

NEW PROPERTY TITLING SYSTEM FOR DELHI

Property titling system for an urban system is very essential for better efficiency of the urban management system. This is one of the key mandatory reforms under the JNNURM and all states are committed to implement reforms in property titling systems. The Government of India, Ministry of Urban Development has made this an important milestone in urban reforms and have recommended, based in the report of a task force set up by them, that a system of recording titles of property should be set up by cities. This would have the major benefit of enabling a framework to be created which would allow property titles to be secured from fraud which are common nowadays and also enable financing companies to use the property titles to create healthy mortgages which would speed up the economic development in cities through banking finance by strengthening the legal framework.

NEED FOR PROPERTY TITLING

Any robust city development in infrastructure and economic growth is possible only if there is safety in recognizing the legal and transferable rights on a property. This involves two things: one is the creation of a system for recording property rights in urban property and second is to enable easy trading in the rights through an effective registration system. Though there is a system for recording rural land titles through khasra/khatauni and girdawari, in the urban set up there is no such system. The registration of

properties under the registration act is not mandatory and it only provides proof of presumed ownership but is not a conclusive proof of title. In the absence of any system there have been instances of duplicate claims to property through forged wills, duplicate power of attorneys, false registrations claiming ownership. There is enormous litigation in respect of property which is stifling the growth of the mortgage market in property. It is also stifling trading in property rights which is legitimate requirement for growth of the urban economy. This artificially restricts the availability of land and property in the market and creates an informal and often illegal market which encourages encroachments, land mafia and strong arm tactics to dispossess rightful owners because today the saying is that “possession is nine tenths of the law”. This situation is untenable in a civilized society. This situation also impacts on the urban planning needs because it is difficult to get information about the developments in the informal land and property market.

BENEFITS OF GUARANTEED TITLE REFORM

Providing clear title through a robust recording system will have multiple benefits. It will reduce litigation dramatically and prevent encroachments. Land will be identified for social developments. Value of properties will go up and larger mortgage finance will be available for businesses at competitive interest rates. Transactions in land will become simpler, quicker, accurate and secure. Urban planning will improve considerably, and

reliable cadastral data will be available. Tax collections will go up formidably which will boost government's investment capacity to create better infrastructure. Credit crunch in property growth will be tackled due to the better value of the collateral offered on account of better titling system. Rajasthan has already introduced the Guaranteed Land Title.

WHAT DOES TITLE REGISTRATION DO ?

A land title guaranteed by the state provides a conclusive proof of title to ownership of property. It provides the land boundaries based on actual ground surveys and certifies it. It reduces scope of litigation and civil disputes. It makes transactions easier because it uses an Information Technology platform as provided under the Information Technology Act 2000. Public can access the record of rights and verify the accuracy of the data if they intend to transact in the property. A state guaranteed title system is the best and is currently followed in many European Union countries including UK and it places the responsibility on the state to maintain the property records and guarantee the title. This is needed for the people to have faith in the property title certification. A privately driven system would not have the required credibility. There is a system of having an initial survey to determine the ownership. Then there is system of providing provisional ownership. Finally there is the system of granting property title certificate. There is a time gap between all the transactions to allow for proper scrutiny and settlement of legal

disputes through a tribunal and appellate tribunal. The tribunal system takes the cases out of civil courts and sets up special courts which are fully equipped to tackle such cases and the speed of decisions is faster and more professional.

The recommendation made by Government of India is to set up an Authority for Title Registration. It would function under the divisional commissioner since all registrations are currently done by Deputy Commissioner's jurisdictions. It would involve amendments to the Indian Registration Act 1908 to make registration of title mandatory. It would involve amendments to the Transfer of Property Act 1882 to make verification process for ownership mandatory. It would involve amendment to the Indian Contract Act 1872 making all government contracts on property to be registered. It would involve the setting up of a dedicated Indemnity Fund to compensate for wrong titling and orders of tribunal which cannot be implemented due to certain circumstances.

THE DELHI SURVEY, REGISTRATION AND RECORDAL OF TITLE OF IMMOVABLE PROPERTIES IN URBAN AREAS ACT 2009

While doing the property tax reforms in MCD in 2002 it was noticed that one of the major lacunae in property market in Delhi is the absence of a proper property titling system. In order to study this the USAID had taken up work through the aegis of Urban Institute Washington to set up a team. This team consisted of

Michael Lee (urban land policy specialist); Amitava Basu (Intercontinental Consultants), B N Banerjee (Fox Mandal Little Solicitors); Amit Dalal (PA Consulting Group); Debolina Kundu (urban development consultant); Meghna Malhotra (ICMA South Asia); Carol Rabenhorst (Urban Institute Washington); Anjali Vohra (Khaitan, Jayakar Sud Real Estate Advocates); and Sudhir Vohra (Consultant). This team studied the existing legal system in Delhi and the application of the laws in Delhi namely the Delhi Land Reforms Act 1954, Punjab Land Revenue Act 1887 as applicable to Delhi, the Delhi Apartment Ownership Act and the new bill under consideration, the existing registration system applicable to Delhi. They also conducted a national seminar on the subject of property titling in Delhi in February 2007. They recommended that the existing laws were not capable of being amended to enable the objective of the property titling system to be implemented and that a separate legislation would be needed for Delhi. Based on this recommendation, the World Bank provided funding support to select a legal firm Amar Chand Mangaldas and Shroff to draft a suitable legislation for Delhi. This firm has already worked and drafted the property titling law for Andhra Pradesh state which has now become a law. Amarchand Mangaldas and Shroff designated a team of legal experts headed by Jatin Aneja which worked closely with the Chief Secretary Delhi and other departments. They studied the reports of Urban Institute Washington, and also wrote a document on global best practices, which was debated by officers of Delhi Government.

Based on this a draft of a new legislation for Property Titling for Delhi has been prepared. A committee of officers consisting of the following was set up to examine the draft in detail as follows :-

1. Chief Secretary Delhi
2. Principal Secretary Finance
3. Principal Secretary to CM
4. Principal Secretary Law and Judicial
5. Principal Secretary Urban Development
6. Secretary Revenue and Divisional Commissioner

This Committee had seven sittings on 19th February 08, 18th June 08, 6th Sept 08, 13th Sept 08, 20th Sept 08, 24th Dec 08 and 21st May 09 and discussed various aspects of the matter in great detail. The draft bill is now ready for consideration of the government. This Act seeks to set up an Authority for taking up the survey, registration and titling work on behalf of government of Delhi. The Authority shall consist of a Chairperson and between three to five members who shall be whole time members appointed for five years. The members shall be of rank of Secretary to government of India or equivalent having two years experience in land management and other relevant qualifications. It shall have its own office and the district representatives and can engage professionals for survey work if required. The authority will survey properties, record and maintain entries, publish notifications, maintain record of rights, settle disputes, assign unique numbers to properties, deliver services to public, and implement orders of tribunals and

courts. It will get grants from government and its report will be placed on the table of the legislature.

After survey there will be a process for provisional title which is valid for ten years. The record will be kept in electronic format and can be accessed electronically as per the IT Act 2000. Thereafter there shall be a conclusive proof of title. Registration shall be compulsory and the Indian Registration Act shall be amended for this purpose. A Register of Titles shall be maintained electronically. There will be two levels of dispute resolution namely a tribunal and an Appellate Tribunal which shall consist of judges and administrative members. Appeals against Appellate Tribunal shall be only to Supreme Court since the appellate shall be like High Court. There shall be a Property Titles Indemnity Fund whose corpus would be contributed by government initially but which would be replenished from charges for registration as decided by government. Penalties for false evidence is fine upto Rupees two lakhs and jail upto seven years. Government has power to make rules to implement the provisions of the Act.
