

National Conference on  
**LAND INFORMATION SYSTEMS**  
**The Next Steps**

March 09 - 10, 2006

Dr. MCR HRD Institute, Hyderabad, INDIA

Discussion Paper

**Just Do It**

By

**Prof. D.C. Wadhwa**

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# Just Do It\*

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I crave your indulgence for the liberty that I am taking of adding a few pages to my earlier two articles on the subject<sup>1-2</sup> already circulated among the participants of this seminar.

The leitmotif of somewhat elaborate and occasionally repetitive observations is the paramount need to observe the Biblical dictum, namely, to render unto Caesar the things that belong to Caesar and to render unto the Lord the things that belong to the Lord. The revenue administration in the country lacks vision, dynamism, a holistic view of land management by the State and finally it lacks any intrinsic momentum. What we have set out to achieve is to construct brick by brick the record of rights in land and record of rights in land is invariably also a record of liabilities. Perfection of title to land is achieved only when all shades and hues and nuances of rights are recorded after comprehensive investigation into all claims no matter how cumbersome the exercise. There simply is no half way house. Now that we are poised to set our house in order, it would be prudent to base our strategy on ground realities. These differ drastically from country to country and from state to state within the same country. Not only they differ from state to state, they even differ from region to region in the same state. The first task is to evolve a format of the land records that we wish to have. I have dwelt at considerable length, on more occasions than one, on the subject but this being the ultimate object of the exercise, what has been stated earlier bears reiteration.

## **Present Status of Record of Rights in Land**

The present status of record of rights in land in India is the difference between the vanishing species and the extinct species. The State is the custodian of rights and therefore of the record of rights. Today we neither have record of land nor of rights. There are millions upon millions of people in the country, both in the urban and rural areas, who have no documents of title to land. The municipal assessment list and the Patwari's record is all that they have to fall back upon. This is the trust which the State has betrayed. And it refuses to acknowledge this fact. We are operating a record of rights which is neither accurate nor valid.

Let us see what Arun Shourie, the then Minister of Disinvestment, Government of India, says in this regard. He writes : "Indian Tourism Development Corporation has operated 32 hotels. ...Of the hotels, eight are in Delhi: Ashok, Samrat, Janpath,

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\* This paper is revised and enlarged version of the Note presented in an International Seminar on Reforms in Land Policy for Accelerated Growth and Poverty Reduction held on January 5-6, 2006, at New Delhi, organised by the World Bank together with the Ministry of Rural Development, Government of India, and others. This paper was also presented in a National Conference on Land Information Systems: The Next Steps held at MCR HRD Institute, Hyderabad, during March 9-10, 2006, organised by Spatial India in association with Survey of India.

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... . . . 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, *thirty-five 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 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 ten 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... . . . 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! ... "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! ... The Lease Agreement for operating Hotel Airport Ashok at the Kolkata Airport - the Hotel came up *thirty 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 hectares 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 Khajuraho presented a double-barreled "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<sup>31</sup>!"

While writing about the disputes between two wings of the same government, he says 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. 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 specialize in. These are all they specialize in<sup>4</sup>." I wrote an open letter to Shourie<sup>5</sup>, a copy of which was sent to him by me as well as by the Editor of the *Economic and Political Weekly* in which that letter was published, asking him a number of questions about privatising the hotels with defective titles but there was no response from him.

In an other case, the Sub-Divisional Officer, Udaipur, quashed the sale of the Laxmi Vilas Palace Hotel, a government of India enterprise at Udaipur. The Centre had sold the hotel to Bharat Hotels under its disinvestment plan, despite protests from the state government. ... A petition challenging the government of India's rights to sell the hotel was filed in the Rajasthan High Court. The state government had claimed that the property belonged to it and the Union government had no right to sell it. After hearing the petition in this regard, the court found that the title was disputed one and ordered the petitioners to take up the matter with the land officer in order to settle the matter. The land officer, the SDO of Udaipur, passed the above-mentioned order<sup>6</sup>.

### **Registration of Conveyance**

Registration of a conveyance which does not in fact convey a title free of flaws actually amounts to the State aiding and abetting an act of fraud where an imperfect title has been palmed off by either not disclosing all material and relevant facts or conveniently distorting them. Solicitors and advocates certify title after making searches of the available records and after traversing such ground as they can. In their search reports they mention that the records were torn and brittle<sup>7</sup>. No solicitor or advocate has ever been hauled up when the title certified by him as clear and marketable turned out to be defective<sup>8</sup>. Mutation can not be independent of registration. Registration has no meaning if it does not automatically lead to mutation.

### **Land Related Litigation**

The volume of land related litigation in our country is now such that the judicial system is itself under threat. The measures undertaken so far have not made any perceptible improvement in the dispensation of justice. In the vacuum created by the inadequacy of the system, money power and muscle power have moved in and at least in some of the states hold the centre stage. This vicious circle is eating into the vitals of the society. Bemoaning the loss of values is of little help. Survival of the fittest is the characteristic of the animal world, its intrusion in our society bodes ill for this ancient civilization. The entire system of dispensation of justice in the revenue courts has now virtually collapsed. If quantity is conspicuous by its absence, quality even more so. This precipitate decline affects millions of people across a broad spectrum. Terms such as Appeal, Review, Remand, Revision, etc., have been drained of all meaning. Things have come to such a pass that the state governments have started giving receipts of the land revenue paid by the citizens with the remarks "Without Prejudice"<sup>9</sup>. This means that though the government is accepting the land revenue from a citizen, it does not know whether the land for which the citizen is paying land revenue belongs to him or not. In other words, it is accepting the land revenue because the citizen wants to pay. It is not uncommon for several persons to pay land revenue for the same piece of land because it carries with it a presumptive

value, that is, one who pays land revenue is presumed to be the owner of the land. For the government, the more the merrier. The result is litigation.

### **Absence of Accountability**

In the current ethos of Indian administration, the concept of accountability continues to retain its character of 19<sup>th</sup> century. The government or a public servant is not accountable to the citizen. This has insulated the system rendering it insensitive to the pleas of the very citizens for the service to whom the system exists. Abuse of power is possible only when there is lack of accountability. The land revenue laws of almost all the state governments say 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 under the provisions of these Acts or to have any such entry omitted or amended.<sup>10</sup> The laws further provide that if any person is aggrieved as to any right of which he is in possession, by an entry made in any record or register maintained by the government, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his right under the provisions of the Specific Relief Act, and the entry in the record or register shall be amended in accordance with any such declaration<sup>11</sup>. This is the position of accountability as regards the land records maintained by the governments even in states where land records have been fully computerised.

The traditional structure of society in India was based on obligations; today's structure is based, at least in theory, on rights. These rights, however, become illusory if their exercise is contingent upon several factors beyond the control of the citizen. Rights in land and rights based on land are the most important of these rights. Shall we let the people live in peace and dignity by affording them access to their rights in their lands without let and hindrance? So much can be done by so few for so many if the government takes the initiative. The commanding height of political power vests in the government. It is the arbiter of the destiny of the people just as it is the arbiter of its own destiny.

### **Lack of Consultation with the People**

The people are never asked as to what is amiss in the present system. All the learned deliberations and discourses are amongst the "experts", erudite reports are prepared, yet another committee is set up to examine the recommendations and finally with great fanfare an announcement is made of the revolutionary measure of administrative reforms. People continue to suffer as before. After a few years the dumb charade is repeated with predictable results. This is not to deny that the experts have a role to play. The question is when. This question, I submit, holds the key to the seemingly impossible riddle of why all the exercises so far in the field of administrative reforms have more or less failed to produce any worthwhile results. There will be no end to this kind of discussion. We have intermittently tinkered with the system in the name of administrative reform. And yet, the system has virtually collapsed. Like we have in law a legal fiction, in administration what we have today is no better than an administrative fiction. If the object is to be achieved, the format must change, the content must change, the methodologies must change and the system itself must change. Merely tinkering with the system would be tantamount to scratching the surface, leaving the core and kernel untouched, an exercise in futility. Therefore, we must go the whole hog if worthwhile results have to be obtained. Any

patchwork is doomed to fail. From the patchwork flow a thousand flaws with which the revenue administration continues to be bedeviled. We need a new approach, a new methodology and a new record of rights in land, imparting to it the temper of times and raising it to the level of a Bible of management of land. The matter brooks no delay. Patchwork and new record of rights in land are as different from each other as cheese from chalk. Decisions may come from above, but there is no reason why suggestions can not come from below.

### **State Guaranteeing Title to Land**

For years we have been talking of introducing the system of State guaranteeing title to land without having undertaken a single pilot project anywhere in the country. Title, clear, incontrovertible and guaranteed by the State is the most important entitlement in the present Indian context. Absence of clear title is the principal cause of agrarian and social unrest in many parts of the country. The present discontent is providing an excellent breeding ground for an agrarian agitation, the like of which we have never witnessed before. The seeds sown by me in my report submitted to the Planning Commission in 1989 were never allowed to sprout for reasons not known to me though Rajiv Gandhi, the then Prime Minister and Chairman of the Planning Commission was very keen to get this system introduced in the country. However, the concept is far more valid today than when it was first mooted.

### **Political Will**

There is a pathetic attempt to visit all our sins on the political parties. Vilasrao Deshmukh, Chief Minister of Maharashtra (Congress ruled state) 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 explain the concept in the meeting. I explained the salient features of this system. 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. That was in 2002. The Indian National Congress, the oldest and the largest political party of India, identified "the acceleration of the implementation of land reforms and the initiation of reforms in land laws and record of rights to enable the conversion from the present system of presumptive titles to conclusive titles guaranteed by the state" as one of the several core priorities in its agenda of governance in its Shimla *Sankalp*<sup>12</sup> dated July 9, 2003, in its *Vichar Manthan Shivir* at Shimla. This was followed by a letter dated July 15, 2003, from Sonia Gandhi, Leader of the Opposition (*Lok Sabha*) and President of the Indian National Congress to all the Chief Ministers of the Congress ruled states, namely, Assam, Arunachal Pradesh, Chhattisgarh, Delhi, Himachal Pradesh, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Pondicherry, Punjab, Rajasthan and Uttaranchal, asking them and their Cabinet colleagues to place those items at the top of their agenda of good governance.

### **Revisional Surveys**

That the system cannot be introduced except through a series of revisional settlements, both in the rural as well as in the urban areas, is an indisputable fact. The issue thus is narrowed down to how can we have revisional settlements at a reasonable cost and for heaven's sake let us not talk of the time span. We are still functioning on the basis of settlement records which are more than a century and a half old. Frankly speaking, it does not lie in our mouth to talk about the time span. We have already wasted fifteen years talking of modalities. All projections of the time frame and the cost entailed are hypothetical and unrealistic.

### **Pilot Project**

As a matter of fact it is precisely for this reason that it is all the more necessary that a pilot project is undertaken. It is only in the light of the experience gained during the execution of the pilot project that we shall have answers to all these questions. If we do not, there will be no end to these questions. My submission is that the pilot project can be done within the existing framework of laws, substantially if not completely, and with the available manpower. As regards the methodology, let one district or at least one tehsil be taken up as a pilot project with the participation of the people. Otherwise these learned discourses will remain as sterile as they have been all these years. The fallacy that the introduction of the system entails massive expenditure, which has been sedulously fostered, is based on misconception. This myth of vast expenditure being involved is a myth which needs to be laid to rest once and for ever. This argument holds no water. That the cost will be considerable is obvious. But the cost has to be viewed against the enormous gain to the State and the people in the form of authentic, accurate and up-to-date land records.

### **Survey of India**

The Survey of India should be entrusted the task of survey in the pilot project. They have the expertise, the manpower, the technology, and their credentials are impeccable. Measurement and boundary marks accompanied by a map drawn to scale are essential ingredients of title and the methodology must be such as will inspire the confidence of the people. The people will happily share at least a part of the expenditure for the grant of a guaranteed certificate, an invaluable parchment, which will allow the proud owner thereof peace of mind. In any resurvey, measurement without map and boundary marks will be no better than lines drawn on water. In large parts of the country boundary disputes continue to threaten both the social fabric as well as peace and tranquility.

### **Survey of Urban Lands**

As regards legal and administrative constraints in the operation of urban land market, we have only constraints. Every brick of the present structure is a constraint itself. What a land holder is entitled to know is (a) what is it that he holds, (b) on what terms does he hold what he holds, (c) what can he use for what he holds and (d) can he transfer his right, title and interest without let and hindrance in what he holds, etc. This is precisely what the system seeks to define beyond any shadow of doubt. Once this happens, the urban land market will thrive on its own inherent momentum driven by market forces, unhampered and unimpeded. Neither Nariman Point, nor Cuffe Parade nor Bandra reclamation in Mumbai figure in the City Survey record.



This is prime land, perhaps the most expensive real estate in India. And it is yet to be measured, mapped and brought on record. So much for the town settlement record of urban prime property. These examples can be multiplied ad infinitum ad nauseam.

### **Management of Change**

There can be no management of change unless there is a change in the management. The three things which together constitute the delivery system are respectively the laws, the ways the laws are administered and the quality of those who administer those laws in terms of character, competence and commitment. There is no dearth of talent in the country and yet the performance is so inadequate. Quantity is the antithesis of quality. A government office is a place where problems become papers until papers become a problem. The response, therefore, at policy level, lacks depth. This vicious circle can be broken only if the administration becomes responsive and accountable to the citizen. Those who are entrusted with a bewildering variety of tasks must be such as can be said to be never a round peg in a square hole nor a square peg in a round hole. They must be equipped with necessary skills to enable them to discharge their duties if not with verve and aplomb, atleast with reasonable satisfaction. Law mercifully does not forbid pursuit of excellence.

### **Recording of Rights in Land of those Who Do Not Own Land**

Recognising and recording of rights of those who have rights in land without having any land themselves will be a significant step in the area of poverty alleviation. Millions of people in the rural areas, most below the poverty line, will be the beneficiaries. These rights, sacrosanct and inviolable and built into the warp and woof of the village economy and duly reflected in the legal framework to protect them at one end of the spectrum and the ground reality at the other end of the spectrum present a truly bewildering and bizarre picture.

### **Recording of Rights of Tribals in Land**

Recognising and recording rights of tribals in land is one thing, creating of their new rights is another. Unless we do the former first, doing the latter will only make confusion worse confounded. Tribal lands especially in the unclassified forests would figure prominently in the proposed revisional settlements.

### **Private Sector Participation in Land Administration**

Private sector participation in land administration is possible only after the process of state guaranteeing title to land firmly takes root. The very basis for such participation will be this system. Let us go back to Arun Shourie. He says: "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. Shamsheer 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"<sup>13</sup>! How will the mutation of this property be affected in the record of rights in favour of the purchaser who has purchased the property from the ITDC and not from Major General S. Shamsher Jung Bahadur Rana? Obviously, the purchaser would grease the palm of the revenue functionaries to the best of their terms for manipulating the mutation, if mutation is got done at all. In such a scenario, private sector participation in land administration will only spawn land-mafias.

### **Resettlement and Rehabilitation in Land Acquisition Cases**

Development of an area and its people at the expense of other people is essentially undemocratic. The doctrine of eminent domain places the State above the people. If the doctrine of eminent domain has to be just equally to those for whom the lands are being acquired as well as those whose lands are being acquired, resettlement and rehabilitation should be placed on a statutory footing in the Land Acquisition Act itself. The Constitution of India treats the tribals as a special group, Land Acquisition Act does not. Is this a fair proposition? Then there are statutory aberrations. Several state laws provide for compulsory acquisition whereas the quantum of compensation is linked to the purpose of acquisition. This may sound bizarre but that is what it is. Let there be one single law, comprehensive and all encompassing, placing rehabilitation on the same footing as acquisition itself. If land holder is made a stake holder in the development of an area, the compulsory acquisition of land may become redundant.

### **Computerisation of Land Records**

Computer is the latest addition to our pantheon. Computerisation, which is now considered a panacea for all problems, has itself become a problem. Computerisation of land records on which crores of rupees have been spent is a classic example of the wrong application of the right remedy. Computerisation after the land records had been brought up-to-date would have produced dramatically different results. Instead a superficial gloss has been imparted to a moth-eaten and tattered record which has been subjected to vast changes, both legal and administrative, and which bears little resemblance to reality, an exercise in monumental self-deception. To talk of digital cartography and to talk of computerisation of land records when more than a century old settlements are in vogue is the ultimate affront to both reason and reality. Inferior use of superior material does not reflect well on our administrative ethos. Measurement, in this case collective, becomes survey when a comprehensive enquiry based on that measurement follows and the finality of the process leads to what is popularly known as settlement. In other words, preparation of a regular record of rights based on resurvey would be for all purposes settlement minus revision of assessment. Digitalisation of data after the survey and comprehensive enquiry based on measurement is the next logical step. Computerisation as an aid to the storage and delivery system comes into the picture at the end of these operations. The mismatch between the 19<sup>th</sup> century records and 21<sup>st</sup> century technology has been brought into sharp focus by somewhat tardy adoption of these devices in our present administration. We are putting cart before the horse. This is exactly what I had said in a meeting of the National-Level Steering Committee on Computerisation of Land Record held on September 21, 1989, of which I was a member<sup>14</sup>. The above-mentioned Committee was set up by the

Ministry of Agriculture, Department of Rural Development (Land Reforms Division), Government of India. V. C. Pande, the then Secretary, Rural Development, Government of India, had agreed that "a condition could be laid down that before data is entered into the computer, it should be ensured that the record of rights are updated<sup>15</sup>". But it has not been ensured anywhere. Sometimes, I wonder if we are using the computers or computers are using us.

### **State's Role in Disputes Relating to Land**

The single largest factor responsible for the enormous litigation in the country today is the State's passive role in disputes relating to land. It steps in *after* the dispute arises. The disputes take years to reach their conclusions - logical or illogical. This can easily be preempted if the State steps in *before* the disputes arise. And this is possible only if the State introduces the system of conclusive title to land in place of the present system of presumptive title to land. This one single step can virtually transform the landscape, economically, politically and socially. It will promote a climate conducive to Foreign Direct Investment. In the housing sector, the response from investors has been less than lukewarm because who will buy 100 acres or more of land without being sure of its title.

### **Citizens' Manifesto**

The suggestions made herein in their totality envisage a citizens' manifesto. The accent, therefore, is not on what the State expects from its citizens but what the citizens expect from the State. The basic function of the State is either regulating or promoting. Outsourcing can be only of a chore, a small part of a larger function and never of the function itself. The paradigm shift constitutes the sub-stratum of these proposals. It could be said to be the blue-print of the brave new world waiting to be born. At the centre of this design, bold, ambitious and imaginative is the introduction of the system which guarantees title to land by the State, elevating the record of rights in land to a Magna Carta.

### **Practical Proposals**

None of this is utopian. The suggestions are of earth, earthy. The legislative changes proposed will inevitably generate a lively debate ensuring wider participation in giving shape to the new format. The Common Minimum Programme of the present Government of India clearly says that "revenue administration will be thoroughly modernised and clear land titles will be established". It can be safely presumed that the Government of India will gladly agree to effecting necessary changes in central laws, when required.

The end product will be a brand new record of rights in land based entirely on the system under which the State guarantees title to land. There can be no empowerment of the community without entitlements. And entitlements cannot be effectively ensured without detailed investigations into and recording of all rights where they exist.

### **Revenue to the State**

An unusual feature of these proposals is that substantial revenues will accrue to the State if they are given effect to. It is not through imposition of new imposts or enhancement of the existing ones, that option having run its course, but by making institutions and people pay and pay happily for their legitimate needs and demands.

The introduction of the system of State guaranteeing title to land will also have a salutary effect on the endemic corruption, the hydra-headed monster which is bleeding the society white.

### **Summing Up**

The condition of record of rights in land in the country is admittedly in tatters. But out of evil cometh good. To do or not to do is not the question. My whole endeavour has been to give a thumbnail sketch of what needs to be done and how. How, I have already answered. When, it is for you to decide. Just do it.

I claim no infallibility for my views which, I submit, you are at liberty to a searching scrutiny. Should they, however, be found to be in order, they must be permitted to dictate further course of action.

### **National Advisory Council to the Government of India**

Some months back I was invited by the National Advisory Council, New Delhi, to deliver a talk on this subject. As the date fixed for the talk was not convenient to me, I regretted my inability to go there. However, the National Advisory Council discussed the matter and Sonia Gandhi, Chairperson of the National Advisory Council, wrote to Manmohan Singh, Prime Minister, about it. The gist of communication regarding modernisation of revenue administration, (leading to Clear Land Titles), sent by the Chairperson of the National Advisory Council to the Prime Minister is as under<sup>16</sup>:

- “1. A central commitment of the National Common Minimum Programme (NCMP) is that the *“Revenue administration will be thoroughly modernized and clear land titles will be established.”*
2. It is understood that a Committee of Secretaries has been set up in this regard and that the Planning Commission are also drawing up a road-map in this behalf.
3. A very large percentage of the people in India live in the rural areas and derive livelihoods, wholly or partially, from land. The compilation and updation of land records is, therefore, a particularly significant measure to instil a sense of security in the farming community and to encourage investments for higher land productivity, especially in the establishment of Clear Titles to Land.
4. This matter has been discussed in the NAC and it has been felt that a system to establish Clear Titles to Land, Updation and Computerization of Land Records and Easy and economical access of rural people to Land Records would be of all-round benefit to the Farmers, including easier credit, quicker land conversions and lesser litigation.
5. The existing Survey and Settlement Organizations have not succeeded in the task of completion, preparation and updation of Land Records. A way out would be to discard the old manual methodology and combine Computer Technology with Privatization in order to obtain accurate surveys, translate them in to correct land records and then put the same on a Web-based service delivery system.
6. The existence of Multiple Agencies, viz. the Survey Department to prepare cadastral records, the Revenue Department to prepare the Record of Rights and the Registration Department to register the transactions relating to land,

compromises the efficiency of updation of Land Records. There ought to be a single Integrated Agency in all States that is made responsible for the preparation and continuous updation of land records by employing modern technology.

7. The current Centrally Sponsored Scheme for the computerization of Land Records is not intended to correct Records of Rights. It is necessary to revamp the existing Centrally Sponsored Scheme into a new Centrally Sponsored Scheme that would comprehensively address the issues of recognizing Clear Titles to Land, Updation of Land Records, Computerization of the Records and complete and free access to such Records by all concerned. The new Centrally Sponsored Scheme could be called "A Scheme for Comprehensive Modernization of Land Records (CMLR)".
8. In order to provide the requisite incentives to the States to adopt the CMLR Scheme, it should be 100 per cent Centrally funded. The Scheme ought to envisage the implementation of certain organizational changes and a sequence of steps, in phases, by the State Governments and funding should be released, in instalments, only on the completion of each successful step.
9. The profile of the Scheme and the broad sequential steps involved are suggested below :-
  - (i) At the level of the State Government, the Scheme should mandate that the Office of the Registrar comes under the Revenue Department; the work related to Registration and Stamp Duty could be kept with the Revenue Department for the required convergence. At the District level, the office of the Collector should be merged with that of the Registrar. Alternatively, connectivity across the two Offices could be established using LAN if they are housed in the same Building or dial-up. If are located separately, the Office of the Sub-Registrar should be connected (using LAN, if located in the same Building or using a Dial-up system, if located separately) with the Office of the Tehsildar.
  - (ii) As a next step, the updation of all Land Records should be completed in a time-bound manner by using the latest available technology in place of the earlier manual system; this would involve aerial surveys, modern satellite technology for mapping and updating the Cadastral Maps and reconciling the maps with the actual position on the ground. Aerial photographs should be used with the help of Agencies like Survey of India, ISRO (and others) for the preparation of Land Maps. The Agencies may be requested to take up Pilot Projects to evaluate the suitability of GPS and other available technologies. All Sub-Divisional and Taluk Offices may be linked to the District Computers to have connectivity including the NICNET, or directly, with the Computerised Land Records available for use and regular, dynamic, synchronous updation of websites.
  - (iii) Before registering any land transaction by way of Sale, Partition, Gift, Mortgage or otherwise, the Sub-Registrar should be required to get the Documents of the transaction verified with reference to Land Records and Mutations effected. In other words, Mutations should precede registration.

- (iv) A Scheme for conversion of Presumptive Titles to Land into Conclusive Titles may be introduced as an integral part of the new Centrally Sponsored CMLR Scheme. In case of transiting from a presumptive title-based system to a conclusive title-based system, the data reflected in the Record of Rights can be designated to be final and conclusive, once the pending Mutations are carried out. The Records can then be thrown open in the public domain by Computerizing and Web-enabling them to facilitate anyone wanting to register a complaint or draw the attention of the Department to discrepancies in the records. The draft Record of Rights prepared for final updation may be made open for public inspection and also made available electronically through the Information Dissemination Centres, running at STD/PCOs on a 'cost plus' basis for three months or even more. There ought to be full transparency by putting the records on the Web and giving a copy to each land owner or property owner every year, for five years, so as to educate them about their title. Later, they could view it at the Private internet shops.
- (v) When pending Mutations are carried out for the updation of Land Records, an institutional mechanism should be drawn up for the involvement of the Panchayats. In undisputed cases, conclusiveness of the title may be recorded straightaway which will be the basis of guaranteeing title to land. Disputed cases could go to a special conflict resolution mechanism at Panchayat level. Appeals on these decisions can be at the Civil Courts including special Fast Track Courts (FTCs) for hearing and disposal within a period of three months. This operation would be progressive, moving from plot to plot, village by village, creating awareness of the operation as it progresses.
- (vi) Once conclusive Titles are established and registered, on-line Non-encumbrance Certificates can be provided for a price from Kiosks. The registration documents should have photographs of the Buyer and the Seller to check *benami* transactions.
- (vii) To provide easy access, all Registration Data in respect of any property should be reflected in the land records available in the public domain on the website. Local entrepreneurs will be invited to set up kiosks at all STD / PCO Centres on a Public-Private Partnership basis. These would be called the "Land Record Information Dissemination Centres" and could be used for viewing and taking print-outs of land records at a 'cost plus' basis.
- (viii) The merged Registrar-cum-Collector's office should have access to all land records in a given format. For instance, a list of 'porumboke' (common property) plot numbers should be available in order to ensure that encroached plots are not privatized or disposed of.
- (ix) The use of Stamp Paper should be eliminated as these cause huge annual losses to the State Governments with the unchecked circulation of fake Stamp Paper. Citizens may pay registration or stamp duty fees at designated public sector Banks and Post Offices so that corruption could be reduced and electronic receipts are issued.
- (x) For the North-Eastern States, where no Survey and Settlement operations

have been conducted, these may first be carried out to establish presumptive Titles. Subsequently, after a period of, say, five years or so, these may be processed for establishment of conclusive titles.

- (xi) After the new Centrally Sponsored CMLR Scheme has been formulated in detail and launched, the Centre could draft a Model law to be enacted by the States to impart legal status to the various features of the CMLR Scheme. This would be a comprehensive land legislation towards provision for Record of Rights and Land Administration; such a law would also provide for State Guarantee of the conclusive Titles that have been registered and would give legal status to the Computerized Land Records. It would lay down a statutory role for the Panchayat Raj Institutions in the updation of Land Records.
- (xii) The Model law could further provide for a State-level Land Records Training Institute to be set up to extend training to Revenue Department functionaries, at various levels ( from Village to State) on all aspects of Modernizing Revenue Administration, including Survey Operations, Computerization of Land Records, process of vetting the Records at Village level and Centralizing Revenue and Registration data. The Institute could also prepare a Manual on Land Records giving detailed documentation of operation and maintenance of Land Records, including issues relating to Computerization of Land Records.
- (xiii) It may be necessary for the Centre to provide an incentive, in addition to 100% grants given for the CMLR Centrally Sponsored Scheme, to persuade the States to enact such laws.
- (xiv) Finally, the Centre might transfer the subjects of Registration and Stamps from the Department of Economic Affairs to the Department of Land Resources Division of the Ministry of Rural Development; given the scale of the task, a suitably empowered Mission could be carved out of the Department of Land Resources, a "Mission for Modernisation of Land Revenue Administration" to be operationalized by relocating the existing staff and according necessary administrative and financial autonomy, powers and accountability."

I hope that the above-mentioned advice of the National Advisory Council to the Government of India will bear fruits. When implemented, it will make history.

#### Notes

- 1 First of these articles entitled "Guaranteeing Title to Land: A Preliminary Study" was my report as Chairman of the One-man Committee on Record-of-Rights in Land submitted to the Planning Commission, Government of India, in 1989. It was published in full in the *Economic and Political Weekly*, Vol. XXIV No. 41, dated October 14, 1989, pp. 2323-2334. It was also published as a monograph.
- 2 The second article, also entitled "Guaranteeing Title to Land", was published in the *Economic and Political Weekly*, Vol. XXXVII No. 47, dated November 23-29, 2002, pp. 4699-4722.
- 3 Shourie, Arun, *The Indian Express*, dated July 7-8, 2002.
- 4 Shourie, Arun, *The Indian Express*, dated July 8, 2002.

- 5 Please see *Economic and Political Weekly*, Vol. XXXVII No. 47, dated November 23-29, 2002, pp. 4700-4702.
- 6 *The Asian Age*, dated February 13, 2003.
- 7 Please see *Economic and Political Weekly*, Vol. XXXVII No. 47, dated November 23-29, 2002, p. 4702.
- 8 Some years back, a solicitor in Mumbai mentioned in his search report that a particular duplex apartment had been divided into two apartments, namely, apartment No. 1A and apartment No.1B. When the purchaser of apartment No. 1A asked for legally valid documentary evidence to that effect, the owner of the duplex apartment could not produce any proof. The search report given by the solicitor turned out to be false because the duplex apartment had not been divided legally and therefore apartment No. 1A did not exist in the eyes of law. The purchaser of the apartment No. 1A wrote to the Bar Council but no action was taken against the solicitors who had given a false search report.
- 9 For example, please see receipts issued by the Government of Bihar.
- 10 For example, please see section 135 of the Karnataka Land Revenue Act, 1964; section 158 of the Maharashtra Land Revenue Code, 1966; and section 8(1) of the Andhra Pradesh Record of Rights in Land Act, 1971.
- 11 For example, please see section 135 of the Karnataka Land Revenue Act, 1964; section 8(2) of the Andhra Pradesh Record of Rights in Land Act, 1971; section 45 of the Punjab Land Revenue Act, 1887; and section 46 of the Himachal Pradesh Land Revenue Act, 1953.
- 12 Please see <http://www.congress.org.in/> In this site please click on English and then documents and then click on Shimla *Sankalp*.
- 13 Shourie, Arun, *The Indian Express*, dated July 8, 2002.
- 14 Minutes of the Meeting of the National-Level Steering Committee on Computerisation of Land Records held on 21st September, 1989. Let me quote from the minutes what I said : "Prof. D. C. Wadhwa striking a discordant note 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. The deficiency in the report of the Expert Group is that there is no discussion on the record of rights. No attempt has also 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. ... Prof. Wadhwa 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. The process of correction of record of rights is through the system of Revisional Surveys and Settlement operations."
- 15 Minutes of the Meeting of the National-Level Steering Committee on Computerisation of Land Records held on 21<sup>st</sup> September, 1989.
- 16 Please see [www.nac.nic.in](http://www.nac.nic.in) In this site please click on communication to Government and then click on concept papers.

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