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IMPACT OF DIGITALISATION OF LAND RECORDS ON THE CONCEPT OF OWNERSHIP - A CRITICAL ANALYSIS

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ABSTRACT

Land ownership allows the owner to enjoy the rights affiliated with the land and the ownership of land is determined using presumptive title system. The digitalisation of land records have been attempted through various programs and schemes. India is now determined to enforce the digitalisation of land records programme through the Digital India Land Records Modernisation Programme (DILRMP). The DILRMP has certain objectives like adoption of mirror principle, curtain principle, and conclusive title system for determination of ownership. The digitalisation of land records aims to provide single window agency for the land records and guarantees land titles to the owners. The implementation of DILRMP tends to secure the ownership of the land to the owners and assures their rights. The execution of DILRMP also comes along with its own challenges and affects the owners of the land. This article discusses about the determination of land ownership using the current presumptive title system and maintenance of land records along with the implementation of digitalised land records and its outcome on the ownership of the land and the rights associated with it.

KEY WORDS

Land, Ownership, Land Records, Digitalisation, DILRMP, Presumptive Title System, Conclusive Title System

I. INTRODUCTION

Ownership means “the bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to the other”¹. “Ownership denotes the relation between a person and object forming the subject matter of ownership. The ownership gives rise to complex of rights, which stands against the entire world and not just certain individuals. Even if some of these rights might not exist in some circumstances. The following instances are indicative of ownership cases: ²”

1. Right to Possess: The owner has exclusive control over the subject matter he/she owns hence the owner has a right to possess, to the exclusion of others.
2. Right to Enjoyment: The owner has the right to enjoy and use their property without interference. This includes the right to access and use subject matter of ownership as per their desire, alter it and enjoy the benefits arising out of it.
3. Right to Manage: The owner has the right to determine how the subject matter shall be utilised and appoint anyone on his/her behalf to manage it.
4. Right to Exclude: The owner has the right to refrain others from the property and has legal protection against trespassing or unauthorized entry into the property.
5. Right to Income: The owner is entitled to income resulting from the subject matter, unless it is forbidden by law.
6. Right to Mortgage: The owner can use the property as collateral to secure loans or for financial obligations.
7. Right to Modify and Destroy: The owner has right to bring changes to the property or destroy the property.
8. Right to Transfer: Only the owner can transfer his/her property to other person and a person who is merely possessing the property cannot transfer its ownership.
9. Right to Bestow and Revive Rights: Ownership is residuary in character and the owner can give certain rights to others and on their extinction, the rights are revived back to the owner.

¹ *Ownership*, Black's Law Dictionary (9th ed. 2009)

² *Ownership*, John W. Salmond, et al., Salmond on jurisprudence (12th ed. 1966)

II. OWNERSHIP OF LAND AND PRESUMPTIVE TITLE SYSTEM

Land ownership refers to the owner's right over a certain area or territory, which is a portion of the Earth's crust that cannot be destroyed or relocated³. “Land includes benefits arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth⁴” Once a person has acquired ownership over a particular land, then that particular person is entitled to all rights associated with that land⁵.

Establishment of ownership is essential to own the land and enjoy the benefits arising out of the land. India follows a Presumptive title system in which the land ownership is determined through a registered sale deed⁶. Other documents that used to establish ownership include the record of rights, property tax receipts, and survey documents. They provide the information on who is in possession of land at present along with the records of past property transaction from one person to another⁷. This led to the development of the system where ownership is ascertained through present possession of the land. In *Bhavnagar Mahanagar Palika through Municipal Commissioner vs. Heirs of Decd. Virbhadrasinhji Krushnakumarsinhji Gohil*⁸, the Supreme Court held that “possession of property provides prima facie evidence of ownership”.

Land can be transferred from one person to another through tenancy, mortgage, gift, inheritance or sale. The right, title, or interest in immovable property should be transferred by a registered instrument, in accordance with *Section 54 of the Transfer of Property Act of 1882*. Land registration is governed by *Section 17 of the Indian Registration Act, 1908*. The registrar may not always personally verify the location and characteristics of the land being sold. The previous transfer of land and the various documents are involved to claim the ownership hence the land ownership is presumed and subject to contestation⁹.

³ Agter, Merlet Michel, *Commons, a Model for Managing Natural Resources*, RITIMO (Nov. 30, 2024, 10.34 A.M.), <https://www.ritimo.org/Land-Ownership-A-Fundamental-Critique-of-Its-Key-Concepts-is-Necessary>

⁴ The General Clauses Act, 1897, (Act 10 of 1897), § 3(26); The Registration Act, 1908, (Act 16 of 1908 § 2(6))

⁵ Agter, Merlet Michel, *Commons, a Model for Managing Natural Resources*, RITIMO (Nov. 30, 2024, 10.50 A.M.), <https://www.ritimo.org/Land-Ownership-A-Fundamental-Critique-of-Its-Key-Concepts-is-Necessary>

⁶ *Damodhar Narayan Sawale (D) through LRs. vs. Shri Tejrao Bajirao Mhaske & Ors* (2023) SCC Online SC 566

⁷ *Land Records and Titles in India*, PRSINDIA (Nov. 30, 2024, 11.45 A.M.), https://prsindia.org/policy/analytical-reports/land-records-and-titles-india#_edn7

⁸ 2020 (Guj) 139

⁹ *Land Records and Titles in India*, PRSINDIA (Nov. 30, 2024, 11.45 A.M.), https://prsindia.org/policy/analytical-reports/land-records-and-titles-india#_edn7

In *P. Kishore Kumar vs. Vittal K. Patkar*¹⁰, the plaintiff claimed ownership based on a Family Settlement Deed while Defendant sought better title from an Inamdar under the Mysore (Personal & Miscellaneous) Inam Abolition Act, 1954. The Court held that “plaintiff could not establish the entitlement to the property with high probability and revenue documents are insufficient against the defendant's proof of occupancy rights”.

III. MAINTENANCE OF LAND RECORDS TO FURNISH OWNERSHIP

If previous transactions are not accurately captured and the government's land records may have any errors or gaps and it raises the question related to ownership hence it is integral to capture the accurate land records. Land records administration means gathering, analysing, and disseminating data regarding the ownership, boundaries, price, and use of land. Across the country, different land records management system are followed by the States based on local customs and historical development. Land records that are stored and managed which tend to determine the ownership of the land includes:

1. The *Record of Rights (RoR)* includes the landowner's name, number and size of the plot, revenue rate, names of all individuals who have obtained certain rights over the land, type and extend of those rights and loans that have been taken out on the property¹¹.
2. A *registered sale deed* includes the information related to buyer and seller, sale taxes, market value of the property, and information about the previous transactions. To begin the process of mutation and reflect this change in the records of rights, the transaction details are forwarded to the tehsil/ taluka office. Following the transfer, a patta (documentary proof of land ownership) will be provided by the State government through the tehsil/ taluka office.
3. *Spatial land records* contain survey documents related to the boundaries of a property and its surrounding area. It will be attested to the property's inclusion in official records¹².

¹⁰ 2023 INSC 1009

¹¹ *What is ROR in Land Records?*, HOME CAPITAL, (Nov. 30, 2024 5.08 P.M.), [https://homecapital.in/what-is-ror-in-land-records/#:~:text=A%20Record%20of%20Rights%20\(ROR,the%20ownership%20of%20the%20property](https://homecapital.in/what-is-ror-in-land-records/#:~:text=A%20Record%20of%20Rights%20(ROR,the%20ownership%20of%20the%20property).

¹² *Land Records and Titles in India*, PRSINDIA (Nov. 30, 2024, 11.45 A.M.), https://prsindia.org/policy/analytical-reports/land-records-and-titles-india#_edn7

IV. DIGITALISATION OF LAND RECORDS

The Computerisation of Land Records scheme was introduced in 1988–1989 with the goal of computerising land records. To improve land records and administration, the Strengthening of Revenue Administration and Updating of Land Records program was created. In 2008, all these programs were consolidated into the National Land Records Modernisation Programme (NLRMP)¹³.

As a Central Sector Scheme within the purview of the Digital India program, NLRMP has been renamed as the Digital India Land Records Modernisation Programme (DILRMP). When DILRMP was introduced in 2008, it has been viewed as a reform programme and expected to computerise land records, maintain and update the records, and validate titles to the owner. It is also seen as a program that will bring value and provide a comprehensive database for development planning, policy drafting and management of regulatory activities by providing conclusive data on land records data¹⁴. The major elements of DILRMP include¹⁵:

1. Computerisation of existing land records
2. Integration of textual and spatial data and Digitization of maps
3. Survey, Re-survey, and Update of available surveys and settlement records and Creation of original cadastral records (record of the area, ownership and value of land)
4. Legal Amendments and Program Management with respect to modernisation of records
5. Computerisation of Registration and its integration with the land records maintenance system and modern record rooms
6. Development of core Geospatial Information System (GIS) and Capacity Building.

V. IMPACT OF OWNERSHIP UNDER DILRMP

The establishment of DILRMP will help to overcome the shortcomings in the current presumptive system and tend to affect the ownership concept in the following manner.

¹³ Bal, Meghna, *Securing Property Rights in India through Distributed Ledger Technology*, ORF (Dec. 01, 2024, 11.00 A.M.), <https://www.orfonline.org/research/securing-property-rights-in-india-through-distributed-ledger-technology>

¹⁴ *DILRMP*, Department of Land Resources, Ministry of Rural Development, (Dec. 01, 2024, 11.30 A.M.), <https://dolr.gov.in/programmes-schemes/dilrmp-2/>

¹⁵ Khemka, Shreevardhan and Jain ,Ayush, *Digitalization Of Land Records In India*, Asian Law & Public Policy Review Journal, Vol.IV (2019), <https://thelawbrigade.com/wp-content/uploads/2020/06/Shreevardhan-Ayush-ALPPR.pdf>

1. Conclusive and State Guaranteed Titles:

One of the objectives of DILRMP is to implement conclusive and State guaranteed titles. In 2009, the Committee on Financial Sector Reforms¹⁶ suggested to shift from presumptive to guaranteed titling system. Under this system, titles are guaranteed by State and if there is any dispute, the affected party could settle disputes with the government unlike the presumptive title system where the affected party will raise the contention against the title holder.¹⁷

2. Protection of Ownership:

In the present system, ownership is presumed on the basis of registered sale deed and subject to contestation. The presumptive system does not necessarily ensure ownership though the land transactions are legitimate. The DILRMP invokes the *curtain principle* to decide the ownership of the land. According to the principle, "title is a conclusive proof of ownership, the record of title is a true depiction of the ownership status, and mutation occurs automatically after registration.

There is no need to probe into previous title transactions." This implies that titleholder will be the absolute owner of the land and secures his ownership over the land.

3. Reliable Transfer of Land:

Accessing records in the presumed system is difficult since one must search through multiple records maintained by various departments. The buyer's responsibility to confirm the property's prior ownership, places an extra burden on the buyer during the land purchase.¹⁸ Buyers hesitate to purchase a land when they could not verify the previous ownership and this tend to restrict the owner's right to transfer the land. But, in the conclusive system it assures that there is no need to thrive into the past transfers and this builds confidence in buyer and paves way for reliable transactions of the land.

4. Absolute Enjoyment of Rights Restricted by Court Proceedings:

Relying on the multiple documents to determine the ownership causes delay in the Court proceedings. On an average, it takes around 20 years to settle land disputes involving

¹⁶ Government of India, Planning Commission, *A Hundred Small Steps: Report of the Committee on Financial Sector Reforms*, (2009), https://www.jrvarma.in/reports/Raghuram-Rajan/cfsr_all.pdf

¹⁷ Mishra, [Prachee](#) and Suhag, [Roopal](#), *Modernizing land records in India*, LIVEMINT, (Dec. 01. 2024 4.35 P.M.), <https://www.livemint.com/Opinion/YZ7goB2ERdl3VZQJTdWc9L/Modernizing-land-records-in-India.html>

¹⁸ *Land Records and Titles in India*, PRSINDIA (Nov. 30, 2024, 11.45 A.M.), https://prsindia.org/policy/analytical-reports/land-records-and-titles-india#_edn7

legitimacy of land titles and documents as well as legitimate possession.¹⁹ By the *doctrine of lis pendens* and in accordance with *Section 52 of Transfer of Property Act, 1882*, the transfer of the property which is the subject matter of the suit pending before the Court is restrained. This curtails the transferring rights of the genuine owner. Based on the *mirror principle*, DILRMP aims to register the land titles accurately and precisely depict the ownership status of the property. This helps to reduce the litigation related to land titles and ensures the owner to absolutely enjoy the rights restricted by litigations.

5. Guaranteed Titles for Financial Opportunities:

Disputed land titles impacts the sectors and development projects that are dependent on the disputed land and creates uncertainty in the minds of investors to invest on the land. The litigated land affects the owner's ability to profit from the land. The owner's right to pledge or mortgage the property²⁰ is also affected. For instance, the farmers utilise land as collateral for seeking loans but the availability of financing and capital for agricultural land is hampered by uncertain land titles and disputed lands.²¹ The digitalisation of land records increases the confidence on the guaranteed land titles retained by the owners and assures the creditors or investors to make the payment or investment. The DILRMP ensures the financial opportunities arise out of the land and thereby protects the owner's right to benefit from the property.

6. Prevention of Delayed and Fraudulent Transfers:

In India, land records are frequently fragmented across several government departments at different levels, outdated and erroneous.²² The establishment of comprehensive single agency to handle land record ensures fair, efficient and transparent land record management system by digitizing them and linking them to spatial data and other databases. This confirms the security of ownership²³ against delayed and fraudulent transfers.²⁴ In *S.Kanniammal @ Mangai vs.*

¹⁹ The NITI Aayog, *Expert Committee on ODR, Strengthening Arbitration and its Enforcement in India – Resolve in India*, (2021), http://niti.gov.in/writereaddata/files/document_publication/Arbitration.pdf.

²⁰ Anushka, *Concept Of Land: Land Laws In India, Get legal India*, (Dec. 01, 2024, 4.05 P.M.), https://getlegalindia.com/blog/real-estate-law/land-laws-in-india/#google_vignette

²¹ Reserve Bank of India, *Report of the Committee on Medium-term Path on Financial Inclusion*, <https://www.cochinchamber.org/storage/circulars/archive/16843.pdf>

²² Mishram [Prachee](#) and [Roopal](#), *Modernizing land records in India*, LIVEMINT, (Dec. 01, 2024 4.35 P.M.), <https://www.livemint.com/Opinion/YZ7goB2ERdl3VZQJTdWc9L/Modernizing-land-records-in-India.html>

²³ Government of India, Planning Commission, *A Hundred Small Steps: Report of the Committee on Financial Sector Reforms*, (2009), https://www.jrvarma.in/reports/Raghuram-Rajan/cfsr_all.pdf

²⁴ Chen, James, *Clear Title: Definition and Importance in Real Estate*, INVESTOPEDIA, (Dec.01, 2024 6.00 P.M.), <https://www.investopedia.com/terms/c/clear-title.asp>

*The State Of Tamil Nadu*²⁵ the Court held that “it is highly impossible to register a fraud document under Star 2.0 project which computerises the registered land documents”.

7. Compensatory Relief to Disputed Claimant:

In the presumptive system, if the disputed claimant proved his entitlement on the land, then the previous titleholder will lose the ownership. The agricultural economist *T. Haque*, suggested that in the conclusive system the titleholder will not be in any danger of losing ownership. The government provides compensation to disputed claimants²⁶ since government is responsible for recording the land titles.

VI. CHALLENGES IN IMPLEMENTING DILRMP AND ITS IMPACT ON OWNERSHIP

The benefits of DILRMP could be utilised only if it has been implemented appropriately and the crucial changes has to be made to harness the benefits. If it is not implemented properly it brings unfavourable outcomes in the ownership concept. Furthermore, adopting single window agency, mirror principle, curtain principle, conclusive title system and titular insurance without certain changes might worsen the current scenarios. Therefore, the implementation of modernisation of land records has to take place in a right manner but the implementation has following challenges.

1. Exhaustion of Resources:

All existing land records have to be accurate and updated to ensure that they are free from any encumbrances. Capturing inaccurate land records or neglecting any records while updating through survey will lead to mismatch between spatial and textual records. The integration of cadastral maps with textual data²⁷ is a resource intensive process.

2. Time Consuming Process:

Information on land records which are currently wide spread across multiple departments have to be consolidated²⁸. Integration of information across different departments and verifying the

²⁵ W.P.No.28728/2018

²⁶ *Digital India Land Records Modernization Programme*, (Dec.02, 2024 7.00 P.M.), https://revenue.odisha.gov.in/sites/default/files/2020-02/DILRMP_at_Glance_0.pdf

²⁷ Government of India, Planning Commission, *A Hundred Small Steps: Report of the Committee on Financial Sector Reforms*, (2009), https://www.jrvarma.in/reports/Raghuram-Rajan/cfsr_all.pdf

²⁸ Mathew, Babu , *Guaranteeing Title to Land by DC Wadhwa*, National Law School Journal: Vol. 2: Iss. 1, Article 24 (1990), <https://repository.nls.ac.in/nlsj/vol2/iss1/24>

records against past transactions would be time consuming. Delayed digitalisation of land records creates an inconclusive decision with respect to ownership. In *Amar Nath Pandey vs. State of Bihar*²⁹, the Patna High Court held that, “the unsurveyed land’s nature is not identified and hence not concrete”. This establishes that unsurveyed and not updated land records might push the owner’s claim in a doubtful position.

3. Acceptance of Legal Amendments and Guidelines:

The Central and State laws which governs registration and land transfers have to be amended and a unified legal guidelines have to be framed. The amendments and guidelines ensure government guaranteed land ownership through digitalisation of land records. The new legal rule may not be accepted by the Civil Courts. For instance, the Civil Courts in the USA held that registration of title can be done only by the order of the Civil Court not by the registration officer. In England, Civil Courts declared that land register correction orders operate against the conclusiveness principle³⁰.

4. Enforcement of Administrative Changes:

The essential administrative changes at the Central and State level for collection and maintenance of land records could bring the envisioned objectives of modernisation of land records. The bureaucrats are vested with high responsibility to implement the digitalisation of land records into action. The powers to examine and update the land documents will deploy the registrar and other bureaucrats in a formidable position. The misuse of administrative powers by corrupt officials or execution of administrative changes in an inefficient manner will cause inconvenience to the citizens.

5. Requirement of Technical Support:

All transactions related to land though registration is mandatory or not³¹ have to be *recorded* for effective utilisation of modernisation of land records. All relevant information related to transactions has to be captured and monitored using a unique identification number.³² The online documentation of land records have to be linked with other departments and Court registries of

²⁹ C.W.J.C.No.906 of 2014

³⁰ Law Commission No:380, UK, *Updating the Land Registration Act 2002*, https://assets.publishing.service.gov.uk/media/5f465347e90e074c4b6fa687/Updating-Land-Registration-final_WEB_230718.pdf

³¹ The First Law Commission of India, 1957, *Report No. 6: Registration Act, 1908*,

³² *Is Digitizing Land Records the Ultimate Answer?*, BAR AND BENCH, (Dec. 02, 2024, 08.00 P.M.), <https://www.barandbench.com/apprentice-lawyer/is-digitizing-land-records-the-ultimate-answer>

the corresponding District or the State, through which a buyer can easily access any relevant information and pending litigations with regard to the property³³. This requires immense technical support.

6. Prone to Cyber Attacks:

The technical support has to be extended without any interruption and the deficiencies in the technical support increases the chances of cyber attacks and errors. The cyber attacks will infringe the data privacy of the citizens and brings down the confidence of government backed digital land records and land titles of the owner. The attacks may alter the land records which will affect the main objective of modernisation of land records to rely on digital records for ownership determination. The cyber attacks and errors will disrupt the services and undermine the reliability of the digital records which will lead to delayed and fraudulent transfers.³⁴

7. Lack of Remedial Measures:

The remedial measures for a genuine owner have been not discussed properly if the entry in the digital records turns out to be incorrect. Though the insurance is guaranteed to the genuine owners, the relief may not be sufficient since the genuine owners will be deprived of their land. A proper insurance claim mechanism has not been drafted and places the genuine owner in an impaired condition.

8. Pendency of Lawsuits:

The genuine owners losing their land without any fault would approach the Court for compensation if the insurance claim is not awarded. The genuine owner may raise dispute over the awarded compensation if it does not equate the market value of the property³⁵. This would result in litigation filed by claimants for compensation before the Court and the pendency of cases would increase.

VII. CONCLUSION

³³ *Linkage of e-Court with Land Records / Registration Data Base*, Department of Land Resources, Ministry of Rural Development, (Dec.02, 2024 08.45 P.M.), <https://dolr.gov.in/linkage-of-e-court-with-land-records-registration-data-base/>

³⁴ Kumar, Nitish, P, *Legal Challenges in the Digitalization of Property Transactions: A Critical Examination of the TOPA Framework*, SSRN Journal, (February 25, 2024) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4738262

³⁵ Singh, Ram, *Inefficiency and Abuse of Compulsory Land Acquisition An Enquiry into the Way Forward*, Economic and Political Weekly, [Vol. 47, No. 19 \(May 12, 2012\)](https://www.jstor.org/stable/23214976), pp. 46-53 <https://www.jstor.org/stable/23214976>

The DILRMP aims for a structured and reliable land record system that safeguards the ownership of the property and ensures the rights of the owner. The implementation of digitalisation of land records requires coordination from the different stakeholders which includes legal and administrative entities, logistic and technical supporters, policy drafters, program monitors, capacity builders and well informed citizens. Despite this the digitalisation of land records may come along with its own technical, legal, administrative and practical difficulties which tend to affect the absolute enjoyment of the owner. Many developed countries like England and Australia have overriding effect over the title system.

India follows the sale deed system which handles multiple documents under different department. The multiplicity of documents and the Courts interpretations may have created doubts regarding the authenticity of this system and protection of rights of the owner. The system may have shortcomings but a large number of developed countries in the world are using the deed registration system successfully with specific requirements. For instance, Netherlands has made certain changes in the law to give protection to the bona fide buyer³⁶.

India could follow a dual system like Australia and New Zealand³⁷, instead of adapting to a system with certain difficulties in it. The efficient factors from both the systems could be adopted for effective land record system which will protect the interest of the parties involved. The digitalisation of land records should be mandatorily enforced and the deed system should be made in par with the digital era in order to complement each other. In Tamil Nadu, the Deeds Department has mandated the submission of GPS-enabled photo documents³⁸. This establishes that cohesive integration of digitalisation and deed system is possible.

The multiple documents under various departments could be interconnected and all relevant information related to land should be maintained. The owner of the land could be determined using the sale deed which is similar to the identification of owner using government guaranteed registered land titles. On rare occasions, based on the complexities of the case, the other documents maintained by the government should be traced back for ownership establishment.

³⁶ Naves, Inge and Hoogcarspe, Sjo, *Art Law in The Netherlands*, LEXOLOGY, (Dec. 03, 2024 6.30 P.M.), <https://www.lexology.com/library/detail.aspx?g=f38485d2-4908-44de-b6ad-1519a9832a54>

³⁷ *Land and Land Ownership*, ICSM, (Dec. 04, 2024 6.30 P.M.), <https://www.icsm.gov.au/education/fundamentals-land-ownership-land-boundaries-and-surveying/land-and-land-ownership/systems>

³⁸ *Major Reforms in Tamil Nadu Deed Registration Sector*, LIVE CHENNAI, (Dec. 04, 2024 6.45 P.M.), https://www.livechennai.com/detailnews.asp?newsid=68679#google_vignette

This is possible when the land records are accurately recorded and updated regularly.

The *Bhoomi project in Karnataka, e- Dhara Land Records Management system*³⁹ in Gujarat, *Land Records Programm in Odisha and Rajasthan Urban Land (Certification of Titles) Act, 2016*⁴⁰ have successfully implemented the digitalised land record system by assessing, designing and updating the land records suitable for that particular region. The respective States have taken necessary measures by overcoming the legal and technical difficulties, reforming the legal and administrative frameworks, enforcing appropriate institutional changes and launching citizen awareness programs.⁴¹ Considering the fact that the Indian land history differs from one region to another, local customs and sentiments affiliated with land and operation of land transfer system differs from one State to another, it is viable to implement a digitalised system which ensures protection of rights of the owner.

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