

Guaranteeing Title to Land

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Reprinted from *Economic and Political Weekly*,
Vol XXXVII, No 47, November 23, 2002

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I

AN OPEN LETTER TO MR ARUN SHOURIE

Dear Mr Shourie,

AS we know each other, I could have sent this letter to you directly by post. But because you are a Minister now, I was not sure that my letter would be considered worth placing before you by your Secretaries. Moreover, I thought that it might be of some interest to others also and hence this 'Open Letter'.

You write (*The Indian Express*, July 7, 2002) that the "Indian Tourism Development Corporation has operated 32 hotels. ...Of the hotels, eight are in Delhi: Ashok, Samrat, Janpath, Ranjit, Kanishka, Indraprastha, Qutab, and Lodhi....On commencing the process of privatising these properties in Delhi we discovered that: Not one of them, repeat not one of them had the title deed or lease documents in order – the documents were either just not available, or the lease was in dispute, and that in spite of the fact that the hotels had been in operation for up to 45 years; Not one of them, repeat not one of them had a completion certificate – and that in spite of the fact that the buildings had been constructed 20 to 45 years earlier; indeed, even the building plans on the basis of which completion certificates could be given – "with retrospective effect" so to say – were not available; Not one of them, repeat not one of them had even the mandatory certificate from the fire authorities. As a consequence the hotels have been encoiled in litigation, often with limbs of the government itself! A typical case is that of Lodhi Hotel. It was in 1966 – that is, 35 years ago – that the ITDC purchased the buildings of this hotel from the department of urban development. ...The value of the buildings had to be

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determined for purposes of fixing the property tax that the corporation would have to pay the Municipal Corporation of Delhi....the tax the ITDC would have to pay would depend not just on the value of the buildings, it would also depend on who owned the land on which the buildings stood. The municipal corporation fixed the tax (property) on the premise that the land was owned by ITDC. The Department of Tourism and the Land and Development Office disputed this assumption: they maintained that the land was owned by the department of urban development and could only be deemed to be on lease to ITDC. ...The dispute ended in the high court of Delhi. Hearings followed hearings – for 10 years. Ultimately, the high court directed that the dispute be resolved by the joint assessor and collector of the municipal corporation. That was two years ago. All that happened was that the municipal corporation and the ITDC kept sending letters to each other. But that very fact now came in handy for thwarting privatisation. The bidders would not bid for the hotel till the issue was resolved, and, on the other side, the various limbs of government would not resolve the issue. Indeed, they would flag this dispute as one of the reasons why privatisation had to be postponed! Naturally, indefinitely. That is how matters stood in September 2001. ...There was no issue of principle that I could detect. That was not even an issue of law. The question was one of fact. It turned on who “owned” the land – the department of urban development or the ITDC, both limbs of the same governmental structures. “But there must be some document – of lease or ownership”. I said in exasperation. That was the problem, the officials explained: the original documents were not, as they had not been, available! All the issues which remained unresolved for years, had to be sorted out before privatisation, and they were”. You write (*The Indian Express*, July 8, 2002): “My colleagues have run into encroachments galore: in some cases – elsewhere as much as in Delhi – the ITDC hotels have encroached on the land of others; in other instances, others have encroached on the land of ITDC! In Ashok Hotel in Delhi – not in distant Manipur, but right here in Delhi, not on the outskirts of Delhi, just three-four hundred yards from the prime minister’s house – 347 quarters have been constructed illegally. The NDMC has stated that the completion certificate for the Ashok and Samrat Hotels can only be given

after these unauthorised quarters are demolished. But it is easier to bring down Pak bunkers across the Line of Control than these!... The lease agreement for operating Hotel Airport Ashok at the Kolkata airport – the hotel came up 30 years ago in 1971-72 – does not exist, and ITDC is engaged in a dispute with the Airports Authority about it. ... The Kovalam Beach Hotel is, on all counts, ideal property for a hotel. ... Its land area is 25.78 hectares. On the records of the state government, however, of this area ITDC has a clear title to only 16.5 hectares. One of the most valuable parts of the complex, Halcyon Castle, is not among the areas to which ITDC has a clear title! Indeed, it turns out that the balance 9.2 hectare have been under occupation of the Kerala Tourism Development Corporation and private parties! Not just that. While this large area has been under the occupation of other entities, ITDC is the one that has been paying taxes on it! Hotel Ashok in Varanasi, one of the ITDC hotels presents an even more delicious illustration of the way things are. ITDC purchased 9.42 acres for the hotel from the department of tourism in 1976. But it turns out that there is no record of the department of tourism having acquired the land and owning it at all! Although the ITDC has been paying taxes on it since 1976, the land revenue records show that the land actually belongs to major general S Shamsher Jung Bahadur Rana of Nepal. Elaborate searches have revealed no document that could establish that the department of tourism ever acquired the property. We have had no option but to disclose this – how should I put it? – “ambiguity” to the bidders and ask them to submit bids for the hotel on an “as is where is” basis! Hotel Ashok in Khajuraho presented a double-barrelled “ambiguity”. The records revealed, on the one hand, that it owned 0.254 acres of which it was not aware, and, on the other hand, that it had encroached on 0.583 acres of a private party’s land – and built 16 rooms and the chef’s residence on them! To implement the decision of the cabinet, my colleagues had to first ensure an out-of-court settlement with private party. It cost Rs 11 lakh”.

While writing about the disputes between two wings of the same government, you say that “you can guess at one reason why such disputes continue for decades. Entire contingents on either side are dedicated to advancing the case of that side.

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Preparing the papers for that dispute, keeping track of it, attending hearings in court on that matter, briefing superiors about what transpired, drafting correspondence about it, filing the communications about it that come – these are the be all and end all of the official life of so many. These are what they specialise in. These are all they specialise in.”

In India, a committed minister can do, and does, anything. So, you have succeeded in privatising the hotels, with defective titles, of ITDC. But you have not answered all the questions that your story raises except to say that “all the issues which remained unresolved for years, had to be sorted out before privatisation, and they were”. We are interested in knowing as to how did you resolve them. Your story does not reveal everything. I have a few questions about the title to land of the privatised hotels and I shall confine myself to the examples given by you because I do not know anything about the other hotels except that not even one of them had a clear title to land or lease deed.

To start with, take the example of Lodhi Hotel. You did not tell us as to how did you resolve the dispute of ownership of land of this hotel. Who was and now is shown as owner of this land in the record-of-rights in land prepared and maintained by the state government? To whom was this land shown as belonging to in the purchase deed of the buildings in 1966? When one buys buildings, one invariably mentions in the purchase deed about the ownership of land on which the buildings are built. Was any plan or measurement of land mentioned in the purchase deed? Was any search made, before buying this property, in the office of the revenue official or sub-registrar of registration department to ascertain the ownership of land and the buildings? If not, why not? Was the purchase deed of these buildings registered? If not, why not? Was mutation of this land and the buildings done in the record-of-rights in land in favour of the ITDC? If yes, what does the mutation entry show and what was the basis of mutation? If mutation was not done, why not?

In the case of Ashok Hotel in Delhi, you say that 347 quarters have been constructed illegally on the land of this hotel by a wing of the government just three-four hundred yards away from the house of the prime minister and that it was not possible to demolish them. Again, how was this question resolved? I

presume that in the record-of-rights in land maintained by the government, the land on which these quarters are built is shown as vacant land. Am I right? If it is so then how was this land shown in the sale deed of this hotel? Was the illegal construction of 347 quarters legalised before selling this hotel or they continue to be illegally constructed and the land on which they are constructed is shown as vacant land in the sale deed or the buyer has bought this hotel with description of these quarters in the sale deed as illegally constructed? As these 347 quarters were constructed illegally, I presume that no property tax on these quarters was being paid to the New Delhi Municipal Council. If no property tax was being paid on these quarters, then how did the occupants of these quarters get the water connections, electricity connections or telephone connections? By whom were the internal roads built and sewage and drainage lines laid? Who has been collecting the garbage from these quarters and transporting it from the quarters to the garbage depot? Do occupants of these quarters pay any rent/consideration? If yes, to whom? Who is accountable for these illegal acts? What action was taken against those responsible for illegal construction and suppression of illegal construction of these quarters? What is coming in the way of New Delhi Municipal Council to demolish these illegal constructions? Why does not the ITDC itself demolish them? Why does not the government instruct the ITDC to demolish its illegal constructions? Was any liability fixed on any person or persons?

As regards the non-availability of the lease agreement for operating Hotel Airport Ashok at Kolkata, is it missing in the files of the government or it was not executed at all? If it was executed, was it registered? If it was registered, its copy can be obtained from the office of the sub-registrar where it was registered unless the records there also do not exist. If it was not registered, why not? What is the nature of dispute between the ITDC and the Airports Authority about it? What is the status of this hotel and the land on which it is built in the record-of-rights in land maintained by the state government? Is the lease entered in the record-of-rights in land? If not, why not?

Coming to Kovalam Beach Hotel, you say that its land area is 25.78 hectares but in the record-of-rights in land maintained

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by the state government, only 16.5 hectares are shown as belonging to ITDC and the remaining 9.2 hectares are under the occupation of the Kerala Tourism Development and private parties. You do not tell us the status of 9.2 hectares in the record-of-rights in land maintained by the state government. You only say that it is in possession of so and so. In whose name does this land stand in the record-of-rights in land? If this land (9.2 hectares) is not shown in the name of the ITDC in the record-of-rights in land, how was the state government collecting taxes on this land and what kind of receipt of taxes was being issued by the state government for this land? How did the ITDC come to own the land of the Kovalam Beach Hotel? If it was purchased by the ITDC, then was any search made about the ownership of land and building and the area of the property? If not, why not? How much land was shown in the purchase deed? Was any plan of measurement of land attached to the purchase deed? If not, why not? Was the purchase deed registered? If not, why not? For how much land was the purchase price paid? If it was acquired, were any acquisition proceedings initiated against this property? Was the land proposed to be acquired measured? Were the boundaries of the proposed land to be acquired set out? Was the plan of the land in question made? What was the area of this property given in the award made by the collector in acquisition proceedings? For how much land was the compensation paid? Irrespective of whether it was purchased or acquired, was the mutation of this land done in favour of the ITDC? If yes, how much area was shown in mutation and what was the basis of mutation? If no mutation was done, why not? Were the Kerala Tourism Development and the private parties in illegal occupation of 9.2 hectares of land? If yes, when and how was this discovered by the ITDC? What kind of use was being made by them of this land? If this land had been encroached upon by the Kerala Tourism Development and the private parties, was it mentioned in the record-of-rights in land maintained by the state government? Who are these private parties? How much land is now shown in the sale deed of this hotel? How has the question of ownership of 9.2 hectares of land been finally resolved?

In the case of Hotel Ashok in Varanasi, you say that ITDC purchased 9.42 acres of land from the department of tourism in

1976 but now it turns out that the land did not belong to the department of tourism. The question is: while purchasing the land, did the ITDC not satisfy itself about the title to that land of the seller? If the ITDC had satisfied itself about the title to land of the seller, how did it do it when the land was not in the name of the seller in the record-of-rights of land maintained by the state government? In whose name was this land entered in the record-of-rights in land in 1976 when it was purchased? Was any search made about the ownership of land before buying it? If not, why not? Was the purchase deed of this land registered? If not, why not? Was the mutation of this land in the name of ITDC done? If yes, what does the mutation entry show and what was the basis of that entry? If mutation was not done, why not? Is the hotel building built by the ITDC on this land not an illegal construction because the land on which it was built did not belong to the seller from whom the ITDC had purchased it in 1976? Further, how did the Varanasi Municipal Corporation grant permission to the ITDC to build a hotel building on land which did not belong to it? Does this illegal construction not invite demolition? Even if it is not demolished, it appears that the hotel building is shown as belonging to the ITDC while the land on which it is built is shown as belonging to major general S Shamsher Jung Bahadur Rana of Nepal in the record-of-rights in land maintained by the state government. If it is so then the ITDC can sell the building but not the land on which it is built. Is it not a rank absurdity? But what sounds like an absurdity is reality in this case. What about the money paid by the ITDC to the department of tourism in 1976 as purchase price of this land? You say that you could not solve the problem of ownership of this land and asked the bidders to submit their bids on an 'as is where is' basis. So, you sold property knowing fully well that it does not belong to the ITDC. Is it not scandalous for the ITDC to sell a property as its property when it knows that the property is shown in the records of the government as not belonging to the ITDC? Was it mentioned in the sale deed that the land on which this hotel is built is shown as belonging to major general S Shamsher Jung Bahadur Rana of Nepal in the record-of-rights in land? If it was mentioned so then how will the mutation of this property be affected in the record-of-rights in land in favour of the purchaser who has purchased the property from the

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ITDC and not from major general S Shamsheer Jung Bahadur Rana?

About Hotel Ashok in Khajuraho, you say that it owned 254 acres of land of which it was not aware. How did this hotel come to own the land, including this 254 acres, of this hotel? Was it purchased or acquired? If it was purchased, from whom was it purchased and what does the purchase deed say about the area of this land? Was any plan of measurement of land attached to the purchase deed? If not, why not? Was any search made to ascertain the ownership of land and its area? If not, why not? If it was purchased, was the purchase deed registered? If not, why not? If it was acquired, what was the area shown in the plan of the land acquired after measurement? Were the boundaries of the acquired land fixed and marked? If not, why not? Were the details about the area given in the award made by the collector in acquisition proceedings? If not, why not? Irrespective of whether it was purchased or acquired, was the mutation done in favour of the ITDC? If yes, what was the area shown in mutation and what was the basis of mutation? If no mutation was done, why not? Had this land (254 acres) been encroached upon by some one or it was lying unused? If it was encroached upon, by whom? And what use was being made of this land by the person who had encroached upon? Was the entry of encroachment made in the record-of-rights in land? Was this encroachment got vacated before selling the hotel? How did it come to the notice of the ITDC that it owned this (254 acres) land? Further, when was 503 acres of land of private party encroached upon by the ITDC? Was it a wilful encroachment or a bona fide mistake? Was the entry of encroachment made in the record-of-rights in land? How is it that the private party kept quiet when its land was encroached upon and 16 rooms and the chef's residence were built on it? Were these rooms and chef's residence built illegally? If not, then how was the plan of constructing these rooms and the chef's residence approved by the local body when the land did not belong to the ITDC? Was there any litigation going on between the ITDC and the private party about this land? If the ITDC had come to know that it had encroached upon the land of the private party, why did it not surrender that land to the private party? What for were Rs 11 lakh paid to the private party? Who is this private party?

Lastly, there are two general questions related to all these cases. Firstly, were the above-mentioned deficiencies disclosed in the final accounts? Did the auditors offer any remarks on the same? Did the Comptroller and Auditor General raise any questions about them? If yes, what were those questions and what answers were provided by the management to those questions? How did the auditors and the Comptroller and Auditor General deal with these issues? Secondly, I presume that in government when land is transferred from one body to another or a building is constructed on the land, the decision about such transfer or construction is taken by the cabinet. I further presume that all facts in respect of the land or building involved are placed before the cabinet. So, were the above-mentioned deficiencies in property explained in the cabinet notes? Further, I also presume that before a matter is taken to the cabinet, inter-ministerial consultation takes place and the most important ministry to be consulted is always the ministry of finance. It is assumed that the ministry of finance would have satisfied itself about the bona fides of the transactions of the properties and the construction of the buildings and the papers attached with the proposals in relation to those transactions and constructions. So, how were the above-mentioned proposals regarding the transfer of land and the construction of buildings approved by the ministry of finance with the said deficiencies in them? Did you study the papers leading to the approval of the proposals by the cabinet? What do these papers say?

Did you think about the reason for this deplorable state of affairs with regard to the title to land and its solution? Do you know about the attempts made in the recent years to improve the situation regarding the record-of-rights in land in the country and the results of those attempts?

Now that you have yourself experienced the problems about unclear titles to land, will you please do something in this matter or you are satisfied with your success in being able to sell the properties with defective titles?

Looking forward to hearing from you soon, and with regards,

Yours sincerely,
D C Wadhwa

II THE ONLY SENSIBLE SOLUTION

In this Part, I shall deal with the reason for the sorry state of affairs with regard to the record-of-rights in land in India, its solution, the attempts made in the recent years to improve the situation and the results of those attempts.

1. LAND RECORDS IN INDIA

Nature and Character of Land Records

As land revenue was the major source of income of the state, it was necessary to identify those from whom it could be collected. Therefore, the land records prepared and maintained by the state governments are primarily for revenue purposes. It is for this reason that the land records contain details like cultivable, non-cultivable and cultivated area, quality of the soil, sources of irrigation, cropping pattern, leases, easements and assessment of land revenue, etc. Further, it was assumed that the persons liable to pay land revenue were the proprietors of the land.

Thus, the present records-of-rights in land in India are fiscal in nature and presumptive in character. The person shown in the record as responsible for paying land revenue for a particular piece of land is presumed to be the proprietor of that piece of land unless it is proved otherwise. Title to land is only incidental and springs from the presumption that he who pays land revenue is the owner. But the entries in such records are not conclusive. Whatever be the entry in the record-of-rights in land, it is permissible to challenge it in an appropriate court or tribunal. Therefore, the revenue laws of the states lay down that no suit shall lie against the state government or any officer of the state government in respect of a claim to have an entry made in any record or register that is maintained by the government or to have any entry omitted or amended.

Similarly, the law relating to registration of documents (deeds) also lays down that while accepting a document for registration, the registering authority need not concern itself about the validity of the document. This position arises because in India

property legislation and legislation relating to registration of documents were never framed with the objective of providing a state guarantee of title to land. The law provides for the registration of document only and not for the registration of title. Therefore, a deed does not in itself prove title, it is merely a record of an isolated transaction. It shows that a particular transaction took place, but it does not prove that the parties to the transaction were legally entitled to carry out the transaction and therefore it does not prove the validity of the transaction. It is left exclusively to the person entering into a transaction concerning an immovable property to investigate himself about the soundness of the title to that property of the person.

Present Status of Land Records

But in all parts of the country, records relating to land are in a very bad shape. In many cases the land is recorded in the name of a person who died long ago and whose legal successors are now the owners but their names are not entered in the record. A similar highly unsatisfactory feature exists in respect of situation of transfer of lands by acts of parties. Land goes on being transferred without consequential mutation in the records with the result that the records as they exist and continue to exist today hardly reflect the present day reality regarding ownership of land. Millions of cases of mutation and measurement are pending in the country.

Not only the land records are not up-to-date, in many cases they are not available at all. For example, in one district of Andhra Pradesh, there were 1,545 villages in 1988. The total number of survey fields (numbers) in the district in that year was 4,20,109. Every survey field (number) has a Field Measurement Book (F M B). In 1988, out of 4,20,109 F M Bs, 19.5 per cent F M Bs were missing and 30 per cent F M Bs were brittle and torn. Thus, land record of 49.5 per cent of the survey fields (numbers) of the district as a whole was not available. Recently, an advocate of Madhya Pradesh High Court, Indore, was engaged by a client to make search of a particular property in the office of the sub-registrar, Indore. In his search report June 30, 2000, the said advocate wrote that he had made search of Index No 2 of the said property for the last 10 years, that is,

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from 1988-89 to 1998-99 on the basis of record available in the office of the sub-registrar, Indore, and found that the record of Index No 2 in the said office is torn and brittle.

B K Mishra, IAS (ret'd), former director of land records, Orissa, wrote to me in his Note on my monograph entitled "Guaranteeing Title to Land": "Unfortunately the records-of-rights we have in India are, generally speaking, out of date by several years mainly because of lack of appreciation of its utility and consequently lack of attention for its proper and timely maintenance". Apart from this, there are many more other cases in which the government, the public bodies and the private persons in whose names the lands stand in the records are not in possession of those lands which is evident from the large-scale encroachment of such lands in all parts of the country. On the other hand, the names of persons who possess those lands do not exist in the records. Such disharmony between the records and the reality not only destroys the utility of the records – which thus becomes a negative defect – but also misleads any person who has to deal with the land. For example, in 1966-67, 1975-76 and 1981-82, the government of Madhya Pradesh distributed government land to landless persons. In 1988, when I visited several villages of Indore district, I found that most of the allottees of those land had 'pattas' of allotments of land in their pockets but no lands. In one village, 23 out of 28 allottees of land were not in possession of lands allotted to them. In another village, 15 out of 20 allottees of land were not in possession of those lands. In the third village, 16 out of 17 allottees of land were not in possession of lands allotted to them. In all these villages the persons who had encroached upon those lands before the lands were allotted to the landless persons continued to be in possession of those lands. The situation was more or less the same in other villages also. There was a difference of degree but not of kind.

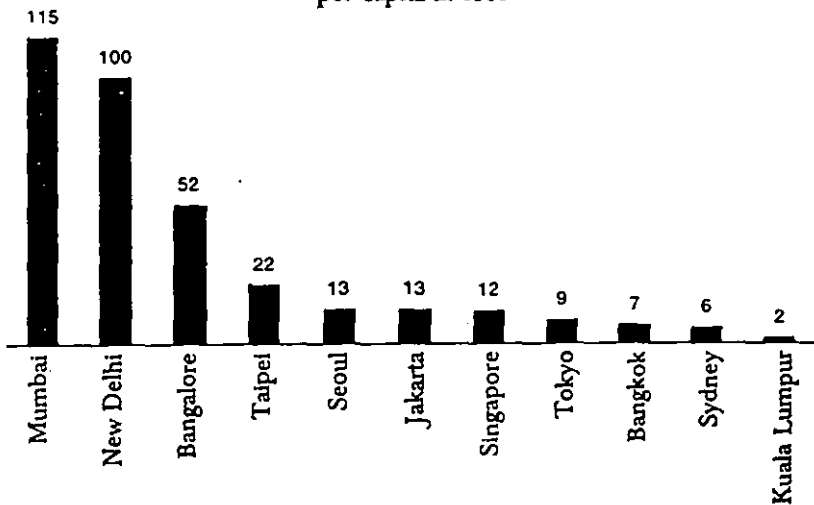
While commenting on my above-mentioned monograph, M Hidayatullah, former chief justice of the Supreme Court of India and former vice-president of India wrote in his Note on this monograph: "I can say that many good cases were lost because the record-of-rights entries were false". V S Deshpande, former chief justice of the Delhi High Court wrote in his book review of my above-mentioned monograph: "This is a small

book on a big subject. The author is a pioneer. ...Entries in the record-of-rights are not...always correct. record-of-rights cannot therefore be relied upon not only in respect of title to the land but also in respect of possession". No wonder, this unhappy situation has led to incessant litigation and clogging of the judicial machinery in the country. Land litigation haunts the courts. V R Krishna Iyer, former judge of the Supreme Court of India, said in his review article on the said monograph: "Land litigation has crowded civil courts and land disputes have led to criminal proceedings".

This litigation is not confined to lay persons. Even the highly placed judicial officials also are not free from it. It was reported in *The Economic Times*, February 2, 1990, that "when Sripat Sharma, a high court judge, bought a piece of land from a farmer in Gurgaon district, on the doorstep of the capital, he thought he was making a sound investment. Today, justice Sharma is going to the courts to fight a case himself, the land he thought he bought had already been sold to a public sector company and the money he paid has gone down the drain".

Chart: Land Costs Relative to Income Levels

Indexed to New Delhi=100; Ratio of land cost per sq metre to GDP per capita in 1999



Source: Colliers Jardine, *Asia Pacific Property Trends* (October 1999), *The Economist* (1996). As reproduced by McKinsey and Company in their report, Volume 1, p 9.

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Land litigation is not confined only to two wings of the same government but is widespread between the state and the citizens, between the citizens and the public bodies as well as between the citizens themselves. At this very moment, there must be millions of cases of all kinds and at all levels, both revenue and civil and even criminal, each one of them arising out of an entry in the record-of-rights in land. Every working day of the court hundreds of thousands of persons, many with empty stomachs, wait in different courts of the country from morning till evening for seeking redressal of their land disputes. The social cost of this litigation is mindboggling. The number of man-days lost in agriculture alone would be staggering. We have more lawyers than doctors in the country.

House-site is obviously the most important input in housing. The kind of housing stock that India needs leaves us with no choice but to opt for mass housing. This in turn means that land should be available on a scale commensurate with housing needs. But this is precisely the bottleneck. Enough land is not available either in big cities or in smaller towns. It is not as though there is no land. Land does exist, but its existence is not enough. It should be available for housing. Availability, in this context, means that it should have a marketable title and should be reasonably priced. If one were to quantify land involved in litigation and consequently frozen, it would be seen that disputes between the state the citizens and between the citizens themselves carry with them a social cost which is many times more than the cost of the land itself. On a conservative estimate, the price of land, at current market prices, involved in litigation in Mumbai alone is around Rs 10,000 crore. This by any reckoning is a colossal figure. There is no authentic and accurate map of a single urban agglomeration anywhere in the country. Since our urban land records, where they exist, are hopelessly outdated, spurious and fictitious structures, which existed only on paper, were shown in many cities to reduce the area of surplus vacant land under the Urban Land (Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976). Decades after the Act came into force, enquiries to determine the surplus land are still going on in many cities, disputes regarding title to land being the principal bottleneck. As the land under litigation is frozen and not available for housing, the prices of the available

land go up. This is the situation in almost all big cities and towns. No wonder, the land costs relative to income levels are very high in India as can be seen from the chart which shows ratio of land cost per square metre to GDP per capita in 1999 in different countries.

Land Records in Earlier Days

Whatever the nature and character of the record-of-rights in land, in earlier days these records were maintained reasonably properly. H M Patel, former finance minister, government of India, wrote to me: "As a young ICS officer during the few years that I worked as an assistant collector in Sind, I remember inspecting most carefully registers of records-of-rights in land every time I visited a taluka headquarter. I had been advised to pay particular attention to these registers and to satisfy myself that they were maintained properly and were up-to-date. I am afraid that such attention is not being paid to this now. assistant collectors and mamlatdars in fact neglect this particular duty. A good many of the benefits of land reforms have not accrued to the beneficiaries because of this neglect". H R Khanna, former judge of the Supreme Court of India, wrote to me: "The revenue records were regularly maintained during British times. ...Subsequently when laws relating to ceiling on land and other agrarian reforms were enacted, there were frequent complaints about tampering with revenue entries and attempt to make entries in disregard of actual position. The result has been that the sanctity which at one time attached to revenue records has got considerably eroded".

Land Reforms and Land Records

While reviewing the progress in implementation of land reforms legislation in the country, the Task Force of the Planning Commission observed in 1973: "In no sphere of public activity in our country since independence has the hiatus between precept and practice, between policy-pronouncements and actual execution, been as great as in the domain of land reforms". A similar view was expressed by the National Commission on Agriculture in 1976 when it said that ... "the implementation lag

in the field of land reforms is still colossal and has become almost chronic”:

As regards the reasons for the poor performance in this field, the above-mentioned Task Force observed: “The absence of up-to-date land records is a serious obstacle in the implementation of land reforms”. Several other evaluation reports also have pointed out over and over again that the main reason for the non-implementation of land reforms legislation has been the lack of reliable up-to-date record-of-rights in land. As it was admitted on all hands that the main tool for the implementation of land reforms legislation is the up-to-date record-of-rights in land, the panel on land reforms observed in 1961 : “It is essential that up-to-date land records should be prepared as a measure of top most priority... ”. Similarly, the National Commission on Agriculture observed in 1976 that ... “it is imperative that the preparation of land records should be given the top most priority in the whole scheme of enforcement of land reforms”.

Land Records and Five-Year Plans

The importance of preparation and updating of record-of-rights in land was emphasised in the First Five-Year Plan itself and was repeated quinquennially thereafter as given below:

In the First Five-Year Plan it was said: “A revenue administration depends, in the last resort, upon a good system of village records. In states like West Bengal, Bihar, Orissa, Rajasthan and Ajmer, there are scarcely any village records. In Hyderabad and certain other areas, over large tracts, there existed a system of village records maintained by zamindars and jagirdars through their own petty employees. These records were seldom of adequate quality and could not be fully relied upon. Record-of-rights and other land records become even more important at a time when rapid changes affecting land have become a normal feature of legislative activity. It would not in fact be too much to say that in some states because of defective revenue records the implementation of reforms already enacted will remain incomplete and may even raise new problems which will come in the way of good administration”.

In the Second Five-Year Plan it was said: “The maintenance of correct and up-to-date land records is a prerequisite for the

implementation of land reforms. ... Frequently, revenue records are defective inasmuch as they do not provide information in respect of the holdings of tenants and crop-sharers. Over large areas cadastral surveys are not up-to-date. As a rule, they form part of settlement operations but these are in arrears in many states. Revision and preparation of village records has to be taken up urgently”.

In the Third Five-Year Plan it was said: “Problems arising in the implementation of land reforms legislation enacted in the states have been studied by the Panel on Land Reforms.... The panel has laid particular stress on the preparation of correct and up-to-date record-of-rights...”.

In the Fourth Five-Year Plan it was said: “A serious constraint on the expeditious implementation of land reforms and also on the availability of credit and other inputs to the cultivating tenant has been lack of correct and up-to-date land records ...”.

In the Fifth Five-Year Plan it was said: “Unless up-to-date records are prepared, it will not be possible to ensure the effective implementation of any measure of land reforms or to consolidate agricultural holdings”.

In the Sixth Five-Year Plan it was said: “It has been recognised that updating of land records is essential not only for implementation of land reforms but also for access to agricultural credit which relies heavily on title to land. ...A systematic programme would be taken up for compilation/updating of land records, to be phased for completion within a period of five years, i e, 1980-85. ...Each cultivator would be given a pass book indicating his status/title to land, description of the land (areas, class, etc), along with a copy of the ‘khasra’ map and such other details as are considered necessary. Appropriate provision will be made in the revenue laws to confer legal status on this document as proof of title and rights in land”.

In the Seventh Five-Year Plan it was said: “Land records form the base for all land reforms measures and therefore regular periodical updating of land records is essential in all states. ...A centrally sponsored scheme is proposed to be implemented during the Seventh Plan on the basis of matching contributions by the states and centre, for updating of land records”.

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Thus, Plan after Plan bemoaned about the poor state of record-of-rights in land and in the Seventh Plan special financial assistance was provided for the purpose. *Nothing happened.*

2. COMMITTEE ON LAND RECORDS

Appointment of One-man Committee on Land Records

It was Manmohan Singh, the then deputy chairman of the Planning Commission, who realised the gravity of the problem and appointed a One-man Committee to study the problem of record-of-rights in land in the country and recommend measures to improve it. On April 3, 1987, he wrote to me saying that the "Planning Commission would be very happy if you would kindly agree to head a One-man Committee on the status of record-of-rights in land". As I was greatly interested in investigating the unfathomable chaos of land records, I agreed to serve on this committee and communicated my consent to head this Committee to Manmohan Singh on April 28, 1987. On May 26, 1987, the committee was formally constituted by the Planning Commission. On June 9, 1987, Manmohan Singh wrote to me : "We are very grateful to you for having agreed to serve on the One-man committee on the status of record-of-rights in land. This is a work of great national importance and I am most grateful to you for having readily agreed to serve on this committee." I commenced my work on the committee from June 16, 1987.

On June 30, 1987, secretary, Planning Commission, wrote a letter to all chief secretaries of the states informing them that the Planning Commission had constituted a One-man Committee to study the problem of record-of-rights in land in the country and further saying that "it will not be possible for Prof Wadhwa to complete the gigantic task unless he gets the fullest co-operation of the state government. The state government is requested to designate a sufficiently senior officer (not below the rank of a joint secretary in the state) as the nodal officer of the committee. While doing so, care may be taken to choose such an officer, who is fully conversant with the revenue laws of the state and has intimate knowledge of the problems in the field. This nodal officer may have to collect and provide all the data required by the committee on this subject".

On July 28, 1987, Manmohan Singh wrote to me saying: "I shall be leaving the Planning Commission at the end of this week, but this should not, in any way, affect the work of the committee that you have very kindly agreed to head. I attach great importance to the work of this committee and I am personally very grateful to you for having undertaken this arduous task". Thus, I continued my work.

Response of state governments to Questionnaire prepared by the Committee

With a view to ascertaining the legal provisions for the preparation and maintenance of record-of-rights in land and preparing a uniform system of preparation and maintenance of record-of-rights in land in the country, I prepared a questionnaire on the subject and sent it to all the state governments with the request that the replies to it may kindly be sent to me at the earliest. Some state governments even constituted committees to prepare answers to that questionnaire. But, there was no satisfactory response to it from the state governments.

The revenue secretary, government of Maharashtra, wrote to the Settlement Commissioner and Director of Land Records of that state in this regard: "As you are aware, we are confronted with most of these questions ourselves. Even after a lapse of 32 years of the reorganisation of states, we have been unable to address ourselves even to such a fundamental issue as what should be the ideal system of measurement in today's circumstances. The questionnaire affords us an opportunity, the like of which is unlikely to come our way for a long long time to go into all the questions keeping in view the different systems of survey and settlement prevalent in the three constituent parts of the state. I am, therefore, to request you to kindly constitute a small committee of officers drawn from these areas and ask this committee to prepare a detailed reply to that part of the questionnaire which deals with matters of survey and settlement. I shall be grateful if the reply to the questionnaire is forwarded to the government within four weeks". *No reply was received from the Settlement Commissioner and Director of Land Records.*

The joint director of land records of Karnataka wrote to me saying that the "director has formed a committee for replying

the questionnaire, but the committee did not meet even once so far”.

The additional secretary to the government, revenue department, Orissa, wrote to me saying that “necessary move may be made to the Planning Commission for providing funds for creation of a post of deputy secretary in the rank of class I state civil services or an Indian administrative service in senior scale with necessary supporting staff to help him compile the information in the secretariat and to collect information from the field. On receipt of information, detailed proposals shall be forwarded. Various books and Acts are not readily available and these have to be purchased or re-printed, xeroxed or cyclostyled which will also warrant placement of sufficient funds at the disposal of the state government. I, therefore, request you to kindly move the Planning Commission to provide adequate funds for the same”.

So, this was the response from the state governments.

Report of the Committee on Land Records

While waiting to get replies to my questionnaire from the state governments, I started studying the system of preparation and maintenance of record-of-rights in land in other countries. It was during this study that I came to know the extent of prevalence of the system of registration of title to land, which is a conclusive proof of the title to land of the holder and is guaranteed by the state, in most of the countries. As I was convinced that the solution of our problem with regard to the up-to-date maintenance of record-of-rights in land lies in changing over from the present system of presumptive title to land in our country into conclusive title to land, I prepared a preliminary study and submitted it to the Planning Commission on August 31, 1989, for its consideration.

The above-mentioned study entitled ‘Guaranteeing Title to Land’ was published in full in the *Economic and Political Weekly*, October 14, 1989, and also in the form of a small monograph on October 18, 1989. The purpose of publishing it in the form of a monograph was to make it available to the citizens to create awareness among them about the existence of the system of conclusive, or registration of, title to land, the extent of its prevalence in other countries and its advantages.

There are millions of small, illiterate, backward, poor farmers in our country whose only evidence of title to their holdings is the entry in the record-of-rights in land maintained by the state governments. But the entire exercise is drained of all significance if this entry in the record-of-rights in land has only a presumptive value. If they are dispossessed of whatever little they have in the form of small pieces of land, which is happening in all parts of the country, the poor fellows are pitted against the might of the mighty and do not get back their lands. Rights in land also carry with them, as a necessary concomitant, the right to have those rights recorded in the records maintained by the government, as conclusive proof of their ownership. This is not happening with the result that the rights of the poor are being allowed to go by the state's default. In a welfare state, the state must protect those who cannot protect themselves. Under the system of conclusive title to land, the record maintained by the government is an authoritative record and the state accepts the responsibility for the validity of the entries in the record. The state guarantees title to land. This system does away with the need for investigation of title to land by the buyers. Under this system, the record-of-rights in land always remains up-to-date and shows the ground position correctly in this regard because under this system there is no registration without mutation. Both are done simultaneously and at the same time. A continuous finality of title to land enables all dealings in land to be effected with security, expedition and cheapness. It also enables land owners to get credit easily and cheaply.

3. INITIATIVES BY CENTRAL GOVERNMENT

Proposed National Seminar by Ministry of Rural Development

As the introduction of the system of guaranteeing title to land in our country would have replaced a system which has been in force for more than 150 years or so, I proposed to have a national debate on the issue. The then secretary, rural development, government of India, who is presently governor of Bihar, took great interest in the proposal. The study reached Rajiv Gandhi, the then prime minister, who was also the chairman of the Planning Commission. He also took keen

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interest in the study and agreed to the proposal of a national debate on the issue. Thus, a national seminar on the subject was organised.

On October 14, 1989, the minister of agriculture, government of India, wrote D O letters to about 50 persons in the country saying that the "department of rural development and the Planning Commission are jointly organising a seminar on the need for 'Guaranteeing Title to Land' on October 30, 1989 in conference room no B at Vigyan Bhawan, New Delhi. In this connection, I am enclosing a note prepared on the subject together with a copy of the report on 'Guaranteeing Title to Land' submitted to the Planning Commission by Prof Wadhwa, chairman, Committee on Status of Land Records. ...I am glad to inform you that the prime minister will also be participating in the seminar. It gives me great pleasure to invite you to attend the seminar and give us the benefit of your valuable experience and comments on the proposal". Those invited to attend the said seminar included chief justice and former chief justices and judges of the Supreme Court and high courts of India, chairmen, Press Council of India and Law Commission of India, attorney general for India, chief election commissioner of India, governor, Reserve Bank of India, Chairman, economic advisory council to the prime minister, chairmen, NABARD, HDFC, HUDCO, IDBI, ICICI and LIC, managing director, Can Fin Homes, eminent professors of economics and law, eminent jurists, ministers, secretaries and officials of the ministries of planning, rural development, urban development, finance and law and justice, members of the Planning Commission, rural development and urban development, retired officials, activists and the journalists. As the prime minister was going to participate in the seminar and the chief justice of the Supreme Court of India was to preside over it, the invitation letters were sent under the signature of a minister of cabinet rank. Perhaps, this was the first seminar by a single academic in the country which was organised by the government of India and in which the prime minister of the country was to participate.

The Note entitled 'National Seminar on Guaranteeing of Title to Land' prepared by the department of rural development, ministry of agriculture, government of India, and sent with the above-mentioned letter dated October 14, 1989,

of the minister of agriculture, government of India, read as under:

There is a strong demand from the land holders in general and farmers in particular for an authentic copy of land records pertaining to their land holdings for obtaining development assistance from government, credit from public financial institutions and fighting litigation in courts. As a result, some state governments have enacted special legislation and some others have made administrative arrangements to provide patta passbooks to land holders in a manner available to an account holder of a bank in respect of his money account. However, the scheme has run into difficulties because public financial institutions insist on authentic evidence of a clear marketable title to land before extending credit to an applicant. Patta passbooks do not satisfy this requirement because information contained in them is derived from land records and entries in land records do not confer conclusive title to land. Thus, the Patta Passbook Scheme on which state governments are prepared to spend huge sums of money will continue to be of little utility until passbooks issued to the land holders reflect guaranteed title to land.

Under the system prevalent in our country, however, the law does not provide for a state certification of title. The entries in record of right confer merely a presumptive and not a conclusive title as a result of which it is always permissible to challenge it in an appropriate court or tribunal. The Transfer of Property Act does not envisage that the document concerning transfer shall originate from a public authority and shall be certified by the state. Similarly, the Indian Registration Act, 1908, provides for registration of document but not for registration of title. The registering authority is not supposed to concern itself with the validity of document. The onus is cast exclusively on a person entering into a transaction concerning an immovable property to investigate into its title. On account of this system, the chances of defect in the title are large. The problem is made further complicated by land records not being up-to-date. It is, therefore, not uncommon that land may have been transferred without a consequent mutation of record. Thus, the record may not reflect the existing reality regarding ownership of land, not to speak of other interests. The consequent disharmony between record and reality reduces the utility of record as it misleads any person who has to deal with the land. All these factors lead to increased litigation, harassment of the public and heavy burden on the judicial administration.

The need for registration of title to land has therefore arisen because existing law is no longer able to cope with new conditions where land has become scarce, well defined boundaries have become imperative, credit is required on the security of the land and individual proprietary rights have become very important because land has acquired a negotiable value. The absence of registration comes in the way of supply of capital for development and is responsible for excessive cost of credit to agriculture. Lack of secure title generates a great deal of litigation, causes delay in acquisition of land and consequent time and cost overrun of development projects. The poorer sections of population, particularly beneficiaries of land reforms measures, are also adversely hit on this account as they are frequently

dragged into disputes concerning land allotted to them while the implementation of protective legislation for STs/SCs is thwarted by unauthorised transfer of their land.

It is in this background that the report of Prof D C Wadhwa, chairman, Committee on Status of Land Records submitted to the Planning Commission recently provides a valuable input to a possible resolution of this problem. He has advocated that we should also gradually adopt the system of registration of title to land in India as it has been done in other countries. It would seem from his study that the world over, there is an increasing acceptance of the 'Torrens System' (so called after the name of Sir Robert Torrens who initiated it in Australia) where state guarantees title to land rather than this being left to the private companies and corporations to investigate it at their own risk and cost. The adoption of Torrens System would not only correct an important lacuna in our legal framework concerning ownership of land but would also have the potential of radically reforming the existing system of land registration, survey and settlement operations and land records management. The proposed system apart from removing insecurity and uncertainty regarding title to land and landed property is expected to reduce litigation and therefore ease the burden of courts. It would also protect the interest of general public, particularly the resourceless poor, against forgery, fraud and cheating not uncommon in land transactions. Guaranteed title would enable dealing in land and landed property to be affected with security, expedition and cheapness both in urban and rural areas. It would be welcomed by prospective buyers and credit agencies alike as it would enhance the marketability and easy transferability of land.

In rural areas, guaranteed title to land would enable farmers to get credit easily and cheaply and thus remove the greatest bottleneck in the scheme of patta passbook. In case of a large number of rural poor who have been allotted government/ceiling surplus/'bhoodan' land under various schemes, the introduction of this system will prevent illegal and unauthorised transfer of their land because the title to such lands will be recorded in the register with all the stipulated restrictions. For precisely the same reason, the proposed move would also facilitate more effective implementation of legal restrictions regarding alienation of tribal land. The introduction of this system will facilitate expeditious updating of land records because there will be no registration without mutation. The finality of title to land would reduce litigation, both civil and criminal, between the state and the citizens, between the citizens and the public bodies as well as between the citizens themselves and would provide stability regarding the enjoyment of rights in land. The state is at present unable to protect rights of its citizens in respect of their land which are threatened by emergence of muscle power. It is not even able to protect its own rights in its own lands which have been seriously eroded by large-scale encroachment and resulting litigation pending before various courts. The registration of title to land will eliminate uncertainty and provide necessary security and protection to citizens, public bodies as well as the state. Financially, the new system could be a self funding mechanism, particularly in urban areas, where transactions are

larger in number and the parties entering into these transactions may be prepared to pay the requisite fee in return for the benefit of an authentic title to land. The system would also go well with computerisation of land records and considerably help in building up a comprehensive land information system using advanced technology.

The proposal outlined in the report of Prof Wadhwa is no doubt still at a preliminary stage. A lot of details about its operational aspects would have to be worked out and considerable spade work would have to be done before a clear outline emerges on how the scheme could be implemented. This may require, among other steps, drawing upon the experience of countries which have changed over to the "Torrens System" as well as minute scrutiny of existing survey and settlement operations, revenue and property laws, the entire system of land records management and adjudication of disputes concerning land. Meanwhile, this consultation is being organised to initiate a public debate on the subject so that various apprehensions, conceptual problems and practical difficulties could be identified which need sorting out before a considered view in the matter is taken."

On October 16, 1989, Yoginder K Alagh, member, Planning Commission, wrote to me: "We hope to organise very soon a detailed discussion on the report on Record of Rights in Land. I enjoyed reading the report and I am sure a discussion on it will be very helpful to the country at this stage."

When the preparations for the seminar were going on, fresh election to parliament was announced. I requested for the postponement of the seminar. It was postponed. Rajiv Gandhi lost power and V P Singh became the prime minister. Replying to question number 1002 regarding my recommendations, V P Singh told parliament (Lok Sabha) on March 19, 1990: "The one-man Wadhwa Committee appointed by the Planning Commission to go into the status of record-of-rights in land in various states has submitted a preliminary study entitled 'Guaranteeing Title to Land' in which suggestions have been made for a change-over from the present system of presumptive titles to land to conclusive titles to land. ... This is proposed to be discussed in a seminar to be organised to which relevant representatives would be invited". *The seminar was never organised.*

However, almost all those who were invited for the seminar expressed in writing their support for the proposal. Most of the invitees to the seminar wrote book reviews or review articles on this monograph. On July 16, 1990, L C Jain, member, Planning Commission, wrote to me: "You will be glad to know that I read the comments straightaway. These good comments are now becoming a burden because of each day's delay in

implementation. I hope on your returns from Australia, etc, action will follow with speed". *Nothing happened.*

Cabinet Secretary to Minister of Law and Justice

On June 11, 1990, the cabinet secretary, wrote a long letter to the minister of law and justice, government of India, in which he described the present position of title to land in India, mentioned the advantages of the proposed system of guaranteeing title to land and finally said : "I shall, therefore, be grateful if a comprehensive proposal is developed within a prescribed time to give an appropriate and enforceable legal shape to the concept of guaranteeing title to land". The minister of law referred the matter to the department of rural development being the nodal ministry in the matter of land records. The department sought specific legal opinion on certain issues. The ministry of law and justice, department of legal affairs, gave their comments and concluded: "However, since the matter requires to be examined in depth and detail, it would be advisable to constitute an expert group which might include not only the legal experts, but also representatives of the ministry of urban development, agriculture (department of rural development) as also of the state governments". *Nothing happened.*

Committee of Secretaries Considers Note of Department of Rural Development

On January 22, 1991, a meeting of the committee of secretaries was held in the committee room of the cabinet secretariat, Rashtrapati Bhavan, New Delhi, to consider the Note entitled 'Guaranteeing Title to Land and Its Adoption in India' prepared by the department of rural development. I was invited to attend this meeting which I did. Four options were listed for the consideration of the committee of secretaries. They were: "(1) To send an inter-ministerial team to few countries where the 'Torrens System' is in operation or has been enforced substituting the system of registration where the title to land is not guaranteed so that necessary operational details are collected to provide answers to many queries and doubts about the likely difficulties to be encountered in implementing the proposal. ... (2) To set up a high level inter-ministerial expert group consisting of representatives from the

department of rural development, ministry of law and justice, ministry of urban development, etc, to examine various aspects of the proposal and its implications. ... (3) To consult the state governments and other legal experts in the matter. Professor Wadhwa has already obtained opinion of many legal experts who favour the adoption of the system. ... (4) To hold a national level seminar of experts with a view to eliciting their general view about the desirability and feasibility of pursuing the suggestion. ... Meanwhile, a large number of legal experts have already communicated their views. In the circumstances, a seminar is not likely to serve much useful purpose at this stage....". During the discussion, it was observed that the proposal merits serious consideration and the proposed system could be tried out on a pilot basis in selected tehsils/taluks or in selected urban areas. "Initially the pilot project could commence the system of registering titles whenever a public authority or government transfers land along with title for various purposes such as house building activities, rehabilitation of displaced persons and others. In such cases, since the title is transferred by the state or a public authority, there should be no difficulty in adopting the system of registering titles." After discussion, however, the conclusion arrived at was that "A high level inter-ministerial expert group consisting of representatives from department of rural development, ministry of law and justice and ministry of urban development may be set up to examine the various aspects of the proposal and its implication. Department of rural development may co-opt such other members as would be necessary from time to time.... department of rural development was requested to take further action in the light of the above conclusions". *Nothing happened.*

Prime Minister on Land Records

On August 15, 1991, P V Narasimha Rao, the then prime minister of India, said in his first address to the nation as prime minister on independence day from the ramparts of the Red Fort, New Delhi: "You must also be aware that there are frequent land disputes and often they assume such violent proportions that the real issues are pushed into the background. And a lot of litigation continues for years, ruining the people. The source of these conflicts are the land records which are not kept properly. The only method to avoid this is to keep our land records in the villages properly

so that people know about their ownership and proprietary rights. We want to launch this campaign throughout the country so that in every village proper land records are made available."

On August 15, 1992, in his second address to the nation as prime minister on independence day, P V Narasimha Rao said from the ramparts of the Red Fort, New Delhi: "Next I had said that the revenue records and the records-of-rights over land in our villages are not maintained properly. The result is that there is protracted litigation which often leads to bloody fights and therefore a programme for their improvement was needed. I am happy to inform you that we have addressed ourselves to this task and a scheme has already been framed. We are going to call a meeting of revenue ministers to urge them to complete this job within a specified timeframe, maybe a year or two". *Nothing happened.*

Ministry of Urban Development and Guaranteeing Title to Land

In May 1990, the draft housing policy, government of India, ministry of urban development, provided that "instead of registration of deeds or interest in the property, alternative approaches like registration of title to property to be explored so that a certificate of registration of title protected by statute can be easily made available". *Nothing happened.*

On July 9, 1990, the National Housing Bank arranged a meeting with the officials of the government of Madhya Pradesh at Bhopal. I attended this meeting at the invitation of the National Housing Bank. The government of Madhya Pradesh expressed its willingness to extend all assistance and co-operation to the National Housing Bank in implementing the title registration scheme with reference to the urban land in the state. *Nothing happened.*

On October 4, 1990, the ministry of urban development, government of India, constituted an inter-ministerial committee comprising the representatives from the department of rural development, Planning Commission, ministry of law and justice, National Housing Bank, HUDCO, HDFC and governments of Maharashtra and Tamil Nadu to finalise the pilot projects in respect of Maharashtra and Tamil Nadu for the introduction of the system of guaranteeing of title to land. The committee visited Pune and Chennai and decided that the pilot projects should be started in these two cities subject to the

approval of the state governments. It was further decided to set up sub-groups at both the places under the divisional commissioners of these two places to formulate detailed guidelines for the introduction of the system there and the desired administrative and legal steps needed for the same. I was invited to attend meetings at both these places which I did. *Nothing happened.*

Ministry of Urban Development and Property Title Certification

On May 6, 2002, the ministry of urban development and poverty alleviation, government of India, appointed a committee to work out the modalities for the implementation of the urban reforms incentive fund of the government of India. The terms of reference of the committee were, among other items, to prepare the framework of the urban sector reforms ...with a view to facilitating growth of the cities with adequate provision of housing and infrastructure and to identify specific legislative measures and administrative/institutional arrangements required to be made for the implementation of the reform agenda. The term of the committee was three months from the first meeting of the committee. I was appointed a member of this committee. The first meeting of the committee was held on May 16, 2002. Twelve measures to be taken by the states had been identified by the ministry. One of them was the implementation of the system of Property Title Certification. During the discussions, I explained the importance of introducing the system of property title certification. All members of the committee were, however, asked to send their proposals with regard to different identified proposals to the ministry for consideration in the next meeting of the committee. Thereafter no meeting of the committee took place. *So, nothing happened.*

4. NATIONAL COMMISSION ON LAND REVENUE ADMINISTRATION

Proposed National Commission on Revitalisation of Land Revenue Administration

On October 9, 1990, the secretary to the government of India, department of rural development (ministry of agriculture) wrote to me: "Government has decided to set up a national commission

on revitalisation of land revenue administration with a view to undertake an in-depth review of laws, rules, regulations and processes, etc, and suggest norms for future set up of revenue administration, overhauling of regulatory framework, modernisation of land records system, induction of cost effective and time saving technologies and new management practices, etc... The government would like to associate you with this work as a full time member of the commission. I shall be grateful if you could kindly convey your consent accepting this position to enable us to process the matter further.” The terms of reference of the proposed National Commission included to “examine the desirability and feasibility of introducing the system of state ‘Guaranteeing Title to Land’ in the country with a view to reduce litigation and ensuring security and stability in land transactions”. I wrote back to the government that as I was working at that time as a full time chairman of a one-man committee of the Planning Commission, it was not possible for me to accept full time membership of the National Commission simultaneously. I agreed to work as a part-time member to begin with and take the full time responsibility in the commission at a later date. In addition to only one full time member, that is, myself, the commission was to have six part-time members. It was also provided in the Eighth Five-Year Plan that a National Commission on Revitalisation of Revenue Administration would be set up, during that plan period, which would take up all issues relating to land record management in the states. *The proposed Commission was not set up.*

5. COMPUTERISATION OF LAND RECORDS

National-Level Steering Committee on Computerisation of Land Records

On September 21, 1989, in a meeting of the National-Level Steering Committee on Computerisation of Land Records, constituted by the government of India, ministry of agriculture, department of rural development (land reforms division), of which I was a member, I “stressed that computerisation of land records is a means to an end, the end being a satisfactory system of record-of-rights which serves the interests of the people and the government alike. ... No attempt has been made to ensure to check whether data

input is correct or not. Unless this aspect is given primacy, the output from the computer is not likely to result in any benefit." I further "clarified that computerisation of land records is not intended to correct record-of-rights. It is merely intended to store whatever is contained in the record-of-rights. ... This aspect is not going to be sorted out by computerisation of land records." Moreover, computerisation does not change the legal character of the land records which is presumptive. The secretary, rural development, "reacting to these observations conceded that ideally the first step should be to update the records to bring them in line with the ground-level situation." He "agreed that a condition could be laid down that before data are entered into the computer, it should be ensured that record-of-rights are updated." *Nothing happened.*

I do not know whether the land records in Delhi, Kolkata, Thiruvananthapuram, Varanasi and Khajuraho have been computerised. If they have been computerised then the examples given by Shourie, mentioned in Part I, about the deplorable state of record-of-rights in land of the ITDC hotels in these cities substantiate my point. Anyway, I give below one example from Pune where the land records have been computerised.

Computerisation of Land Records in Pune

In 1965, one A built a building in Pune. On March 31, 1990, the said A divided the said building into four apartments and constituted the said building into a Condominium under the Maharashtra Apartment Ownership Act, 1970, by a Deed of Declaration registered in Mumbai. The said A retained one apartment for himself and sold away the remaining three apartments to B, C and D, all businessmen from Mumbai, in 1990, 1993 and 1993 respectively. All the sale deeds were registered in Mumbai. B divided his apartment into two apartments in 1999 and sold one of them to X and the other to Y. The sale deeds were registered in Pune.

Taxation Rules under Bombay Provincial Municipal Corporation Act, 1949

According to Rule 1(1) of the Taxation Rules regarding notice of transfer, etc, of premises assessable to property taxes (Chapter VIII of Schedule D), framed under the Bombay

Provincial Municipal Corporation Act, 1949, which are in force in the state at present, whenever the title of any person primarily liable for the payment of property taxes of any premises is transferred, the person whose title is so transferred and the person to whom the same is transferred are required to give notice of such transfer to the municipal commissioner within three months after execution of the instrument of transfer, or after its registration, if it is registered, or after the transfer is effected, if no instrument is executed. As mentioned above, before 1990 the entire building was one unit only and stood in the name of A alone in municipal records and was assessed for property taxes as one unit at the then prevailing rate. B, who purchased the apartment in 1990, was required under the law to inform the Pune municipal corporation about his purchasing the property and to get the same transferred in his name and also assessed in his name for the purposes of property taxes. As he was apprehensive that the property taxes of the apartment purchased by him would go up if he informed the municipal corporation about his purchasing the property, he did not inform the municipal corporation. A also did not inform the municipal corporation that he had sold the property to B and continued to get the bill of the property taxes for the entire building in his name at the then fixed taxes and collect B's share from him at the old rates. When C and D purchased the apartments in 1993, they also did the same thing. The result was that none of the purchasers or the seller informed the municipal corporation about their purchase or sale of the property, as required under the law, and the entire building continued to be shown as one unit in the municipal records in the name of A as the sole owner though in reality three out of four apartments had been sold out by A who had remained the owner of only one apartment. Every year the bill of the property taxes was being received in the name of A, for the entire building, as an owner of the building as if no Condominium had been formed and no apartments had been sold out and A was the sole owner of the building. The apartment owners were dividing the bill of the property taxes among themselves unofficially because they were paying the shares of taxes of their apartments to A and not to the municipal corporation. When X purchased the apartment from B, B tried his best to persuade X to do the same thing, that

is, not to inform the municipal corporation about the constitution of the Condominium and about the purchasing of apartments by X and others and pay to A 1/5th share of the bill of the property taxes because by then five apartments had come into being after B had divided his apartment into two apartments. He tried to explain to X that in this way they all would be paying less property and other municipal taxes. X told B that he had already come to know about what he was doing and therefore had mentioned in the Deed of Apartment that B would get the property entered in his name in the record of the Pune municipal corporation and other concerned records, pay all the municipal taxes to the municipal corporation and furnish receipts thereof to him. B was very angry when X told him that he would inform the municipal corporation.

Maharashtra Apartment Ownership Act, 1970

Section 18 of the Maharashtra Apartment Ownership Act, 1970, says that each apartment and its percentage of undivided interest in the common areas and facilities appurtenant to such apartment (being an apartment submitted to the provisions of this act) shall be deemed to be a separate property for the purpose of assessment to tax on lands and buildings leviable under such law and shall be assessed and taxed accordingly. Therefore, as soon as Deed of Apartment of X was registered, he wrote to the commissioner, Pune municipal corporation, informing him about his purchasing the apartment and requesting him to issue a bill for property taxes for the apartment in his name after determining the rateable value of the apartment. As the records of the municipal corporation showed only A as the sole owner of the building, the municipal corporation was not aware of the constitution of the Condominium or about the sale by A of three apartments in the Condominium to B, C and D, and asked X to supply to them copies of the Deed of Declaration of the Condominium and also copies of the Deeds of Apartments of all the buyers of the apartments. X wrote back saying: Under the provisions of the Maharashtra Apartment Ownership Act, 1970, each apartment is an independent unit exclusively belonging to the owner of that apartment, having no connection with other apartments in the Condominium. The owner of each

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apartment acquires full ownership of the apartment concerned by virtue of his own Deed of Apartment independently in his own right without any connection whatsoever with the Deeds of Apartments of owners of other apartments in the Condominium. It is not necessary for the owner of an apartment in a Condominium to have copies of Deeds of Apartments of owners of all other apartments in the Condominium. Therefore, he was neither expected to possess copies of Deeds of Apartments of owners of all other apartments in the Condominium nor could he be called upon to produce such copies. Thus, the requisition for the supply by him, to the municipal corporation, copies of Deeds of Apartments of owners of all the apartments in the Condominium was misconceived, improper and illegitimate. As regards the Deed of Declaration, he wrote to them that it would be with the party which made that Declaration. The Deed of Declaration being a registered document, its copy could also be obtained from the registration office and he may not be called upon to produce the same. Thus, the Pune municipal corporation knows that A, B, C and D who were, under the law, required to give notices to the municipal commissioner about the transfer of titles to their properties liable to property taxes, within three months after the registration of sale or purchase deeds of their properties, did not do so at all. Nothing was done by the Pune municipal corporation for non-compliance of their law by A, B, C and D.

Condominium and Land Records

Not only in the records of the Pune municipal corporation the names of B, C and D did not appear as owners of apartments in the Condominium, in the record-of-rights in land maintained by the state government also they did not appear. When X wrote to the City Survey Officer informing him about the purchase by him of the apartment in the Condominium and requesting the City Survey Officer to issue a separate Property Card in his name, the City Survey Officer found that A was being shown, in their records, the sole owner of the entire building and the department was not informed about the constitution of the Condominium and the sale of three apartments by A to B, C and D.

Maharashtra Land Revenue Code

Section 154 of the Maharashtra Land Revenue Code, 1966, provides that when any document purporting to create, assign or extinguish any title to, or any charge on, land used for agricultural purposes, or in respect of which a record-of-rights has been prepared is registered under the Indian Registration Act, 1908, the officer registering the document shall send intimation to the talathi (village accountant) of the village in which the land is situated and to the tahsildar of the taluka, in such form and at such times as may be prescribed by rules made under this code.

Maharashtra Registration Manual, 1997

Order 431 of the Maharashtra Registration Manual, 1997, provides that every sub-registrar should send during the first week of every month to the tahsildar of the taluka a Return in Form A showing registrations effected with respect to land whether used for agricultural or non-agricultural purposes for which the record-of-rights is maintained. Order 432 of the above-mentioned Manual says that this Return should include information regarding sales by private contracts, sales by civil courts, permanent leases, gifts, exchanges, mortgages with or without possession, partitions, releases, acknowledgements of money paid in consideration of extinction of mortgages, reconveyance of mortgaged property, settlements, transfer of mortgage rights and deeds of adoption conveying rights in self-acquired immovable property and other transactions in land. This rule further provides that the registering officer should prepare Form A in duplicate on separate sheets for each village so that they may be sent direct to the village accountant by the tahsildar.

*Maharashtra Land Revenue (Village, Town and City Survey)
Rules, 1969*

In Pune, the record-of-rights in land is prepared in the form of 'Register of Mutations' and the 'Property Card' prescribed by Rule 7 of the Maharashtra Land Revenue (Village, Town and

City Survey) Rules, 1969. Section 150 of the Maharashtra Land Revenue Code, 1966, provides that the talathi/maintenance surveyor shall enter in the Register of Mutations intimations of acquisitions or transfers received by him under section 154 of the code and as soon as a mutation is entered in the Register of Mutations, he shall post up a complete copy of the entry in a conspicuous place in the village, town or city. He is further required under the said section to give notice to all persons appearing from the Property Card to be interested in the mutation and to any other person whom he has reason to believe to be interested therein, requiring them to send their objections, if any, to the entry within 15 days from the date of receipt of such notice. The section further provides that the disputes, if any, shall be decided and the mutations in the Register of Mutations certified by a revenue or survey officer. After certification, the entry is transferred from the Register of Mutations to the Property Card.

The names of B, C and D do not appear on the Property Card because the talathi/maintenance surveyor did not get the intimations of transfers and acquisitions of those apartments from the officer registering documents under the Indian Registration Act, 1908, and the concerned parties did not approach the revenue authorities to do the mutation in the record-of-rights in land. Thus even after knowing that the property has been converted into a Condominium and sold by A to B, C and D, the revenue authorities have not carried out the necessary mutations in the record-of-rights in land because the concerned parties have not approached them. This is happening all over the country. In some states, the registering authorities are not sending the intimations of acquisitions or transfers of properties to the village accountants regularly while in others where such intimations are being sent, the village accountants do not take any action on them unless approached by the concerned parties. The result is that transfers do not get reflected in the record-of-rights in land prepared and maintained by the governments.

Rules of the Maharashtra State Electricity Board

In 1995, B, C and D decided to have separate electric meters for their apartments. According to the Rules of the Maharashtra State Electricity Board (MSEB), an electric connection can be

given either in the names of the owners or in the names of the tenants. For claiming to be the owners of their apartments, they were required to produce the receipts of the property taxes paid by them to the municipal corporation. As they were not paying any property taxes to the municipal corporation, they obtained false certificates and also false monthly rent receipts from A to the effect that they were the tenants of A and submitted those false certificates and false rent receipts to MSEB to prove that they were the tenants of A though they had purchased their apartments from A in 1990 and 1993. In this way, they obtained electric connections for their apartments by producing false certificates and false rent receipts. The MSEB knows that B, C and D had obtained false certificates from A and submitted those false certificates to the MSEB and that this amounted to cheating the MSEB but no action was taken by the MSEB for this illegality.

The examples can be multiplied but I shall give here only one more example. About 100-150 yards away from the above-mentioned building in which X purchased his apartment, there is a very famous High School. It was started in 1963. Its building was built prior to 1963 on two plots, but in the record-of-rights in land (Property Card) even now those two plots are shown as vacant land. The Revenue Department knows about it.

As I have said earlier, the land records in Pune have been computerised. So, today, instead of incorrect presumptive land records, we have computerised incorrect presumptive land records in the city. I understand that in about 70 per cent cases, the entries in the Property Cards are not correct. This is true of practically the whole country wherever land records have been computerised or are being computerised, the difference being only of the degree.

6. MCKINSEY AND COMPANY ON LAND RECORDS

McKinsey and Company on Unclear Land Titles in India

On September 6, 2001, McKinsey and Company, an American Consultancy firm, submitted to the Prime Minister of India a three-volume report entitled "India: The Growth Imperative – Understanding the Barriers to Rapid Growth and Employment Creation" of a study conducted by the McKinsey Global

Institute in collaboration with McKinsey's India Office. It is stated in this report that "unclear property rights for rural and urban land remain a major issue throughout India. It is a complex and knotty problem and has been exacerbated because of variety of reasons." It is further stated in this report that "land market distortions account for close to 1.3 per cent of lost growth a year, but largely remain excluded from public debate. ... Most land parcels in India – 90 per cent by one estimate – are subject to legal disputes over their ownership. The problem might take Indian courts a century to resolve at their current rate of progress. This lack of clarity over who owns what makes it immensely difficult to buy land for retail and housing development. Property developers also have trouble raising finance, since they cannot offer any land to which they do not have a clear title as collateral for loans."

As regards the policy recommendations, it is said in the report that "in order to solve the issue of unclear ownership rights to land titles, the government must expedite all the existing land disputes cases which are languishing in courts all over the country. This will not only clear up the disputes but, as a result, also ease the huge burden being shouldered by the courts at present. The government should, therefore, set up specialised courts to handle land title disputes. These courts should have an explicit fast-track time limit to solve each case, with well-defined arbitration procedures in case of appeal. A similar system was adopted in post-reunification East Germany to resolve the land claim issues arising from land expropriation under the communist regime." It is further said in the report that the government should "simplify and modernise the current registration system for land titles. In particular, it should streamline the land registration procedure by eliminating the intermediate (validation) steps. This simplification, together with the computerisation of registered land titles, would then limit the manipulation of titles at different levels."

Faulty Solutions

As McKinsey Global Institute has not studied the jurisprudence of record-of-rights in land in India, the solutions offered by it for making the unclear land titles in India clear will not solve the problem because they do not tackle the root cause of unclear land

titles in India. The question of unclear land titles cannot be solved only by setting up of fast-track courts to settle land disputes and computerising land records. I have already dealt with computerisation of land records earlier. As regards the setting up of fast-track courts to settle land disputes, it is not going to solve the problem permanently unless the basic question, namely, the legal aspect of land records is resolved. By the time existing land disputes are settled, new disputes will take their place. Under the present system of presumptive titles to land, litigation will always stay ahead of resolution. The example of East Germany given by McKinsey Global Institute is not relevant to us.

Introduction of System of Conclusive Titles to Land in Germany

In Germany, a uniform system of registration of title to land was introduced throughout the country in 1897 by the Land Register Act (*Grundbuchordnung* vom March 24, 1897, GBO). In 1899, the Imperial Civil Code (*Bürgerliches Gesetzbuch*, BGB) provided that from January 1, 1900, an entry in the land register (*grundbuch*) prepared and maintained by the state government will be the sole admissible evidence of title to land. Thus, an entry in the land register became a conclusive title to land as far as a bona fide purchaser is concerned. The purchaser is not required to make enquiries beyond the land register. He is protected by the entry in the land register, that is, he acquires full title of a person shown in the land register as owner irrespective of whether the entry in the land register is correct or not. The land registers (*grundbuecher*) were prepared for all parcels of land, both urban and agricultural, in the country.

Confiscation of Land in East Germany by Soviet Military Administration

Before the German Democratic Republic (GDR) was formed in 1949, the Soviet Military Administration confiscated, between 1945-1948, as land reforms measure (*Bodenreform*), all farmsteads (including the buildings, cattle and equipment) and forest exceeding 100 hectares without any compensation and directed to destroy all land registers pertaining to those lands. The confiscated land amounted to 3.2 million hectares (2.2 million hectares of farmland

and one million hectares of forests) which was more than 30 per cent area of Soviet occupied zone. The Soviet Military Administration assigned this land to the 'State's Land Trust' administered by the local authorities. The Trust distributed about two-thirds of this land to the new settlers. Similarly, the Soviet Military Administration seized the property of about 10,000 companies of heavy industry, mines, credit institutions, banks, insurance companies etc, amounting to about 70 per cent of the total industrial output. Most of these companies were transferred to the German administration, then nationalised and transformed into people's enterprises and collective associations.

Confiscation of Land by GDR Government

The GDR government also confiscated without compensation, between 1953-1958, about 31,000 agricultural holdings of those who fled to West Germany during this period. In urban areas, as the rents of the rented properties were legally fixed at the rates of 1936, the landlords could not afford to get the repairs of their apartment buildings carried out and therefore were forced to abandon their properties. These properties were transferred to people's ownership. The local governments also expropriated private apartment buildings for renovation and modernisation by paying only nominal compensation. These also were transferred to people's ownership. By 1989, about 43 per cent of the rental estates were under the control of people's ownership. After 1958, the properties belonging to West Germans, foreigners and those who fled to West Germany were legally not confiscated but administered by people's enterprises (*Gebaudewirtschaft*) on trust basis; but in practice those enterprises ousted completely the foreigners and those who fled to West Germany from their ownerships of their properties. It was not uncommon for those enterprises to even sell such properties. It is estimated that at least 2,50,000 parcels of land were under the administration of those enterprises.

Transformation of Agricultural Land into Production Cooperatives

From 1952 onwards the GDR government compulsorily transformed agricultural land into production cooperatives (*Landwirtschaftliche Produktionsgenossenschaft*). The farmers

became members of the cooperatives. Though they continued to remain owners of their lands in the cooperatives, the cooperatives had exclusive right of utilisation of land without any regard to the status of ownership. The cooperatives built about two lakhs buildings without paying any attention to survey boundaries and without any entry in the land registers. The use of real estate in people's ownership could be transferred to enterprises, cooperatives and even private citizens. Land was allotted to individuals without creating any formal title, the land being used for buildings. The transferees acquired the right of utilisation. Private transactions of real estate were fully regulated. The transfer of private land ownership was subject to public control and came close to a standstill. Administrative assignments of land became more important than the status of ownership. Consequently, the system of maintaining the land registers was abandoned.

Joint Declaration by German Governments before Unification of Germany

Before the unification of Germany on October 3, 1990, the two German governments issued on June 15, 1990, a Joint Declaration about "Open Questions of Ownership" (*Gemeinsame Erklärung der deutschen Regierungen über offene Vermögensfragen*) which provided that all lands and enterprises that had been illegally expropriated by the GDR authorities contrary to the laws of the Federal Republic of Germany were to be returned to the rightful owners, with some exceptions. Restitution was excluded if the return of land was impossible, for example, if apartment houses had been built without any attention to cadastral boundaries or if the real estate had been acquired in good faith. In those cases the applicant was entitled to partial compensation. The owner also could choose compensation instead of restitution. With favourable decisions of restitution, the owner succeeded in all legal relationships with the parcel of land, the land register being rectified. All those who abandoned their lands and buildings when they fled to the West or sold their properties to purchasers under unfavourable conditions were entitled to get back their properties. Similarly, restitution applied to loss of property by means of fraudulent practices such as abuse of power, corruption, unlawful compulsion or deceit

committed by private purchasers, a state authority or a third party. The Joint Declaration provided that the expropriations carried out by the Soviet Military Administration were to be excluded from restitution. This condition was laid down by the Soviet government for giving its consent for German unification. The Joint Declaration became part of the Unification Treaty (*Einigungsvertrag*). This exclusion was challenged in the constitutional court. But the highest constitutional court (*Bundesverfassungsgericht*) held in 1991 that this exclusion did not violate the fundamental rights of the former owners of the properties. This decision was based on the outstanding goal of German unity and the prerogative of the federal government in foreign relations in regard to the demand of the Soviet Union to exclude those expropriations from restitution. In 1996, an appeal against this decision in the European Commission of Human Rights was dismissed. However, for all lost properties small compensation was to be paid under the Balancing Act (*Ausgleichsgesetz*) of September 27, 1994. The amount and the mode of payment of compensation corresponded to the compensation paid under the Compensation Act (*Entschadigungsgesetz*) of September 27, 1994.

Establishment of Treuhand

On June 17, 1990, the GDR government established a Federal Trust Agency (*Treuhandanstalt*) for privatising the former publicly owned enterprises to bring them into line with the requirements of a competitive economy and for improving the financial position (*wettbewerbsfaehigkeit*) of as many enterprises as possible and thereby securing jobs and providing land for investment. The Unification Treaty provided for the continuation of *Treuhand* even after unification.

Dissolution of Production Cooperatives

On July 1, 1990, the right of utilisation of production cooperatives was abolished. The Agricultural Adaptation Act (*Landwirtschaftsanpassungsgesetz LwAnpG*) dissolved the production cooperatives and the former members of the cooperatives regained possession of their lands including full powers of disposition. The cooperatives were converted into partnership corpora-

tions. The enterprises which were formerly the property of the people (*volkseigenem Vermoegen*) were transformed into companies on the basis of capital (*Kapitalgesellschaften*) by Trusteeship Administration Act (*Treuhandgesetz*). The *Treuhand* was to sell those companies to private people. This did not apply to properties belonging to the municipalities, cities, districts and states (*Laenders*) and churches. About 60 per cent of the publically held land in the GDR came under the control of *Treuhand* for privatisation. Similarly, all privileges of the people's ownership and the control of real estate were abolished.

Restitution Act

On September 29, 1990, the Joint Declaration dated June 15, 1990, of Open Questions of Ownership was transformed into an Act for the Regulation of Open Questions of Ownership (Restitution Act) (*VermG, Vermoegensgesetz*). This Act was adopted by the Federal Republic under the Unification Treaty. This Act prohibited the *Treuhand* to sell any property for which claim for restitution had been filed. Because the selling of land by the *Treuhand* to prospective investors was blocked till the question of title was resolved, the *Treuhand* itself did extensive title searching of entries in the pre-GDR land registers.

As the *Treuhand* was to sell land to prospective investors, it became necessary to settle the question of title to those lands. But the restitution of lands and buildings to original owners became an obstacle for investment. Even West Germans were not willing to invest in former East Germany because the titles to properties were not clear. After the reunification, 1.2 million applications were filed for restitution of 1.5 million properties. All those applications had to be settled at the earliest and hence the special legislative and administrative measures were taken. The newly created offices for Open Questions of Ownership were unable to deal with this workload. The privatisation work of *Treuhand* came to a standstill.

Investment Priority Act

A new legislation – Investment Priority Act (*Investitionsvorranggesetz*) – was therefore enacted in 1991 which provided that even if there was a possibility of the success of the restitution

claim, the blocking of the sale of land under restitution claim was removed and the *Treuhand* could sell the land under claim to the third party if the transaction ensured jobs, served the improvement of the housing supply or the establishment of infrastructure (roads, railways, etc). The former owners who would have been entitled to restitution were to be compensated at full market price. This Act modified the principles of Joint Declaration dated June 15, 1990. The restitution still had priority over compensation. But investment projects excluded the restitution of land, but only under the condition that full compensation at market price is paid.

Application of BGB and GBO to Former East Germany

As of October 3, 1990, the date of unification of Germany, different forms of ownership prevailing in East Germany were given up and all real estate transactions were to be governed by the BGB (Civil Code) and the GBO (Land Register Act) of the Federal Republic of Germany in all the territories of former East Germany. Thus, the principle of free transfer of land was restored in these territories. But in the absence of up-to-date land registers, cadastral land surveys and the real estate recording offices (*grundbuchamts*), it became impossible to transfer real estate in those territories in accordance with the provisions laid down in the BGB and the GBO with the result that the transactions in real estate came to a halt there.

Transfer of Real Estate by Administrative Procedures

To overcome this problem, the government provided for the transfer of ownership of real estate in those territories by administrative procedures, as a temporary measure, instead of the provisions contained in the BGB and the GBO. The registration of unsurveyed lands and the then existing rights of utilisation were regulated by the Land Selection Act (*Bodensonderungsgesetz*) of December 20, 1993. This Act allowed to use the farmland consolidation proceedings to determine and split up parcels of land without prior cadastral land surveys and to determine the status of ownership and of other rights in *rem* by administrative acts which were given the force of law. The Ownership Assignment Act

(*Vermögenszuordnungsgesetz*) promulgated on March 29, 1994, allowed the transfers of land ownership of nationalised real estates by administrative acts. After the BGB and GBO were declared to be in force in the territories of former East Germany, the illegally built buildings there before 1990 became unprotected because the Unification Treaty had not recognised the illegal acts of assignments before 1990 as right of possession. The courts therefore refused to recognise such ineffective property rights. Thus, from October 3, 1990, the land owners could claim for the return of their lands to them. Suddenly, the users of those properties became liable to be evicted. The Unification Treaty, however, provided an interim solution by providing for the transformation of those rights of utilisation into limited property rights while maintaining independent ownership of buildings. Thus the tenant of the land could stop the owner from claiming restitution because the right of utilisation had been transformed into a right of possession. However, the Act Adjusting Real Estate Law of October 1, 1994 (*Sachenrechtsbereinigungsgesetz* SaRBerG) provided a definite resolution of those de facto relationships by abolishing the remaining constituent patterns of real estate law of the former GDR, the various rights of utilisation and separate ownership of building and land and transforming them into corresponding property rights of the BGB. This settled the conflicting interests of the owners and users. The main purpose of this legislation was to protect those users who had built buildings without any legal basis, especially without any right of utilisation. Those persons were treated as if they had obtained the right of utilisation. The Act established a legal relationship between the owner and the user of the same piece of land. The user was legally entitled to claim from the owner a heredit building right or a right to purchase the real estate itself. Thus either the right of utilisation was transformed into a restricted right in *rem* of the BGB or the ownership of land and the right of utilisation (including ownership of the building) were merged in one person. The heredit building rights were regulated by this Act as well as by an Executive Order on Heredit Building Rights (*Erbbaurechtsverordnung*). Generally, the heredit building rights were granted for 90 years, their periods were largely determined by the former rights of use or the current usage of the buildings. After granting heredit building rights, the former rights of use, legal rights of possession or the rights of separate

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ownership of buildings ceased to exist. The harmonisation of real estate law was completed by the Law of Obligations Harmonisation Act (*Schuldrechtsanpassungsgesetz*, SchRAnpG) which provided that from January 1, 1995, rights of utilisation of land of *dachas* shall be transformed into lease contracts. The owner of the land was entitled to rent being gradually adapted to the market rents.

Winding up of Treuhand

The *Treuhand* was wound up on December 31, 1994. It had achieved its purpose to a large extent. By then it had privatised 15,102 businesses, parts of enterprises and mining rights and more than 25,000 small enterprises. More than 38,000 parcels of land (except farmland and forests) had been sold by the Agency to private investors.

Purchase of Confiscated Land

On December 20, 1995, it was provided through an Executive Order on the Purchase of Land (*Flachenerwerbsverordnung*) that all those whose properties had been confiscated by the former GDR government and those properties had been transferred into the ownership of public domain and were excluded from the restitution could buy those properties at a reduced price if the properties had been transferred into the ownership of the state. On July 15, 1996, the Wall Land Act (*Mauergrundstücksgesetz*) provided that those whose lands had been expropriated for building the Berlin Wall and other frontier barriers at the border could also buy those lands at reduced price. The price was fixed at 25 per cent of the market value.

Settlement of Restitution Claims

By 1996, the situation was reported to have improved. Up to June 1996, 66 per cent of all restitution applications had been settled. The more difficult cases, however, still remained unresolved. It was expected that all pending applications would have been settled by the year 2000. But, restitution was no more considered an obstacle to investments.

(The above account of resolution of land claims in post-reunification East Germany is largely based on a paper entitled 'The Reprivatisation of Land in East Germany after 1990' by Burkhard Hess, published in *The Public Concept of Land Ownership*, Reports and Discussions of a German-Korean Symposium held in Seoul on October 7-9, 1996, edited by Bernd von Hoffmann/Myong-Chan Hwang.)

Conclusive Titles Introduced Again in Former East Germany

Not only restitution applications had to be settled urgently, the land registers also had to be updated. During my visit to Germany in 1991 at the invitation of the Federal government, I was informed by the Chief Executive of *Treuhand* that 95 per cent of the land registers in East Germany had not been destroyed. So, they had to be updated. Those destroyed had to be reconstituted. In some urban areas cadastral land surveys did not exist and therefore survey work had to be undertaken. The recording offices of real estate had to be built again. The transfers of entries in the land registers were given priority so that the banks could advance money. The *Rechtspfleger* (an administrative staff who makes entries in the land registers) had to be trained by the *Rechtspfleger* from West Germany. As the *Rechtspfleger* from the West were reluctant to work under poor conditions in the East, they were paid additional amount as incentive for working in the East (*ostzulage*) as bushgeld (literal meaning jungle allowance). All this had to be done on a priority basis. Once the restitution applications were settled and entries made in the land registers, those entries became the conclusive titles to land and were guaranteed by the state. *No more litigation*. Where is the similarity between the conditions prevailing in India at present and the conditions prevailing in post reunification East Germany?

7. INDIFFERENCE OF STATE GOVERNMENTS

Comments of State Governments on Report of the Committee

The copies of the monograph were sent to all the state governments for their comments. Only three states, namely, Maharashtra, Punjab and Karnataka, sent their comments to me.

On December 18, 1989, Prabha Rau, minister for revenue and cultural affairs, government of Maharashtra, wrote to me about the monograph saying: "The concept is unexceptionable. I can vouch for it both as a farmer and as the state's minister for revenue. The traditional concept of record-of-rights is hopelessly out of tune with the imperatives of a society striving to contain the dynamics of change. Even the Registration Act reduces the state to the position of a passive participant in the matter of transfer of property. How one law permits the registration of a document, which violates other laws, is really intriguing. In the wake of agrarian reforms, the state itself has created a whole new class of property owners but I am afraid the state has proved inadequate to the task of safeguarding the interest of this class, largely because of the inadequacy of the system.

The situation is such that the rule of law is being jeopardised by the laws themselves. What you have proposed will surely change all this. The question therefore is not whether the system proposed by you should be adopted but how soon, at what level, and in what manner. All these three aspects are inter-related. Though our laws do not preclude the possibility of any one of the states of the union adopting the system of state guaranteeing title to land, we should all strive for a uniform system throughout the country.

The ideal arrangement would be for one of the states to prepare the ground for the introduction of the new system under which what would be registered is title and not merely a deed purporting to convey that title. And this ground can only be prepared at the state level. The distance between presumptive proof of title and conclusive proof of title is vast and one must traverse this entire distance to produce results, which make it possible for the system of guaranteeing title to land to succeed.

I am seriously contemplating initiating steps in that direction. The task is formidable but one which needs to be accorded national priority. We in Maharashtra would warmly welcome adopting a system which answers a myriad of problems." *Nothing happened.*

On June 29, 1990, under secretary to the government of Punjab, Revenue Department, wrote to me : "The suggestion mooted by Prof D C Wadhwa, regarding "No registration without mutation" could be acceptable, to begin with, on an

experimental basis, in a restricted area. According to the prevalent practice in the state, one can sell his property by presenting a registered deed, a symbolical document reflective of title of the land. Going by such practice, say if a certain property undergoes five successive transactions then in such cases, the revenue records would not go to guarantee the title-land in favour of the final purchaser, if the preceding four transactions are not given effect to in the revenue records. If the ultimate purchaser party approaches the patwari to get his mutation entered, he could very well refuse to do so on the simple plea that the mutation in question could not be entered unless the former four transactions also take effect in the revenue records. Illustratively, if in the meantime, the purchaser party, second in the chain of transactions, has since left this world, then the last party would be hard put to get the mutation sanctioned entered. Faced with such an odd situation, he would either have to grease the palm of the revenue functionaries to the best of their terms for manipulating the mutation or forget and go without mutation. Thus, such imponderable hindrances many a time retard the progress of revenue records leaving holes in them.

The proposal, to usher in the procedure of "No registration without mutation", could obviously lead to the updating of land records in a facile way. Undoubtedly, there is a provision in the existing land revenue laws whereby a patwari is required to enter the mutation on the basis of registration memoranda received by him. The field Kanungo, thereafter, is to check the entries made on the basis of registration memoranda in the register of mutations. On the first visit of the supervisory revenue functionary, in the Circle, after the entry of a mutation, the mutation register is required to be presented before him for orders on the mutations entered. If any mutation fails to be sanctioned that day, viz, for non-appearance of the party concerned, or for any other reason, then such mutation is presented on his next visit, but this practice apparently is not followed faithfully. The mutations are not consistently entered on the basis of registration memoranda. These are not found entered/sanctioned according to the prescribed schedule. Consequently, mutations in large numbers keep on waiting for appropriate orders. Conversely, sale transactions continue

unabated. Resultantly, the land records assume a discordant picture. If the registration law is amended to enable the registering officer to refuse the sale deeds which are not supported with copy of its mutation, speaking of the genuineness of title of land, then it is felt that the land records could regularly, without any abyss, keep up its pace of updating."

On September 22/27, 1990, deputy secretary to the government of Karnataka, Revenue Department, wrote to me: "This government is however keeping the suggestions in view and will try to adopt the same if they are found to suit the situation and help the general public".

8. PILOT PROJECT IN MAHARASHTRA

Committee on Good Governance Proposes a Major Initiative

On July 25, 2001, Madhav Godbole, IAS (Retd), former home secretary, government of India, submitted to the government of Maharashtra, his report of the One-man Committee on Good Governance in Maharashtra in which he proposed a major initiative for guaranteeing title to land in the state. He said : "Dr D C Wadhwa has done a pioneering study in this behalf more than a decade ago. The study has been commended by the government of India to the states for suitable follow-up action. This matter was examined by the state government way back in 1989-90 and it was decided to take steps to implement this crucial reform. It was also decided to take a pilot project in this behalf in Pune city. Unfortunately, there has been no follow up action so far."

"The advantages of the new system are numerous. It will help in translating the land reforms in reality. It will reduce court litigation substantially. It will enable speedy sanction of loans by banks and financial institutions. It will help in speedy urbanisation. The new system will also increase the revenues of the state and local bodies substantially. Lastly, it will also create ample employment opportunities. Needless to say, it will create large-scale satisfaction all round. It is thus clear that this initiative will be welcomed by the people in both the urban and also the rural areas...."

"In the light of the above, it is recommended that Maharashtra should take a lead in this behalf in the country by launching a

pilot project in one district and in one large city such as Pune immediately”.

Proposal to Undertake a Pilot Project Approved

Perhaps, in view of the recommendation made by Godbole in his report of the One-man Committee on Good Governance in Maharashtra for launching a pilot project on guaranteeing title to land in one district and in one large city in Maharashtra immediately and also, perhaps, influenced by the report of the McKinsey and Company that India is losing 1.3 per cent economic growth per annum on account of unclear titles to land in the country, the Chief Minister of Maharashtra called a meeting in his office on January 3, 2002, to consider introducing in the state the system of guaranteeing title to land, suggested by me in 1989. The meeting was attended by the Revenue Minister, Chief Secretary, Principal Secretary (Revenue), Principal Secretary (Urban Development), Secretary (Information Technology), Secretary (Law and Judiciary), Secretary (Co-operation), Divisional Commissioner (Pune), Collector (Pune), Settlement Commissioner and Director of Land Records (Maharashtra) and Inspector General of Registration (Maharashtra). I was invited to attend this meeting. I explained the salient features of this system in the meeting.

The system of guaranteeing title to land is based on three principles, namely, the mirror principle, the curtain principle and the assurance principle. The mirror principle means that the register of title to land maintained by the government is a mirror which reflects accurately and completely and beyond all arguments the existing facts that are material to a particular piece of land and the title is free from all encumbrances not mentioned in the register. According to the curtain principle, a buyer of land need not and, indeed, must not make searches about the past history of the title to that land. In other words, he need not go behind the curtain and should rely solely on the curtain, that is, the information contained in the land title register. The assurance principle says that if in a case the mirror fails to give absolutely correct reflection of a title to land and if a person relying solely on the information contained in the register of title to land suffers loss, the state will indemnify him

to the full extent of the loss suffered by him because the mirror is prepared and maintained by the state.

I explained all these three principles in the meeting. None of the officials present in the meeting expressed his reservations about the system. Lastly, I made two proposals, namely, undertaking of a pilot project on the subject in the state and establishing of a Land Title Institute in Pune for research and training in land titling. *Both these proposals were approved.*

Revenue Minister Informs the Press

After the meeting, the Revenue Minister informed the press that the state government had decided that the "revenue department will issue a certificate of ownership of land, named Conclusive Title, after verifying the land records. ... 'It will be a title of land authenticated by the government'. There are several cases of people fraudulently selling land without holding the title of the same. Some times, the ownership is not transferred on the titles of land even after the transaction is effected. As a result, disputes arise between the buyers and the sellers or their heirs over the ownership. To do away with this, the authentic title will be issued by the government itself. ... At present, land-owners are given 7/12 (Record-of-Rights in Land) abstract cards in rural areas and property cards in urban areas. However, both these documents do not show conclusive titles and on several occasions disputes between the parties involved reach the courts. Such litigations have delayed development of properties at several places in the state. The suggestion has come from a one-man committee of Dr D C Wadhwa, director of Gokhale Institute of Politics and Economics. The Committee had been appointed by the centre during Rajiv Gandhi's tenure as PM, but its report was gathering dust till date".

Incorrect Minutes of the Meeting

But, the decision of establishing a Land Title Institute in Pune was neatly omitted in the minutes, of the above-mentioned meeting, prepared by the Department of Revenue. In this connection, I wrote to the then Chief Secretary on February 26, 2002, as under:

"I have been associated with several state governments, including the government of Maharashtra, and various ministries of the government of India for the past several years in different capacities. During this period, I never came across a case where the Department of a state government had overruled the decision of the Chief Minister of that state. The Department, no doubt, can, and should, express its opinion, if it is different from that of the Chief Minister, on any matter. But once the decision is taken by the Chief Minister, the Department cannot, and should not, overrule it directly or indirectly.

"Coming straight to the point, in the meeting held on the 3rd of January, 2002, under the Chairmanship of the Chief Minister to consider the introduction of the system of registration of title to land in the state, I had made two proposals, namely, undertaking of pilot project on the subject in the state and establishing of a Land Title Institute in Pune for research and training in land titling.

"As you know, the Chief Minister explicitly approved my both the above-mentioned proposals. The Minister for Revenue and a number of officials from the Department of Revenue were present in the meeting. None of them expressed any reservation about the decision of the Chief Minister. The Minister for Revenue expressly supported the decision of the Chief Minister. In fact, I wrote to the Minister for Revenue on the 9th of January saying that I was glad that he supported both my proposals. I also wrote to the Chief Minister on the same date thanking him for giving me an opportunity to place before him my views on the subject and for agreeing to both the proposals put forth by me. On the same date, I wrote to the Secretary to the Chief Minister thanking him for arranging that meeting and saying that I was glad that the Chief Minister had agreed to my both the proposals. Before that I had written to you and the Principal Secretary, Department of Revenue, on the 7th of January saying that I was eagerly looking forward to discussing with you both the operational aspect of the "decisions" of the government taken during our meeting on the 3rd of January. By "decisions", I obviously meant the undertaking of a pilot project and of setting up of a Land Title Institute in Pune.

"After that I went out of Pune on an assignment of the UGC to review the working of the Department of Economics of the

Punjabi University, Patiala. I returned to Pune in the evening of 31st January. I was hoping that the minutes of our meeting held on the 3rd of January would have arrived in my office in Pune in my absence. I went to my office on the 1st of February and found that the minutes had not arrived. I telephoned the office of the Settlement Commissioner and enquired about the minutes. The P A to the Settlement Commissioner told me that they had received the minutes. I requested him to send a xerox copy of the same to me which he very kindly did. I noticed from the minutes that they had been issued on the 19th of January and had been sent to all the persons, who had attended the meeting, except me. I telephoned the Deputy Secretary, Department of Revenue, Mumbai, and requested him to send a copy of the same to me for my record. He sent the copy to me on the 1st of February.

“I was surprised to read the minutes. It is correctly said in the minutes that I argued for the introduction of the system of registration of title to land in the state and also proposed for the setting up of a Land Title Institute in Pune. But while reporting the decisions taken in the meeting, it is said in the minutes that the districts of Pune, Latur and Nanded were selected for conducting Pilot Project for the introduction of the system of registration of title to land to which the Chief Minister gave his approval. Strangely, the minutes are silent about my second proposal, namely, establishing of a Land Title Institute in Pune which gives the impression that no decision was taken about that proposal. This is not true. As mentioned above, the Chief Minister had also given his approval for setting up of a Land Title Institute in Pune. But it was not mentioned in the minutes for reasons known to the Department.

“On the 5th of February I telephoned you and enquired about the omission of this decision in the minutes. You told me that it must have been omitted unintentionally and advised me to write to the Principal Secretary, Department of Revenue, the exact wording of the said item so that the minutes are corrected. Accordingly, I wrote to the Principal Secretary, Department of Revenue, on the 5th of February itself informing him about my conversation with you, your advice to me in the matter and finally requesting him to get a sentence added at the end of the last paragraph of the minutes saying that the Chief Minister also

gave his consent for the setting up of a Land Title Institute in Pune. I sent copies of that letter to you and the Secretary to the Chief Minister. I also spoke to the Secretary to the Chief Minister about it who told me that he would get the minutes corrected. As I did not get the corrected minutes for a long time, I telephoned the Principal Secretary, Department of Revenue, and enquired about the corrected minutes. From my conversation with him, It became clear to me that the omission of the decision of the Chief Minister in the minutes regarding the setting up of a Land Title Institute in Pune was not unintentional but deliberate.

“When a *Talathi* deletes a valid entry from 7/12, we consider it a very serious matter. The omitting by the Department of Revenue of the decision of the Chief Minister from the minutes of the meeting is a more serious matter because it amounts to indirectly overruling the decision of the Chief Minister. It is a well settled law by the Supreme Court of India that what cannot be done directly cannot be done indirectly. As the Department can not overrule the decision of the Chief Minister directly, it also cannot overrule it indirectly. In the realm of constitutional law, doing indirectly what cannot be done directly is considered a fraud.

“The Chief Minister can change his decision any time. The government also can change its decision. My submission is that when a decision is taken in a meeting, it should be faithfully recorded in the minutes of that meeting. If that decision is changed subsequently, it should be recorded in the minutes of the subsequent meeting. As far as I know, the Chief Minister has not changed his decision regarding the setting up of a Land Title Institute in Pune.

“When even correct minutes of the meeting of the Chief Minister cannot be guaranteed at the highest level, I think that it will be of no use for me to work for guaranteeing title to land in the field or for achieving the mirror and curtain principles in land records. Therefore, with utmost respect I beg to say that I withdraw myself from the pilot project and shall not be attending the meeting convened by the Department of Revenue on the 2nd of March at Pune. ...

“We all say that what Oxford and Cambridge are to England, Pune is to India. The establishment of a Land Title Institute in

Pune would have made a unique contribution in the field. Land titling is a very complex, technical and legal matter. If operated competently and efficiently, the proposed pilot project in Pune, Latur and Nanded districts can become a model not only for the remaining districts of Maharashtra but even for the rest of the country. I wish it all success." I sent copies of this letter to the Chief Minister and the Revenue Minister.

Minutes Corrected

On March 20, 2002; the said minutes were corrected by adding a sentence in the minutes that the proposal for setting up of a Land Title Institute in Pune was also approved by the Chief Minister. After this, on the insistence of the Chief Secretary, I agreed to continue my association with the pilot project.

Meeting to Decide Operational Details

On April 12, 2002, the chief secretary convened a meeting in Pune to decide about the operational details of the decisions of the state government taken during the meeting held on January 3, 2002, at Mumbai. I was invited to attend this meeting which I did. It was decided to set up a Committee, comprising of Settlement Commissioner and Director of Land Records, Inspector General of Registration, one Deputy Secretary from Revenue Department, one Deputy Secretary from Law and Judiciary Department, one Officer from Revenue Department (Deputy Collector), one Officer from Land Records Department and possibly one Divisional Commissioner, which would meet at least once in a week and would consider the questionnaire prepared by me and all the land title related laws which would be affected by the proposed changes and suggest the likely time table and the modalities for the implementation of this system in the state. It was also decided that the Committee should submit its report within three months. I was to work as an Advisor to this Committee. As regards the setting up of a Land Title Institute in Pune, it was decided that it should be started as soon as possible with me as the Honorary Director. It was further decided that for the time

being it could start functioning from Yeshwantrao Chavan Academy of Development Administration Yashada at Pune.

Committee Set Up

On August 29, 2002, in pursuance of the decision taken in the meeting convened by the Chief Secretary, the Committee was formally set up by the government but as regards the setting up of a Land Title Institute in Pune, nothing has been done so far in the matter.

News Reaches World Bank

The news about the decision of the government of Maharashtra to undertake pilot projects on land titling in the state reached the World Bank. The Bank knew about my study on guaranteeing title to land as the study had been used by the Bank liberally in its Policy Research Working Paper number 2123 on Access to Land in Rural India (May 1999). An official of the Bank working on rural policy issues telephoned me on May 3, 2002, to find out about the status of the pilot projects in the state and the background context. The bank, together with a group of partners from multilateral and bilateral agencies had organised in Cambodia in the first week of June, 2002, a regional workshop on land issues in Asia. I was invited by the Bank to attend this workshop which I did. As the Bank had invited policy makers from different countries, the Chief Minister of Maharashtra also was invited for the said workshop. The government of Maharashtra, however, sent the Principal Secretary (Revenue) to this workshop. The delegates from other countries, particularly the policy makers like Ministers, etc, were eagerly looking forward to knowing about the policy of the government of Maharashtra with regard to the pilot project on land titling. But the Principal Secretary (Revenue) did not throw any light on the same.

Officials Reluctant to Implement the System

Now the officials of the Department of Revenue seem to have developed cold feet about implementing this system. While writing about the possible outcome of the project, the Department

of Revenue says that “Curtain characteristics introduced, Mirroring situation possible, state Guarantee to the title questionable, Private insurance to be explored”. In another note prepared by the Department of Revenue, one of the ‘concrete suggestions’ made by the Department is of “Promoting land title insurance organisations”.

I do not know the reasons for this somersault by the officials of the Department of Revenue in this matter during this period. This is another instance of the Department of Revenue overruling the decision of the Chief Minister taken by him in consultation with the Department itself. When the officials say that the mirror and the curtain principles can be achieved and would be “ensured”, I fail to understand as to why they question the guarantee to be given by the state for the image reflected by that mirror. If the mirror reflects the correct position and the people act on the basis of that reflection then there will not be a single case of indemnification. I am at a loss to understand their position in the light of their own statements. When the Settlement Commissioner and Director of Land Records informed the chief secretary, in the meeting convened by him on April 12, 2002, about his meeting in Delhi regarding the role for insurance companies, the Chief Secretary also said that he was in favour of state guaranteeing title to land.

Anyway, I have told the officials of the Department of Revenue, as I had said in the meeting convened by the Chief Minister where all these officials were present, that I shall be glad to work on this project if it is implemented as decided and approved in the meeting convened by the Chief Minister, that is, if the pilot project aims at introducing the system of guaranteeing title to land in the state.

Official of Land Title Insurance Company, USA, on Guaranteeing Title to Land

On February 28, 2002, former Vice-President and Associate General of the biggest land title insurance company in the USA. and former Chairman, Committee on Foreign Investment in US Real Estate, came to see me in Pune. He came from Mumbai at 9.30 am, spent the whole day with me and went back to Mumbai at 5.30 pm. We, of course, discussed all about land in India and

other countries. Even he emphatically told me that under the present conditions prevailing in India, the introduction of the system of guaranteeing title to land by the state is the *only sensible solution* of the problem.

9. LAND - MOST ESSENTIAL RESOURCE

Land - Special Concern of the State

Land is limited but most essential resource because without land there can be no activity. Therefore, land has been the special concern of the state all over the world. Before independence, state's role in land management in India was minimal. After independence, there has been some land reforms legislation in the country. But they were mostly distributive, protective and operational measures and did not concern themselves with the foundation of all rights in land, namely, the title. Even for the implementation of these distributive, protective and operational legislations there has been no reliable record-of-rights in land. The principal reason for this failure is the inability of the system, designed originally for a static agricultural economy, to cope with the pressures - both quantitative and qualitative - that have built up in the years since independence.

The ever lengthening shadow between promise and performance is the product of the system itself. Election manifestos and five-year plans in rainbow colours promise us that the brave new world is round the corner. They mean well. They all do. And they all fail. Repeatedly and dismally. This is inevitable. As long as the system remains unaltered and as long as the law remains the principal barrier to what it seeks to achieve, Rule of Law will remain a cliché. To this is added another dismal dimension of administrative ineptitude tempered with political considerations.

Economists on Guaranteeing Title to Land

The economists in the country have neglected land law though land is the most important resource in the economy of a country. They have, no doubt, done considerable research on

land reforms and have published those studies but have not done any work on the basic aspect of land law. I have not seen a single Finance Minister or a member of the Prime Minister's Economic Advisory Council or a member of the Planning Commission or an economist invited by the Finance Minister for pre-budget consultations saying that the economic growth requires, among other things, the reforming of land market which is highly imperfect in the country. Their research is devoted to commodities markets, labour market and markets for financial assets and markets for real (non-financial) assets other than land. The report submitted by me to the Planning Commission was, and even at present is, the first study of its kind in India in which the question of improving the land market in the country by introducing the system of guaranteeing title to land is discussed. However, economists have supported the introduction of the system. V K R V Rao, former Director, Delhi School of Economics, former Vice-Chancellor, Delhi University, former Member, Planning Commission and former Education Minister, government of India, wrote to me: "I have gone through the monograph ... and would cordially endorse the conclusion that it arrives at, viz, that we should go in for a system of registration of title to land You have pointed out quite correctly that if the title to land ownership is registered, this saves enormous amount of trouble for the owner to get credit for his agricultural operations, or for the banker to give credit to the owner. ... With agriculture forming such an important component of our economy, and a pace setter in many ways, it is very necessary that people who own land and want to cultivate it are given facilities to get credit for long term as well as short term purposes, and as the cultivator is dependent upon title to land, he finds it very difficult to operate under the existing circumstances as there is no registration of title to land which guarantees legal ownership". M L Dantwala, National professor in Economics, wrote to me: "From the very beginning I have been supporting your exploration of the problem of title to land and was probably the first to endorse your well researched recommendation I feel that through your laborious study you have made out such a strong and convincing case for adopting the system that it needs no further endorsements".

Law Scholars on Guaranteeing Title to Land

Not only economists, even the scholars in law also in India have not done any studies on the jurisprudence of record-of-rights in land in the country. The reason for this neglect of studies on land law by the law scholars in India may be, as P M Bakshi, former member of the Law Commission of India and former Director of Indian Law Institute, New Delhi, says that it does not offer the thrill and excitement of the constitutional law or the romance of the family law or the conflicts of interests that often find expression in controversies in the field of the law of civil wrongs or the drama of the criminal law. But this is not the justification for the neglect of land law by the law scholars in the country. In other countries, particularly in the USA, Canada, UK, Germany, The Netherlands, Sweden, Australia and Singapore, etc, the scholars in law have done and continue to do considerable work on this subject. However, after the publication of my study, many law scholars in India have supported my idea of conclusive titles to land. For example, P M Bakshi says in his book review of this monograph: "Students of jurisprudence will easily appreciate the great potential and the vast connotation of the word "Title". ... many facets of land law have remained neglected and guaranteeing title to land is one such facet which deserves serious attention, even though the process is bound to be demanding and time-consuming and involving hard work. It will ultimately be successful, if the government and the scholars make the expected contribution". Upendra Baxi, professor of Law and former Vice-Chancellor of Delhi University and former Director of Indian Law Institute, while supporting the idea, wrote to me saying that instead of a comprehensive finalisation of the presumptive title, we should begin with proclamation of conclusive titles in the laws reserved in the Ninth Schedule to the Constitution and finalisation of land titles for the beneficiaries (weaker sections) under ceiling laws and pattas (e g, Madhya Pradesh law) for squatters, dam oustees and under anti-poverty programmes. This, "will have immediate political acceptance, upon which we can build the grand design you have in mind and which I share". B B Pande, Professor of Law, University of Delhi, says in his book review of this monograph that "the suggestion

of replacing the existing system of registration of deeds ... by a system of registration of title to land ... would certainly do away with a lot of uncertainty and speculation about the real title holder, thereby introduce a kind of open and predictable system. Commenting on my monograph, S P Sathe, former Principal, ILS Law College, Pune, says: "Land being a scarce commodity, any uncertainty about its ownership could lead to frauds, exploitation and other illegal transactions. Land ownership must now be made a matter of information which could be obtained for the asking. This is one example of the primitive nature of our property law which obfuscates the legal position and leads to unnecessary uncertainty which is conducive to fraud and exploitation. This also leads to unnecessary and prolonged litigation". Alice Jacob, former Director of the Indian Law Institute and former member of the Law Commission of India, after reading my monograph wrote to me: "I read it with absorbing interest. You have highlighted and ably discussed a problem of fundamental importance to our economy and planned development. Land is a basic and fixed commodity and well thought-out legislations on land reforms and land ceilings have floundered because records relating to land are in a very bad shape. The litigation on land is tardy and cumbersome and the social costs of such litigation in a poor country like ours can well be imagined! In the backdrop of this bleak scenario, your valuable suggestion on remedying the situation by introducing the concept of guaranteeing title to land needs to be seriously considered. ...The present system of presumptive titles to land needs to be changed to conclusive titles to land by state certification process to give certainty of title to land and avoid needless and costly litigation. The problem needs the urgent attention of our policy makers and legislators". Dieter Conrod, Head, Department of Law of South Asia Institute of Heidelberg University, Germany, wrote to me: "Your study has been stimulating to read, and I think it gives a very good overview over the subject. I think the work you have undertaken is of the utmost importance and could only wish that careful attention is given to it by the government. In fact, on a study tour to Bangladesh which I undertook last December to advise on some legal measures in connection with liberalisation of economy it struck me that a good system of record-of-rights would be one

of the most beneficial measures for economic growth in that country, too". In his report to the government of Bangladesh on liberalisation of Economy in Bangladesh, Conrod wrote: "A bottleneck for investment and for the security of loans is the difficulty of establishing a title to land and getting information about its encumbrances. ...These and other difficulties will in the long run be overcome only by introduction of a register of titles in land India also seems to be considering the introduction of such a system. The Indian Planning Commission has set up a one-man committee (constituted by Professor D C Wadhwa of the Gokhale Institute in Poona) to study existing statutory provisions of records-of-rights. A preliminary comparative study has meanwhile been published".

Practitioners of Law on Guaranteeing Title to Land

As regards the practitioners of law, in India they are always very busy with their work in the courts and do not do any research work in law. So, they too have done nothing to study the land law in the country and suggest reforms. But they have supported the suggestion of introducing the system of conclusive title to land in the country. For example, Nani A Palkhivala, Senior Advocate, Supreme Court of India, and former Ambassador of India to the USA wrote to me: "Your suggestion ... is excellent. It will go a long way towards making title to land secure, thereby reducing to a minimum the uncertainties of protracted litigation regarding so basic an asset which, as you rightly say, is the corner-stone of social stability". L M Singhvi, Senior Advocate, Supreme Court of India, former High Commissioner of India to the UK and presently Member of Parliament (Rajya Sabha) wrote to me: "I am delighted with your project on 'Guaranteeing Titles to Land in India' comprehensively, persuasively and therapeutically encapsulated in your monograph which is a superb piece of innovative research, constructive and imaginative scholarship and excellent craftsmanship. The project you have in mind deserves nation-wide support and I hope that the government would accord the priority it deserves". K K Venugopal, another Senior Advocate of the Supreme Court of India, wrote to me: "I have gone through your thought-provoking study dealing with the title to

land. ... Definitely once the alternative system of registration of title as opposed to the registration of deeds is put into place, it would be of great help in assuring the intending purchaser that the land he seeks to purchase has a clear title". Tapas Kumar Banerjee, Barrister-at-Law, wrote in his book review of this monograph: "There are certain books the value whereof cannot be appreciated from their size or bulk: The monograph under review is one such work. It is small in size but its contents are thought-provoking and the problems posed in it are of immense interest and great importance. ... In a tiny seed is hidden the life of a great banian tree. In this tiny monograph there are plenty of materials and suggestions which require follow up action and it is expected that the appropriate departments of the government and all concerned will give their thoughts for developing the ideas hidden in this monograph so that the suggestions become reality". Gobinda Mukhoty, Barrister-at-Law and Senior Advocate, Supreme Court of India, wrote to me: "Suggested remedies are excellent. ... If your suggestions are accepted, I am sure that innumerable people in this country will be grateful to you as title to land would be easy to prove". It is said in a book review of this monograph in the *Kerala Law Times*: "This is a marvelous, wholly unique and completely novel idea authoritatively executed with exact precisions, the like of which has never been attempted before". Many other advocates have expressed similar opinions.

Election Commission on Guaranteeing Title to Land

R V S Peri Sastri, the then Chief Election Commissioner of India and former Law Secretary, government of India, wrote to me: "For the purpose of dealing with the evils of unending litigation relating to land, benami holdings which serve as a haven for black-money and the evils of black-money itself, it is of utmost importance that we adopt a system on the lines suggested by you for ascertaining easily the owners of lands and buildings. ... The existing system of registration and the land surveys which were adopted during the earlier period were mainly devised for the limited purpose of safeguarding the interests as to revenue and the sooner we replace them by a system of title to land suggested by you, the better it will be for

us, particularly from the point of view of achieving the objective of a welfare state as envisaged by our Constitution”.

Civil Servants with Experience in Land Records on Guaranteeing Title to Land

The senior civil servants, having considerable experience in land records, have also supported the idea of introducing the system of conclusive titles to land. For example, K Srinivasan, IAS (Retd), former Member, Board of Revenue, Orissa, wrote to me: “I carefully went through your brilliant dissertation in the booklet entitled ‘Guaranteeing Title to Land’. ... Having spent about 15 out of my 35 years in I.A.S. in jobs related closely to land records, I immediately realised the importance of your message. ... You have convincingly put forth a case for the state adopting a system of registration of titles in the place of system of mechanical registration of transfers. This should not be difficult in India. ... Thus your proposal is quite practical and eminently necessary”. K Balasubramanyam, IAS (Retd), former Commissioner, Land Reforms, Karnataka, wrote to me: “There can be no disagreement on the benefits that would accrue to all concerned namely the land holders primarily, the government and the financial institutions by the substitution of a record of conclusive titles for the present land records which, at best, are only evidence of presumptive title”. P Subrahmanyam, IAS (Retd), former Principal Secretary, Revenue and Forests Department, Maharashtra, wrote to me: “May I at the outset compliment you on your excellent treatise ‘Guaranteeing Title to Land’. In an otherwise rich country, where the poor abound, relations centering around property are the very bedrock of social stability. These relations have been subjected to enormous strain, more particularly since the state’s role changed from that of a mere regulatory mechanism to that of a benevolent benefactor committed to the weal and welfare of the disinherited of the earth. The IXth Schedule to the Constitution of India is veritably the *Abhay Mudra* of the state for those whose hopes were enshrined in the laws relating to land reforms. But the archaic framework within which these laws were to operate has unfortunately been found to be a hindrance. The Deed System of Registration has long since outlived its utility. The

Indian Registration Act, 1908 was obviously adequate in a static society with the state itself being the principal instrument of perpetuating the status-quo. With the passage of time, the latent contradictions stimulated by new forces have begun to surface. Section 22A of the Indian Registration Act, 1908 is itself an admission of the fact that special measures were necessary to ensure that the state's intervention in favour of the beneficiaries of land reforms legislation was not thwarted by the Deed System of Registration. We are aware of the exciting possibilities of the system of state guaranteeing title to land". H M Patel, ICS (Retd), former Finance Minister, government of India; wrote to me: "Undoubtedly, its introduction in India will put a heavy burden on our administration today, but I have seen our rather run-down administration cope with some very much more difficult matters whenever there has been sufficient determination and conviction at the top. Your concrete suggestion seems to me to be eminently workable. Since Planning Commission is seized of this question, I think your recommendations, so cogently argued and supported by data relating to experience of other countries, will receive earnest consideration of government. I can only hope it will be expeditious and, if as I hope, the government accepts them, they will ensure their implementation with vigour and determination. Once again my congratulations on having drawn attention to a subject of great importance and of particular value to a very very large number of people in this country, and on indicating how best to handle it". S Guhan, IAS (Retd), former Finance Secretary, Tamil Nadu, and former Economic Advisor to the Chief Minister, Tamil Nadu, wrote to me: "I realise that many of these issues can be answered only on the basis of experimentation and the pilot basis you have suggested of starting with a district or two in each state is eminently practical. I am, therefore, very interested in knowing what the Planning Commission proposes to do for following up your suggestions". A K Khalid, former Member, Board of Revenue, Punjab (Pakistan), wrote to me: "You will be pleased to know that, stimulated by your learned thesis on *Guaranteeing Title to Land*, I have started reappraisal of the Agrarian Laws of Pakistan to see their inadequacies as to guarantee title to land as also to ensure authoritative and accurate version of the records-of-rights about landholdings in rural areas".

Lending Agencies on Guaranteeing Title to Land

In many developed countries, the lending agencies for housing have their own research departments which do a lot of research work in the field of land law. In India, they do not do any such work. Therefore, they face many problems. So, they also have welcomed the proposal of guaranteeing title to land. T V Ramachandran, the then General Manager and Economic Advisor, National Housing Bank, wrote to me: "The registration of title to land ... literally takes the burden of title verification off the chest of a lending agency and prove a boon to the borrower as well". A K Shetty, the then Managing Director, CanFin Homes Ltd, welcoming the system of registration of title to land, wrote to me: "It will make each parcel of land a definite and distinct commodity conferring perfect title to its owners. The new system will also help the credit institutions all over the country to accept land as security in as simple a way as accepting fixed deposit receipts or company scrips or gold ornaments. With the guaranteeing of title to land by the government ... the mortgages taken by the lending institutions can be made negotiable securities and traded in the secondary market. There will be literal flow of finance for land development, agricultural operations and for house construction". Brijit Singh, the then Chief (Legal and HPF), Life Insurance Corporation of India, wrote to me: "One of the ingredients of housing loans by financial institutions, like LIC, is that the borrower should mortgage his right, title and interest in the property and for this purpose, the title to the land has to be, prima facie, good and marketable. The present day land records kept by the state government are either not proper or are not up-to-date. In the eyes of law, even the registered deeds raise only presumption of title. They do not constitute final and authentic evidence of a clear and marketable title to the land. There is a practice of issue of pass books by certain revenue authorities, but again, they are only copies of revenue records and do not take the place of valid certificate of title within the meaning of the Transfer of Property Act which deals with transactions pertaining to immovable properties. ... We are confident that the various suggestions made in your preliminary report are of topical interest and the financial institutions like LIC will benefit from the change-over

to the new system in the matter of title investigation". S K Sharma, the then Chairman and Managing Director of Housing and Urban Development Corporation Ltd. (Hudco) wrote to the then Joint Secretary, Ministry of Urban Development, government of India: "I am of the view that the idea mooted by Dr Wadhwa is good and needs to be supported". The Hudco even approached me to do further "detailed research into the specific systems issues followed in different states with Hudco Research Fund".

Senior NGO on Guaranteeing Title to Land

Mohan Dharia, President of Vanarai, Pune, and former Deputy Chairman of the Planning Commission, wrote to me: "I have carefully gone through the papers and the valuable suggestions made by you. I do agree that our country should introduce the system of registration of title to land on the basis of experiences of the other countries in the world".

Senior Journalist on Guaranteeing Title to Land

B G Verghese, visiting professor, centre for Policy Research, New Delhi, and former Editor-in-Chief, *The Indian Express*, wrote to me: "I have read your paper and found it most interesting. I would endorse your proposal for registration of titles - and by a Corporation if necessary. ... It will also give a fillip to genuine land reforms and to combating arrears in courts, many of which are land related cases. ... it is no use computerising the wrong data at huge cost and then undoing that at further cost".

Judges on Guaranteeing Title to Land

As regards the judiciary, the judges in India do not do any research work. But many high courts and finally the Supreme Court of India have been repeatedly pointing out the lacuna in our jurisprudence of record-of-rights in land by holding that land records are not records of titles though they never suggested any remedial measures. However, after the publication of my study, even judges have supported the introduction of the

system of guaranteeing title to land in the country. For example, V M Tarkunde, former Judge of the Bombay High Court, wrote to me: "I have gone through ... your booklet entitled 'Guaranteeing Title to Land'. I am sure that the suggestions made by you in the booklet are extremely useful. It is very desirable that in India also we should have a system by which a government department guarantees titles to immovable properties". V S Deshpande, former Chief Justice of the Delhi High Court said in his book review of this monograph: "Land is a scarce resource. The title to the land should, therefore, be guaranteed by law. In India, however, we do not have any state guarantee of title to land. What we have is a system of registration of assurances. The assurances of title given by the vendor to the purchaser or by a transferor to a transferee contained in the transfer deed become the subject-matter of registration under the Registration Act, 1908. But this is registration of documents. It is not registration of title. Therefore, if the representation as to the title implied by a statute or expressly made in the transfer deed is proved to be wrong, the purchaser loses the land to the rightful owner inspite of the assurances. His only remedy is to seek damages for breach of covenant of title by resorting to costly litigation. Ultimately the seller may be found not solvent enough to pay the damages, the money obtained by him by fraud would have been safely hidden away to be beyond the reach of the court. This is not satisfactory. Dr Wadhwa is to be congratulated for his radical approach to the improvement of the present system of land registration in India. His thorough study of the state guarantees of the title to land will lead to the formation of a more satisfactory system in India ...". H R Khanna, former Judge of the Supreme Court of India, wrote to me: "It is a valuable study on a subject which is of vital importance for millions of people, but to which not due attention has been given in recent years. I am glad that in this publication you have tried to create awareness of the ... system of registration of title and reflecting the latest position in respect of title". Y V Chandrachud, former Chief Justice of the Supreme Court of India, wrote to me: "You are right in saying that the revenue records maintained in our country regarding the title to land and possessions of lands are in a pathetic condition. ... I am particularly happy that you have enlightened our people on the

corresponding systems of maintaining land records in Australia, England, Canada, USA and the Afro Asia nations. The concluding chapter of your book 'Quintessence of the System' is very relevant in the context of our peculiar problems and the remedies which we should adopt for improving the system, as broadly suggested in Chapter 12 of your book. I am sure that your book will be appreciated by all concerned". M Hidayatullah, former Chief Justice of the Supreme Court of India and former Vice-President of India, wrote in his Note on this monograph: "Dr Wadhwa has suggested registration (of title) and I agree Perhaps Dr Wadhwa will enlarge his book and give other suggestions. He certainly is the only qualified person to handle this difficulty". While supporting the idea of introducing the system of conclusive title to land in the country, V R Krishna Iyer says in his review article on the monograph: "Uncertainty of title breeds litigative conflicts and social entropy, even loss of revenue and peril to state and community land. It is therefore of paramount importance that societal progress demands a land system most conducive to simplified registration of titles, easily verifiable public records of rights and indisputable finality regarding holdings and interests and liabilities so that land transactions may be free from obscurity, disputes and long drawn-out court proceedings. India is very much concerned with such experiments, what with its agrarian preponderance, urban over-crowding and need to conserve resources for developmental purposes. It is in this background that we must evaluate the strategic significance and seminal projections of Dr Wadhwa's preliminary study titled: 'Guaranteeing Title to Land'. ... All land reforms, uses and transactions require litigation-free title, clear identity, least obscurity and easy forms of transfer. From these view-points, the existing divergent systems prevailing in the country call for radical modernisation. Consolidation of holdings, conferment of ownership on small tenants and less confusing and more inexpensive mobility of land deals are necessary conditions for a progressive nation. The research by Dr Wadhwa, oriented precisely on these desiderata, is instructive for Indian conditions. ... Revenue or municipal records in India are still only presumptive evidence with no assurance of judicial acceptance of cadastral conclusiveness. ... Our agricultural and industrial advance must be matched

by our jurisprudence of land records... Its emphasis should be not on the fiscal concerns of the state but on the proprietary clarity, finality, and immunity from later challenges. Litigation will dwindle, transfers will be expeditious, loans and other transactions based on land may be easy and people at every level will profit by a systematisation of public records on land ownerships. ... The seminal significance for India from these experiments must be grasped by our legislators both from the angle of rural backward beneficiaries of land reforms laws and urban buyers hungry for a few cents of holding where one may sleep in quiet or run a business without forensic forays. ... Creative intelligence and dynamic law-making must now enter the field to produce a jurisprudence of land justice, of which a major input must be modernisation, maintenance of title registers and easy availability of irrefutable evidence of ownership. Law is what law does and land law must be judged by this test... Not presumptive but conclusive is the desideratum... This is no legal magic and some Indian legislation, a la the Land Acquisition Act, also free land title from challenges”.

*National Commission to Review Working of Constitution on
Guaranteeing Title to Land*

On January 15, 2002, the Secretary to the National Commission to Review the Working of the Constitution telephoned me and asked me for a copy of my report entitled ‘Guaranteeing Title to Land’ for the perusal of the Commission. I sent to him a copy of the said report.

On March 31, 2002, the 11-member above-mentioned National Commission submitted its report to the government of India. The Commission was headed by a former Chief Justice of the Supreme Court of India and included in it two former Judges of the Supreme Court of India, one former Judge of a High Court, Attorney General for India, former Attorney General for India, former Speaker, Lok Sabha and presently Member of Parliament (Lok Sabha), former Secretary General, Lok Sabha, former Ambassador of India in the USA, a former Member of the Parliament (Rajya Sabha), and a Chief Editor and Managing Director of an English daily newspaper. This Commission also unanimously recommended the adoption of

the system of guaranteeing title to land by the state. In its report, the Commission says:

"6.4.2 Land is the most valuable natural resource whose planning and development offer major prospects for increases in output and incomes for the people, especially for those who are near or below the poverty line. For efficient land planning and optimum use, it is essential that there be clarity and certainty about title to land. In India land records are in a very poor shape and there is maximum litigation in the rural areas about ownership. It has been estimated by reputed agencies that India loses 1.3 per cent economic growth as a result of disputed land titles, which inhibits supply of capital and credit for agriculture. It is therefore exceedingly important that a fundamental change is brought about in the way land records are maintained. At present land records are presumptive in character. In August 1989, the Supreme Court stated that "revenue records are not documents of title". Millions of productive man-hours are lost in time consuming litigation. The Commission recommends that we move to a system where the state guarantees the title to land after carrying out extensive land surveys and computerising the land records. It will take some time but the results would be beneficial for investment in land. This will be a major step forward in revitalising land administration in the country as it would enable Right to access, Right to use, Right to enforce decisions regarding land. Similar rationalisation of records relating to individuals rights in properties other than privately held lands (which are held in common) would improve operational efficiency which left unattended foment unrest. The Commission is of the view that a coherent public policy addressed to the modern methods of management would contribute to better use of assets and raise dynamic forces of individual creativity. Run away expansion in bureaucratic apparatus of the state would also get curtailed by new management system".

I wonder whether any one from the government, that is, the Prime Minister, the Deputy Prime Minister, the Ministers of Rural Development, Urban Development, Law and Justice, Disinvestment and the Deputy Chairman of the Planning Commission, has read the above-mentioned recommendation of the said National Commission! *Perhaps not!*

10. LAND TITLES EXCLUDED FROM REFORMS AGENDA

Although, according to the Report of the McKinsey and Company, inflexible labour laws and poor transport infrastructure account for only 0.3 per cent of lost growth a year, they are on the high agenda of the government while unclear land titles which, according to the same agency, impede growth rate by 1.3 per cent per annum are totally excluded from the policy debate. Is it not strange? Is it because multinationals and big industrial houses have created a very powerful lobby, in the government, which is clamouring for reform in labour laws and there is none, I repeat none, except only one, I repeat only one, researcher like me in this vast country who has been pleading for reform in land law? Or are there some powerful vested interests who thrive on the confusion created by unclear land titles and therefore are coming in the way of reforming the system? V R Krishna Iyer wrote to me: "I appreciate your proposals but wish that you pursued it to a finish". What should I do, My Lord, to pursue it to a finish?

// THE ONLY SENSIBLE SOLUTION

Finally, it will not be a case of love at first sight. I have been proposing this system for the last 13 years. The country will have to fall in love with it. If not today, tomorrow. The conversion of the present system of presumptive titles to land into conclusive titles to land is the only sensible solution of this problem. The sooner it is done, the better it will be for all of us. The proposal has received support from all segments of the society. Only bold political direction alone can bring about reform of this magnitude which will bring our country in the mainstream of a world-wide trend, enhance the marketability of land, reduce the stupendous social cost of litigation and give a boost to agricultural production and urban and industrial development.

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