine existing support mechanisms including Paralegal and Community Resource Persons programmes in various states.
- To search an effective community-based support mechanisms to resolve land problems of poor and tribal.

## **2. Expected outcomes**

Search for a community-based support mechanisms model for tribal and poor people development.

A blueprint for the implementation of community-based support mechanisms models across the country is prepared.

## **Methodology**

The experiences in the states of Andhra Pradesh, Telangana proved that facilitating support to the poor, coupled with building capacity of adjudicating officers, can help the poor gain secure rights to land with minimum cost. These experiences offer valuable learning for designing legal assistance models that resolves land problems of the poor across the country. This paper study primarily aims at drawing a mutual platform and develops an effective community-based involvement models to address land problems in rural India. With involvement of officials from departments of land administration, rural development, tribal welfare, members of legal services authorities, representatives from civil society, academicians and others involved in poverty eradication/land administration/legal aid (assistance) programmes are involving in the formation of land policies.

To realize the objectives of paper, I have under gone through suitable authenticated secondary reading sources. With referring various national and international level institutions reports with highlighting some of the case studies and best practices followed at local and regional levels on the issues which covered in my paper.

### **Land –poorer-poverty an integrated over view**

Access to land is of fundamental importance in rural India. The incidence of poverty is highly correlated with lack of access to land, although the direction of causality in this relationship is not clear. Households that depend on agricultural wage labor account for less than a third of all rural households but make up almost half of those living below the poverty line. Many of these households also own some land, but in holdings that are so small or unproductive that their owners derive a greater share of their livelihoods from their own labor than from their own land. Land plays a dual role in rural India: aside from its value as a productive factor, land ownership confers collateral in credit markets, security in the event of natural hazards or life contingencies, and social status. Those who control land tend to exert a disproportionate influence over other rural institutions, including labor and credit markets.

### **Enabling the rural poor to have access to land –Over view**

Whether through land redistribution or resettlement or through changes in the nature of the rights and duties that underlies tenure - remains a crucial element in the quest to eliminate poverty and hunger. However, for various reasons, the experience of agrarian reform during the last 30 years has been less positive than had been hoped. Landholding is too deeply embedded in other social processes - kinship, politics, religion, history, and often subtle forms of symbolism - for land to be treated solely as a resource to be allocated. The vested interests of politicians, bureaucrats, and local elites, have militated against implementation of agrarian reform policies, even when written into law. Agrarian reforms

have often had unintended impacts, frequently including a worsening, rather than its improvement, in the distribution of holdings.

A key requirement for any escape from poverty and hunger is access to productive resources. For the rural poor, land and financial resources are of foremost importance, but technology, seeds and fertilizer, livestock and fisheries, irrigation, marketing opportunities, and off-farm employment are also essential. The Discussion Paper will present some of the major policy issues as they relate to the actual and potential role of civil society and its relations with other actors.

In India, Besley and Burgess (1998) investigated the relationship between land reforms and poverty reduction at state level, using panel data for the sixteen major states. Their main conclusion is that land reforms do indeed appear to have led to reductions in poverty in India. In their analysis, the authors controlled for other factors that may be associated with poverty reduction, in order to rule out the possibility that land reform activity merely serves as a proxy for other policies<sup>12</sup>. Their detailed analysis finds that while skepticism is warranted with respect to the prospects for redistributing land through land ceilings, the abolition of intermediaries and tenancy reforms (at least in some states) appear to have been more successful in reducing poverty. These findings accord reasonably well with existing, empirically based assessments of the relative success of Indian land reforms.

### **Land reforms and distribution of land for poorer in India**

Land was made a 'state subject' by the Government of India in 1935. As a result, under the Indian Constitution, land reform is the responsibility of individual states, although central Guidance is offered at federal level. The nature of the legislation, the level of support or otherwise from existing or new institutional arrangements and the degree of success in implementation have varied significantly from state to state.

Broadly speaking, three major types of land reform legislation have been enacted after independence, though not all of these have been enacted in all states: the abolition of intermediary tenures; regulation of the size of holdings (through ceiling-surplus redistribution and/or land consolidation); and the settlement and regulation of tenancy (Ray 1996, Appu 1997). The stated intentions of these reforms, justified on grounds of both social justice and economic efficiency in agriculture, were to transfer land 'to the tiller' (often entailing a *de jure* if not *de facto* ban on landlord-tenant relations), to increase security of tenure for tenants (through registration of informal, oral tenancy agreements; conversion of continuous tenancies into ownership rights), and to regulate rents paid by tenants.

The political reality behind these reforms, however, is that they were generally promulgated by ruling elites composed of or electorally dependent on the upper echelons of agrarian society (Herring 1983). The abolition of intermediaries during the 1950s was more

5 completely and easily achieved than subsequent reforms owing to political expediency: it brought substantial gains to many at relatively low political cost. Paradoxically, many of the beneficiaries of the abolition of intermediaries (former upper and middle caste tenants) are now among those politically visible, larger landowners who bitterly oppose ceilings on land holdings (Ray 1996).

Moreover, the cost of the abolition of intermediaries was high: the heavy compensation paid to former zamindars enabled many of them to become rich agro-industrialists, and many acquired ownership rights over land they did not previously own. These early reforms left substantially unchanged the inequalities in land holdings and the precarious position of sharecroppers and agricultural laborers. It is conventionally thought that ceiling-redistributive reforms in India have achieved little. Left by individual states allowed landlords to retain control over land holdings, most infamously through *benami* transactions whereby

village record-keepers (patwaris) could be bribed to register holdings in the names of deceased or fictitious persons. The lack of accurate, updated records of rights in land is widely noted to be a major constraint on the effective implementation of ceiling.

### **Redistributive of land and tenancy reforms**

However, the threat of ceilings does seem to have prevented the further expansion of large holdings, and there is little doubt that the redistribution of even very small plots of homestead land has brought substantial benefits to the poor. Some states have achieved much greater progress than others in implementing ceiling-redistributive reforms: Jammu and Kashmir has redistributed 17 per cent of its operated area, West Bengal 6 per cent, and Assam 5 per cent.

A relatively neglected issue in the massive literature on Indian land reforms is state initiated Land consolidation. Not all agree that it constitutes true 'land reform', as by design it usually attempts scrupulously to leave unchanged the distribution of land. Without redistribution, land consolidation stands to benefit those with larger land holdings more than those with smaller holdings, since the opportunity costs of land fragmentation are higher the larger the farm. Where agro ecological conditions and institutional design have been conducive to success, however, as in Uttar Pradesh, land consolidation programs have reportedly led to reduced dependency for many farmers, and have increased the economic viability of many farms (Oldenburg 1990).

Overall, around a third of the total operated area in India was reported to have been consolidated by the mid-1980s, almost all of which was in Punjab, Haryana, Uttar Pradesh, Maharashtra and Madhya Pradesh (Thangaraj 1995)<sup>8</sup>. In these states, land consolidation was achieved through state programs. The legacy of mahalwari tenure systems may have made the task of land consolidation easier in Punjab and Haryana, although agro ecological conditions here were also more favorable. In other states (Tamil Nadu, Kerala) no legislative provision exists for land

consolidation, yet some consolidation has been achieved through spontaneous exchanges by farmers themselves in the land market.

The implementation of tenancy reforms has generally been weak, non-existent or counterproductive, resulting in the eviction of tenants, their rotation among landlords' plots to prevent them acquiring occupancy rights, and a general worsening of their tenure security (Appu1997)<sup>9</sup>. Legislation that attempts to ban tenancy (leasing) outright, as in Uttar Pradesh, Orissa and Madhya Pradesh (albeit with certain exceptions), has particularly perverse effects. It inevitably leads to concealed tenancy arrangements that tend to be even more informal, shorter (increasingly seasonal), and less secure than they had been prior to reform. In other states (Bihar, Rajasthan), although tenancy is not prohibited, no legal provision exists to record informal tenancies. The registration and protection of informal tenancies has taken place only in West Bengal and to a lesser extent in Tamil Nadu and Vidharbha area of Maharashtra. By 1992, according to one commentator, ownership rights had been conferred and tenancies protected on no more than 4 per cent of the total operated area (chiefly in Assam, Gujarat, Himachal Pradesh, Karnataka, Kerala, Maharashtra, and West Bengal). The net result of tenancy reforms is said to have been the loss of access by the rural poor to around 30 per cent of the total operated area (Ray 1996).

Tenancy reforms are clearly of continuing relevance in reducing poverty. Two elements are of particular importance, involving both legal and institutional reforms. First, deregulation of land-lease markets is important where attempts are made to ban tenancy outright, since this exacerbates tenure insecurity for tenants. Second is the registration and protection of informal, concealed tenancies along the lines of the West Bengal model. More generally, three critical ingredients of success in implementing reforms in land administration stand out: the importance of collective action at local level, the public nature of proceedings, and state power exercised on behalf of the socially excluded. This is as true of land consolidation in Uttar Pradesh as

it is of tenancy reforms in West Bengal, and offers valuable lessons from which to learn in broader efforts to improve land settlement, adjudication and registration.

### **Critical aspects of the Implementation of land reforms in India**

The growing paradox of development makes it hard to explain the pattern of discrimination and undermining of citizens. It is undisputable that over the years the intensity of deprivation, oppression and exploitation of the under-privileged has increased amidst high economic growth rate (averaged around seven per cent since 1997 this has raised critical questions about the development strategies and policies adopted by the state. During the last two decades, the most critical of the challenges has come from the people's protests, movements, forums, organizations, groups and individual activists addressing issues which are vital for sustenance of livelihood of the marginalized and deprived

- State connived land alienation
- Defective surveys and settlements and no-recording of possession
- Irregular or inaccurate enjoyment surveys
- Permissions granted for purchase of tribal land
- Inefficacious implementation of restoration legislation
- State acquiesced land alienation
- Informal, Unrecorded or Disguised
- Benami purchases
- Long Term Leases, Power of Attorneys, Unsatisfactory Agreements
- Manipulation of records and boundaries and loopholes in land laws
- State Negation of Tribal Rights to Land and Land based Resources
- Unlawful declaration of 'deemed reserved forests'

- Improper or Incomplete Survey and Settlement Procedures has been examined
- Continuation of 'loopholes' in legislations
- Non rectification of colonial
- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015 with old insights

### **Complex procedure of land acquisition**

The Act unequivocally states that a detailed report evaluating the socio-economic implications of the acquisition on the residents of that area must be prepared in consultation with the local residents associations in urban areas and village council in rural areas. Thereafter, the report has to be scrutinized by an expert panel consisting of two social scientists, two rehabilitation experts and a technical expert having knowledge of the project for which the land is to be acquired.

Moreover, the intention of acquiring the land must be made explicit by way of registration 7 within 12 months of the submission of the report. Any objections to the proposed acquisition have to be made to the administrative head of the concerned area. The government can acquire land only after completing the aforementioned formalities. This procedure can be circumvented only if the government decides to invoke the urgency clause which can only be done in the rarest of rare cases in national interest. In the views of many business leaders, this procedure is highly infeasible and would make it virtually impossible for any project to properly take off because, they argue, committee clearances in India are inextricably intertwined with red-tapism. In addition, by the time all the clearances are actually obtained, the project may lose its relevance or the project cost may significantly rise, so many businesses may simply decide to give it up.

1. High cost of acquisition:
2. Limited role of government:

3. How it is beneficial for schedule caste and schedule tribes?
4. Criticism on Land Acquisition Bill-2015

This bill will increase the cost of the land making most of the projects unviable. Also it will increase the land acquiring time. The Bill is in the favor of land owners but not in the poor strata of the society who affordable housing. In need case of urgency, the government can acquire a land by ignoring all the pre-set conditions. For this the Bill has an urgency clause. It is possible that compensation calculated might be less than market rate as compensation is not aligned to the loss but to the category. Railways, highways, defense, nuclear projects, low cost housing and industrial area or parks are exempted from some of the clauses and act of the bill. Projects may be delayed by affected families for additional compensation.<sup>2</sup>

### **Land access and distribution Anew initiation of holistic community Supportive mechanism in Telangana**

The land policy of the country, after Independence mainly aims at abolition of intermediaries, regulation of tenancy, imposition of ceilings on landholdings and redistribution of ceiling surplus land. Several State governments while, not in position to distribute sufficient quantity of ceiling surplus land, adopted the policy of distributing the government wastelands and bhoodan and gramdan lands acquired. Around 14.7 million acres of government land has been distributed to rural landless poor families by various State governments so far (GoI, 2007). The distribution of government wastelands was most vigorously implemented in the State of Andhra Pradesh which has a high percentage of landless laborers. The State has distributed 1.7 million hectares of government wastelands, followed by Uttar Pradesh which distributed about one million hectares of government land to the landless poor. There has not been much opposition to the redistributive programs of wastelands from the landed elite because of the following.

The uncultivated wastelands by definition termed as 'lands which are degraded and cannot fulfill their life sustaining potential. Much of the government wasteland distributed was of poor quality which needed much investment to be used for productive purpose. – The process of encroachment is very common by landed class. At the time of abolition of intermediaries, it was presumed that the corpus of wastelands acquired would be used to provide land to the landless. While part of this corpus was certainly used for this purpose, it is also common that the practice has been deviated for other purposes. For example the major component of The Comprehensive Wasteland Development Programme launched by the government of Tamil Nadu, launched during 2003, was to develop five million acres of government wasteland by involving the corporate sector for commercial agriculture. Implementation of laws with hasty and improper distribution of lands For example, the field investigation in Andhra Pradesh had shown that about 30 per cent of the reported beneficiaries did not have legal as well as physical possession of the allocated land (Tim et al 2008). Poverty and inequity in rural Andhra Pradesh are centrally linked to land ownership.

Approximately 10 per cent of rural households in Andhra Pradesh are absolutely landless and another 36 per cent own less than half Acre of land. Only 6 per cent of rural households in Andhra Pradesh own more than five acres of land. The distribution of land at the disposal of the government, commonly known as Banjar land, constitutes an important component of the land reform programme in Andhra Pradesh. It has been estimated that by 2010, about 52.53 lakh ac. have been assigned to the landless poor, catering to about 31.59 lakh beneficiaries.

That is, the land distributed on average was 1.6 acrs. However, the organizational challenges posed by the small holdings for the efficient utilization of land, water and other inputs and also the diffusion and adoption of various technologies sets a limitation for land distribution programmes.

## **SERP (Society For Elimination of Poverty) Land Access Program, Andhra Pradesh and Telangana**

SERP's Land Access Program and managed the program as State Legal Coordinator since its inception in 2004 to until 2008. This analysis of the SERP land access program is based on the author's experience as well as analysis set forth in Kumar (2006), Patnaik and Kumar (2012), Mitchell et al. (2011), Ledger, Kumar and Mitchell (2011), Mitchell and Hanstad (2008), Nielsen and Hanstad (2005), Nielsen and Vhugen (2008), Society for the Elimination of Rural Poverty [SERP] (2008) and SERP (2002).

In 2004, to help rural poor families who are landless or lack secure legal rights, the government of Andhra Pradesh launched a legal assistance program for land (initially called the Non-Land Purchase Program and now called the Land Access Program) to provide free legal assistance in resolving land problems. The program was launched with World Bank support and with technical assistance from Landesa. The Land Access Program is part of a large state rural livelihoods program called Indira Kranthi Patham (IKP), implemented by the Society of Elimination of Rural Poverty. (SERP), which is part of the state government's Rural Development Department. SERP operates through 975,362 women's self-help groups comprised of 10.9 million rural poor women across the state.<sup>3</sup>

SERP's Land Access Program is built on a community-based paralegal model. Communitybased paralegals have emerged globally as a cost-effective solution to the problem of access to justice for rural communities. Community-based paralegals are less expensive and more accessible than lawyers, and can often resolve problems faster than existing formal legal structures or administrative bodies. Community-based paralegals are more likely to empower their clients through education and legal literacy. They are drawn from the community, usually from the most disadvantaged, marginalized and backward sections of society. This gives them greater insight into and understanding of what makes people tick, what their concerns could be and how

these could be resolved better. This places the community paralegals in a unique position in which they can liaise and network with the local authorities and service delivery agencies on behalf of community members. Ideally, a community-based paralegal should be a person who has the following skills and attributes:

- Has basic knowledge of the law, the legal system and its procedures, as well as basic legal skills;
- Is a member of the community (or part of an organization that works in the community) and
- Has basic knowledge of the ways community members access justice services, including traditional or informal justice mechanisms;
- Has skills and knowledge on alternative dispute resolution mechanisms, including mediation, conflict resolution and negotiation;
- Is able to communicate ideas and information to community members using interactive teaching methods;
- Is able to form effective working relationships with local authorities and service delivery agencies;
- Have community organizing skills that can be used to empower communities to Address systematic problems on their own in the future.

The SERP paralegals provide legal education and aid services to households that need assistance securing their land rights, whether that entails correcting or updating Revenue records, obtaining pattadar passbooks (land cultivators passbooks) and title deeds, obtaining pattas (land titles) or addressing other land issues.

To provide this kind of legal assistance on a large scale at low cost, SERP trained local youth as paralegals and community surveyors to work with women in self-help groups (SHGs). SERP piloted the paralegal assistance activities in 2004, expanded to an entire district in 2005 and then rolled out to all 22 districts of the state in

2006. The SERP land activities are currently implemented in 852 mandals (sub-districts) in all districts of the state.

### **Community and Paralegal Groups**

Community paralegals were initially tasked with securing land rights of the rural poor by: (1) identifying the land issues of the poor at the village level; and (2) facilitating the resolution of those issues through legal analysis, case investigation, land surveys and coordination with the Revenue Department (responsible for land administration in Andhra Pradesh).

SERP has recruited 379 rural youth from poor houses holds, especially from Scheduled Castes and Scheduled Tribe families, as paralegals by way of notification, a written test and an interview. They were given a one-month initial training, which was conducted in the districts and included a village stay. Later, they were given five-day training at the Andhra Pradesh Academy of Rural Development in Hyderabad. NALSAR University of Law, a premier law school in the country, the conducted a ten-day paralegal certification course. Continuous capacity building for paralegals is done at the district level through fortnight meetings. Trainings given to paralegals include the basics of land records, land enactments, procedures, identification and resolution process of land issues. SERP appoints one paralegal per mandal (sub-district) to work with the Mandal Samakya (a federation of poor SHG women at the mandal level) under the guidance and supervision of the Land Centre at the district level.

The principal activities of the paralegals are identifying and listing land issues in villages (including, but not limited to, cases pending in Revenue Court of a given mandal), gathering the required factual information and documentation from case files and from speaking with the involved parties, preparing reports for Revenue Department functionaries and petitions for the administrative courts, assisting claimants and administrative court officials in resolving the issues and tracking the cases until they are resolved. Revenue Department functionaries, with the assistance of

paralegals and other SERP staff, hold Village Courts to hear cases, resolving as many as possible on the spot.

### **Community Surveyors**

In response to the chronic shortage of trained surveyors in rural areas, SERP hired 473 rural youth having technical qualifications as Community Surveyors by way of notification, a written test and an interview. They were trained for two months in cadastral survey at the Andhra Pradesh Survey Training Academy, completed a one-year apprenticeship with departmental mandal surveyors, and received a license from the Department of Survey. Community surveyors work with paralegals to help settle survey-related issues of the poor.

### **Land Centers**

A Land Center (also called Land Rights and Legal Assistance Center) was established at each district headquarters. An additional Center is established in each of seven districts where there is a Scheduled Area. These Centers are managed by young law graduates who are appointed as Legal Coordinators and retired revenue officers who are appointed as Land Managers. The Center handles all the activities relating to ensuring secure land access to the poor, including creating awareness, providing access to information and land records, facilitating resolution of survey related issues and providing legal aid.

### **Results of the Land Access Program**

A focus on women has been a key feature of SERP's land work. This focus has received widespread support from both rural women and their husbands. Importantly, the work of the paralegals was accomplished through women's SHGs, and before the paralegals were hired by the state in 2010, they were initially employees of the SHG federation. Paralegals have focused their awareness and education activities through SHG mechanisms, so naturally many of the requests for assistance come from women, although most requests do not involve issues that are unique to

women. By focusing on women and working through SHGs, the IKP program strengthens the ability of rural women to understand and defend their interests and those of their family. Between 2006 (when the SERP Land Access Program was scaled up to all districts) and 2010, paralegals and community surveyors identified land problems of 610,000 rural poor involving 1.18 million acres of land, out of which, the paralegals and community surveyors helped to resolve land problems of 430,000 rural poor involving 870,000 acres of land (SERP, 2013).

Two-thirds of land cases identified by SERP during 2006-2010 involve claims by members of SC and ST families. SC and ST land holdings are gradually decreasing (Land Committee, 2006). Understanding the gravity of land problems of the poor, SERP has undertaken the inventory of land holdings and land problems of SC and ST families during 2010-2012. The inventory identified 2.16 million land problems among 1.46 million SC and ST families, involving 2.41 million acres of land. Out of this, 980,000 land problems were resolved by organizing village courts during January to March 2012 (SERP, 2013).

Various committees appreciated SERP's Land Access Program and have recommended its expansion to remaining mandals in the state and also across the country. For example, the Committee on State Agrarian Relations and Unfinished Task of Land Reforms recommended the program's adoption in other states with any modifications as may be deemed proper to suit the local environment (CSARUTLR, 2008). The Land Committee of Andhra Pradesh also recommended for the program's expansion to the entire state to encourage alternative dispute resolution and to support the community in fighting cases and the system in gathering authentic information on the cases. Landesa conducted several rounds of research from 2005 to 2012 that found SERP paralegals effective in helping poor families and women obtain secure legal rights to land at a low cost. The following are the key lessons from SERP's Land

## **Access Program:**

- Paralegals from the community of the poor, if trained well, can competently support both the poor and the adjudicating authorities in settling land disputes.
- This program is a low cost and high impact solution for securing land rights for the poor. The annual cost per SERP paralegal is approximately Rs. 100,000 (USD 2,200), which includes salary, travel, training and management costs.
- Apart from pro-poor land legislation, the poor require knowledge of those laws and legal support to get their land issues resolved. The SERP program did not do much about increasing land legal literacy among the poor.
- Even though it was planned by SERP to undertake trainings for revenue officers,11 nothing has moved in that direction.
- The reach of SERP paralegals is only to the one-third of the state. Out of 1,134 Mandals, SERP paralegals work only in 379.

## **Paralegal Volunteers Program of the Legal Services Authority in Andhra Pradesh**

Article 39A of the Constitution of India (1949) provides that “the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.” Further, the Supreme Court of India on several occasions held that legal aid is a fundamental right, and it is a sine qua non for justice. In fulfillment of the constitutional mandates, the Government of India enacted the Legal Services Authorities Act of 1987, which came in to force in 1995. Legal Services Authorities were constituted at the Mandal, district, state and national levels to provide free legal services to the poor and needy (National Legal Services Authority, 2010; Andhra Pradesh State Legal Services Authority, 2010).

In early March 2013, Landesa, in collaboration with NALSAR University of Law and with support from Legal Service Authority, established the first Land Rights Legal Aid Clinic at a district level office dedicated to providing free legal services to the poor on land matters. This Clinic, which is housed at the office of the District Legal Services Authority in Warangal District of Andhra Pradesh, is intended to increase land-related legal awareness among the poor and tribal's to promote their legal empowerment; to provide free legal services to the poor and tribal's in securing rights over land; and to develop and promote alternate dispute resolution mechanisms to settle the land-related problems of the poor and tribal's. This Clinic is the first of its kind established in Legal Services Authority's office and can be a model for all the Legal Services Authorities across the country.

### **Land Rights Initiative of the APMSS**

The Andhra Pradesh Mahila Samatha Society (APMSS) is a part of Mahila Samakya, a national-level project that has taken up the cause of women's empowerment and is supported by the Ministry of Human Resource Development. The main focus of APMSS is empowering women through education and facilitating a process of learning to strengthen the self-image and confidence of women, enabling them to take charge of their lives. The rationale behind the project was the conviction that women at the grassroots level are still ignorant of their rights. Presently, APMSS is working in 4,385 villages in 104 Mandals across 14 districts of Andhra Pradesh. About 200,000 poor rural women are in the Sanghams (groups) of APMSS. The past 17 years of APMSS experience suggests that majority of the women in the Sanghams either have no land or have land problems.

During 2011, APMSS, with the support of Landesa, trained all the Sangham leaders and staff on basic land records, major land problems and the process to resolve land problems. Landesa conducted ten days of training in three phases for two District Resource Persons from each of the 14 districts where APMSS is working. The training included understanding basic land records

and the process to resolve selected land issues (getting name entered in Record of Rights and getting title documents, getting title for land purchased through unregistered sale documents, getting tile for Inam (gift) lands and getting title for forest land in occupation of tribal's). These District Resource Persons in turn, with the help of Landesa, provided training to all their staff in the district and Mandal sangham leaders. About 500 members of samakhyas and staff got trained on land matters, and all of them are women. Mandal sangham leaders and the staff educated all the women in Sanghams on land issues. Although the APMSS staff does not appear to be addressing land issues in the active style used by the SERP paralegals, reports from APMSS suggest that these trainings helped the

12 staff to resolve a number of land problems for APMSS members and enabled the staff to provide advice to villagers on land matters. The experiences of APMSS highlighted the need and the importance of training women on land issues. The SERP land access program, even though worked with women federation, could not do much in training them.

### **Land Legal Literacy and Capacity Building Efforts of Landesa in Andhra Pradesh**

Landesa has made many efforts since 2003 to persuade SERP, APMSS, LSA and other government and non-government organizations to launch paralegal initiatives to resolve the land problems of the poor. Landesa also played a significant role in the design and implementation of paralegal programs in SERP, APMSS and LSA. These initiatives have been successful in resolving thousands of land problems of the poor. Landesa's evaluations of these initiatives highlighted the need to educate the rural poor on land matters and the need to provide training to paralegals and adjudicating authorities. To address this need, Landesa has undertaken several initiatives to spread land legal literacy and build the capacities of adjudicating authorities (revenue officers and civil courts judges) and paralegals.

## **Establishing Paralegal Centers for Securing Land Rights for the Poor**

- The experiences in Andhra Pradesh and Odisha offer valuable learning for designing a legal aid system that resolves land issues for the poor across the country. Based on experiences discussed above, the followings prove to be essential ingredients of an ideal legal aid system:
- Land legal literacy for the poor and tribal's
- Youth from the poor families trained on land laws and land survey methods to help the poor and tribal's
- Law graduates and retired revenue officials to guide these youth and a panel of lawyers to take up cases of the poor in courts
- Paralegal Centers at the block level for the poor to access the services of legal aid program
- Land Rights Centers in law schools to train paralegals and other stakeholders and to conduct research
- Regular and periodic training for land administration officials and judges
- Accessible land records
- Print and electronic materials on land laws in local languages and in simple and easy to-understand forms

### **A transparent and accountable land administration**

The Government of India, as part of the World Bank-funded National Rural Livelihood Mission (NRLM), has the potential to implement a legal aid program across the country to help the poor get secured rights to land, thus enhancing their livelihood security. A Paralegal Center should be established at every block/sub-district headquarters under the control of the district NRLM office. Ideally, the center should be established in the premises of the District Legal Services Authority as was done recently in Warangal district of Andhra Pradesh. A Land Rights Center, like the one established in NALSAR University of Law, should be

established in a law school in each state to provide training and other technical support to paralegals and lawyers. The center should conduct research and policy advocacy and preparation of awareness raising materials on land laws.

The Paralegal Center should consist of paralegals, community surveyors and lawyers. In each block/sub-district, between three and five rural youth or women from the community should be identified, trained in land and legal matters and positioned as paralegals. Similarly, three to five youth or women from the community should be identified, trained in land survey and positioned as community surveyors. At each Center, a coordinator with a law background should be appointed to provide functional support to the paralegals. A retired revenue officer should be appointed to provide support to the coordinator. A panel of lawyers should be constituted in each Center to fight the land cases pertaining to the poor in both revenue and civil courts. The support of law schools should be taken to train the paralegals and also to utilize the services of law students in providing legal assistance to the poor.

A local youth should be selected and appointed as a Community Resource Person in each village for identifying the land problems of the poor and tribal's in lines with the CRP program in Odisha. They will conduct an inventory of all the land in the village and prepare a list of land problems of the poor and tribal's. Subsequent to the inventory, CRPs will assist the paralegals in resolving the identified problems. The service of the CRPs will be required only in the first year of the legal aid program Based on the inventory of the land problems identified by the CRPs, paralegals should conduct local enquiry and collect necessary information required for filing petitions/cases before the appropriate authorities. Paralegals should also assist the poor in filing the petitions/cases

In venues such as the revenue and civil courts wherever intervention of lawyers is required, the lawyer's panel should take up the cases. Wherever survey-related issues are reported, services of the community surveyors should be utilized. All the

land cases, identified and filed before revenue authorities by the paralegals, should be settled on a priority basis and in a time bound manner, preferably by holding the courts or hearings in the villages. Paralegals should take steps to spread land legal literacy among the poor. State governments should constitute Convergence Committees at the state, district and sub-district/taluqua levels to provide necessary support and guidance to the Paralegal Centers. The Committee should consist of officers from revenue, rural development, panchyatraj, forest, tribal welfare and social welfare departments as well as representatives from civil society.

An intensive, continuous and comprehensive training should be given to all the revenue officers at various levels to reinforce their pro-poor perspective and to expand their understanding of the pro-poor land laws, rules, government orders and judicial decisions. Periodic refresher courses shall be arranged to boost their morale and to keep up their enthusiasm levels high. Land is life for poor families. In India, there are thousands of poor and tribal's who are suffering with land problems, and for them, deprivation of land is deprivation of life. Paralegals Centers, with low cost, can help restore their land to them, and thus, can bring back life to them.

### **Community-based support mechanisms: path for mutual adjudication and assessment of land rights for poorer**

Formal land adjudication procedures do not always in cases where there is uncertainty in some or all land rights]. Such is the case in some customary tenure systems where rights often overlap and boundaries are ill defined from a land administration point of view. There are often claims that these boundaries are well known locally in the area concerned. There is however, danger of loss of information as land changes hands through inheritance and as generations change. Pro poor land administration practices aim to accommodate all forms of rights be they formal or informal. The aim is not always to change the local institutional arrangements into a tiling system but rather to document what exists on the ground and improve the traditional customary system by making it

more functional, efficient and transparent. The intention of this study is to develop a procedure based on the roots, cultural norms and values of the traditional land tenure arrangements but which from a land administration point of view, improves land management and the social wellbeing of the citizens. If rural communities can better manage their land, water and forestry resources, this can take great strides into alleviating poverty. Having a tribal LIS can assist land administrators in delivering public services efficiently and in achieving better and informed governance in land as well as improved land use and environmental management. As urban land becomes even scarcer, the potential for economic prosperity in communal land starts to emerge.

Some social groups are often deprived off their right to own land in communal land]. This is in a contradicting view of communal land being a birth right in customary law. With communal tenure, there is lack of procedures and tools for performing the land adjudication procedure so that rural communities can access the benefits of land registration. Communal tenure is complex as it is highly reliant on cultures, social values and institutions of local people and these may vary according to context. Often there are overlapping claims and temporal rights. This makes the adjudication of communal land a complex process. There is a need for a model which is adaptive to the temporal and other behavioral aspects presented in the context. Customary tenure presents a social tenure based on local agreements which need a social approach to registering them. This social approach to land registration involves the use of unconventional approaches to land administration so that all social tenures excluded from the formal LAWS can be documented.

This study brings into light the best practices for designing a field procedure for performing land adjudication within the rural communities. This is achieved through synthesizing best practice reports from other nations and current literature within land administration such as the social tenure domain model the end

result should be a relatively low cost land adjudication procedure that does not require experienced technocrats for implementation. The whole adjudication process should be of a participatory nature and involve all members of the community. The community should ideally benefit through the community learning process as the land adjudication procedure is carried out. This study identifies the social groups and best practices to be considered in the development and execution of the land adjudication process. A first draft field of a field procedure for performing land adjudication within the rural communities is developed. This is achieved through utilization of Enterprise Architect and Unified Modeling Language (UML) in modeling procedures carried out in land adjudication. (see diagram followed in next page)

### **Structure of the Mutual adjudication system**

The proposed adjudication employs systematic adjudication approach with the aim of cost minimization. With this systematic approach government will incur the costs of adjudicating land rights as this is a social responsibility or public service to the rural citizenry. The target group of this social land registration exercise involves mostly the poor and or disadvantaged with a few privileged individuals and families. The program executors through the Ministry of Local Government decide on the administrative wards that will be treated at a time as well as the order of progression of the adjudication exercises.

Systematic adjudication reduces the possibilities of having floating parcels while ensuring the availability of a complete index map after the completion of each and every ward. All land parcels will be included in a register that shows the parcel, owner and the corresponding rights as per the land tenure model. Community education and consultation is a significant component within adjudication that is designed to ensure that existing land rights are accurately recorded. As a part of educating the community, information on why it is important to have their land right recorded is imparted. The purported land adjudication

benefits can then motivate the villagers to have their land parcels registered. When the community is well informed, the task of adjudicating will be easier as everyone is aware of the proceedings and the reason of doing so. The first exercises act as pilot projects with future projects learning from the pilots through collection of information about successes, failures and complaints. Land adjudication in communal land is a new concept so not only the community benefits from the learning process but the land officers performing the land adjudication exercise as well.

The adjudication crew will comprise many actors who will be able to resolve disputes that arise during the process. In this case oral evidence will be employed in bearing witness as there are no written documents that can be used to resolve disputes. The knowledge from the lineage of chiefs and village elders is also useful in mitigating land disputes. Land disputes are resolved on site to avoid unnecessary costs that can be incurred using the court procedures which are lengthy. For each property all the owners and the neighbors' should be present.

This way, neighbors can bear witness to the correctness of the boundaries. The chief, or a member of the village elders should also be available to authenticate the procedure and represent the administrative leadership. If there is a consensus on boundaries during adjudication, then future disputes, evictions and dispossessions are likely to be minimal. Any appeals or objections that can arise after the register of land rights is compiled are availed to the district administrator who represents the ministry of local government. A copy of the register in both computerized and hardcopy format is stored at the district administrator's office for public viewing.

To achieve the goal of cost minimization, unconventional approaches to land administration are employed particularly to reduce the costs of the initial land survey of boundaries. High resolution satellite imagery can be employed to delineate boundaries of land parcels. This will suffice the needs of the

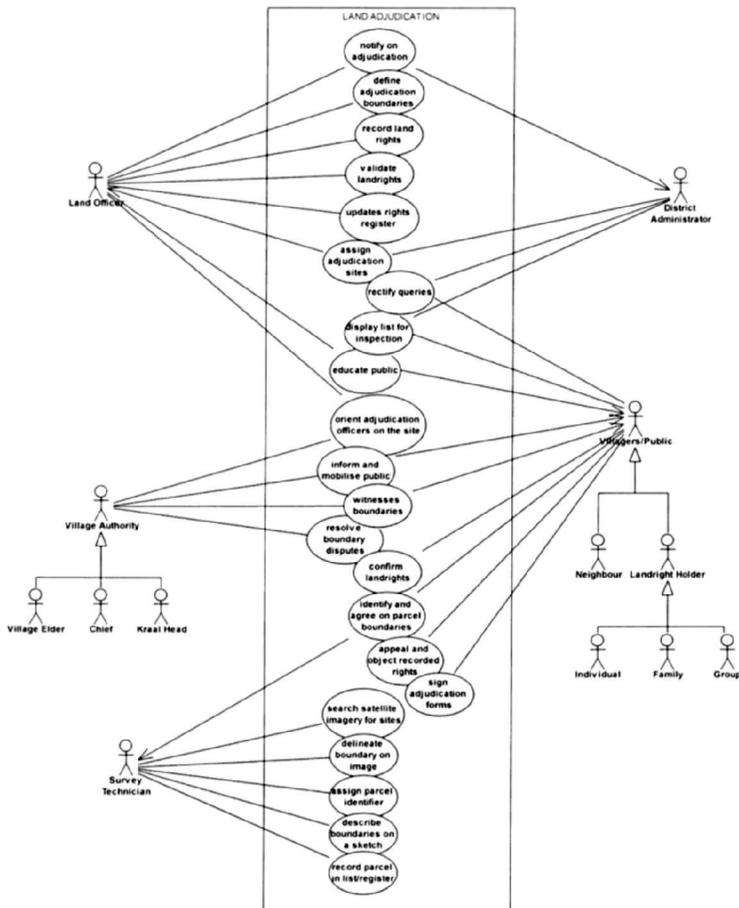
exercise as general boundaries are the ones which would be recorded. The expertise of a licensed surveyor is not necessary. The use of satellite imagery reduces the costs and the time needed to mark the boundaries. The whole village is visible on one or a series of adjacent imagery and thus it is possible to locate parcels against their adjacent parcels. The boundary description will be noted down on the sketches by the survey technician. Parcels can be assigned a number and or text description in order to cover all possibilities for parcel descriptions during the adjudication exercise. A piecewise land adjudication approach whereby the ward is broken down into villages and adjudication carried out village by village can be employed. The village is further broken down into sections so that the exercise is manageable with minimum interference from dwellers from further off properties and or villages. The segmentation of the villages is based on collaborative efforts with the chiefs who are the local leaders to decide on the optimum way to conduct the procedure. This also ensures that the chiefs assume an active role in the process.

Customary tenure is classified as a social tenure and as such requires a social approach to the conduct of the adjudication exercise to minimize resistance from the villagers. The Adjudication process comprises of the following major steps which are explained in due course and these are:

- Land officers notifies chief about the exercise through the district administrator
- Chief mobilizes villagers on a meeting date
- Educating the people (citizens)
- Chief provides information on local customs and rights to land
- Documenting which includes person, right, witnesses and delineating boundaries
- Storage of documents by district administrator
- Lodging documents in national register

# Land acquisition actors and roles at various levels

uc Land Adjudication Actors and Roles



## Conclusion

In sum, one may infer that the existing constitutional provisions for preventing transfer or tribal lands into the hands of non-tribal's are not implemented in Andhra Pradesh Telangana or in India with the required seriousness that the issue deserves. Similarly the fact that assignment lands are going out of the hands of the poor, despite the laws prohibiting the same, has not been addressed seriously. The many recommendations made by the Land

Committee in this regard may not see the light of day given the lack of political commitment to protect the lands of the poor. Regarding land acquisition, one finds that the determination of the State to take possession of land from rural people at any cost either for irrigation projects, SEZs, thermal plants etc., is not matched by its responsibility to respect and follow the existing laws and procedures. One does not find the State machinery showing any empathy towards the rural people who are going to lose lands and livelihood. The promises of the State to provide good resettlement and rehabilitation measures are not fully trusted by the affected people, and they have enough reason to be suspicious. The affected people are neither consulted nor their views respected, including in Tribal areas which are covered under the Fifth Schedule of Indian constitution.

The approach of the State towards the affected people has been that of coercion, threat, intimidation and finally use of a disproportionately large police force to take over the lands. Where the private corporate companies are the project promoters, one finds the revenue and police administration colluding with the private company to intimidate the villagers. The affected people have lost faith that mainstream political parties would protect their interests as they are seen to be hand in glove with the private companies. It is civil society organizations, advocacy groups and public spirited individuals who have played a very active role in raising awareness levels among the affected people regarding their own land rights, the machinations of the officials in violating the rules and colluding with the private companies etc. and have provided legal support to the fighting people. It appears that this is the trend at the all-India level also, in the post-liberalization phase, as the dominant political parties and also the State are increasingly seen to be siding with private companies.

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### **Glossary/Abbreviations:**

**Zamindars:** a landowner, especially one who leases his land to tenant farmers.

**Patwaris:** village record-keepers.

**Banjar land:** Uncultivated land. Land not cultivated for continuous four harvests though it was cultivated earlier

**SERP:society for elimination of poverty**

**Indira kranthi patham (IKP):** Indira Kranti Patham (IKP) is a statewide poverty reduction project to enable the rural poor to improve their livelihoods and quality of life through their own organizations. It aims to cover all the rural poor households in the state with a special focus on the 30 lakh poorest of the poor households. It is implemented by Society for Elimination of Rural Poverty (SERP), Dept of Rural Development, Govt of AP Mandal samakya: a federation of poor **SHG** women at the mandal/block level

**APMSS:** The Andhra Pradesh Mahila Samatha Society is a part of the Mahila Samakhya Programme of Government of India under department of Education, Ministry of Human Resource Development. The programme was launched in the State during the year 1993 with Medak & Mahaboobnagar districts initially and presently extended to 15 districts through phase wise expansion. The principle objective of the programme is Education for Empowerment of Women. It is sought to be achieved through village women's collectives - The Sanghams.

**INAM (GIFT):** Benefit, Blessings and Profit.

**National rural livelihood mission (NRLM):** Aajeevika - National Rural Livelihoods Mission (NRLM) was launched by the Ministry of Rural Development (MoRD), Government of India in June 2011. Aided in part through investment support by the World Bank, the Mission aims at creating efficient and effective institutional platforms of the rural poor enabling them to increase household income through sustainable livelihood enhancements and improved access to financial services

**CRPS-community resource person:** CRPS being local youth have a better understanding about the community they understood the sentiments and attitudes of local communities especially poor landless.

## **Land Disputes Consequent to Land Reform Acts in Tamil Nadu**

**M. Thangaraj**

Land is an important productive asset and nearly two-thirds (61.5 per cent in 2011) of the population is directly depends up on agriculture for their survival. Per capita availability of land is declining day by day as there is mounting pressure on land. Population explosion prohibits in achieving equal distribution of land in India.

Major objective of the paper is to examine land disputes consequent to implementation of land reforms provisions in Tamil Nadu. The specific objectives of the study are to examine land disputes relating to 1. Ceiling on land holdings, and 2. Tenancy reforms. Two types of data were collected for this paper. Data on land disputes were collected for the initial period of implementation land reforms during the late 1960s from the study conducted by Sonachalam on “Land Reforms in Tamil Nadu – Evaluation of Implementation” and the study was funded by the Research Programme Committee, Planning Commission, Government of India. Initial period data are necessary in order to understand the magnitude of land disputes. Data relating to the latest period were collected from the Commissionerate of Land reforms in Tamil Nadu.

Chapter 10 of the Tamil Nadu Ceiling on Landholdings Act, 1961 deals with “Land Tribunals” which has four important components viz. 1. Constitution of land tribunals under section 76; 2. Transfers of appeals from one land tribunal to another under section 76-A; and 3. Jurisdiction and powers of the land tribunal under section 77.

Chapter 11 of the Tamil Nadu Ceiling on Landholdings Act, 1961 deals with “Appeals and Revision”. Chapter 11 has five important components viz. 1. Section 78 of the Act deals with appeal to Land

Tribunals; 2. Section 79 deals with appeal to the High Court; 3. Section 82 of the Act deals with revision by the Land Commissioner; 4. Section 83 of the Act makes provision for revision by the Court; and 5. Section 84 of the Act provides power to stay.

## **1. Types of land disputes**

George and Raju conducted a study on 'Implementation of Land Reform in Three Villages in Kerala'. The authors have reported that there was three types of land disputes in Kerala. They are: 1. Ceiling, 2. Tenancy, and 3. Kudikidappu (hutment dwellers) provisions<sup>1</sup>. The authors have further reported that landowners adopted various methods to evade the ceiling viz. benami transfers, leases, and gifts. The exemptions provided in the Act were used as loopholes in process of implementation. At the stage of the verification enquiry, the land owners tried to influence the findings by means often not so fair<sup>2</sup>.

Sonachalam conducted a study on 'Land Reforms in Tamil Nadu- Evaluation of Implementation'. He has classified land disputes relating to tenancy into four categories, viz. 1. Application by landlords for eviction of tenants which may be called as "Eviction Cases". 2. Application by landlords for resumption of land for personal cultivation and this type may be called as "Resumption Cases", 3. Application by tenants seeking to continue in the leaseholds offering to pay pre-Act rent to the landlords whenever the latter try through court to resume the land for personal cultivation and this may termed "Lease Continuation Cases", and 4. Application by the tenants for restoration of leased land which they were cultivating upto 01-12-1953 but evicted subsequently and this may be called as "Restoration Cases"<sup>3</sup>. Sonachalam further stated that the process leading to the declaration of surplus land was slow and cumbersome. On receipt of the statement issued by the Authorized Officer, the landowners put in their objections. This has led to wastage of time and causes delay<sup>4</sup>.

## **1.1. Legal Hurdles**

Many provisions under the land reforms legislation were subject to legal hurdle due to appeal by the aggrieved landowners and tenants against the ceiling area, provisions of the tenancy Acts. Appeals and other legal hurdles were the main reasons for delay in making final decision.

## **1.2. Ceiling on landholdings**

The Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 (Tamil Nadu Act 58/61) was enacted with a view to reduce the disparity in the ownership of the agricultural land and concentration of such land with certain persons and to distribute such land among the landless and other poor. The disputes involved in the ceiling on landholdings are:

1. Compensation was given to the landowner who lost their land due to implementation of ceiling on land holdings. The payment of compensation for the landowners was fixed according to the formulae fixed by the Act. Landlords who lost their land under the ceilings on landholdings Act filed cases against the calculation of compensation which was very low.
2. On receipt of the draft statement issued by the Authorized Officer, the landowners raised their objection about the wrong calculation of surplus land.
3. Distribution of poor quality of land ceiling surplus land to the beneficiaries.
4. In many places only patta was given and not the surplus land.

## **1.3. Tenancy**

### **Tenancy Laws**

The following Acts have been implemented under Tenancy Reforms:

1. The Tamil Nadu Cultivating Tenants Protection Act, 1955
2. Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956
3. The Tamil Nadu Public Trusts (Regulation and Administration of Agricultural Lands) Act, 1961
4. The Tamil Nadu Agricultural Labourers Fair Wages Act, 1969
5. The Tamil Nadu Agricultural Lands (Record of Tenancy Right) Act, 1969
6. The Tamil Nadu Occupants of Kudiyruppu (Conferment of Ownership) Act, 1971

Four types of tenancy disputes. They are: 1. Eviction cases, 2. Resumption cases, 3. Lease continuation cases, and 4. Restoration cases.

#### 1.4. Performance under Land Reforms

**The data relating to the performance under land reforms presented in Table 1 clearly explicate that 8130 acres of land is covered by court proceedings.**

**Table 1: Surplus, assigned and number of beneficiaries**

<b>a</b>	<b>Surplus (from inception to till date)</b>	<b>2,08,442 acres</b>
<b>b</b>	Lands assigned	1,90,723 acres
	from 1964-65 to 2000-01	1,79,678 acres
	from 2001-02 to 2005-06	8,351 acres
	from 2006-07 to 2010-11	2,059 acres
	from 2011-12 onwards	635 acres
<b>c</b>	Number of beneficiaries	1,50,935
<b>d</b>	Allotted for public purpose	9,609 acres
<b>e</b>	Lands to be allotted (covered by Court proceedings)	8,130 acres

**Source:** Land Reforms, Commissionarate of Land Reforms, Government of Tamil Nadu

## 2. Land Disputes during the late 1960s

Land reforms Act has given ample scope for landlords and tenants to go to courts to get justice by making appeals to the Land Tribunals.

### 2.1. Application filed and disposed by landlords and tenants

The distribution of data presented in Table 2 clearly show that applications filed by the landlords for eviction of tenants and for resumption of land for personal cultivation with 18050 cases as compared to the application filed by the tenants for restoration of land from landlords with 633 cases. Total number of application disposed accounts for 62 per cent in the case of landlords and tenants it was only 58 per cent of the cases. It is worth noting that out of 18683 total applications filed, 5812 applications were withdrawn. Applications pending for disposal was 1358 cases.

**Table 2: Applications filed and disposed under the Tenants Protection Act, 1955, as on 30.06.1967**

	Total	Sec 3 - By landlords for eviction of tenants	Sec. 4A - By landlords for resumption for personal cultivation	Total applications filed by landlords	By tenants for restoration
1.Total application	18683	16428	1622	18050	633
2. Total disposed	11513	10583	560	11143	370
2(a) Area involved (acre)	22596.51	20344.69	1658.45	22003.14	593.37
3. Not pursued or withdrawn	5812	4563	1012	5575	237
4.Application pending disposal	1358	1282	50	1332	26
5. Evicted, resumed and restored	3292	3165	154	3219	73
5 (a) Area involved	7365.14	6696.34	735.01	7431.35	133.79
6.Unfavourably disposed	8221	7418	506	7924	297
6 (a) Area involved	15031.37	13648.35	923.44	14571.79	459.58

**Source:** Sonachalam K.S., *Land Reforms in Tamil Nadu – Evaluation and Implementation*, Oxford & IBH Publishing Co, New Delhi, 1970, p. 43.

## 2.2. Eviction Cases

Landlords filed applications for eviction of tenants. Data presented in Table 3 clearly show that Thanjavur district accounts for large number of applications forming 53 per cent of the total eviction filed cases. The data further show that of the total evicted was slightly high Tiruchirapalli district with 1276 cases as compared to Thanjavur district with 1271 cases. The data further indicate that the extent involved for eviction was the highest in Thanjavur with 2548.68 acres which accounted for about 38 per cent of the total extent involved.

**Table 3: Applications filed by landlords for eviction by districts**

District	Total filed	Total evicted	Extent involved (acres)
State	16428	3165	6691.14
Chingleput	536	49	225.87
South Arcot	836	105	201.32
North Arcot	53	7	36.15
Salem	374	73	285.47
Dharmapuri	38	4	26.25
Coimbatore	1282	68	365.74
Tiruchirappalli	2375	1276	2498.41
Thanjavur	8641	1271	2548.68
Madurai	780	82	171.42
Ramanathapuram	587	59	227.33
Tirunelveli	922	171	104.50

**Source:** Sonachalam K.S., *Land Reforms in Tamil Nadu – Evaluation of Implementation*, Oxford & IBH Publishing Co, New Delhi, 1970, p. 50.

## 2.3. Resumption Cases

In order to escape from the legal tangle, landlords tried to resume the land from tenants under personal cultivation. Data presented in

Table 4 clearly show that applications filed by landlord was the highest in Coimbatore district with 740 (46 %) cases filed followed by Thanjavur district with 420 (26 %) cases filed. Of the total 1622 cases filed for resumption, only 154 cases were allowed to resume which accounted for 9 per cent.

**Table 4: Applications filed by landlords for resumption of land for personal cultivation by districts**

District	Total filed	Allowed to resume	Extent allowed (acres)
State	1622	154	735.01
Chengleput	36	9	28.03
South Arcot	15	2	6.51
North Arcot	94	18	77.36
Salem	6	..	..
Coimbatore	740	58	344.84
Tiruchirappalli	35	3	2.19
Thanjavur	420	28	166.66
Madurai	29	1	1.53
Ramanathapuram	236	35	107.90
Tirunelveli	10	..	..

**Source:** Sonachalam K.S., *Land Reforms in Tamil Nadu – Evaluation and Implementation*, Oxford & IBH Publishing Co, New Delhi, 1970, p. 51.

## 2.4. Restoration Cases

The tenants who were aggrieved by the dispossession of land due to tenancy Act can apply for restoration of land. Data presented in Table 5 clearly indicate that application filed by dispossessed tenants for restoration of land for personal cultivation was the highest in Thanjavur district with 190 (30 %) cases filed followed by Madurai district with 159 (25 %) cases filed. Of the 73 (33 %) cases of restored, the highest number of restored cases was in Madurai district with 24 cases.

**Table 5: Applications filed by dispossessed tenants by districts**

District	Total filed	Restored No.	Extent involved (acres)
State	633	73	133.79
Chengleput	45	10	4.60
South Arcot	60	7	9.07
North Arcot	1	..	..
Salem	5	1	2.44
Coimbatore	70	7	3.00
Tiruchirappalli	57	1	0.40
Thanjavur	190	18	59.64
Madurai	159	24	38.93
Ramanathapuram	30	3	14.00
Tirunelveli	16	2	1.51

**Source:** Sonachalam K.S., *Land Reforms in Tamil Nadu – Evaluation and Implementation*, Oxford & IBH Publishing Co, New Delhi, 1970, p. 52.

## **2. Revenue Courts (Settlement of land disputes for latest period)**

There were 6 Revenue Courts functioning in 1. Cuddalore, 2. Tiruchirappalli, 3. Mayiladuthurai, 4. Tiruvarur, 5. Thanjavur, and 6. Madurai in the State to deal with the disputes between the landowners and tenants under various Tenancy Laws. In order to speed up the disposal of the pending cases, the Chief Minister of Tamil Nadu made Announcement in the year 2012-13 to create 4 additional Revenue Courts. Accordingly, in the year 2013, four new Revenue Courts were formed in Tirunelveli, Nagapattinam, Lalgudi, and Mannargudi. Thus, 10 Revenue Courts are functioning in the State under the Special Deputy Collector as Presiding Officers with quasi-judicial powers:

**Table 6: Details of Overall disposal and pendency in Revenue Courts From 1.6.2011 to 31.3.2018**

1 Cases pending as on 31.5.2011	9,806
2 Receipt from 1.6.2011 to 31.3.2018	39,532
3 Disposal	46,423
4 Balance as on 31.3.2018	2,915
<b>From 1.4.2017 to 31.3.2018</b>	
1 Cases pending as on 31.3.2017	4,601
2 Receipt from 1.4.2017 to 31.3.2018	4,405
3 Disposal	6,091
4 Balance as on 31.3.2018	2,915

**Source:** Revenue and Disaster Management Department Policy Note 2018-2019, Pp. 157-158.

The work of Revenue Courts has been computerized and progress reports are monitored through online at headquarters. The existing **10** Revenue Courts and their **jurisdiction** are detailed below:

**Table 7: Revenue Courts Jurisdiction**

Sl. No.	Office	Jurisdiction
1	Special Deputy Collector (Revenue Court) Cuddalore	Entire Revenue Districts of Cuddalore, Villupuram, Vellore, Tiruvannamalai, Kancheepuram and Tiruvallur
2	Special Deputy Collector (Revenue Court) Tiruchirapalli	Tiruchirapalli, Manapparai and Tiruverumbur Taluks of Tiruchirapalli District and entire Revenue Districts of Perambalur, Ariyalur, Salem, Karur, Pudukottai, Namakkal, Dharmapuri, Krishnagiri, Erode, Coimbatore, Tiruppur and The Nilgiris
3	Special Deputy Collector (Revenue Court) Lalgudi	Lalgudi, Musiri, Manachannallur, Thuraiyur, Thottiyam and Srirangam Taluks of Tiruchirapalli Revenue District.
4	Special Deputy Collector (Revenue Court) Madurai	Entire Revenue Districts of Madurai, Dindigul, Theni, Sivagangai, Ramanathapuram and Virudhunagar

5	Special Deputy Collector (Revenue Court) Tirunelveli	Entire Revenue Districts of Tirunelveli, Thoothukudi, and Kanniyakumari.
6	Special Deputy Collector (Revenue Court) Tiruvarur	Tiruvarur, Kudavasal, Valangaiman, Nannilam and Needamangalam taluks of Tiruvarur Revenue District
7	Special Deputy Collector (Revenue Court) Mannargudi	Mannargudi and Tiruthuraipoondi Taluks of Tiruvarur Revenue District.
8	Special Deputy Collector (Revenue Court) Mayiladuthurai	Mayiladuthurai, Tharangambadi, Sirkazhi and Kuthalam Taluks of Nagapattinam Revenue Districts.
9	Special Deputy Collector (Revenue Court) Nagapattinam	Nagapattinam, Kilvelur, Thirukuvalai and Vedaranyam taluks of Nagapattinam Revenue Districts.
10	Special Deputy Collector (Revenue Court) Thanjavur	Thanjavur, Orathanadu, Thiruvaiyaru, Kumbakonam, Papanasam, Thiruvidadaimarudur, Pattukottai, Peravurani taluks of Thanjavur Revenue District.

**Source:** Revenue Courts, Commissionarate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

### 3. Appellate Authorities/ Revenue Courts

The Special Deputy Collectors (Revenue Courts) are appellate authorities who decide appeals against the orders of the Tahsildars concerned in respect of the Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969. They administer various tenancy laws as detailed below:

#### 4.1. Tenancy Laws

##### 4.1. a) The Tamil Nadu Cultivating Tenants Protection Act, 1955 [Tamil Nadu Act 25/55]

The Tamil Nadu Cultivating Tenants Protection Act, 1955 protects the interest of the cultivating tenants, from eviction from the lands, except for non-payment of lease rent or any act which is injurious or destructive to the land or crops thereon, using the land for any purpose other than agricultural or horticultural or wilfully denying the title of the land owner to the land. The disputes

between the land owners and tenants are settled by the Revenue Courts.

**Table 8: Progress in settling the dispute between the land owners and tenants : Protection of tenant (as on 28.02.2019)**

No. of cases as on 31.01.2019	236
Receipts upto 28.02.2019	109
Disposal upto 31.01.2019	33
Balance Pending	312

**Source:** Revenue Court, Commissionarate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

#### **4.1 b) The Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act, 1956 [Tamil Nadu Act 24/56]**

The Tamil Nadu Cultivating Tenants (Payment of Fair Rent) Act 1956 provides for the fixation of the fair rent payable by the cultivating tenants to the landowner/public trust at 25 percent of the gross produce. The landowner pays the land revenue and other dues on the land, while the tenant bears the expenses on cultivation. The fair rent may be paid either in cash or in kind. All the disputes between the land owners and tenants are settled by the Revenue Courts.

**Table 9: Progress in settling the dispute between the land owners and tenants: Fair Rent (as on 28.02.2019)**

No. of cases as on 31.01.2019	44
Receipts upto 28.02.2019	1
Disposal upto 28.02.2019	3
Balance Pending	42

**Source:** Revenue Court, Commissionarate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

#### **4.1 c) The Tamil Nadu Public Trusts (Regulation and Administration of Agricultural Land) Act, 1961 [Tamil Nadu Act 57/61]**

The Tamil Nadu Public Trusts (Regulation and Administration of Agricultural Land) Act, 1961 has been enacted for the regulation and administration of agricultural lands held by the Public Trusts in the State.

No Public Trust can cultivate land in excess of 20 standard acres under Pannai cultivation and, if any, in excess of 20 standard acres, held by the Public Trust under Pannai Cultivation is liable for lease to bonofide tenants.

**Table 10: Progress in settling the dispute between the land owners and tenants: Public Trust (as on 28.02.2019)**

No. of cases as on 31.01.2019	1871
Receipts upto 28.02.2019	247
Disposal upto 28.02.2019	534
Balance Pending	1584

**Source:** Revenue Court, Commissionarate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

#### **4.1, d) The Tamil Nadu Agricultural Labourers Fair Wages Act, 1969**

The Tamil Nadu Agricultural Labourers Fair Wages Act, 1969 provides for the payment of Fair Wages to Agricultural Labourers of Nagapattinam and Tiruvarur districts for the various types of work in agricultural sector. In regard to other districts, the Minimum Wages Act is being followed. Very often disputes arise between the cultivators and agricultural workers. Example: There was a massacre in Kilvenmani village in the erstwhile East Thanjavur district on 25th December, 1968 44 agricultural workers and their family member were burnt alive by the landlords.

#### **4.1. e) The Tamil Nadu Agricultural Lands (Record of Tenancy Rights) Act, 1969 [Tamil Nadu Act 10/69]**

The Tamil Nadu Agricultural Lands (Record of Tenancy Rights {RTR}) Act, 1969 provides for the registration of the names of the

persons cultivating any agricultural land of landowners and public trusts in the State. The rights of the cultivating tenants are protected under this Act by registering themselves as cultivating tenants. The Taluk Tahsildars who are the Record Officers for purposes of this Act, have to prepare a Record of Tenancy Rights to safeguard the interest of the Tenants. Section 4 of the Act empowers the Record Officers to take suo motu action for registering the tenants.

**Table 13: Progress in settling the dispute between the land owners and tenants: RTR (as on 28.02.2019)**

No. of cases as on 31.01.2019	55
Receipts upto 28.02.2019	10
Disposal upto 28.02.2019	7
Balance Pending	58

**Source:** Revenue Court, Commissionarate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

#### **4.1. f) The Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 as Amended 40/71**

The Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 provides for occupancy rights to agriculturists or agricultural labourers who were occupying the Kudiyiruppu (Homesteads) as on the 19th June, 1971 either as tenant or as licensee and such Kudiyiruppus shall vest in them absolutely free from all encumbrances.

**Table 11: Progress in settling the dispute between the land owners and Occupants of Kudiyiruppu (as on 28.02.2019)**

No. of cases as on 31.01.2019	0
Receipts upto 28.02.2019	2
Disposal upto 28.02.2019	2
Balance Pending	0

**Source:** Revenue Court, Commissionarate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

#### **4.1. g) The Tamil Nadu Rural Artisans (Conferment of Ownership of Kudiyiruppu) Act 1976 (Presidents Act 38 of 1976)**

The Tamil Nadu Rural Artisans (Conferment of Ownership of Kudiyiruppu) Act 1976 (Presidents Act 38 of 1976) provides for the conferment of ownership on rural artisans occupying Kudiyiruppu in the State as on the 1st July, 1975 either as tenant or as licensee. The Government have enacted the Tamil Nadu Act 39 of 1990 extending the time limit for occupation of Kudiyiruppu upto 01.04.1990.

#### **4.1. h) Summary of Progress**

Comparison of data on number of disposal and pending cases for three points of time viz. 1967 (Table 2), 1918 (Table 6) and upto 28.02.2019 shows that the land disputes have gone up in Tamil Nadu.

**Table 12: Summary of Progress (as on 31.0.2019)**

No. of cases as on 31.01.2019	2206
Receipts upto 28.02.2019	369
Total	2575
Disposal upto 28.02.2019	579
Balance Pending	1996

**Source:** Revenue Court, Commissionerate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

Details of cases disposed under Tenancy laws by Revenue Court as given in Table 13 clearly indicate that the highest number of cases disposed was in Mayiladuthurai Revenue Court. The data further indicate that about 89 per cent of the cases were relating public trust under Hindu Religious & Charitable Endowments (HR&CE) alone. It important to note that HR&CE is under the control of government of Tamil Nadu.

**Table 13: Details of Cases Disposed under Tenancy Laws  
(Act-wise) by Revenue Court February 2019**

Special Deputy Collector [Revenue Court]	Cases Pending Under the Tamil Nadu Public Trust Act 57/1961		Tamil Nadu cultivat -ing Tenant Protection Act 25/55	Tamil Nadu Cultivat ing Tenants Payment of Fair Rent] Act, 24/56	Tamil Nadu Agricult- ural Land [Record of Tenancy Rights] Act, 10/69	Tamil Nadu Occupan -ts of Kudiyiru ppu [Confer ment of ownershi p] Act, 40/71 as amended by Act 39/90	Tamil Nadu Rural Artisans Conferme nt of ownership of Kudiyirup pu Act, 38/76 as amended by Act 39/90	Total
	HR& CE	Non HR& CE						
1 Cuddalore	5	5	0	0	0	0	0	10
2 Madurai	41	0	13	2	2	0	0	58
3 Mayiladuthurai	79	7	11	0	3	0	0	100
4 Thanjavur	39	0	0	0	0	0	0	39
5 Tiruchirapalli	44	0	2	0	0	0	0	46
6 Tiruvavur	38	0	0	0	2	2	0	42
7 Lalgudi	84	9	3	0	0	0	0	96
8 Mannargudi	47	0	0	0	0	0	0	47
9 Nagapattinam	85	0	3	0	0	0	0	88
10 Tirunelveli	51	0	1	1	0	0	0	53
Total	513	21	33	3	7	2	0	579

**Source:** Revenue Court, Commissionerate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

Details of cases pending under Tenancy laws by Revenue Court as given in Table 14 clearly indicate that out of 1996 cases pending, the highest number of cases was in Lalgudi Revenue Court with 450 (23 %) cases followed by Thanjavur Revenue Court with 330 (17 %) cases. The data further indicate that about 71 per cent of the cases were relating public trust under Hindu Religious & Charitable Endowments (HR&CE) alone.

### **Bhoodan Land**

Tamil Nadu Bhoodan Yagna Act, 1958 was enacted to regulate lands received as donation by Sri Acharya Vinoba Bhave, Bhoodan Yagna movement. Land under the control of Bhoodan is also facing problem while distribution of such land to the beneficiaries. About 26 per cent of the Bhoodan lands are under disputes.

**Table 14: Details of Cases Pending under Tenancy Laws by Revenue Courts (Act-Wise) February 2019**

Special Deputy Collector [Revenue Court]	Cases Pending Under the Tamil Nadu Public Trust (RAAL) Act 57/1961		Cases pending under Tamil Nadu cultivating Tenant Protection Act 25/55	Cases pending under Tamil Nadu Cultivating Tenants [Payment of Fair Rent] Act, 24/56	Appeals pending under the Tamil Nadu Agricultural Land [Record of Tenancy Rights] Act, 10/69	Cases pending under Tamil Nadu Occupants of Kudiyiruppu [Conferment of ownership] Act, 40/71 as amended Act 39/90	Cases pending under Tamil Nadu Rural Artisans [Conferment of ownership of Kudiyiruppu Act, 38/76 as amended by Act 39/90	Total
	HR & CE	Non HR & CE						
1 Cuddalore	19	7	1	1	1	0	0	29
2 Madurai	94	0	95	22	17	0	0	228
3 Mayiladuthurai	184	80	12	0	0	0	0	276
4 Thanjavur	248	27	38	4	13	0	0	330
5 Tiruchirappalli	37	23	102	3	15	0	0	180
6 Tiruvarur	58	0	19	0	0	0	0	77
7 Lalgudi	389	20	31	6	4	0	0	450
8 Mannargudi	56	0	1	0	0	0	0	57
9 Nagapattinam	120	2	6	0	0	0	0	128
10 Tirunelveli	219	1	7	6	8	0	0	241
Total	1424	160	312	42	58	0	0	1996

**Source:** Revenue Court, Commissionerate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

**Table 15: Progress in distribution of Bhoodan Land (as on 31.12.2018)**

1. Extent obtained as donation	<b>28049.98</b> acres
2. Extent distributed to beneficiaries	<b>20494.36</b> acres
3. Out of balance extent, extent covered under litigation, registration, confirmation, etc.	<b>7270.90</b> acres

**Source:** Land Reforms, Commissionerate of Land Reforms, <http://www.landreforms.tn.gov.in/BhoodanBoard.html>

## Judgments-Case Laws

Information relating to judgments of case laws on land disputes are given in Annexure 1.

## Department Letters

Information on department letters relating to land reforms, revenue courts and Bhoodan Board are given in Annexures 2.1, 2.2 and 2.3.

## **Conclusion**

Of the total number of applications filed and disposed under the tenants protection, the highest number cases both filed and disposed was under eviction of tenants by landlords as on 30.06.1967.

Comparison of latest data on land dispute with the initial period shows that number disputes have increased both in numbers of cases disposed and cases pending.

It is depressing to note that a large number of cases pending even after fifty years of implementation of Land Reforms Acts and establishment of several Revenue Courts.

Highest number cases pending under tenancy laws was under the Public Trust land under the control of HR&CE which is under the control of Government of Tamil Nadu.

Even Bhoodan land is also facing problem while distribution of such land to the beneficiaries. About 26 per cent of the Bhoodan lands are under disputes.

## Annexure 1: Judgments - Case Laws

Sl. No.	Subject	Case No.	Date
1.	<b>Section 22</b>	<u>AIR 1979 SC 1487</u> <u>WP 19088/2009</u>	04.05.1979 13.03.2009
2.	<b>Section 3 (22)</b>	<u>CRP No. 3428/1976</u>	16.11.1978
3.	Section 23	<u>WP No. 2485/2009</u>	27.07.2018
4.	<b>Section 3 (22)</b> Exclusion of lands explanation V to Section 3(40) – conversion of ordinary acre into standard acres.	<u>8143 /2004 and CMP No.14276/2003</u>	07.06.2011
5.	<b>Section 77-G</b> – Bar of jurisdiction of all Civil Courts	<u>44455,24903, 15902,15903, 24643, 42548 and 21257 /2005</u>	01.08.2013
6.	<b>Section 21-A</b>	<u>13885/2004</u>	08.02.2013
7.	<b>FAMILY - STRIDHANA</b>	C.R.P. NO. 785 OF 1966 C.R.P. NO. 904 OF 1974 C.R.P. NO. 2578 OF 1975 C.R.P. NO. 3103 OF 1976 C.R.P. NO. 2135 OF 1974 <u>C.A. NO. 1592/69</u> C.A. NO, 1667/81	22.06.1977 23.10.1977 29.03.1978 21.07.1978 11.02.1982

8.	<b>TRANSFERS AND PETITIONS</b>	<u>CR.P.</u> <u>NO. 2038 and</u> <u>2039 of 1973</u> <u>W..P.</u> <u>NO. 2786 of</u> <u>1976</u> <u>C.R.P</u> <u>NO. 2033 OF</u> <u>1974</u> <u>C.R.P.</u> <u>NO. 2013 OF</u> <u>1975</u> <u>C.R.P.</u> <u>NO. 1068 OF</u> <u>1975</u> <u>C.R.P.</u> <u>NO. 2651 OF</u> <u>1975</u> <u>C.R.P.</u> <u>NO. 1098 OF</u> <u>1975</u> <u>C.R.P.</u> <u>NO. 1101 OF</u> <u>1975</u> <u>C.R.P.</u> <u>NO. 1594 OF</u> <u>1975</u> <u>C.R.P.</u> <u>NO. 3364 OF</u> <u>1974</u> <u>C.R.P.</u> <u>NO. 3557 OF</u> <u>1976</u> <u>C.R.P.</u> <u>NO. 1571 OF</u> <u>1976</u> <u>C.R.P.</u> <u>NO. 2171 OF</u> <u>1976</u> <u>C.R.P.</u> <u>NO. 1119 OF</u> <u>1972</u> <u>C.R.P.</u> <u>NO. 3332 OF</u> <u>1976</u> <u>W.P. NO. 253</u> <u>and 2577 to</u>	27.09.1974 08.09.1976 07.07.1977 17.01.1978 23.03.1978 14.02.1978 24.02.1978 24.02.1978 27.03.1978 07.04.1978 17.11.1978 24.11.1978 24.11.1978 18.12.1978 21.01.1979 07.02.1979 30.03.1979 18.04.1979  04.05.1979 06.07.1981 30.11.1978  ---
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		<u>2579 of 1977</u> <u>C.R.P.</u> <u>NO. 3224 OF</u> <u>1978</u> <u>C.R.P.</u> <u>NO. 605 OF</u> <u>1977 (1-4)</u> <u>C.R.P.</u> <u>NO. 605 OF</u> <u>1977 (5-9)</u> <u>C.A. NO. 2542</u> <u>to 2544 of 1972</u> <u>C.R.P. NO. 2706</u> <u>OF 1979</u> <u>C.R.P. NO. 2795</u> <u>OF 1976</u> <u>C.R.P. NO. 2848</u> <u>of 1976</u>	
<b>9.</b>	<b>EXEMPTION</b>	<u>W.P. NO. 3310</u> <u>OF 1977 (1-3)</u> <u>W.P. NO. 3310</u> <u>OF 1977 (4-6)</u> <u>C.R.P. NO. 1210</u> <u>OF 1975</u>	04.08.1980  24.02.1978
<b>10</b>	<b>TRUSTS</b>	<u>S.T.A 2 OF 1973</u> <u>C.R.P. 2140 OF</u> <u>1978</u> <u>C.R.P 2456 &amp;</u> <u>2457 OF 1978</u> <u>C.R..P. NO.</u> <u>3314 OF 1975</u> <u>C.R.P. 2694 OF</u> <u>1977</u> <u>C.R.P. NO. 2875</u> <u>&amp;</u> <u>3120 OF 1977</u> <u>C.R..P. NO. 1547</u> <u>OF 1976</u> <u>C.R..P.</u> <u>NO. 2774 OF</u> <u>1976</u> <u>C.R..P.</u> <u>NO. 1222 OF</u> <u>1976</u>	16.09.1975 03.11.1978 14.12.1978 31.01.1979 01.02.1979 06.03.1979 12.04.1979 25.04.1979

11.	<b>OPPORTUNITY</b>	<u>W.P.</u> <u>NO. 2613 OF</u> <u>1974</u> <u>W.P. NO. 4843</u> <u>OF 1973</u> <u>W..P.</u> <u>NO. 4855 OF</u> <u>1975</u> <u>C.R..P.</u> <u>NO. 2285 OF</u> <u>1976</u> <u>W.P. NO. 1496</u> <u>OF 1972</u> <u>W..P. NO. 4479</u> <u>OF 1973</u> <u>C.R..P.</u> <u>NO. 3616 OF</u> <u>1973</u>	28.08.1974 22.11.1977 18.01.1978 -- 21.11.1978 05.12.1978 24.01.1979
12..	<b>POWERS OF THE LAND TRIBUNAL</b>	<u>C.R..P.</u> <u>NO. 3079 OF</u> <u>1975</u> <u>C.R..P.</u> <u>NO. 1490 OF</u> <u>1976</u> <u>C.R..P.</u> <u>NO. 3552 OF</u> <u>1976</u> <u>C.R..P.</u> <u>NO. 2060 OF</u> <u>1977</u> <u>C.R..P.</u> <u>NO. 3206 OF</u> <u>1975</u>	02.03.1976 24.04.1978 17.11.1978 08.02.1979 07.02.1979
13.	<b>MR III AMOUNT PAYABLE</b>	<u>C.R.P.</u> <u>NO. 1837 OF</u> <u>1975</u> <u>C.R..P.</u> <u>NO. 2705 OF</u> <u>1977</u>	23.01.1978 23.12.1977

14	<b>MR IV DISPOSAL OF SURPLUS LANDS</b>	<u>W..P. NO. 3535 OF 1974</u> <u>W..P. NO. 7221 OF 1975 &amp; 442 OF 1976</u> <u>W.A. 129 TO 135 OF 1976</u> <u>C.R..P. NO. 184 OF 1976</u> <u>W..P. NO. 2872 OF 1972</u> <u>W..P. NO. 3203 OF 1976</u> <u>W..P. NO. 5036 OF 1973 and 460 of 1974</u> <u>W..P. NO. 5827 OF 1975</u> <u>W..P. NO. 2602 OF 1975</u> <u>W..P. NO. 1727 OF 1977</u>	17.10.1974 23.03.1978 25.07.1978 03.11.1978 06.11.1978 16.11.1978 24.11.1978 23.02.1979 11.04.1979 06.08.1979
15.	<b>Assignment –</b> Appeal should be filed by the aggrieved partly immediately to the appropriate authorities.	<u>40187/2016</u>	16.12.2016
16.	<b>Assignment-</b> The original assignees alone have right even if the quantum of surplus lands diminished subsequently.	<u>8953,8964 and 9011/2007</u>	27.07.2012

17.	<b>Assignment –</b> Ineligible persons cannot get assignment	<u>30793/2013</u>	12.01.2016
18.	<b>Assignment –</b> Revision provided under section 82 of the Act and revision provided under Rule 11 (3) are different one. The petitioners were misconceived.	<u>8602/2004</u>	07.06.2011
19.	<b>Assignment –</b> Once the assignees fulfilled the conditions laid down under the Disposal of Surplus Land Rules, they can sell the lands.	<u>27198/2013</u>	29.06.2016
20.	(a) Service of notice on the contesting respondents is essential. (b) Suo motu power cannot be exercised without any tangible reason for condoning the delay in filing revision.	<u>11561/2004</u>	01.07.2010
21.	Case re-opened in the light of provisions of Amendment Act 11/96	<u>14931 /2007</u>	06.11.2015
22.	<b>MISCELLANEOUS</b>	<b>C.R.P. 2103 OF 1976</b> <b>W.P. 3389 OF 1973</b> <b>W.P. 3825 OF 1975</b> <b>W..P. 1718 OF 1972</b>	19.10.1978 15.02.1978 21.06.1978 06.11.1978

**Source:** Case laws Judgments, Commissionarate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

## Annexure 2: Department Letters

### 2.1 Land Reforms

<b><u>Audit Paras</u></b>	Pending List of Inspection Report, Audit paras and Public Accounts Committee
<b><u>DRO Meeting</u></b>	Meeting of District Revenue Officers - Review and Training on 26th and 27th July 2018
<b><u>D1/3042/2016, 30.5.2017</u></b>	Land Reforms – Forwarding of declaration in Form 15 to be made by the transferee under Section 19(1) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, as amended to the Authorised Officer Continuation of forwarding of Form 15 declaration by the Registering Authority to the Sub Collectors / Revenue Divisional Officers conferred powers of 'Authorised Officer' Re-structuring of Land Reforms Request to forward Form 15 declaration to all the Sub Collectors / Revenue Divisional officers - Instructions issued to all Deputy Inspector General of Registration by the Inspection General of Registration – Regarding.
<b><u>G1/9487/2015, 28.4.2017</u></b>	Land Reforms - Court cases - Monitoring of Court cases - Instructions issued - Regarding.
<b><u>G1/9487/2015, 21.3.2016</u></b>	Land Reforms - Court cases - Monitoring of Court cases - Instructions issued - Regarding.
<b><u>F1/8312/15, 27.05.2016</u></b>	Land Reforms - Updation of MR II, MR III and MR IV Registers - Instructions issued - Regarding.
<b><u>F1/8312/15, 30.11.2015</u></b>	Land Reforms - Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961 as amended - Agricultural lands - Lands held in excess of ceiling limit - Identification of cases and taking action under Land Reforms Act - Instructions - issued
<b><u>B1/3643/15, 29.10.2015</u></b>	Land Reforms - Periodicals due to this Commissionerate - Format for sending the Periodicals Regarding.
<b><u>B1/3643/15, 09.09.2015</u></b>	Land Reforms - Land Reforms unit in all Collectorates (except Chennai) - Powers delegated to the Sub Collectors/Revenue Divisional Officers - Certain guidelines for assignment of surplus lands issued - Regarding.

<b><u>A4/7884/2012,</u></b> <b><u>27-12-2012</u></b>	Right to Information Act, 2005 - Public Information Officer and appellate authorities in the Head Quarters and Sub-ordinate Officer under the Right to Information Act,2005 - certain modifications - orders issued.
<b><u>F1/965/2012,</u></b> <b><u>02-02-2012</u></b>	The Tamil Nadu Land Reforms [Fixation of Ceiling on Land] Act, 1961 as amended – Lands assigned with certain conditions – Registration to be banned - Regarding

**Source:** Land reforms, Department Letters, Commissionerate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

## 2.2: Revenue Courts

<b>Lr. No. / Date</b>	<b>Revenue Court</b>
<b><u>D.O.Lr.No.11/</u></b> <b><u>1772/2016,</u></b> <b><u>26.06.2016</u></b>	Computerisation of Revenue Courts - Software Programme developed by NIC for Revenue Courts - Scanning of served copy of final order - Assistance requested – Regarding
<b><u>11/1772/2016,</u></b> <b><u>26.06.2016</u></b>	Revenue Courts - Computerisation of Revenue Courts - Software Programme developed by NIC for Revenue Courts - Scanning and uploading of served copy of order - Instructions – Regarding
<b><u>11/11512/201</u></b> <b><u>5, 11.06.2016,</u></b> <b><u>Hr &amp; CE</u></b>	Revenue Courts - Reduce the long pending cases - Instructions issued – Regarding
<b><u>11/11512/201</u></b> <b><u>5, 25.05.2016</u></b>	Revenue Courts - Reduce the long pending cases - Instructions issued – Regarding
<b><u>11/11512/201</u></b> <b><u>5, 05.04.2016</u></b>	Revenue Courts - Reduce the long pending cases - Instructions issued – Regarding
<b><u>11/1772/2016,</u></b> <b><u>01.04.2016</u></b>	Computerisation of Revenue Courts - Programme developed by NIC for Revenue Courts - Data entry to be completed – Regarding
<b><u>11/1772/2016,</u></b> <b><u>11.03.2016</u></b>	Revenue Courts - Computerisation of Revenue Courts - Data entry in the Demo site – Regarding
<b><u>11/6731/2012,</u></b> <b><u>18.05.2015</u></b>	Minimum Wages Act, 1948, Minimum rates of wages for employmnet in agriculture - Revision of rates - Orders issued - Notification Published in the Tamil Nadu Governemtn Gazette - Implementation – Regarding

<b><u>D2/7860/2008,</u></b> <b><u>30-08-2011</u></b>	Revenue Court – Post of Enforcement Revenue Inspector kept vacant –Direction of Firka Revenue Inspector for carrying out Eviction -Requested
<b><u>D2</u></b> <b><u>(12)/1196/2006,</u></b> <b><u>24-03-2010</u></b>	Kudiyiruppu Patta - Tamil Nadu Occupants of Kudiyiruppu (Conferment of Ownership) Act, 1971 - Kudiyiruppu as on 1.4.90 eligible for the Conferment of Ownership Rights over the Kudiyiruppu - Extension of time limit from 1.4.1990 - List of eligible cases - Called for - Regarding

**Source:** Revenue Court, Commissionarate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

### 2.3: Bhoodan Board

<b>Lr. No. / Date</b>	<b>Bhooan Board</b>
<b><u>K3/11569/2014,</u></b> <b><u>22.6.2016</u></b> <b>( in Tamil )</b>	Bhooan - Confirmation, Registration and patta transfer pending in Bhooan lands - Regarding
<b><u>K1/607/2011,</u></b> <b><u>29.3.2016</u></b>	Bhooan Lands – Prohibiting the registration of documents relating to Bhooan lands – Putting "0" Valuation - Rectification of discrepancies - Pending - poor progress - follow-up action – Regarding
<b><u>Lr.No.</u></b> <b><u>34671/LR(1)/12</u></b> <b><u>-1, 30-11-2012</u></b>	Bhooan Lands – Involvement of District Administration required – Instructions issued – Regarding
<b><u>L5/64/11 (BB),</u></b> <b><u>10-09-2012</u></b>	Bhooan Lands – Electricity power Connection to the Grantees for Agriculture – Issue of No Objection Certificate – Regarding
<b><u>L1/7/2012</u></b> <b><u>(BB), 18-06-</u></b> <b><u>2012</u></b>	Bhooan Land – Tamil Nadu Bhooan Yagna Act, 1958 Rules, G.O., etc – Bhooan Lands data sent - Regarding
<b><u>L1/11/12 (BB),</u></b> <b><u>06-03-2012</u></b>	Bhooan Lands – Bhooan Lands allotted for cultivation – Application of allottees for loan Government subsidy, - Crop damage relief etc., - Regarding

**Source:** Bhooan Board, Commissionarate of Land Reforms, Government of Tamil Nadu, [www.landreforms.tn.gov.in](http://www.landreforms.tn.gov.in)

## Notes:

1. George, P.T and Raju, K.N., *Implementation of Land reform in Three Villages of Kerala State, India*. Vol. I, Asian and Pacific Development Administration Centre, Kuala Lumpur, 1980, p. 29.
2. George, P.T and Raju, K.N., *ibid*, p. 26.
3. Sonachalam K.S., *Land Reforms in Tamil Nadu – Evaluation of Implementation*, Oxford & IBH Publishing Co, New Delhi, 1970.
4. Sonachalam K.S., *ibid*, p. 81.

## References:

1. Land Reforms, Commissionerate of Land Reforms, Government of Tamil Nadu (<http://www.landreforms.tn.gov.in/>)
2. Revenue and Disaster Management Department Policy Note 2018-2019. (<http://www.landreforms.tn.gov.in/>)
3. Revenue Courts, Commissionerate of Land Reforms, Government of Tamil Nadu, (<http://www.landreforms.tn.gov.in/>)
4. Thangaraj M., (Ed) *Land Reforms in India -Tamil Nadu: An Unfinished Task"*, Sage Publications, New Delhi, 2003.
5. Venkataramani, G., *Land reforms in Tamil Nadu*, Sangam Publishers, Madras, 1973.

# Land Disputes Resolution in Bihar

Dr. C. Ashokvardhan, IAS (Retd.)

## Part One: The Bihar Land Disputes Resolution Act, 2009

The Bihar Land Disputes Resolution Act, 2009 was enacted as it was deemed necessary in larger public interest to provide for an effective and speedy mechanism to resolve disputes relating to land, which if not addressed immediately, might lead to simmering discontent, resulting even in major turbulence. It has been found that mostly land disputes appertain to matters connected with entries in revenue records, partition of jamabandi, forcible dispossession or threatened dispossession of public land allottees as well as raiyats, boundary disputes, unauthorized constructions and the like.

The BLDR Act, 2009 is concerned with the adjudication of disputes within a delimited canvas of the following Acts:

- (i) The Bihar Land Reforms Act, 1950
- (ii) The Bihar Tenancy Act, 1885
- (iii) The Bihar Privileged Persons Homestead Tenancy Act, 1947
- (iv) The Bihar Bhoodan Yajna Act, 1954
- (v) The Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961
- (vi) The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956

Disputes arising out of or under any of the aforesaid Acts shall be resolved under the procedure provided in the BLDR Act, but, to the extent the BLDR Act has covered such disputes and has provided forum, procedure and mechanism for their resolution. Schedule-1 of the BLDR Act incorporates the aforesaid six Acts.

Different forums and procedures have been provided for the resolution of disputes under the aforesaid six Acts. Quasi-judicial

forums have been provided in the aforesaid Acts, for the determination of rights, including disputes resolution, to a certain extent. Nonetheless, it was considered expedient to provide a uniform and common forum, procedure and mechanism which would ensure effective, efficacious and expeditious resolution of disputes. In a way, whereas the six Acts were primarily meant for the determination of rights, following due procedures, within the specific errand of each of the said Acts, the BLDR Act deals with disputes arising out of the rights so determined by specific laws.

A sub-divisional rank officer, namely, Deputy Collector Land Reforms, is the designated competent authority under the BLDR Act. He is the original court to dispose off dispute matters, as per jurisdiction outlined for him. Appeals from his orders lie to Divisional Commissioner.

The DCLR's jurisdiction, as per Section 4 (1) of the Act, covers the disputes connected with the following matters:

- (a) Unauthorized and unlawful dispossession of any settlee or allottee from any land or part thereof, settled with or allotted to him under any Act or policy of the State or Central Government providing for settlement of government land to the persons of any specified category under any Act contained in Schedule-1 to this Act, by issuance of any settlement documents/ parcha by a Competent Authority;
- (b) Restoration of possession of settled/ allotted land in favour of legally entitled settlee/ allottee or his successors/ heirs, upon adjudication of unauthorized and unlawful dispossession;
- (c) Threatened dispossession of a legally entitled settlee/ allottee;
- (d) Any of the matters enumerated in (a) (b) and (c) above appertaining to raiyati land;
- (e) Partition of land holding;
- (f) Correction of entry made in the Record of Rights including map/ survey map;
- (g) Declaration of the right of a person;
- (h) Boundary disputes;

- (i) Construction of unauthorized structure; and
- (j) Lis pendens transfer.

It is pertinent to point out here that Hon'ble Patna High Court has read down the following of the aforesaid clauses under Section 4 (1) of the BLDR Act, vide order dated 31.07.2018 passed in CWJC No. 1091/2013:

Section 4(1)

Clause (e) Disputes relating to partition of holding

Clause (g) Disputes with regard to declaration of right of a person

Clause (i) Disputes relating to construction of unauthorized structure

Clause (j) Lis pendens transfer

The following four factors need to be highlighted while discussing the jurisdiction of the DCLR:

1. The DCLR shall not review or re-open any finally concluded and adjudicated proceedings under any of the Acts contained in Schedule-1. His authority is circumscribed by the final orders passed by competent authorities designated under the six Acts (Schedule-1). He cannot on his own, re-open a proceeding concluded already, or else, the notion of finality in a given law would have become elusive. For instance, if following a well laid out procedure ceiling surplus lands have been acquired, the DCLR is not supposed to restart ceiling proceedings himself afresh or tinker with the matters in the aforesaid six laws which do not fall in the limited jurisdiction spelt out in the BLDR Act.

However, there is an exception here and this is for resolving disputes that come up in day to day administration of revenue matters in a rather down to earth, mundane way. These mundane matters conjure up the limited jurisdiction of the DCLR. It is in respect of these mundane disputes, in a limited way, that an exception to general bar on touching upon finality situations, has

been drawn. Or else, the finality spectrum drawn by competent authorities under the six Acts would have become gospel truths foreclosing any departures. It is inconceivable to close down a legal system finally ignoring call of grounds realities as will keep coming up in day-to-day situations. Some space had to be given, against specified jurisdiction, to reflect upon, or draw correlates or read down pre-decided matters in a rather flexible fashion to resolve disputes through alternative dispute resolution mechanism and thereby to lessen burden on regular courts.

The exceptional jurisdiction is as follows:

Where rights of an allottee or settlee or a raiyat are determined under any of the six Acts (Schedule-1), the DCLR has been authorized to entertain and adjudicate cases **appertaining to matter specified in his jurisdiction** under the BLDR Act.

2. There could be a situation in which a forum under the six Acts (Schedule-1) exists for the creation of rights and petitioner before DCLR has not availed of that forum, the DCLR will not have jurisdiction to adjudicate any fresh rights. Such rights shall be determined in accordance with the provisions of the relevant law contained in Schedule-1.
3. The BLDR Act also envisaged a situation, in which no forum for the creation/ determination of rights has been provided in the said Acts and yet a dispute has cropped up. One solution could have been to effect amendments in the Acts concerned, filling up gaps, to meet unforeseen contingencies. There could have been no end to contingencies and to amendments. Hence Section 4 (4) of the BLDR Act, gave residual authority to DCLR to resolve such disputes within the larger gamut and framework of the Act, concerned (Schedule-1) (Hon'ble Patna High Court has struck down this provision for being arbitrary and unconstitutional: Annexure-A).
4. The BLDR Act, envisaged a situation which presented a complex question of title. Section 4 (5) of the Act provided that the DCLR shall close the proceedings and leave it open to parties to seek remedies before the competent Civil Court

(Hon'ble Patna High Court has held that no **right and title** can be decided by DCLR unless the same have been pre-decided by a competent Civil Court: Schedule-1).

Hon'ble Patna High Court's order passed on 31.07.2018 in CWJC No. 1091 of 2013 in the context of certain provisions of the Bihar Land Disputes Resolution Act, 2009 has been extracted in **Annexure-A**.

The competent authority (DCLR) under the BLDR Act, shall have the same powers in making enquiries under this Act, as are vested in a court under the Code of Civil Procedure, 1980 (V of 1980), in trying a suit, in respect of:

- (a) Admission of evidence by affidavits;
- (b) To issue summons for ensuring the attendance of any person and examining him on oath;
- (c) Compelling the production of documents;
- (d) Awards of cost
- (e) To call for any report of order for local enquiry; and
- (f) To issue commission for local enquiry or order examination of witnesses.

## **Part Two: The Bihar Land Tribunal Act, 2009: Salient Features**

**Preamble** – An Act to make Provisions for the Bihar Land Tribunal.

WHEREAS, disputes relating to land pending before different forums in the State of Bihar are huge in number and the present machinery including Civil Court is over burdened because of pendency of huge number of disputes relating to land;

WHEREAS, right, title and possession over land is regulated under various land laws operating in the State of Bihar;

WHEREAS, the different forums under different land laws have been provided for adjudication of disputes;

WHEREAS, the State Government is faced with complexities arising out of the multiplicity of adjudicating machinery and delay in the settlement of disputes;

WHEREAS, the State Government strives to ensure speedy disposal of disputes under various land laws;

WHEREAS, in the absence of a common Adjudicatory Body, the people of the State are faced with undue hardship in getting their grievance redressed;

WHEREAS, there is mandate to constitute a tribunal under Chapter XII of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, with such modification and with such enlargement of jurisdiction as may be deemed expedient;

WHEREAS, the Constitution of India has conferred jurisdiction under Article 323 B on appropriate legislature, to provide for adjudication or trial by Tribunals, by law, of any dispute, complaints or offences with respect to all or any of the matters specified in clause (2) with respect to which such legislature has power to make laws;

WHEREAS, in larger public interest and in the interest of the people of the State, it is deemed expedient to create a consolidated forum for adjudication of all disputes appertaining to land in the State of Bihar;

WHEREAS, with a view to provide a common and uniform forum for adjudication of disputes, it is necessary to create a Tribunal at the highest level in the hierarchy;

BE, it enacted by the legislature of the State of Bihar in the sixtieth year of Republic of India, as follows:

**Section 1. Short title, extent and commencement –**

(1) This Act may be called the Bihar Land Tribunal Act, 2009.

- (2) It shall extend to the whole of the State of Bihar.
- (3) It shall come into force on such date as the Government may, by notification, appoint.

**Section 2. Definitions** – In this Act, unless the context otherwise requires, the definitions provided in the Acts/ Manuals referred to in Section 9 (1) shall prevail.

**Section 3. Special Definitions** – In this Act, unless the context otherwise requires:

- (a) “Chairman” means the Chairman of the Bihar Land Tribunal.
- (b) “Member” means Member of the Bihar Land Tribunal.
- (c) “Tribunal” means Tribunal constituted under Section 4 of this Act.

**Section 4. Constitution of the Bihar Land Tribunal –**

- (1) The State Government shall, by notification in the Official Gazette, constitute for the State a Tribunal called the Bihar Land Tribunal (hereinafter referred to as the Tribunal) for the purposes of this Act.
- (2) The Tribunal shall consist of a Chairman and not more than four other Members from judicial and administrative wing appointed by the State Government:

Provided that the State Government may, by notification in the Official Gazette, increase or decrease the total number of Members of the Tribunal.

**Section 5. Qualifications for appointment of Chairman or other Members –**

- (1) A person shall not be qualified for appointment as the Chairman unless he is, or has been, or is qualified to be a Judge of a High Court, or has practiced as an advocate continuously for not less than twenty years in Any High Court.
- (2) A person shall not be qualified for appointment as a Judicial Member unless he:
  - (a) is or has been, a District Judge and has held the post in that rank for at least three years, or has practiced as an advocate continuously for not less than fifteen years.

- (b) is qualified to be appointed as a judge of a High Court.
- (3) A person shall not be qualified for appointment as an Administrative Member unless he:
- (a) has held the post of Member/ Additional Member, Board of Revenue, Bihar, or
  - (b) has held the post not below the rank of Principal Secretary/ Secretary to the Government of Bihar and has dealt with Land Reforms matters during his services in the Bihar Government in the capacity of Appellate/ Revisional Authority.

for a period of not less than one year in either (a) or (b), in the aggregate.

- (4) Any vacancy in the office of the Chairman or any Member shall be filled by the Government in accordance with the provisions of this Act.

### **Section 6. Terms and Conditions of the service of Chairman and Members –**

- (1) No person shall be appointed or shall continue in the office of the Chairman and Member if he has attained the age of seventy years. The terms of the Chairman and the Members shall be five years or till they attain the age of 70, whichever is earlier.
- (2) There shall be paid to the Chairman and the Members such salaries and allowances as may be prescribed.
- (3) The other terms and conditions of the service of the Chairman and Members shall be such as may be prescribed.

### **Section 7. Resignation and removal –**

- (1) The Chairman or other Member may, by notice in writing under his hand addressed to the State Government resign his office:

Provided that the Chairman or other Member shall, unless he is permitted by the State Government to relinquish his office sooner,

continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

- (2) The Chairman or any other Member shall not be removed from his office except by an order made by the State Government on the ground of proved misbehavior or incapacity after an enquiry made by a Judge of the High Court in which such Chairman or other Member had been informed of the charges against him and given a reasonable opportunity of being heard.
- (3) The State Government may, by Rules/ Instructions regulate the procedure for the enquiry of misbehavior or incapacity of the Chairman or other Member referred to in sub-section (2).

### **Section 9. Powers of the Tribunal –**

- (1) The Tribunal shall have the power to entertain any application against the final order passed by the Appropriate Authorities under the Acts/ Manuals, mentioned below, within 90 days of such an order provided no other forum of appeal or revision against the order passed is provided in that Act/ Manuals:
  - (i) The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961
  - (ii) The Bihar Land Reforms Act, 1950
  - (iii) The Bihar Tenancy Act, 1885
  - (iv) The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956
  - (v) [xxx]
  - (vi) The Bihar Bhoodan Yajna Act, 1954
  - (vii) The Bihar Privileged Persons Homestead Tenancy Act, 1947
  - (viii) The Bihar Government Estates Manual, 1953
  - (ix) The Bihar Settlement Manual
  - (x) Bihar Land Disputes Resolution Act, 2009
  - (xi) Bihar Special Survey and Settlement Act, 2011
  - (xii) Bihar Land Mutation Act, 2011

It shall be open to the State Government to add or remove any Law/ Manual in or from the list herein fore mentioned.

n addition, the Tribunal shall decide any case transferred to it by the Government or Bihar or by the Hon'ble High Court of Judicature at Patna with regard to any other revenue or land reforms Law/ Manual for the time being in force.

- (2) The Tribunal shall have powers vested in the Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908) including the power to recommend to punish for Contempt of Court.

**Section 15. Transfer of proceedings pending in Patna High Court/ State Government to the Tribunal** – All cases connected with the Acts/ Manuals dealt with under Section 9 of this Act and pending in the High Court of Judicature at Patna, but excluding writ petitions filed under Articles 226 and 227 of the Constitution of India and cases pending with the State Government, immediately before the commencement of this Act, as could have been within the jurisdiction of such Tribunal, and cases arising after the commencement of this Act, as would have been within the jurisdiction of such Tribunal, shall stand transferred to the Tribunal with effect from the said date of commencement:

Provided further that it shall be open to the High Court of Judicature at Patna to remit the dispute pending adjudication in any writ proceeding before it for adjudication by the Tribunal.

**Section 18. Bar of Jurisdiction** – Save as otherwise expressly provided in this Act, no court, except the Patna High Court and the Supreme Court of India, shall entertain any suit, or other proceeding to set aside, or modify or question the validity of an order or decision passed or taken by an authority under this Act or any Rules made thereunder or in respect of any matter falling within the scope of the Tribunal.

**Hon'ble Patna High Court's Order passed on 31.07.2018 in  
C.W.J.C. No. 1091/2013 in the context of the Bihar Land  
Disputes Resolution Act, 2009**

<b>Sl. No.</b>	<b>Section BLDR Act</b>	<b>Summary</b>	<b>Para in Patna High Court's Order</b>
1.	Section 3	BLDR Act covers: (i) The Bihar Land Reforms Act, 1950 (ii) The Bihar Tenancy Act, 1885 (iii) The Bihar Privileged Persons Homestead Tenancy Act, 1947 (iv) The Bihar Bhoodan Yajna Act, 1947 (v) The Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961 (vi) The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (Same Acts included in Schedule -1 of the BLDR Act)	Para – 49 The procedure prescribed under the Act of 2009 shall be applicable to resolve the disputes which arise in course of implementation of a right of settlee/ raiyats or allottees already determined under any of the six enactments or by a Competent Civil Court of Forum and is brought before the competent authority under the Act of 2009.

2.	<p>Section 4 (1) Clause (e)  Clause (g)  Clause (i)  Clause (j)</p>	<p>Disputes relating to partition of holding Disputes with regard to declaration of right of a person Disputes relating to construction of unauthorized structure Lis pendens transfer</p>	<p>Para- 50 Para- 51 The aforesaid clauses under sub-section (1) of Section 4 are to be read and understood limited to the disputes under these heads which have already been determined and adjudicated by a Competent Civil Court or any other Court of Forum provided under any of the six enactments and the claim made by either parties has been duly adjudicated.</p>
3.	4 (i) clause (e)	Partition of Land	<p>Para- 52 Partition of land has to be read as to the disputes relating to land allotted in a title suit between the parties or otherwise falling in the hand of a party by virtue of an adjudication</p>

			<p>made by Competent Court under any of the six enactments.</p> <p>In the garb of Clause (e) the competent authority cannot entertain a complaint based on a claim for partition or share in a land dispute. The disputes relating to partition among the co-sharers, co-parceners and joint owners etc. which are not yet decided by a competent Civil Court would not be subject matter of dispute falling in the hand of the competent authority under the Act of 2009.</p>
4.	4 (1) clause (g)	Declaration of the right of a person	<p>Para- 52</p> <p>This provision has to be read and understood as a provision where under the competent authority would entertain a claim</p>

		<p>for enforcement of the declaration in favour of a person by virtue of an adjudication made by competent Civil Court or any other court or forum under any of the six enactments.</p> <p>The competent authority under the Act of 2009 being a Revenue Officer would not create or confer a right in favour of a person which may be duly conferred upon a person or declared in favour of a person by a competent Civil Court in an adjudication of disputes arising under any of the six enactments.</p>
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5.	4 (1) Clause (i)	Construction of unauthorized structure	<p>Para – 52 This should mean and understand only such construction of unauthorized structure which are standing on the land of a raiyat allotted or settled under any of the above referred six enactments and no other land or structure.</p> <p>So far as unauthorized construction on public land is concerned, those are governed by a specific statute namely, Bihar Public Land Encroachment Act.</p>
6.	4(1) clause (j)	Lis pendens transfer	<p>Para 52 Lis pendens transfer is governed by Section 47 of the Transfer of property Act and is applicable to a civil litigation. In</p>

		<p>our opinion the reference of the words 'Lis pendens transfer' would mean only such transfer of land of a raiyat or a settlee allotted or settled under any of the six enactments pending the adjudication under the concerned Act.</p> <p>The competent authority, in exercise of his power under the Act of 2009 cannot in the garb of clause (j) entertain a complaint and decide on the legality and validity of a transfer of land during the pendency of a suit or proceedings before the civil court of a competent jurisdiction under any of the six enactments which are all related to land reforms.</p>
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7.	Section 4 (4)	Notwithstanding anything contained in sub section (2) an (3) hereinabove if no provision is made in any of the Acts contained in Scheduled 1 for determination of rights of allottee/ Settlee or raiyat and claimed right is yet to be determined, it shall be open to the Competent Authority to finally determine such right.	<p>Para 54</p> <p>In view of the discussion made hereinabove, since we find that sub section (4) of Section 4 has an effect of taking in its fold any real or imaginary right which may be claimed by an allottee or settlee or a raiyat not conferred by any of the six enactments, the wide powers conferred upon the competent authority is found to be unbridled, unfettered, unanalyzed and unguided, hence, they are being grossly abused.</p> <p>It is therefore not possible to save sub-section (4) of Section 4 of the Act of 2009 by applying the principles of harmonious construction of</p>
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			the statute. Sub-section (4) of Section 4 of the Act of the Act of 2009 is therefore held to be arbitrary and unconstitutional.
8.	4 (5)	The Competent Authority, wherever it appears to him that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to parties to seek remedies before the competent Civil Court.	<p>Para 55 In the light of the discussions which we have made hereinabove, it is also declared that-sub section (5) of Section 4 of the Act of 2009 has to be read in consonance with sub section (2) and sub section (3) of section 4 of the Act of 2009.</p> <p>Sub-section (5) of Section 4 has to be taken as a mandatory provision. It shall be the duty of the competent authority to close the proceedings which involve question of <b>title and rights</b> and are in the nature</p>

			<p>of disputes covered under any of the six enactments mentioned under Schedule-1 of the Act of 2009 which have not been adjudicated by a competent civil court. In all such cases the competent authority shall while closing the proceeding leave it open to the parties to seek their remedies before the competent civil court.</p>
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# **BHOOMI, KAVERI and MOJINI Integrating Land Records, Land Transactions and Land Survey in Preventing Land Disputes in Karnataka**

**M. G. Chandrakanth**

## **Preamble**

Land forms more than 60 percent of the value of fixed assets possessed by farmers. With the increasing pressure on land for various uses, migration and urbanization, the land values have been raising, along with the transaction costs of securing property rights to land. It is crucial to provide a transparent and accountable system to buyers and sellers of land to facilitate different types of land transaction changes called 'mutation'. Using the e – Governance, Karnataka Government is attempting to provide transparency, accountability and dispute redressal pertaining to land transactions in rural areas.

The buying / selling of land, specifically agriculture land is dealt by the Ministry of Revenue, under which the Department Land Records (BHOOMI, MOJINI) and the Department of Stamps and Registration (KAVERI) work in tandem. Though under the same Ministry, these Departments worked independently which brought ordeal for farmers who are largely the land owners, the land buyers as well as sellers.

## **e-Governance initiative**

The e-Governance is integrating different Departments under the Revenue Ministry in Karnataka by integrating BHOOMI (Land

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<sup>30</sup>Invited paper for the National Workshop on “Land Dispute Redressal: A Plea for Reforms” at LBSNAA, Mussorie, April 2-4, 2019. I am grateful to Sri Varapasada Reddy, KAS, E Governance, Dr MN Rajendraprasad, KAS, Assistant Commissioner, National Highways, Ramanagaram; Sri Rajasekhar Technical Expert, Shri Gurumurthy Kalasapura, Administrative Expert, Shivu Shivapura, BHOOMI Monitoring Cell, Dept of Survey and Land Records, Govt of Karnataka, Bangalore for sparing their valuable time in explaining the BHOOMI-KAVERI-MOJINI integration which has made this presentation possible.

Records Management) with KAVERI (Registration of land at Sub Registrar office) through MOJINI (preparation of land sketch by physical survey, maintained by Department of Survey and Land Records) BHOOMI is the Land Records management system in rural areas inaugurated in 2000 by the Government of Karnataka. This program has electronically relevant data from 30,000 villages, for 2.5 crore farmers with 1.7 crore RTCs (Record of Rights, Tenancy and Crops) all in soft form. The manual RTCs which prevailed at the time of data entry are now available in soft copy in Kiosk Centres. The RTC indicates ownership, changes if any, in the RTCs through mutation according to Karnataka Land Revenue Act using BHOOMI - Land Records database. The BHOOMI and KAVERI offices are established in all taluks.

KAVERI is the web based application of Department of Stamps & Registration, Government of Karnataka that provides for document registration and facility to search for required Index and registered copies.

### **Process of land transactions**

Land is a natural resource. Selling or buying land is not similar to that of fruits and vegetables or any other commodity, since the process involves (1) physical measurement of that portion of land to be sold or bought (2) verification of clear title to land, whether single or multiple owners, (3) whether land has encumbrances, limitations for purchase / sale and finally (4) Registration of the bought property with transparent and accountable information and without disputes pertaining to land.

This article is a modest attempt to share how the integration of BHOOMI, KAVERI AND MOJINI processes are resulting in redressal of land disputes.

### **Case of sale / purchase of the complete block of land**

In this case the seller and buyer with the RTC will approach KAVERI for registration as this does not involve the pre-mutation

sketch 11E. Once the land is registered in KAVERI, this information will be transferred to BHOOMI which will generate new RTC in the name of the buyer, since entire piece or block of land is sold.

### **Case of sale / purchase of a portion of land from single owner or multiple owners of land**

It is crucial to note that in more than 70 percent of the RTCs, the land belongs to multiple owners. This is due to the subdivision and fragmentation of holdings. Subdivision of land decreases the size of holding while fragmentation of land holdings, increases the number of holdings. Fragmentation refers to the way the land has been held by farmers. Farmers usually own land in more than two or three locations in a village. Hence when land is subdivided, the heirs will seek partition in every fragment or parcel of land. Thus, the size of fragment during each subdivision reduces. When farmer/s wish/es to sell a portion of land, 'Nada Kacheri' a Hobli level office is approached with an application attaching the RTC document, available online in Bhoomi Kiosk at Taluka level. In this application, the seller/s request/s for pre-mutation sketch 11E. The need for the sketch arises since, farmer/s is/are selling a portion of land. The Pre mutation sketch ie 11E, is compulsory for registration whenever part of the land is sold, or whenever land of multiple owners is sold. When the entire land is sold, 11E sketch is not required. However an Amendment to BHOOMI has been brought to include 11E sketch whenever land transaction takes place irrespective of part of full land.

### **Matching the RTC data with Akarband**

The data in RTC is electronically matched with data in 'Akarband', the base data on land with details of Survey number, division (Hissa or Podi), name of the owner/s, extent of land, source of irrigation and other details. If the RTC data matches with the corresponding base data in 'Akarband' available in the Dept of Survey and Land Records (MOJINI), then a licensed surveyor will be informed to conduct the physical verification of land or survey. The seller pays Rs. 600 for this purpose of which Rs. 300 is

paid to licensed surveyor, who will survey that portion of land to be sold marked by the farmer. In the process of conducting survey, licensed surveyor gives notice to the seller, buyer, and four surrounding owners to be present during survey. On the day of survey, after the land is physically measured in the presence of the buyer, seller and other farmers, statements of the owners available around will be taken with their signature. In the discussion, if it is found that there are legal cases of land disputes, such lands will not be registered.

### **Pre-Mutation sketch or 11E sketch**

The 11E sketch prepared by the Surveyor, records the owner/s of land, whether there is any dispute, whether the land belongs to Government (which cannot be resold, if the owners are SC/ST who have been granted the Government land). This also helps the other owners regarding their land extent as also to learn of encroachments if any. This 11E sketch is called pre mutation sketch prepared by the licensed surveyor. Every transaction buyer or selling, should have 11E sketch as an Amendment to Bhoomi.

In the earlier manual system, even after registration, the buyer was not assured regarding which portion of land is bought, whether the land had clear title, whether the land belonged to SC/ST community who have been granted Government land, which cannot be brought or sold. In the present system, due to physical verification of the property, and signature of both purchaser and seller, registration will be completed after paying the relevant fees. Thus dispute occurrence is avoided from the beginning itself. If Akarband data does not match with the RTC data provided by farmer, then RTC will be corrected. RTC from Bhoomi and Akarband from Mojini can differ.

### **Disputes resolution – Buyer beware concept**

In the manual system it was only after registration of the property, purchaser could verify the survey number, whether land to that extent was available for sale, who are the neighbouring farmers/

owners, any limitation on sale of land such as Government allotted land were not known to the buyer. Now, all these are verified even before registration. The most common problem is that of encroachment by neighbour. If there is dispute, during physical verification of land survey by licensed surveyor, when measured in the field, all lands surrounding will be measured. When farmers are observing process of survey and if they indicate dispute, purchaser will be informed, to make a decision regarding purchase. The purchaser then can opt out of purchase. Once the purchaser gets the Bhoomi the 11E sketch, then the purchaser is 99% sure that the land has no dispute. If there is court case, they will not register that land.

Thus, the introduction of premutation sketch 11E is a buyer beware concept. This renders the Buyer to be extra careful, since buyer has more information on the seller, his/her land, which portion of the land is being sold, whether there is encroachment of the proposed land to be sold, whether the land is granted by the Government, the extent of uncultivable land (Kharab A), the extent of Government land (Kharab B, such as area for roads, cart way, foot path etc), whether there is any dispute. Therefore in this procedure we are arresting the dispute.

### **Legal disputes are reduced due to insistence on physical verification of land due to the survey by licensed surveyor for getting premutation sketch 11E**

The portion of land to be sold or bought has to be surveyed by the licensed surveyor upon application by the seller / buyer in Nada Kacheri, there is physical verification of the property. This further involves the necessary meeting of buyer and seller. Since both buyer and seller are involved in the land transaction, their commitment in the transaction commences from day one. Thus, the process of physical verification of land happens even before registration of property. In the process, if there is a disputed portion, the buyer can indicate, that he/she will not buy. Therefore, in the process of issue of 11E sketch, the buyer/seller can be almost assured that the land in question is free of litigation,

as the land property along with the titles to land from RCT and other associated details from Mojini (akarband) are physically verified on ground by buyer and seller in the presence of land owners of adjacent lands. If there is a legal case, the property will not be bought or registered. Therefore this process of pre-mutation sketch 11E requirement, the disputes are arrested not further allowing for litigation. Therefore litigations have reduced substantially after the Bhumi Kaveri Mojini integration.

### **Importance of land survey in land transaction in reducing disputes**

For selling portion of land, once seller /buyer applies to MOJINI (in Nada Kacheri) by paying the required fees for land survey sketch, the seller will be informed upon verification of records, as to when the licensed surveyor will visit the land and will survey the land. Notice of survey will be sent to seller, surrounding owners of land also. The licensed surveyors are hired after the Government trained them and only those who have passed in the survey examination, are listed as licensed surveyors. Their services are paid on each sketch basis, from the fee collected from seller. Survey takes within 15 to 30 days. The surveyor brings all records from MOJINI. The surveyor will physically survey in the presence of buyer, seller, neighbours to land, and measure the extent of land proposed to be sold and prepare the 11E sketch called Mahajar where the buyer and seller will sign in the sketch, having agreed to the physical survey, having agreed to the location and extent of the piece of land transacted. Upon signature of buyer and seller, that the seller has agreed to sell the piece of land, its location and other details, the surveyor gives sketch 11 E. This is Mojini. This sketch data is also updated in MOJINI after survey. Thus, every land transaction buyer or selling, should have 11E sketch as an amendment to BHOOMI. The Sub-registrar will check the 11E diagram, the buyer, and seller. All sketches have been digitized. They are permanent records. Mojini will have the sketch. Before Mojini, records will be brought and then land will be surveyed. Data will be fed to Mojini back. 11E sketch gets ready in Mojini. Every transaction should be accompanied by 11E

sketch. Sub registrar will check the sketch, to confirm the buyer, seller and the extent of land to be sold. Only then it will be registered. Registration of land will take place only with sketch 11E.

### **11E sketch number**

After 11E sketch is prepared, the buyer / seller duo will be given the 11E sketch number, with which both buyer and seller will proceed to KAVERI for registration. The seller / buyer duo receive acknowledgement at every office / level / step of transaction. For example when the seller / buyer applies to Nadakacheri for premutation sketch 11E, at Nadakacheri, number for 11E sketch, then for Registration at KAVERI for registration and so on. For instance KAVERI gives J slip an intimation slip from Sub Registrar with seller buyer details, survey number, amount for which land was sold, and this information in XML (extended markup language ) format will immediately after registration will be flown to BHOOMI electronically. Hard copy of J slip is also sent to seller.

For the portion of land sold, seller name will be picked from BHOOMI, the title to land will be changed to the buyer, sale deed document will be created mentioning the new name of the owner (the buyer), the photos of seller, buyer and their thumb impression are printed in the Sale deed, which are now registered by sub registrar after stamp duty is collected (usually 7 percent, depends upon area, guidance value, market value). The information on changed title to land and the extent of sale of land registered will immediately be sent to BHOOMI software. This information flow will prevent the seller to further sell the same piece of land and limits the sale of land to the balance extent of the land available. Earlier with manual system, this information flow was absent, and sellers were able to sell the same piece of land again to any other buyer/s and increase the litigation and land disputes. Thus the BHOOMI – KAVERI AND MOJINI linkage has lead to drastic reduction in land disputes.

As 11E sketch number is entered in KAVERI for registration, impersonation is avoided since BHOOMI, MOJINI are already integrated which is finally integrated with KAVERI. As the process is electronic, nothing is keyed in or typed.

### **Disputed land, Government allotted lands cannot be sold**

In KAVERI system, 11 E sketch number is entered in KAVERI from MOJINI which are integrated. In the sketch, the survey number, seller's name, buyer's name, targeted extent of area sold are mentioned. Impersonation is avoided. Nothing is typewritten as the process is electronic. Even before Registration, the RTC tells about the Patta or the nature of land ownership, for instance if granted by Government, such lands cannot be bought or sold as there are restrictions on sale of Government provided to SC/ST, as such land cannot be sold at all due to land grant from the Government. Such land can be sold only with the permission of the Government following a lengthy process. For instance, the seller should have obtained permission to sell the Government granted land by purchasing land else where obtaining permission to sell this parcel of land. Thus, Patta information will help the buyer to take decision and the system will not allow for any transaction of such land. Further the available balance of land for sale is automatically checked due to integration with Mojini (Survey). Suppose farmer has sold 5 acres out of 10 acres, the balance of 5 acres of land only can be sold, which will be verified in KAVERI by interacting with BHOOMI and MOJINI. If the farmer tries to sell more than what is available, the system does not permit this transaction.

In Nada Kacheri, office at Hobli level, whenever seller applies for 11E sketch with the RTC all the relevant information such as survey number are from BHOOMI. Request for sale or purchase of land is received at Hobli level. Acknowledgement is given at every level for the buyer, seller. BHOOMI and KAVERI are located at taluk level. Due to computerization of 1.7 crore RTCs belonging to 2.5 crore farmers spread over 30,000 villages of Karnataka in BHOOMI with sketch details in MOJINI, the

registration of land in KAVERI is facilitated and this cycle of information flow is dynamic in relation to land transactions. The same procedure is applied for land belonging to multiple owners. After Registration in KAVERI the data on size of land sold in specific survey number is informed to BHOOMI which will then make corrections to the reduced size of land owned in BHOOMI software.

### **The benefit of integration of BHOOMI – KAVERI – MOJINI (BKM)**

The benefit of the integration of BHOOMI – KAVERI – MOJINI can be appreciated considering the aftermath of land registration in the absence of such integration. Once the portion of land sale upon registration in KAVERI is effected, if the sale of land is not reported back to BHOOMI (RTC), then, the seller's RTC record continues to indicate the pre-registration extent of land for sale but not the reduced extent of land for further transaction. This enables the seller to sell his land again to some one else adding to land disputes. However, with the integration of BKM, the extent of land upon registration in KAVERI, is automatically reported electronically to BHOOMI and corresponding changes in RTC will be made. In fact, a new RTC will be created for the new buyer of land and for the seller, the new extent of reduced land will be shown in the RTC. This sync or integration has facilitated in greatly reducing land disputes as the extent of land to be sold, after a sale, gets deducted from the remaining balance of land immediately after registration in KAVERI. Further this has enhanced transparency in land transactions. Without integration of KAVERI (Registration) with BHOOMI (RTC), the sub-registrar was merely registering land extent and not informing the extent of land sold to the BHOOMI and the original RTC continued to prevail, increasing the land disputes. Now the contents are verified by feedback with MOJINI due to pre-mutation 11E check as well as akarband with RTC.

## **RTCs continuously updated**

Land identified by survey number and owner selling the land, extent of land for transaction information is available in RTC. The RTCs are continually getting updated considering the sale / purchase of land showing the current extent of land for sale. For instance, for a specific RTC holder, if the owner possesses 2 acres of land, at the most, the owner can sell two acres and not beyond. If the owner indicates that he wants to sell more than two acres, the system does not allow for the transaction, since it indicates that the maximum land the seller has is 2 acres. Earlier the same piece of land used to get registered in several names as there was no means of remembering, tracking, the names of buyer/ seller and other details. This used to result in multiple litigations. The integration of BKM has put a halt to all such land disputes by enhancing transparency. This is the most imp't integration of KAVERI with BHOOMI.

## **Without physical verification (survey), no land is bought or sold**

In the present system of BHOOMI- KAVERI - MOJINI integration, without physically verifying the property by the licensed surveyor in the presence of buyer, seller and neighbours, generating sketch 11E, signed by both purchaser and seller, land registration in KAVERI will not take place. Hence land disputes are largely minimized. After mutation, ie change of ownership for the piece of land, signals will be transmitted to MOJINI which will have a new sketch 11E due to the sale of the portion of land. Using MOJINI sketch for instance, two sketches, for survey number 1/1, 1 / 2 will be prepared after selling a portion of land, with corresponding changes in RTC and two RTCs will be provided for survey number, one for 1/1, and another for 1 /2. MOJINI identifies boundary of land through sketches and incorporates in RTC. Thus, 11E sketch, reaches KAVERI, KAVERI verifies data from BHOOMI, and upon verification sends signals to BHOOMI, which in turn sends signals to MOJINI for sketch. This will be incorporated in RTC by BHOOMI which in turn will write two RTCs, 1/1, 1/2.

## **Role of 11E sketch**

For selling part of land, 11E sketch is saved in BHOOMI – MOJINI as MOJINI is already integrated with BHOOMI. The information on existing owner, extent of land and other details of RTC are integrated from Nada Kacheri with the State Data Center (SDC) in Bangalore head quarters housing BHOOMI. After 11E sketch is prepared wherever necessary, asks 11E sketch number. The validity of 11E sketch is six months, because land sale or purchase can take place frequently. The exact number of 11E sketch can only be entered and will match the owners, survey number, Chekbandi. With feeding the sketch number, all other details of land need not be entered in KAVERI.

Next, from the sale deed document provided by KAVERI, the information extent of property sold to purchaser is provided to all the interested parties such as owner, purchaser, neighbours if they register their name in the Citizen Registration Platform (newly created). This will provide information on name/s of our neighbour/s, along with other details. This will benefit the true owner who can appeal if there is mistake in sale or if the land sale has taken place without his/her involvement. The following additional points may be noted.

## **Scope for objection exists even after registration**

After registration, there is 30 days waiting period, during which there is scope for objection. If there is impersonation, by any chance, that can be rectified. It is crucial to note that rights are non-extinguishable. This implies that, for some reason if owner/s are unable to exercise their right, it does not mean that the owner/s have lost the right. Hence BKM integration provides a platform for exercising rights by owners.

## **Multiple owners**

In cases of multiple owners to property, all owners should be involved in decision making. In RTC, this information on multiple

owners is provided. However they may not be involved in land transaction. Therefore physical verification of land and need for pre-mutation sketch 11E is a great requirement which has the backing from Supreme court verdict.

Most of the disputes arise due to non involvement of share owner/s in land transactions whenever there are multiple owners to property. In such litigations the tahshildar can solve disputes by hearing them. If not satisfied, there is provision to appeal to Assistant Commissioner, on to Deputy Commissioner, on to Karnataka Appellate tribunal, High Court, Supreme Court. Thus, the litigations have reduced. since the buyer of land can insist for presence of multiple owners of land during preparation of pre-mutation sketch 11E as well as during registration in KAVERI.

### **Citizen Registration Platform (CRP)**

In order that objection to land transaction be allowed, objections to land transactions can be filed with Tahsildar (BHOOMI) within 30 days of land transaction. In order for the information on transaction, Citizen Registration Platform has been created to provide information on land sale, purchase, date of transaction, the price / value, extent of land and so on. Any person can register his/her name and mobile number with CRP on line, in BHOOMI website, indicating interest in specific survey number as in RTC. The KAVERI information on land transaction from BHOOMI will be sent through SMS message whenever transaction takes place. This will permit the stakeholders' claim on land and can further reduce the land related disputes.

### **Conclusion**

The integration of BHOOMI (land records) – KAVERI (land registration in sub registrar's office) – MOJINI (land survey) in Karnataka has lead to transparency, accountability and reduction in land disputes in terms of transaction cost of handling disputes and the time taken in handling them.

## **Annexure**

### **Information in RTC**

The BHOOMI can be accessed in the website: [landrecords.kar.gov.in](http://landrecords.kar.gov.in)

Then in the BHOOMI website, clicking on services, view RTC and MR, selecting the specific district, taluk, Hobli, Village, Survey Number, selecting Hissa or podi (division of land), period of information from which the transaction date ie Mutation, clicking on fetch, props up the entire RTC. A few details are as under:

Hissa: refers to land division or podi,

Kharab A: refers to uncultivable land such as hilly land

Kharab B: refers to Government land such as road, path 1 acre 00 gunta; 00 part of gunta; Fraction of gunta information is available

Kabje refers to owner name, – all the owners of land are listed.

**Khata number:** Refers to the ledger number in the village, where the details of land transactions are written. If land transactions, ownerships are searched according to Khata, land possessed will be displayed, survey number wise, if any person owns in more than one survey number.

Kabje or type of acquisition of rights: Indicates whether the land was acquired by partition, MR – mutation register (by sale or purchase etc),

M - mutation

Mutation is the index of change. What was earlier, what is later.

**Hakku:** What are the entitlements of others on this land – eg foot path may be provided through this land, ie using land for right of way

**Runa:** What the land owner is due to others – example crop loan, or term loan etc

farmer owes to others

Soil type – red, black etc

**Patta** – For example, if the land is granted by govt, it will be mentioned. This will provide information on whether the land can be purchased. For instance, if the land owner belongs to SC/ST community, if the land under consideration was granted by Government, such land cannot be bought or sold, unless the land owner has purchased some other land and has permission from the Government (Revenue Department) for sale / purchase. This will also prevent further dispute pertaining to land.

**Chalte beelu:** Current fallow

Since 2006, due to integration of BKM, when land is registered, 11E sketch is prepared, this data is provided back to BHOOMI. The Mutation is certified and for podi (or division), MOJINI (sketch ) is referred to. The survey supervisor will update the sketch 11E in accordance with the purchase and sends the data back to BHOOMI and in turn BHOOMI certifies this (by examining the extent of land available for sale) which is possible due to integration. Thus, pre mutation sketch is compulsory for registration. When part of the land is sold for which 11E sketch is prepared by the surveyor. When full extent of land is sold, 11E sketch is not required.

Integrated mutation podi refers to obtaining in one transaction, we get mutation (change of ownership or title) and the division of land (podi) which is effected whenever 11E sketch is prepared.

SRO is sub registrar office, then will connect to Bhumi thru Karnataka state wide area network, dedicated network for Govt offices maintained by CEG center for E governance Taluk and

SDC state data center are both connected. Every day any change takes place, one copy of the change of all taluks is kept in survey dept, Bangalore.

Taluk BHOOMI, Sub registrar office are in Taluk level. They are both integrated at state level.

# Overview of Land Disputes and Challenges in Rajasthan

**Modu Dan Detha, O.L. Dave & P.S. Dashora**

Respected chairman of this session,  
Respected director LBSNAA, Mussoorie  
Respected Centre director for rural studies,  
Workshop director/ co-ordinator,  
Other honourable dignitaries present here,  
Officers and supporting staff of LBSNAA for this workshop

In Rajasthan even before the enforcement of Rajasthan Tenancy Act there was tenancy in whole state with exception of some areas of *Sri Ganganagar* where *malikana haq* was prevalent. Tenancy title is accrued by two reasons; however, this is not simple as evident from various litigations which ultimately defined the nuances forming the base of to accrue the tenancy:

## **I. Disputes Arising By Process Of Operation Of Law**

1. This includes:

- (i) By operation of Section 9 of Rajasthan Land Reforms and Resumption of *Jagir* Act, 1952
  - This section provides that at the commencement of this act a tenant who has heritable and full transferable rights and is entered in revenue records shall be called *khatedar*.

In past, this section created lots of litigations because every princely state had its own land laws and this created confusing local acts and local terminology regarding cultivators/tenants. However, now the cases are settled, but some cases are still pending before *Jagir* Commissioner.

- (ii) By operation of Section 10 of aforesaid act 1952 regarding *khudkast* land.
- (iii) Under Section 15 of Rajasthan Tenancy Act, 1955 every tenant and *gair-khatedar* as otherwise provided in this act will be *khatedar* tenant whose name is entered in annual registers as a tenant as on 15.10.1955.

- Initially there was a huge litigation under this section but now the litigation under this section has reduced sizeably. The main reason of litigation under this section was wider base for *khatedari* as compared to Section 9 of Resumption of Jagir Act, 1952. Now law provides *khatedari* to all tenants. *Khatedari* in temple land and some other land creates huge litigation. The tenancy act provides the definition of tenant. Then, question arose and litigation came over which vernacular terminology is synonymous to the definition of tenant. The increase in size of litigations is because now to accrue *khatedari* right only tenancy is sufficient.
  - Due to the around 30 tenancy land laws and circulars, there are so many vernacular names entered in the repealed laws of erstwhile princely states and their interpretation creates litigation like- *gair morusi*, *jota*, *gair bapi*, etc. Some cases are still pending at trial court, first appellate court and board. This is to some extent due to changing interpretations of local terms by the courts.
- (iv) This Section is not applicable for *Gang Cannal*, *Jawai Canal* and *Bhakra canal* project area and land allotment under grow more food campaign. There are some restrictions in application of Act in Chambal command area. This is because the incongruence of provisions of act and the practices. This create litigation as evident in *Chambal* project area and allotment under grow more food campaign. Grow more food allottees could not get *khatedari rights* under this section after passing a time it creates more problem particularly in area of *Hadoti* i.e. *Kota* division. This resulted in lots of confusion arose among the government machinery and the people about whether their allotment is under colony act. Allotment was not under colony act, so there was no sale register and people approached court for *Khatedari rights*.
2. On 15.10.1955 major part of state had only one settlement and that settlement completed between 1942 to 1950. So, naturally some people who were occupancy tenant not entered in record due to errors, negligence and bad-intention of *Amins* and inspectors. It creates litigation. Princely state *Jaisalmer*

has no settlement before 15.10.1955 and its sizeable part falling in IGN command area. It creates litigation and government has made special provision i.e. Section 15 aa of RTA for IGNP project area. Some litigation is still pending.

3. Section 13 of RTA for tenants or *khudkast* and section 19 is for sub-tenants who entered in annual register on 15.10.1955 got *khatedari rights* but some litigation between tenants and tenant of *khudkast* and tenant and sub-tenant arise in this behalf. Now only few cases pending but this operation of law was a good law and revolutionary law. But it creates some litigation due to the shadow of repealed act of some states.

#### 4. SECTION 193 OF RTA ACT-

- There were some village servants' provision in land revenue system from historical times and Rajasthan Tenancy Act has also a specific chapter for Grants at favourable rates of rent and village service grants heading comes under this chapter. Section 193 provides that if village servants are no longer required, such village servant may become *khatedar* of his village service grant. Village servants have the status of non-transferable and non-heritable rights. Village service grant of land is without liability of land and it was non-transferable and non-heritable. Therefore, they were not tenant, they were only grantees. So, they were not covered by Section 15, 13 and 19 of the RTA of 1955.
- **Village servant** - This grant was declared as no longer required for land system after the commencement of tenancy act. So, at first, the matter arose in colony area on whether these village servants get *khatedari* rights by payments or without payment. Litigation went up to High Court, where it was settled that village servants will get *khatedari* without any payment. Some cases are still pending.
- Some village servants were from class of society with special legal protection under Section 42 (b), (c) of

aforesaid act 1955. Before the commencement of act entered in revenue record and now continuously entered in revenue record their sub-tenants were from different class of society. Now, litigation arises due to this point and due to this provision that under section 193 only village servant is eligible for *Khatedari*. Some cases are still pending.

- Tenants who could not get their rights by their village servant status go in litigation and confusion arises for *maufi-az-dehi-kaminan* in *Gang Canal* area for *pujari*, *maullwi* and *granthi*. This creates litigation due to misunderstanding that land belongs to institution that is *mandir*, *masjid* and *gurudwara*. Actually, village servants are in these cases are the village servants of state. They were never existed and worked as servant of that institution. Misunderstanding creates litigation. Still some cases are pending. A circular of year 99 entered *khatedari* of village servants in the name of *Gurudwaras* and *mandirs* wrongly and it is still continued. These village servants have only 5 *bigga* land. They were very poor people so they accepted this thing as their misfortune, due to their weakness. In some areas, people appoint a new manager for land and these tenants ousted by villagers and influencing people. This leads to litigation.

5. Section 194 of RTA provides *Khatedari* rights for grove holders.

## II. BYACT OF PARTIES:

(i) Act of parties claim legal rights

- Tenants who were not entered in annual registers but were tenants on 15.10.1955.
- Tenants in those areas where no record is in existence on 15.10.1955.
- A major part of state was falling under that area which had only one recent first settlement (*bandobast bar awal*) and

has no second *sani* and subsequent settlement. A large number of tenants were not entered as tenant.

- These three categories of tenants can get their right in compliance of operation of law by a application under Section 13 (tenant of khudkast), 15, 19 (sub-tenants) of RTA, right getting by a claim from application requires reply of application, inquiry, and prove and establish case and these situations create litigation. Now, only a few cases still pending, initially this was a major part of litigation.

(ii) After commencement of tenancy act and land revenue act government allotted land for agriculture purpose. Failure of some applicants to get allotment created litigation that he has more priority than allottee. There were complaints against wrong allotment and breach of condition of allotment. This creates litigation. In the respective rules of concerned allotment rules and in some cases state make references. Still some cases are pending. This practice should be discouraged and there should be a uniform decision that after the getting of khatedari rights and passing of reasonable period, if today person is not debarred by law to hold land then challenge to these allotments may rejected because in most cases applications were presented by villagers to oppose there opposite party on their personal cause rather than public cause.

(iii) By the transfer of possession in compliance of legal act of parties and by Act of God.

- These are the bequest, gift, sell, and death of tenant. In these cases title will be transferred to new legal right holder to replace the older entry.
- These actions should comply with the legal fulfilments and there is application of personal law also. Provisions of personal law sometimes are misunderstood or non-complied.

Many cases are pending in courts due to disputes between parties regarding bequest gift and sale and succession.

- This is due to the concept of coparceners and ancestral property.
  - Women heirs are not entered in record.
  - Due to second marriage of women in peasantry.
  - Not-application of Hindu Succession Act to *Hindu* tribes while they were practising similar system of succession as other *Hindu* peasantry of same area.
  - Application of *Quranic* law for succession in Muslims and clashes between *Quranic* succession and differences between traditional practices and *Quranic* law.
  - Denial of inheritance on women's previous marriage son i.e. *Gailad (foster)*.
- (v) Disputes arising by applicants under rule 5A of evacuee agricultural land rules 1963

**III. DISPUTES REGARDING POSSESSION:** The saying “possession is nine points of law” is an old common law precept that means one who has physical control or possession over the property is clearly at an advantage or is in a better possession than a person who has no possession over the property.

IV. "Initially i.e. at the time of *bar-aval* settlement, names were entered on the basis of possession. On the basis of possession some persons were not entered and this created misunderstanding that possession can create right title but there is no provision to accrue *khatedari* on the basis of mere possession.

- (i) Initially in princely states enough land was available for cultivation. If someone brought barren land under cultivation and he agreed to pay the rent this land was called *notod* (newly brought under cultivation). Now, one can get land only through various allotment rules. Old cases where *notod* was not entered as a tenant land, people approached court. Most cases regarding declaration of *khatedari* rights against state. These come under this case. Some cases are still pending.
- (ii) There is a provision for allotment of land by way of regularisation on the basis of cultivated possession.

Regularisation is decided by a committee. However, due to non-occurrence of periodic meeting of this committee not all cases are presented in committee and presentation of case with incomplete information. This creates litigation.

- (iii) There is a provision for small and medium patch allotments in colony area and non-colony areas. In colony area ample land is available in this category, allotment was made in accordance with rule but state goes for appeals.
- (iv) Applications under Rule 5A of evacuee agriculture land rules 1963 on the basis of possession
- (v) **JOINT TENANCY** – There is a legal concept that each and every co-tenant has possession on every inch of land and possession of one co-tenant is a possession of all the co-tenants. Due to this co-tenancy disputes arise.

There is a legal concept that newcomer by way of sell is a stranger and stranger can get possession by way of division of holding. This creates litigation. Any failure party to purchase the land instigate other co-tenants to create litigation. Sometimes co-tenant wants land of weaker co-tenant for them and then they oppose the outside purchaser and sometimes they try to get temporary injunction and permanent injunction not to sell the particular portion of land and not to give possession of particular piece of land. Generally, co-tenants have divided their land at their own and account is jointly.

Co-tenancy creates disputes regarding land reforms i.e. protection of crop by earthen wall or by nylon net from animals and digging of well and even obstructing way on the basis of their own division of holding.

#### (vi) **DISPUTES REGARDING RIGHT OF WAY-**

These disputes fall in three categories:

- **Right of way and other private easement** - Right of way and other private easement (water channels) where way and other easements are not recorded in revenue records and base of right is easement. Then on occurrence of any disturbance

tenant can approach the court. This is one of the chief causes of today's litigation due to awareness of one's own right and non tolerance tendency. (Section 251 RTA)

- **Opening of new way, enlarging of existing way and lying of underground pipelines-** Ample litigation in this section of 251-A RTA exists in courts.
- **Demarcation of existing way-** Demarcation of existing way in revenue record by way of updation of land record in Section 131 and 132 read with Land record rule 58, 59, 60, 66 and 86 in those areas where settlement is not in process. Sizeable litigation exists nowadays in form of applications and appeal in revenue courts, especially in IGNP areas of phase II where Chak plan was not implemented in context of demarcation of ways and water courses in colony area and colony general condition 8 (2) is amended and now there is no provision for creation of way for individual tenant or square purpose.
- **Right to construct or alter watercourse or to create a right of way or to construct a village road-** This is under colony general condition 8 (2).
  - After division of holding which is not on regard disputes arise regarding construction of water channels to those kila numbers which are not falling on watercourse side and these kila numbers are in possession of another cotenant.
  - In some cases, this is due to change in irrigation system.
  - A sizeable litigation exists in colony area and pending in courts.

## V. BOUNDARY DISPUTES

- (i) There are two types of payers i.e. payer only for *pathar-gadhi* and *seema-gyan* and demarcation of boundaries. Second, prayers with suit/ application of ejectionment.
- (ii) Another classification of cases is dispute between private party and dispute within state and private party.

- (iii) At the time of settlement, land was available in ample quantity and it was in the form of tenancy not wealth. Now, actually it has become a wealth that is safe deposition of wealth and investment. Due to this at the time of settlement some boundaries are with errors of actual possession and some boundaries are not correct comparison by three angles permanent point. A sizeable litigation in this section exists in state.
- (iv) After allotment, division of holding and conversion corrections were made in revenue maps as per entries of *jamabandi* after passage of sometime litigation arose. A sizeable litigation on this ground exists in courts and field.

## VI. DISPUTES DUE TO RESETTLEMENT

- (i) Settlement can change the soil classification for the determination of rent and also change the boundaries of survey numbers (*khasra* number) but in resettlement they change the right title.
- They prepare *khasra* i.e. field book enlisting comparatively the old and the new right title entries. In this process they mention old entries only the last settlement entry rather than last entries before resettlement. In this process land of new allottees is entered as government land and they amalgamate separate tenancies into a single tenancy.
  - Instead of mentioning the area of old number which got included in new number, they mention only that a part was included. This creates disputes.
  - In resettlement, settlement employees acted on the land as first settlement; due to this they changed the area under various titles of tenancy and government titles.
  - Due to resettlement many cases of correction of entries and declaration of right instituted in courts and still pending at various levels and government also present references through Director Land Record. Some of these references are still pending.

**VII. EJECTMENT DISPUTE-** Section 44 give the right to tenant to sub-let their tenancy under legal provisions. Sub-letting creates litigation due to disputes between parties and breach of legal provisions. Breach of section 42 (b) also creates litigation.

- (i) Ejectment of certain trespasser under Section 183, 183-B and C. Under this Section 183-B and C suit can be brought by a tenant limitation is 12 years. Section 183-B and C for eviction of trespassers from SC and ST land by summary proceeding.
- (ii) Ejectment under Section 183-A provides summary eviction of mortgagee on non-delivery of possession of land after the expiry of the period of mortgage.
  - For usufructuary mortgage after expiry of mortgage period or 5 year/ 20 year (before commencement of act) whichever is less mortgage amount shall be deemed to be paid off.
- (iii) Ejectment for illegal transfer and sub-letting Section 42 (b) permit SC and ST and *sarahiya* ST to transfer their land to their respective class only and Section 46-A and 48 permit SC and ST tenants to let or sub-let and exchange within their class only.
- (iv) Ejectment for detrimental act or breach of condition i.e. use of holding for purpose other than the purpose for which it was let and letting and sub-letting at any one time for a term exceeding 5 years and any other breach of tenancy law.

**VIII. DISPUTES REGARDING SURRENDER, ABANDONMENT AND EXTINCTION OF TENANCY-**Section 55 to Section 64 of Tenancy Act.

- (i) **SURRENDER-** A tenant can surrender his holding. Possession is an essential condition. Concept of possession sometimes creates dispute.
- (ii) **ABANDONMENT-** In this case tenant has some rights to regain possession under certain circumstances. Some disputes are pending in this regard at various levels.

### **(iii) EXTINCTION-**

- When a tenant dies leaving no heir.
- Surrender or abandons.
- Land acquired under law.
- Deprived of possession and recovery of possession is barred by law.
- Ejectment.
- Sell or gift.
- Migrates from India without lawful authority.
- Cancellation of allotment

A number of cases are pending for the cancellation of allotment and some other cases are also pending in courts at various levels.

**IX. DISPUTES REGARDING SUCCESSION-** When a tenant dies intestate, his interest in his holding shall devolve in accordance with the personal law to which he was subject at the time of death.

- Hindu Succession Act provides equal right to female successors. Initially, this was not adopted in practice and later on creates litigation.
- Tribes living in plain area of state, practices same heir system as other peasantry but new law of Hindu Succession is not applicable to them
- Step-sons from different wives creates dispute when widowed mother dies. It is not similar to local customs.
- Hindus and Muslims have distinguished succession system but peasantry practically practices similar system with a little difference. Later on it creates disputes.
- Successors name not entered in *jamabandi* timely by mutation.
- Woman's first marriage son.

## **X. CASES ARISE FROM HIGHER COURT'S DECISION COMPLAINEE:**

According to necessity and thinking of that time, some allotments made not in accordance with mandatory provision of the act, cases related to water-bodies are directed by honourable High-court to reconstitute the position of these bodies in record and field as on 15.8.1947. Thousands of references presented in Board of Revenue and thousands cases decided but a lot is pending for decision.

### **PENDENCY OF CASES IN REVENUE COURTS**

Pendency of cases in revenue courts is as under:

- Total 2,64,442 cases are pending in sub-ordinate revenue courts and average institution is 2.3 lakhs per annum and disposal is 2.3 lakhs per annum since last two years. Disposal is slow and has no features of reducing total number of cases despite *Nyay-aapke-dwar* campaign and camp cases and organisation of *Lok-Adalat*.
- In Board of Revenue total pending cases are 64,000 and average disposal is 11,000 per annum and institution is 10,000 per annum.

This shows that tenancy cases cannot be reduced properly without any mechanism which solves the problem before it converts into dispute. Only then we are in position to properly prepare a more accurate land record and more effective land system for the purpose of curtain, mirror, single-window and assured title objectives.

There should be a mechanism for continuous updation of land-record by way of correction-sheets, mutation, division of holding, exchange of holding, *tarmeem*, correction of errors and confirmation of right as per law.

# **Draft Paper, Not to be referred Land Titling and Land Disputes in India**

**Pradeep Nayak**

Nowhere in the world are agrarian relationships more complex than in India. We have here state ownership as well as proprietary ownership. There are tenants below tenants, and a wide variety of types of co-sharers. As a result of provincial land reform legislation, tenancies in the various parts of India may be surrounded with greater or lesser degrees of legal protections. In any case, the rights of tenant depend more on the size of his holdings and his standing in the village than on his status in law. 1From the very start, the goal of efforts to modernize land administration in India was to increase tenure security and reduce the cost of transferring land... In this context, a key concern that is likely to be debated in policy circles, has been whether, and if yes when and how, India should make the transition towards a system of title registration, often also referred as a Torrens system.<sup>2</sup> These two district statements aptly summarizes the nature of the Indian property records and challenges for a policy regime for a secure and clear property rights in land. This paper makes an attempt to explain how land titling regime as envisaged under DILRMP would address the Indian land disputes.

- 1 Daniel and Alice Thorner.1962.*Land and Labour in India*, Bombay: Asia Publishing House, p.149.
- 2 The World Bank. 2007. *India: Land Policies for Growth and Poverty Reduction*, July 9, Report Number-38298 -IN p.IX.

## **Record of Rights System in Perspective**

The *Committee on State Agrarian Relations and the Unfinished Task in Land Reforms* (2009) has very succinctly and precisely sums up the nature and picture of the record of rights system in India and legalities of the rights on a broader perspective. It would help one to comprehend the dynamic and diverse nature of the record of rights and the various interests it represents on a piece of

paper document called as record of rights locally as *patta/khatauni/pahanipatrike/khatian, etc.*,

The plural nature of the country's habitation, the growth process of the revenue laws which have followed the social and political development in the country have given rise to a multi-layered system of rights and privileges. The post-Independent India has added to some of these complexities. In the tribal areas of Jharkhand, the rights structures varies not only from tribe to tribe but even within the tribes after every distance of 10 to 15 kilometers. No system of registration of rights can be effective and no system of taxation can ever be efficient and just without a description which enables the land to be identified with certainty on the ground. The rights of the individuals and the communities in respect of the land, water resources, trees and forests, use of land, cultivation, incidence of payment of rent, change in the physical features, the authority which the Government exercises in respect of this land, method of change in the rights, etc., are all included in a body of documents called the records- of-rights. Record of rights in India reflect the following rights – (i) ownership rights, (ii) homestead rights, (iii) right of vested land assignees (patta right), (iv) dakhalkar right, (v) share croppers' right, (vi) lease right, (vii) hold over right, (viii) right regarding forcible possession, (ix) permissive possession right. The first 6 rights are regulated by various State enactments, whereas the seventh is a phenomenon of the Transfer of Property Act and last two rights are regulated by the Indian Limitation Act. More importantly land records and cadastral maps show easement right for roads/paths, irrigation, bathing and other domestic work, sports and games, worshipping in the temples/mosques, burning ghat/grave yard, tending cattle, etc.<sup>3</sup>

3 Government of India.2009.*Report of the Committee on State Agrarian Relations and the Unfinished Task in Land Reforms*, Department of Land Resources, Ministry of Rural Development, New Delhi, p.147.

The entries in the land records continue to record proprietary rights holders and certain details like cultivable, non-cultivable land, quality of soil, sources of irrigation, cropping pattern, leases, easements, and assessment of land revenue, etc.,

## **The Constitutional Provisions Concerning Land in India**

An overview of the constitutional provisions pertaining to land would be helpful in understanding the legality of land rights or property rights in land in India particularly the role of the state in securing and protecting the property rights in land and its linkage with the matters like forest and mining. In the Seventh Schedule of the Indian Constitution, the divisions of power among the Union and the States have been made and accordingly they are empowered to make laws. The report of *the Committee on the State Agrarian Relations (2009)* claim that “Land Reforms remain a means of distributive justice to the marginalised and, therefore, a part of the Preamble to the Constitution.”<sup>4</sup> The implication is that land regimes in India are having constitutional implication as evident in the Apex court's historic judgments on abolition of *zamindars* and intermediaries.

4 Government of India.2009.*Report of the Committee on State Agrarian Relations and the Unfinished Task in Land Reforms*, Department of Land Resources, Ministry of Rural Development, New Delhi, p.13. 5Ibid.p.77.

The creation of distinct legal and institutional space for predominantly tribal areas in the Indian constitution is a legacy of the British policy of exclusion of general laws to tribal areas though it had facilitated the assimilation process to promote its market interest. Currently, certain parts of the ten Indian States are covered as scheduled areas. The states which are having scheduled areas under the Fifth Schedule of the constitution are: Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telengana. Part B of the Fifth Schedule provides for the creation of Tribal Advisory Council in each state having schedule areas, a statutory

body, to advise the government on matters pertaining to the welfare of the tribals as and when sought by the Governor. The tribal areas of the mainland were governed under the provisions of Fifth Schedule of the Constitution. The states in the northeast India are covered under the Sixth Schedule of the Constitution and other legal constitutional provisions. The Sixth Schedule has prescribed the provisions for the establishment of Autonomous District Councils (ADC) at local and regional levels and empowers these councils with legislative, executive and judicial powers. The Sixth Schedule applies to certain tribal areas of the states of Assam, Meghalaya, Tripura, Mizoram, Manipur, Nagaland, Assam, and Arunachal Pradesh. Briefly the various administrative, constitutional and legal-institutional arrangements that have implications on the land tenure system in the in northeast India are given here.

## **5 The Composition of Record of Rights**

A reference to some legal provisions of some of the states in India about the nature and content of record of rights in which the entries are made which represent the property rights are made so as to give an idea of the extant presumptive land title. The West Bengal Land Reforms Act, 1956 ( Act X of 1956) under section 50 in Chapter VII lays out the prescribed authority under the Act shall be in charge of maintenance of up-to-date record in village record-of rights by incorporating therein the changes (i) mutation of names as a result of transfer or inheritance, (ii) partition, exchange or consolidation of lands comprised in holdings or establishment of cooperative farming societies, (iii) new settlement of lands or holdings (iv) variation of revenue (v) alteration in the mode of cultivation, for example by a *bargadar* (tenant), (vi) such other causes as necessitate a change in the record of rights. Further, the West Bengal Land and Land Reforms Manual, (1991) Rule 56 stipulates that, mutation of record of rights (substitution of the name of a person by the name of another in the record of rights) may be done by the prescribed authority on the following ground, namely, transfer by sale, gift, exchange, inheritance based on the registered sale deed.<sup>6</sup> The Section 2 (1) of the Bihar Land Reforms Act, 2011, in fact, lays out a comprehensive procedure of

record of rights correction by means of the following instruments/means which are generally found in other parts of India.

6. Government of West Bengal. 1992. *The West Bengal Land and Land Reforms Manual*, 1991, Kolkata: Sree Saraswati Press, pp.23-24.

- a. Sale-purchase, gift
- b. Exchange
- c. Partition of holding
- d. Inheritance/ succession, intestate or testamentary
- e. Will
- f. Order / decree of court under Code of Civil Procedure, 1908
- g. Order /decree of court under the Bihar Land Disputes Resolution Act, 2009
- h. Settlement/ transfer/ assignment of public land by competent authority
- i. Acquisition under the Land acquisition act
- j. Land granted under the Bihar Bhoodan Yagna Act, 1954
- k. Settlement of Homestead land under the Bihar Privileged Persons Homestead Tenancy Act, 1947
- l. Tripartite purchase of *rayati* land for *mahadalit* (depressed caste) families under Purchase Policy, 2010
- m. Restoration of land to former *rayaits* under the Kosi Area (Restoration of lands rayaits) Act, 1951
- n. Restoration of land to former *rayaits* under the Land Acquisition Act, 1894
- o. Settlement of surplus under the Bihar Land Reforms (Fixation of ceiling area and acquisition of surplus land) Act, 1961 or
- p. Through any other means/instrument which the government may notify from time to time<sup>7</sup>

7. Government of Bihar. *The Bihar Land Mutation Act, 2011*.

The Bihar Land Reforms Act, 2011 interestingly retains the meaning and content of the Record of Rights as defined under the Bihar Tenancy Act, 1885 which shows amply that it is the historical legacy of the property institutions that inevitably shape

the present functioning of the property rights institutions which are being sought to be replaced by conclusive land titling system. Section 102 of the Bihar Tenancy Act, 1885 stipulates that following particulars are to be recorded in the Record of Rights.

- (a) The name of each tenant or occupant
- (b) The class to which each tenants belongs , that is to say, whether he is tenure holder, *rayati* holding fixed rates, settled *raiyats*, occupancy *raiyats*, non-occupancy *raiyats* or under *raiyat*, and, if he is tenure holder, whether he is permanent tenure holder or not, and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) The situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) The name of each tenants' landlord
- (e) the name of each proprietor in the local area or estate
- (f) The rent payable at the time the record of rights is being prepared
- (g) The mode in which that rent has been fixed-whether by contract, by order of a court, or otherwise;
- (h) If the rent is gradually increasing rent, the time at which, and the steps by which, it increases;
- (i) the rights and obligations of each tenant and landlord in respect of
  - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, *jhil (lake)*, tank, or well or any other source of supply, and
  - (ii) The repair and maintenance of appliances for securing supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land
- (h) The special conditions and incidents, if any, of the tenancy;
- (i) Any right of way or other easement attaching to the land for which a record of rights is being prepared
- (j) If the land is claimed to be held land free-whether or not the rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without According to the Karnataka Land Revenue Act, 1964, Record of Rights provides the following:

Record of Rights: - (1) A record of rights shall be prepared in the prescribed manner in respect of every village and such record shall include the following particulars.

- (a) The names of persons who are holders, occupants, owners, mortgagees, landlords or tenants of the land or assignees of the rent or revenue thereof;
  - (b) The nature and extent of the respective interest of such persons and the conditions or the liabilities (if any) attaching thereto;
  - (c) The rent or revenue (if any) payable by or to any of such persons; and
  - (d) Such other particulars as may be prescribed.
- (2) The Record of Rights shall be maintained by such officers in such areas as may be prescribed and different officers may be prescribed in different areas.
- (3) When preparation of the record of rights referred to in subsection (1) is completed in respect of any village, the fact of such completion shall be notified in the official gazette and in such manner as may be prescribed.

## **8. Karnataka Land Revenue Act, 1964.(Karnataka Act 12 of 1964)**

The nature and content of information pertaining to land ownership and interests recorded in the record of rights in some of the select states clearly reveal that the property rights in land are quite complex and diverse. It requires a great deal of efforts and resources on the part of land revenue administration to maintain each entry in the record of rights (both textual and spatial). The land ownership record does not cover the interests of the actual legal owners but also a number of subsisting interests and claims. This creates a fertile ground for rent seeking on the part of the revenue officials given the rising pressure on land and its commodification.

## **The Legal and Institutional Architecture for Rural Land Titling**

The salient features of the draft land titling bill presented by the Union government as model draft to follow for the states and Union Territories are described here which would offer a clear picture of the legal and institutional architecture of a guaranteed land title regime:

1. The setting up of a land titling authority by both the union and state government by an act of the legislature and delineation of its jurisdiction and offices.
2. The land title authority shall discharge the functions like laying down guidelines and instructions of its functioning, prepare, update and maintain the register of titles, records, update and maintain survey entries, to deliver copies of land titles on payment of fees to make entries in the register of titles conclusive and indefeasible within prescribed time frame, indemnify entries in the register of titles, collect the duty and fees on behalf of the government or a local body, etc.,
3. Preparation of records by the authority of all the immovable properties by undertaking survey of boundaries of every immovable properties and titling of record over each immovable properties in notified area.
4. The preparation of register of titles will be taken up based on the available land records data in the prescribed manner and invite objections from all the persons who have any interest in such immovable property to file claim and to attend either in person or by an agent duly authorised in this regard.
5. Upon the notification for recording for land titling, it is mandatory for all the parties to intimate the land titling authority any suit or appeal or revision in relation to any rights or interest in an immovable property recorded in the register of titles for its recording.
6. Compulsory intimation of proceedings under land acquisition act by the land acquisition officer/collector in respect of any property situated in the notified area to land title registration officer and obtain a certificate of recording.

7. All the transactions by the government in respect of immovable properties owned by it, e.g., alienations, assignment, regularisation of occupation, sale, grant, lease and all transactions made by the government in respect of any other property shall be intimated to the concerned title registration officer by the district collector<sup>9</sup> concerned for recording in land title.
8. Compulsory intimation to land title registration officer on all the pending actions as on the date of notification or arising after notification, like appointment of receiver in any insolvency petition, or Writ or an order affecting an immovable property made by any court or competent legal authority for the purpose of enforcing a judgment or recognizance of any
- 9 District Collector/ Deputy Commissioner is the head of the district revenue administration. Deed arrangement or arbitration or settlement, get it recorded and obtain a certificate of its recording.
10. Compulsory registration and submission of information to the title registration authority on all acts or transactions or documents creating, assigning, declaring, limiting, varying or extinguishing any request relating to immovable property in the notified area, which are required to be registered under section 17 of the Registration Act 1908 (16 of 1908) and the documents compulsorily registerable under this Act within the time frame.
11. Compulsory intimations by all the subsisting powers of attorney authorising the agents to sell or develop or construct the immovable property to get them recorded and obtain a certificate of recording.
12. After completion of the title records, the register of titles shall be prepared and maintained by the authority. The authority may designate officers for the creation, operation and maintenance of register of titles. The register of titles shall contain a property sheet inter alia consisting the following particulars, namely:
13. Any other provisions of the land titling law inconsistent with provisions of the Act, e.g. the Indian Stamps Act, 1899, the

Registration Act, 1908, the Limitation Act, 1963 shall be amended in the manner as may be prescribed.<sup>10</sup>

- 14 See Government of India. 2011. *The Draft Land Titling Bill, 2011*, Department of Land Resources, Ministry of Rural Development, [www.dolr.nic.in](http://www.dolr.nic.in) (accessed on May 15, 2016). We have discussed these three principles in the Introduction.

A reading of the provisions of the so-called model draft land titling reveal that the draft prescribes a complex legal and institutional architecture which would inevitably contribute to high transaction cost in land titling. When the Bill would be turned into an act and implemented, the complexities, especially the informal nature of land holding, possession, and the informal nature of land transactions would also inevitably shape its objective, efficacy and implementation. Similarly, the customary land holding in India such as the *Mundari Khutkhanti* and *Bhuhinhari* land tenures in Jharkhand and the clan, village and customary nature of land tenures in northeast would pose formidable challenge to confer an individual title security. The informal nature of land transaction on a piece of paper like *sada bainama* in Andhra Pradesh and the benami (fictitious) transfer of tribal land may take advantage of the titling system if they are able to procure land title certificate through fraudulent process. There is absence of enough provision in the draft titling bill how to compensate the aggrieved person whose land was lost by its transfer without his knowledge due to the fraudulent action by others.

### **The Presumptive Land Records and Ownership**

A reference to the legal status of the record of rights in the revenue laws across the states in India enacted during the colonial times reveal that the record of rights so prepared or entries made in the record during the survey and settlement operation are presumed to be correct until proved contrary after the lapse of time inviting objection to the draft record of rights. This depicts that the records so prepared have conclusive evidence value but has not attended any finality and open to changes. The record of rights is thus flexible to address to contingent situations. The Section 84 of the

Chota Nagpur Tenancy Act, 1908 stipulates that the record of rights prepared and duly certified under the Act shall be presumed to be finally published and be conclusive evidence unless expressly denied.<sup>11</sup> The Section 153J of the Bombay Land Revenue (Amendment) Act, 1913 states that, “any entry in the record of rights, and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or anew entry is lawfully substituted therefore.”<sup>12</sup> The Section 12 of Bihar Special Survey and Settlement Act, 2011 was enacted in the light of implementation of National Land Records Modernisation Programme (NLRMP)<sup>13</sup> to carry out the modern survey in land. The Act has made provision in Section 12(3) about the presumption of final publication and correction of record of rights. It says “every entry in the record of rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct unless it is proved by evidence to be incorrect.” In the similar vein, the state of Odisha has enacted the Odisha Special Survey Act, 2012 which says that, the record of rights prepared and finally published under the act shall be presumed to be correct until proved contrary by evidence. The record finally published shall have conclusive evidence value. Further, it says that if any entry in the record of rights is corrected it shall be presumed to be correct until proved otherwise, but the previous entry (prior to correction) shall be admissible as evidence of the facts existing at the time when such entry was made.<sup>14</sup> The Section 44 of the Punjab Land Revenue Act, 1887 (Act 17 of 1887) stipulates that, “an entry made in the record of rights in accordance with the law for the time being in force, or in an annual record in accordance with the provisions of the chapter and the rules there under, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefore.”

15. Government of Jharkhand. *The Chota Nagpur Tenancy Act, 1908*.
16. Government of Maharashtra. *Bombay Land Revenue (Amendment) Act, 1913*.

17. Redesigned as Digital India Land Records Modernisation Programme (DILRMP) in April 2016, its ultimate objective is to switch over from the presumptive land records to conclusive land title system.
18. Government of Odisha. The Odisha Special Survey Act, 2012.
19. Government of Punjab. *The Punjab Land Revenue Act, 1887*.
20. Government of Andhra Pradesh. 2006. *Land Committee Report*, pp.17-20.

## **Nature of Land Disputes**

*The Koneru Ranga Rao Committee on land issues* in Andhra Pradesh has brought out the widespread practice of informal transactions among the poor people throughout the undivided Andhra Pradesh. The Record of Rights are issued by officials without following due procedures like field measurements involving the government or assigned land irregularly. In other cases, the land passbooks or the *pattadar* passbooks are not issued due to the following disputes or legal reasons which can be generalized for other parts of India:

- a. Agreements or unregistered documents
- b. Disputes among the legal heirs/interested persons over the undivided property of the joint family
- c. Settlement of joint family property among the family members
- d. Civil court litigations
- e. boundary/ownership/ other disputes
- f. land dues or cess or revenue due from the assignees for assigned land
- g. alienation of assigned land
- h. Lands covered under land ceiling act
- i. no interest on the part of assigned/lessee landholders to get the land records recorded in their name
- j. Unsettled estate or *inam* (revenue free land grants by state) lands.

## 21. Personal Laws and the Land Titling

The existence of different nature of personal laws governing inheritance and succession of landed properties and absence of a uniform civil code pose challenges for developing a regime for guaranteed title to land in India. The seminal studies of Bina Agarwal find that there is difference in the scriptural prescription and the customary practices in matters relating to the inheritance of property rights in land. The gendered nature of family relations has shaped the rights of women in land rights. The marriage in India continues to be based on unequal partnerships with gendered roles in all communities.

The codification of tribal customary inheritance laws needed to be guarded against the apparent gender inequalities in the entrenched community practices. The reforms in the personal laws needed to be carried out to remove the similar pattern of gender inequality. This may raise a highly contentious issue of uniform civil code as it may encounter stiff resistance from the Muslim clerics and politicians.<sup>17</sup> The property inheritance followed among the Muslims are similar to Hindus i.e., the difference in scriptural literature and actual customary practices. The Muslim widows or daughter are either excluded from inheritance of any landed property. The customary practices have detected the inheritance system than the scriptural dictates. In succession of agricultural land, the Muslim women are deprived of the inheritance right.

Ibid.pp.478-479.

Ibid.pp.227-229.

22. See for example a study by Carol Upadhaya.2005. "Community Rights in Land in Jharkhand," *Economic and Political Weekly*, 40 (41), October 8-14, pp.4435-4438.
23. See the report "Access to Justice, 2015-2016" [www.dakshindia.org](http://www.dakshindia.org) (accessed on November 15, 2018) community rights and led to conflict of interest between the state and community officials.<sup>19</sup>

## The Indian Land Disputes and Land Titling

The most important argument for adoption of land titling is that the land title would be indefeasible as the record of rights would follow mirror principle by presenting accurate status of land ownership under the conclusive title regime. But a survey in November 2015 to February 2016 on questions pertaining to civil and criminal nature of court cases in 24 states in India covering 9329 litigants reveal that nearly 66.2 per cent court of cases are civil in nature pending adjudications. This reflects that the property related disputes like title, possession and inheritance claims are the bulk of court cases.<sup>20</sup> A comparative reading of the draft land titling of the of rural and urban development ministries of Government of India, the land titling act of Rajasthan government and the Urban Property Records programme initiated by Karnataka state finds that none address the roots of land disputes given the existence of a variegated governing land laws such as land reforms laws and the laws prohibiting transfer of scheduled caste and scheduled tribes.

A recent study by the World Bank on the Land Administration Governance Framework (LAGF) in six states like Odisha, Karnataka, Bihar, West Bengal, Andhra Pradesh and Jharkhand finds that land disputes like tenancy, alienation of tribal land, land acquisition, pending ceiling on land holdings cases and the disputes arising due to old and outdated records are the main factors that affect the functioning of the revenue administration.<sup>21</sup>

24. The World Bank. 2015. *India : Land Governance Assessment; National Synthesis Report*, Report Number-Aus18306. [www.worldbank.org](http://www.worldbank.org) (accessed on 19 August 2017).
25. See [www.http://lawcommissionofindia.nic.in](http://lawcommissionofindia.nic.in) (accessed on February 17, 2019)

The prevalence of possessory rights and legal rights over a land in cases like agricultural tenancy practices, claim for title by adverse

possession and claim for easementary property rights of both neighbor's land or government land are the common cases of land disputes. Under the law of Limitation Act, 1963, a legal owner and a title holder of immovable property is precluded from recovering his property from a trespasser in occupation of the property for a continuous period of 12 years openly and peacefully and in a manner hostile to the interest of legal owner. There are pros and cons of the adverse possession in India . One views suggest continuance of adverse possession in India as land records are not up-to-date, and property titles are not reliable, the problem of identity of property and the difficulties of even genuine occupants to secure their actual possession with formal title deeds. On the other hand, there is other view that the law encourages land grabbers, relatives and neighbors to occupy the lands of the absentee landholders like non resident Indians , initiate vexatious litigations without any colour of title and derive title by reason of open and hostile enjoyment for a very long period in connivance with revenue officials.<sup>22</sup> In the case of government land, the period of limitation for any suit is thirty years except in the cases where the suit is pending in the Supreme Court.

The Bihar Land Disputes Resolution Act, 2009 states that the land disputes emanate mostly from record of rights and revenue records (such as entries made thereof), unlawful occupation of *rayaiti* land (land with occupancy and proprietary rights), forcible dispossession of 13 allottees and settlees of public land, partition of recorded land in the record of rights, boundary disputes, etc., It thus explains that the so-called conclusive or guaranteed title to land no way look into the root cause of the disputes. In fact disputes arise from both land settlement and land regulative laws. The reference from the Bihar Land Disputes Resolution Act, 2009 is important because land and agrarian issues of Bihar have impacted the formulation and shaping of post-independence land policies of the Indian state to a large extent.

The description of varied nature of land disputes integral to land titles listed by the Act, 2009 thus explains the historic legacy of land rights and title in India. For example,

Section 4 of the Act says that, the competent authority shall have jurisdiction and authority (as civil court) to hear and adjudicate, on an application or complaint or on any application referred to by a prescribed authority or officer, any issue arising out of following types of disputes:- (a) Unauthorized and unlawful dispossession of any settlee or allottee from any land or part thereof, settled with or allotted to him under any Act contained in Schedule-1 to this Act by issuance of any settlement document/*parcha* by a competent authority;

- (b) Restoration of possession of settled / allotted land in favour of legally entitled settlee/ allottee or his successors/heirs, upon adjudication of unauthorised and unlawful dispossession;
  - (c) Threatened dispossession of a legally entitled settlee/ allottee;
  - (d) Any of the matters enumerated in (a), (b) and (c) above appertaining to raiyati land.
  - (e) Partition of land holding;
  - (f) Correction of entry made in the record of rights including map/survey map.
  - (g) Declaration of the right of a person;
  - (h) Boundary disputes;
  - (i) Construction of unauthorized structure; and
  - (j) *Lis pendens* transfer.
- (5) The competent authority, wherever it appears to him that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to parties to seek remedies before the competent Civil Court.

Section 6 of the Act also says that the State shall be a necessary party in certain cases concerning a land or a portion thereof, and in which one of the parties to the case is an allottee or settlee of land by the state with occupancy and proprietary rights.<sup>23</sup> The involvement of the state in India as the biggest litigant in land matters is evident when the apex court had given a very important judgment in the case pertaining the working of the Limitation Act,

1963 when it comes to the question of protecting the public interest by the state in land matters against the fraudulent actions by the public or a petitioner. Apart from encroachment of government land or public premises, which the state governments have made legal provisions to address issues like land grabbing, which is very broad in scope and content and objectives. It is felt that the existing mechanism to address the acts of land grabbing would not be sufficient to address the issue. This also clearly reveals that the land is not only a thing but a relation to persons. Apart from an overview of the nature of land disputes currently prevailing, as the legacies of the colonial property rights institution, the judgments of court on cases like fraud provide an interesting twist to the discourse on secured property rights in land. The subject of land titling guarantee cannot be thought in isolation of other aspects of it, viz., the fraud in title registration and land grabbing that is integral to the so-called secure individual property rights.<sup>24</sup>

26. See Government of Bihar. *The Bihar Land Disputes Act, 2009 (Act 4, 2010)*, The Bihar Gazette (Extraordinary), 2010. 14
27. See the limitations of the land title guarantee regime in chapter one and the working of land titling in the developing countries in chapter three.
28. S.P. Chengalvaraya Naidu Vs Jagannath on 27 October, 1993, 1994 AIR 853, 1994 SCC (1) 1

In *Brundaban Sharma and other Versus the State of Odisha*, the Supreme Court of India in a Special Leave Appeal Case no 2838 and 15485 of 1993, had upheld that the delay in exercising the revisional powers of the state machinery does not give the immunity of the law of limitation to the fraudulent land settlement in connivance with revenue authorities.

In *S.P. Chngaalvaraya Naidu Vs Jaggannath*

A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage...Non-production and even non-

mentioning of the release deed at the trial is tantamount to playing fraud on the court... A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.

An examination of the land grabbing acts passed by Assam, Andhra Pradesh, Karnataka and the ordinance of Odisha state reveals that the definition of incidences of land grabbing and land grabber is very wide. Thus land grabbing act is not confined to illegal action in relation to 15 state/government land but also private and the trust estates land included. The Karnataka land grabbing act claims to curb “organised attempts” to grab lands whether belonging to the government, religious and charitable institutions, statutory, local institutions owned or controlled by the state. The land grabbers are forming bogus cooperative societies or fictitious bodies and indulging in “large scale, unprecedented and fraudulent sale of such lands through unscrupulous real estate dealers or otherwise” and thereby adversely affecting public order.

## **Conclusion**

The complex procedure in survey and settlement of claims and interests of land different land tenures, the legal and constitutional provisions governing the subject of land, the grounds on which the ownership records are changed and updated by the state machinery and its negligence, the existence of complex personal laws, customary nature of tenures and informal nature of land transactions all contribute immensely to the complexity of land tenure system. The draft land tilting bills only laid out some general features of the provisions governing the issuance of land title as one size fit all approach which would be wholly inapplicable to address the complex land tenure system of India. The provisions of the draft land titling bill clearly takes into the interests of the propertied classes solely and ignores the interests of landless persons like the tenants, women and others secondary

interests holders. The digitisation of land records programme gives excessive focus on the so-called online delivery of public service and land records management. Unfortunately, land records management requires heavy dependence of skilled manpower to observe and record minute details in changes. It is critically observed on the present nature of technology driven digitisation programme that, “hardcore jobs like correcting land records, recording encroachments, verifying mutations in the field, and observing changes in land use require dedicated field effort with proper supervision. Excessive dependence on sophisticated tools may help us to make an impact in meetings and seminars, but does not improve the ground situation.”<sup>26</sup>

29. Naresh C. Saxena. 2005. “Updating Land Records: Is Computerisation Sufficient,” *Economic and Political Weekly*, January 22, p.319. 16

## **Resolution of Land Disputes by Alternate Dispute Resolution Mechanisms (ADR)**

**-Ratan K. Singh<sup>†</sup>**

***“No one shall be arbitrarily deprived of his property”***

Where there are needs there are resources but where there are resources there are inevitable conflicting claims. Land, being one of the most important natural resource sustaining human existence, is often a subject of constant dispute- which indeed has become a widespread global phenomenon of the century!

What goes to the root of the problem are the different interests over the land which may take the form of a right to use the land, to manage the land, to generate an income from the land, to exclude others from the land, to transfer it and the right to seek compensation for it.

All Land Disputes pose a negative impact on the society in the context of economic, social, spatial and ecological development and render negative consequences for both individuals as well for the entire society at large. Thus there lies a need for an integrated dispute resolution mechanism that understands people's positions, interests and motivations, and facilitates a peaceful state of human co-existence to bring about greater social stability.

There is widespread dissatisfaction with the current land dispute litigations in terms of both the processes-that are long drawn and the inadequate results which they yield. The Courts are burdened

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<sup>31</sup> Article 17(2), Universal Declaration of Human Rights, 1948.

<sup>32</sup> Wehrmaan, B. (2005) “Urban and Peri-Urban Land Conflicts in Developing Countries” Research Reports on Urban and Regional Geography 2. Berlin.

with the excessive land dispute litigations as there are very few other alternatives to resolve conflicts. The formal system of justice in place today has been unable to meet the needs of the society due to reasons inter alia being the content of the substantive law by which it is governed, the strict lengthy and cumbersome structural and procedural requirements on which it is based and the prohibitive costs which follow. Besides this, the Court system follows an adversarial procedure that lacks consideration of human relationships which possibly become irreconcilable by the time the disputes reach their logical end. Besides, most people are denied any access to justice at all.

To counteract the misery of the litigants, the ADR- Alternate Dispute Resolution Mechanisms were introduced aimed at reducing the delays and costs as that resulting from protracted court litigations; putting in place less formal dispute resolution mechanisms; ensuring party autonomy; preserving personal and business relationships; and ultimately ensuring over all better outcomes.

While some aspects of land disputes are inevitable, others may unnecessarily tend to waste the limited resources. All that the disputants require are forums which can provide them opportunities to put forth their respective claims and negotiate a mutually agreeable solution. When such mechanisms are in place, court mechanisms would automatically be very rarely triggered.

Sociologists believe that though land disputes may be seen as destructive, they can also become engines of social change. Going by the said view and realizing their positive potential, steps can be taken for utilizing land disputes constructively as instruments for bringing about a change in the justice delivery system.

The present paper attempts to throw light on mechanisms that can perhaps be brought into force, to distill the competing claims of

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See, Bonacker, T. (2002) *Social Science Conflict Theories- Introduction and Overview*. In Bonacker, T. (eds) "Social Science Conflict Theories" Peace and Conflict Research 5.

the citizens over land and also offers a silhouette of a dispute resolution system which is not tied to legal technicalities and that which is not strictly bound by rules of practice or procedure but which aims at delivering substantial justice to the potential litigants.

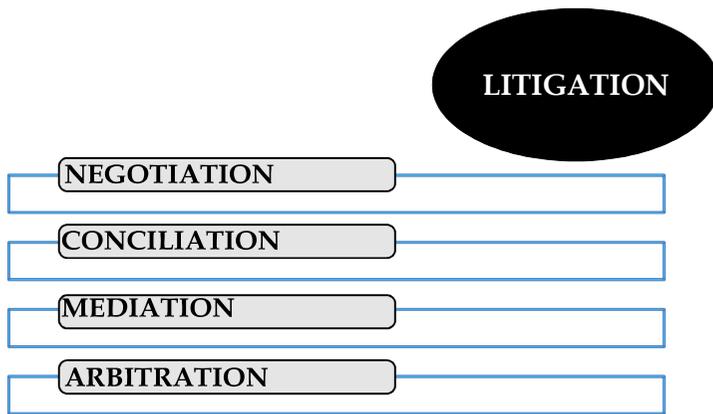
## **Identifying Land Disputes**

First step towards the development of an integrated system for resolution of land disputes lies in the identification and analysis of the conflict involved, in terms of its underlying causes, actors involved with special emphasis on their relationships, positions, interests, needs and motivations. \

Land disputes vary on different paradigms. While they may differ in the context of the identity of the actors involved, they may also differ due to the land itself which may either be a private, state or commonly owned subject. Identifying the specific nature of the conflict involved is necessary to develop a continuum of methods appropriate for resolution of a widest range of possible disputes.

Broadly, land disputes may assume the following forms:

- Boundary/ Demarcation Disputes
- Partition Disputes/Inheritance Claims
- Title/Ownership/Possession Disputes
- Disputes following land acquisitions and inadequate compensation and rehabilitation;
- Evictions
- Survey Disputes/ Consolidation Disputes;
- Destruction of Property;
- Trespass;
- Competing use/rights over common and collective land;
- Disputes over value of land;
- Disputes over use of land, etc.



## Choosing the Suitable Forum

Depending upon the nature of the dispute and the degree of escalation, different dispute resolution mechanisms can be brought into force through statutory interventions and judicial actions. Some peculiar ADR mechanisms that can prevent the prospective disputants from resorting to Courts and resolving their disputes over land, amicably through such promising modes are as under:

### Negotiation

As per the dictionary meaning, to negotiate means to deliberate discuss or conference upon terms of a proposed agreement. It involves two opposing parties who adopt a position that maximizes their benefit at first and then is narrowed down to arrive at an amicable settlement.

Land disputes that are easily discernible and can be brought to a halt at a pre-conflict stage can be placed on the table for a negotiation talk between the parties themselves to arrive at a mutually acceptable solution. Such an interactive session is aimed at preventing the disputes from escalating and has the potential for offering a positive gain or reducing a potential loss.

## Mediation

The dialogue and negotiations between the parties in more complex cases can be guided by a neutral party to assure that the perceptions, interests and motivations of both the parties are put across through a structured discussion that is aimed at jointly resolving their concerns. The mediator's role is confined to establishing a negotiation process with inputs from the parties and facilitating the parties to iron out the substance of their disputes into compromise, rather than functioning as a judge or arbitrator and rendering any decisions.

“Mediation is based on the following principles:

- Voluntary participation: Participation in mediation must always be voluntary.
- Neutrality: Mediators must at all times remain neutral as to the outcome of the mediation.
- Impartiality: Mediators must at all times remain impartial towards the participants.
- Confidentiality: Mediators should not disclose any information about or obtained during a mediation to anyone without the express consent of each participant.
- Inclusivity: An inclusive process need not always imply that all stakeholders participate directly in negotiations, but mechanisms should be created to include all perspectives in the process.
- The negotiated agreement between the parties is not based on who is right and who is wrong but aims to satisfy the interests/needs of all parties involved.
- Information disclosed during mediation is not allowed to be used in subsequent legal procedures.”

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Stephen Isenberg, “Managed Care, Outcomes and Quality: A Practical Guide” (1st edn, New York: Library of Congress Cataloging-in-Publication Data, 1997) 33.

See, Beer, J. E., Packard, C. C.: e Mediator's Handbook. Canada 2012.

For the resolution of land disputes mediation can be facilitated by professional mediators who are land experts and have undertaken specialized training in mediation. Land Officers from government authorities exclusively dealing with land matters of the particular area in which the land in dispute is situated can preferably be appointed as mediators. Land dispute resolution can be effectively achieved through such persons possessing competency in the field. Compared to court actions, mediation takes 1/5<sup>th</sup> amount of time and offers an effective consensus building process that avoids polarization and offers flexibility by bringing all the players to the table.

In sharp contrast to court litigation, Mediation offers the following reasons for its statutory adoption (as a necessary pre-condition to litigation):

*“Improved communication and creative problem solving.* Often public hearings do not offer opportunities for meaningful dialogue. More often than not the parties are showcasing their positions for the benefit of the media.

*An opportunity to separate facts from emotions,* leading to improved communications. There's no need for grandstanding if certain discussions are with the mediator only.

*Cost Savings.* If parties are invested in the process that leads to settlement and they feel the decision is satisfactory, they will not bring a lawsuit. Obviously this will avoid legal expenses.

*Improved community relationships.* If parties are satisfied with an outcome, they are more likely to work cooperatively in future. For controversial projects or policies, a mediated outcome also results in less political fallout for the decision makers.”

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Whatling, T.: Mediation Skills and Strategies Guide. London/Philadelphia 2012., pp. 22-24; United Nations Department of Political Affairs (UNDPA) and United Nations Environment Programme (UNEP): Natural Resources and Conflict. A Guide for Mediation Practitioners. Nairobi 2015 p. 86-87

## Conciliation

Another prominent ADR option for certain types of land disputes is Conciliation, which similar to mediation, is a voluntary process of dispute resolution, wherein a neutral third party called the Conciliator helps the disputants arrive at a mutually agreeable solution. Conciliation is often resorted to after negotiations between the disputing parties fail. The Conciliator aids in persuading the parties who put forth the foundations and factual evidence to assert their respective rights and obligations and thereupon freely discuss, negotiate, recommend and accept conciliator's advice for an amicable resolution of their disputes.

*“Conciliation is the self-cessation of disagreement, disputes between involved parties via mutual negotiations or mediation by another person. Successful conciliation maintains solidarity between parties, avoiding prolonged and costly legal proceedings and cases where a petty dispute turns into a criminal incident.”*

The conciliation process assumes statutory sanction under Part III of the Arbitration and Conciliation 1996. In case of land disputes, conciliation may not only be based on party guidelines and State laws but would also apply custom, traditional practices, local village regulations, and customary laws to help persuade parties to defuse their contradictions amicably. Conciliation of land disputes to be effective would require minimal state intervention and rather develop a pro-active and creative involvement of the community and mass-organizations at the grassroot level. As land disputes often involve strong emotions surrounding the land and pre-existing relationships between the opposing parties, Conciliation would aid in comprehending the tense and stubborn attitudes of the parties towards each other and help ease the tensions, envy and potential to out-do others. From a win-lose psychology, it holds the potential to shift the parties into a win-win position. The outcome of Conciliation is a settlement agreement, enforceable by the Courts of law, which tends to restore or

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<sup>37</sup>Edith M. Netter (1992) “Land Use Mediation: A New Way to Resolve Conflicts” Planning Commissioner Journal Vol.3.

improve the relationship between the parties. The Conciliation settlement agreement once signed by both the parties becomes final and binding on both the parties and is enforceable as a decree of a civil Court under the provisions of the 1996 Act.

Land disputes arising between land users are often petty and conciliation can help defuse them without resorting to state agency settlement. There are certain types of land disputes for which conciliation must be undertaken at the grassroots level in the first instance. These are disputes arising among land users on the right to ownership, administration and use of land; on land-related assets; disputes over the transfer of land use rights etc. When such type of disputes arise, conciliation can be prioritized and encouraged.

Thus an integrated consultative mechanism for public land issues is indispensable, and Conciliation as an alternative to traditional court system for resolution of public land disputes is an option worthy of statutory incorporation.

## **Arbitration**

Besides the various consensual approaches as discussed above, the land disputes can also be resolved through another alternative to court litigation called Arbitration which is comparatively more flexible, quicker and less expensive. The arbitration process falls midline between mediation and litigation, as the arbitrator- acts as a mediator to consider the facts arguments interests and perceptions of both the parties and thereafter acts as a judge and offers a third party decision to re-establish trust and respect amongst the parties. The greater flexibility of procedure enables parties to agree on a qualified professional who acts as a neutral judge to decide fairly between both the parties. Upon conclusion of the confidential and time-bound arbitration proceedings the arbitrator renders his decisions by way of an arbitral award that details the liabilities between the parties or lack thereof.

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<sup>38</sup> Law Dictionary, Encyclopedia Publishing House, Ha Noi-1999, p.208-209

Under the Arbitration and Conciliation Act, 1996, generally all disputes, capable of being decided by a Civil Court involving private rights, can be referred to arbitration. The Act does not specifically provide the category of disputes which are arbitrable or not and the same has been a contested issue, decided by the courts on a case to case basis.

While examining the scope of Section 8 of the Arbitration and Conciliation Act, 1996 in the matter of *Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd. (Booz Allen)*, the Supreme Court categorized a gamut of disputes as non-arbitrable by distinguishing between disputes involving 'rights *in rem*' and those involving 'rights *in personam*.'

As per the Supreme Court, ' certain categories of disputes are reserved for public fora (Courts or Tribunals) for public policy reasons either expressly or by necessary implication and hence such disputes are not arbitrable. Accordingly, in such cases where the cause/dispute is not arbitrable, the court before which a suit is pending will refuse to refer the parties to arbitration under Sec.8 of the Act even if parties have agreed an alternate forum for settlement of such disputes.

In terms of the said judgement, all disputes involving '*rights in personam*' have been left for adjudication by the private fora (such as Arbitral Tribunal). Broadly, the reasons underlying this position is that matters involving morality, status and public policy cannot be referred to arbitration.

The following disputes have been identified as non-arbitrable disputes by the Supreme Court in *Booz Allen* (and more recently in *Vimal Kishore Shah*) : (i) disputes relating to rights and liabilities which give rise to or arise out of criminal offences; (ii) matrimonial disputes relating to divorce, judicial separation, restitution of conjugal rights, child custody; (iii) guardianship

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<sup>39</sup>(2011) 5 SCC 532

<sup>40</sup>Ibid

<sup>41</sup> *Shri Vimal Kishor Shah and Ors v Mr: Jayesh Dinesh Shah and Ors*. Civil Appeal no 8164 of 2016

matters; (iv) insolvency and winding up matters; (v) testamentary matters (grant of probate, letters of administration and succession certificate); and (vi) eviction or tenancy matters governed by special statutes where the tenant enjoys statutory protection against eviction and only the specified courts are conferred jurisdiction to grant eviction or decide the disputes.

While categorizing the above disputes as non-arbitrable the Supreme Court held the view that such disputes involve a right *in rem*, exercisable against the world at large, as opposed to right *in personam*- that are interests protected against specific individuals.

However, there are certain land disputes that are arbitrable, such as disputes involving specific performance of an agreement to sell, recovery of rent with respect to premises that are not subject to any rent legislations, etc., for in such cases the relationship between the parties is governed by a contract between them and the rights arising therefrom are exclusive to the parties rather than against the world at large. An agreement to sell or mortgage does not involve any transfer of right *in rem* but creates only a personal obligation. Thus claims for specific performance of agreement to sell or agreement to mortgage are arbitrable.

A new framework of statutory arbitration for resolution of land disputes can be possibly brought into force, that seeks to take into consideration the rights of third parties likely to be effected by the resolution outcomes, through impleadment or otherwise.

### **Forms of ADR Mechanisms in other Jurisdictions**

Use of ADR mechanisms for resolution of land disputes is not uncommon. A growing number of States have begun to sponsor support, and facilitate recourse to different ADR forums to ease the burden on their traditional Courts. Some examples have been elaborated under.

In Ghana, following alternative dispute resolution mechanisms have been identified for dealing with land conflicts:

- Informal arbitration by “respected persons” ;
- State-sponsored alternative dispute resolution to encourage out-of-court settlement;
- Court-annexed alternative dispute resolution by judges, explicitly for land related cases;
- Special committees at the land administration to deal with specific types of land conflicts (Land Title Adjudication Committee and Stool Lands Boundary Settlement Committee);
- Informal land conflicts settlement by land management experts who are usually members of the Ghana Institution of Surveyors;
- Informal land conflicts settlement by state officials such as elected officials;
- Religious (Islamic) courts where land disputes are resolved by religious leaders based on religiously sanctioned codes;
- Settlement by professional mediators and arbitrators at private mediation centers based on international standards.

In Kenya, an Environment and Land Court has been established as a Superior Court with the status of a High Court under the Environment and Land Court Act No. 19 of 2011 having jurisdiction to hear disputes relating to environment and land, e.g. disputes relating to land administration and management or cases relating to public, private and community land and contracts. As per the Kenya Dispute Resolution Centre, the most commonly used ADR processes in Kenya include Mediation, Negotiation and Arbitration. The Constitution of Kenya establishes a Land Commission under Article 67 whose functions are to among others encourage the use of alternative dispute resolution mechanisms in land conflicts.

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<sup>42</sup>Odametey, C.: The Regulation of Land Disputes: Promoting the Option of Alternative Dispute Resolution Mechanisms: e Case of Ghana. Unpublished Master's Thesis at the Centre of Land Management and Land Tenure, Technische Universität München 2007.

<sup>43</sup><http://www.disputeresolutionkenya.org/what-is-adr.htm>

In New Jersey there are State-run or State-authorized mediation programmes designed to resolve affordable housing disputes.

The State Department of Environmental Protection in Massachusetts has been using mediation for resolving wetland disputes.”

## **Conclusion**

*“Looking at all the procedures of resolving a land conflict, we would conclude that it is easier to prevent a conflict than to cure it. In resolving a conflict, we cannot do much about the harm that has already been done. It is therefore a more worthwhile investment for every government to invest in land conflict prevention measures by putting the right policies in place and ensuring implementation of what the policies require”*

Land disputes pose a pressing issue of public concern as the current sub-optimal dispute resolution machinery draws citizens into lengthy conflicts that have negative consequences on both individual and social harmony. Though courts are an option yet the court systems are considerably weak. Each land conflict is unique in its own particular local, regional, national, social, political, socio-political, economic, socio-economic, cultural conditions and requires own individual solution. Improving the efficiency and timelines of the dispute resolution mechanisms has become the need of the hour in order to avoid the risks of social instability.

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<sup>44</sup> Hereinafter referred to as ADR

<sup>45</sup> Constitution of Kenya, Article 67(2) (f)

<sup>46</sup>For examples of mediation mechanisms in other Asian countries, see Gunawardana, M. (2011) “A Just Alternative: Providing Access to Justice through Two Decades of Community Media on Boards in Sri Lanka”, The Asia Foundation; Lederach, J.P. and Thapa, P. (2012) “Staying True in Nepal: Understanding Community Mediation through Action Research”. The Asia Foundation Occasional Paper No. 10.

<sup>47</sup>Kariuki, J. W.: The Impacts of Land Conflicts on Women's Livelihoods: The Case of Nakuru District, Kenya. Unpublished Master's Thesis at the Centre of Land Management and Land Tenure, Technische Universität München 2005.

ADR mechanisms comprising of broad range of just and accountable dispute resolution forums that uphold the constitutional principles, respect human rights and promote responsible land governance, are therefore suggested as a recourse to defuse and settle land disputes. Revisions to the existing legal regime are thus required to be made, to more effectively channel disputes through the different ADR mechanisms and improve their outcomes once started. Improving legislation through establishment of new laws and by-laws as well as by challenging, changing and amending existing laws and by-laws, first step can be taken towards ensuring that legislations will mitigate land conflicts and their negative consequences from the resolution both in terms of process and outcome, to the widest extent possible.

However, law derives its authority from the obedience of the people. Therefore, for the principles of ADR to be successfully adopted in the Indian Legal System as an alternative to the justice delivery system, it is incumbent upon the policy makers to create awareness of the different alternative forums available to the people for a quick and efficient resolution of their disputes. All laws defining the rights, duties and entitlements of the people in respect of land and its entire statutory and procedural framework needs to be known to the public as well as to public officials to ensure that they will be effectively implemented, and thereby land conflicts can be kept to a minimum. Distribution of knowledge and relevant skills for avoidance and effective resolution of land disputes amongst people in different strata of the society such as those at village level, panchayat level, amongst revenue authorities etc. would serve the real object of such legislative reforms.

The former Chief Justice of India, Hon'ble Mr. Justice A.M. Ahmadi very rightly stated –

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<sup>48</sup> Aristotle, Politics, 1269a. *Available at:* <http://www.perseus.tufts.edu/hopper/text?doc=Perseus%3Atext%3A1999.01.0058%3Abook%3D2%3Asection%3D1269a> (Accessed on 25 March 2019)

***“while we encourage Alternative Dispute Resolution mechanisms, we must create a culture for settlement of disputes through these mechanisms, Unless the members of the Bar encourage their clients to settle their disputes through negotiations, such mechanisms cannot succeed.”***

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