

Comments by Sh. BK Agarwal as Chair of the session  
**‘Evaluating Title Records and Property Valuation Systems in India’**  
in the conference  
**“India Land Forum 2020: Data-driven Research & Evidence for Land Policy  
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1. Almost in all the countries of continental Europe, a Cadaster with spatial attributes and description of the land is maintained mainly for fiscal purposes. Also, there is a registry for deed registration which originated independent of cadaster and mainly had person based records.
2. For better land administration European countries have been making efforts to integrate these two institutions for creating a parcel-based legal record of ownership and other rights.
3. Germany has upgraded to the title registration system by making a Grandbuch based on information contained in the cadaster and deed registry.
4. France in 1955 created a register in the deed registry called ‘Real Estate File’ which gives parcel-wise information. Attributes of a parcel are taken from the cadaster and legal rights from the registered deeds. A cadaster is still maintained separately for other administrative use.
5. The Netherlands has completely merged the cadaster and deed registry since 1825. These are maintained by the same authority and cadaster works as the index for the deed registry.
6. In India also deed registry and cadastre developed independently maintained by separate authorities under separate laws drafted in the middle of the 19<sup>th</sup> century. Both have different legal significance and value and neither is complete in itself. Deed registry creates legal evidence for a certain type of transactions like sale, mortgage, gift, long leases etc. Cadaster records the legal evidence created by deed registry, court orders, inheritance etc. against a parcel. Recording of this legal evidence, which is created elsewhere, has been given a presumption of truth by the provision of law. This is so because an entry in ROR is made only after summary appreciation of evidence by a quasi-judicial officer.

7. Record of Rights in India is equivalent to cadaster in European countries. As of now, it is not Land Register as per the meaning of this term in Europe. Land Registers in European countries are maintained by deed registrar only. Legal facts come from the deed and parcel attributes from the cadaster.
8. In India, deed registration law and Land Revenue Acts have very strong legal provisions, stronger than many European countries. With some improvements in law and procedures, we can build a robust Land Administration system.
9. As many European countries have done, we need to integrate these two sub-systems to the extent possible for better land administration. Along with that, we need to make some changes in the laws which were drafted one and a half century back by Britishers who hardly had any experience in drafting the law. England did not have codified laws like other European Countries. The first time they tried their hands in India only. England never maintained any cadaster and they still don't have one. Till 1925 there was no registration of deeds in England except in two counties of Yorkshire and Middlesex.
10. Let me emphasise here a very accurate and precise survey and digitization are helpful but not essential in establishing an efficient land administration. England still does not have a cadastre and title are registered based on ordnance maps scale of which too small to fix precise boundaries. In Australia all titles are registered based on the stand-alone survey of each plot. So unless we reform law and procedures, land administration can't be improved.
11. I will briefly give my thoughts on this issue.
12. At present as per The Transfer of Property Act except for gift, sale, mortgages and leases of more than one year, all other transactions can be done orally without any deed without any registration. Some examples are family partition and settlement, gift for charitable purposes, gift by a Muslim, equitable mortgage etc. No transaction in immovable property should be allowed without a written and registered deed. All exemptions from the writing of deed and registration in the Transfer of Property Act and the Registration Act should be dropped. Give exemption from stamp duty if required but not from registration.
13. There is no recording of pending litigation anywhere. If a property is sold during litigation, the purchaser is bound by the final order of the court but he has no way to know about litigation at the time of purchase. The Law Commission in

1998 and the Supreme Court in 2011 have recommended to the Government to make a law for the registration of pending litigation.

14. The contract to sell should also be registered compulsorily because such a contract is enforceable against a subsequent purchaser under the Specific Relief Act. Some states have already made amendments in The Registration Act to this effect.
15. All the orders, decrees, awards affecting immovable property must be recorded in the registry by the beneficiary without which order should not be implementable.
16. Linking of Cadastre and deed registration is necessarily required. In India, no legal provision is there for such a linkage. The first step should be to make it compulsory to describe land based on the entry in ROR. Rather a copy of ROR must be attached with the deed. This measure will identify land and will also ensure regular updating of ROR. This will also establish prima facie the ownership of the transferor. Under the present law 'description sufficient to identify land' is required. If maps of a particular area are not available stand-alone survey of land under transfer can be done as is done in Australia.
17. Reduce the registration gap. At present four months are allowed for registration after execution of a deed. If a deed for the same land is executed within this period a legal dispute is bound to take place. In today's time of fast communication, not more than one month may be allowed.
18. At present, if the seller has a plot in Delhi and another in Mumbai, he can register the sale deed of both plots in Delhi only. It may take months for the sale deed to appear in the records of the Registrar in Mumbai. This should be stopped.

### **Cadastre/ Record-of-Rights**

19. There is a huge amount of litigation before revenue officers in addition to litigation in the civil courts. All this litigation does not settle who has the right over land which can be decided only in the civil court. This litigation is only over the question 'what entry should be made in the ROR'. Even if Revenue Board decides on an entry in ROR after years of litigation, the other party can go to a sub-judge in a suit for declaration to get a decision on his rights. So there is no need for multiple levels of appellate authorities and then review and revision

which only increase the agony of people. In West Bengal and Karnataka, there is only one appeal and there are no powers for the review or the revision. The same pattern should be followed in every state.

20. People should be allowed to enter their mutation on the portal and upload all the necessary documents. Whenever one downloads a copy of a ROR of a particular piece of land, a copy of the mutation so entered must download automatically along with ROR. This will ensure that a transaction immediately appears on ROR and a person dealing with that land will at least have up to date information on that land. The mutation may be sanctioned by the revenue officer as per the usual procedure.
21. An entry in the ROR should be considered as constructive notice under the Transfer of Property Act at par with a registered deed.
22. Under Hindu Succession Act ancestral property is a joint property of all the coparcener which includes all the decedents upto three generations. No individual has the right to dispose of without the consent of others. At present in the ROR of states, there is no provision to have a separate account of joint ancestral property. This creates legal disputes.

#### Privatization

23. Most of the litigation is taking place in cities where land value and the number of transaction is very high. ROR are also not updated. I strongly feel that partial integration of land registry and ROR should be tried in cities. Powers of sub-registrar and Assistant collector should be given to one of the officers of Municipal Corporation. Registration and entry in ROR can be completed on the same day. Further privatization of land registry in urban centres must be considered on the pattern of passport offices.