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## Guaranteeing Title to Land by DC Wadhwa

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**Guaranteeing Title of Land — A Preliminary Study by D.C. Wadhwa; Modern Arts and Industries, Bombay, 1989—Pp 45—Rs. 25.**

There is very little original work dealing with the question of guaranteeing title to land. This gap has been excellently filled by D.C. Wadhwa while working in his capacity as Chairman, One-man Committee, Records of Rights in Land, Planning Commission, Government of India.

At present the duty to investigate and clear title to land lies on the purchaser. Before buying land or wanting to acquire any right in land it becomes necessary to investigate the title of the previous owner's. The legal frame work does not provide any immunity against a purchaser who may have been defrauded, except to a very limited extent. Under the Transfer of Property Act, 1882, section 55(1)(b) prescribes that the seller must produce title deeds for inspection by the buyer. These documents, however, are private documents not certified by the court. The other relevant law is the Registration Act, 1908. This enactment provides only for the Registration of documents and not title. Registration is made compulsory in certain cases *e.g.* section 54 of the T.P. Act. Thus outright sale of immovable property and various other transactions concerning immovable property are covered (P. 6). Failure to register will mean that the transaction cannot effect any immovable property.

A prospective buyer today has to depend on his private initiative. It is usually the job of his attorney to investigate the history of the title and furnish opinion to his client. Such a procedure is not fool proof. The procedure of Registering the document only creates an appropriate entry in a public register. Under the Indian Evidence Act, 1872, such an entry is of presumptive value. In other words there is a presumption that what is entered in a public record is correct. In reality, these entries are made for other purposes, such as realisation of revenue, etc. It is therefore open to an aggrieved person to challenge the presumption that is raised, as a 'rebuttable presumption'. The Supreme Court of India has held that these entries are open to attack on the ground that it is made fraudulently or surreptitiously.

Sri. Wadhwa examines this problem briefly but very pithily and suggests that there are two solutions. The first is Registration of title (instead of the deed). This system was invented by Sir Robert Torrens and introduced for the first time in South Australia in 1858. The system has since spread all over Australia and New Zealand and has been implemented in its modified form in many other parts of the world like Canada, England, USA and other countries of Asia and Africa. The Torrens system, essentially relies upon an official determination to secure title to land. It then proceeds to protect the registered owner against all claims or demands not noted on the book for the registration of titles. The second alternative is a scheme of title insurance issued by title companies which maintain elaborate records. It operates by extending a guarantee to the Purchaser against loss from defective title. (P. 9)

In many parts of the world there appears to be a combination, modification and permutation of these two alternatives. Chapters five to nine examine the position obtaining in different countries thus helping the reader to see the implication in any parts of the world.



After surveying the experience of different countries, the author makes a few concrete proposals for adoption in India "Under the present system of survey and settlement operations in India the most important part of the work of a settlement officer is the determination of the proprietary rights in land. . . in most of the states the surveys had been conducted long back" (P. 39, 40) and due to subsequent changes village maps have become outdated. The author therefore suggests a new survey along with introduction of registration of title to land so as to convert presumptive title into a conclusive one.

If such a system is introduced then a *bona fide* purchaser of land will have to be indemnified for any loss incurred to him by virtue of defective title. Since, state will be the guarantor the liability will fall on the Government. Other countries of the world have tackled this problem by creating a fund. In South Australia a levy of 0.2 per cent of the value of land transacted goes into the fund. In England the fund was built up by annual allocation of a percentage from land registration fees. In India also the same way out is suggested, though an initial contribution by the state may be required.

It is conceded that the task, if undertaken would be quite heavy increasing work load of the present staff. An autonomous statutory corporation is therefore envisaged and recommended. This body, it is suggested, may even go in for computerisation of all relevant data so as to hasten storage and retrieval of information.

One can thus see that the central thesis of Sri D.C. Wadhwa has very far reaching consequences. The task of converting presumptive title into conclusive title in the vast territory of India is not going to be of easy magnitude. Even a reform like land reforms with clear socialist goals resulted in resumption of land by the haves from the have-nots in many parts of India, then what about a reform like this whose declared objective itself is neutral or status-quoist so far as ownership pattern is concerned. Will such a gigantic effort, to be carried out by the bureaucracy bring to light existing benami ownership or will it consolidate, perfect and multiply the same? Obviously the propertyless cannot spearhead this reform movement and the question remains as to which section of society will therefore take the lead?

In the last chapter of the book entitled 'Quintessence of the system' the author points out that the system of registration of title should prove attractive to a large number of landowners. The author is certainly not thinking of big landowners and vested interests but about the beneficiaries of land reforms and similar programmes. He even suggests that registration of title can prevent alienation of land by those who were landless "because all the disabilities with regard to transferability of land will be mentioned in the title register". (P. 44)

The fear, however remains that any reform especially one which touches on the vital question of ownership when passed through the existing class structured apparatus of the state will yield benefits for the propertied classes even if its social objective is quite the opposite.

We are today going through a transition period from planned economic development to market oriented development, converting land to a freely exchangeable commodity is therefore something which will be heartily welcomed by all those who are relentlessly pressing for the total commercialisation and commodification of our economy. The builders lobby in urban centres *e.g.* is mounting pressure on the Government to lift all restrictive laws. They would certainly welcome reforms that make land an easily exchangeable commodity just like any other commodity in the market.

Sri Wadhwa's study is sub-titled as 'A preliminary study'. While strongly recommending familiarity with the present debate contained in this small but rich book, one anxiously awaits a more detailed study to dispel the fears expressed above.



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