



**GUARANTEERING TITLE TO LAND : A PRELIMINARY STUDY**  
(1989). By D. C. Wadhwa. N. M. Tripathi Pvt. Ltd., Bombay. Pp. 45.  
Price Rs. 25.

**THERE ARE** a few subjects in the law in India which remain comparatively unexplored, and land law is one of them. It is true that since Independence, considerable activity has been seen in the field of land reforms and this has occasioned the publication of some studies on legislation relating to land reforms. But not much attention has been paid to the basic and general aspects of the law relating to land. The number of books dealing with such aspects in India could be counted on the fingers. More surprisingly, there are hardly any upto date Indian books dealing with the legal aspects of land records. It cannot be disputed that in a country like India, where, for centuries, land was the most valuable species of property, the maintenance of proper records and an understanding of the legal details relating thereto, should be regarded as possessing theoretical as well as practical value.

If the book under review is taken seriously by all concerned—and there is no reason why it should not be—then the situation is likely to change. Although it does not profess to be a mere academic study of the legal aspects of land records and is mainly in the nature of a plea for reforming the present system, still it throws up several important issues which (it is hoped) will not be neglected for long. The theme put forward in the book is the question of introducing a system of land records which guarantees title to land instead of merely preserving evidence of rights in land. Wadhwa, the author, with his usual zeal, tries to put forth a concrete suggestion, preceded by a brief description of the present picture. The book describes itself as a preliminary study. If the theme put forth is found acceptable to all concerned, obviously much more will have to be done. Let us, however, understand how the present system of maintenance of land records operates and how it could be improved upon.

Any legal transaction concerning land, under the present system, is primarily a transaction between the parties. The creation, transfer or extinction of rights in land is, in the main, viewed as a matter of contract between the parties. No doubt, a fairly detailed structure of legal provisions has come up to deal with the obligations and corresponding rights of the parties involved in the transaction. But, as a matter of law, it remains as a transaction within the region of private law. When effected by a document, the transaction would be recorded in the official registers, but the registrar of documents (or any other government functionary) does not give any guarantee of the title of the transferor. He only guarantees the authenticity of the document as recorded.

It is true that particularly in respect of agricultural land, India has



been having, for centuries, a system of land records. But the entries made in such records do not have any conclusive validity. Same is the position regarding urban land. Thus, if A transfers land to B, and the transaction is effected by a document, then its registration merely implies that it is genuine. But it does not imply that the person who executed the document did have a good title. No doubt, the law of contracts and the law of property spell out certain obligations as between the transferor and the transferee, including the obligation to give a good title. But there is no assurance by the state of the title. The entries in the land records may be given presumptive value by the land revenue Act of the state and are of utility to that extent. But there is no final assurance given by the government as to the ownership of the person recorded as the owner. Apart from this, the land records themselves may not be upto date.

We have been used to this system, so that we have not given sufficient thought to the possibility of evolving something more satisfactory. This is surprising because for any country, land would be the most prized resource. Traditional economic theory enumerates the main economic resources as consisting of the human resources, material resources, the resource in the form of capital and resources in the form of technology. Land is a resource which has something to do with all these categories. If therefore the rights in land can be put on a firm footing, there is everything to gain. Could there not be a system of registration of title rather than a mere system of registration of document or transaction concerning title? As persons interested in the subject are aware, such a system is now operative in many countries. Originating in Australia under the name of the Torrens system, it had travelled far beyond its shores and found acceptance in many countries within as well as outside the Commonwealth. The main features of the Torrens system are: (a) achievement of certainty of title to land; and (b) simplification of conveyancing relating to land. Certainty of title to land is achieved by certifying, or guaranteeing, by the state, the validity of title to land. Once the title to land of a person is registered by the state as above, the title of the registered proprietor is paramount, subject to certain specified exceptions. The purchaser of the land registered under the system need not go behind the certificate.

A pithy description of the Torrens system has been given as follows:<sup>1</sup>

A system for registration of land under which, upon the landowner's application, the court may, after appropriate proceedings, direct the issuance of a certificate of title. With exceptions, this certificate is conclusive as to applicant's estate in land. System of registration of land title as distinguished from registration or recording of evidence of such title.

How this system differs from the present system as operative in India

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1. *Black's Law Dictionary* 1335 (1979).



can be best appreciated if one remembers that the Torrens system introduces a totally new concept of state guarantee of title to land, which is missing at present in India. Even the entries in the records relating to agricultural land do not amount to a certification by the state, of title. By virtue of provisions in the state land laws, supplemented by certain provisions in the Evidence Act<sup>2</sup> such entries may possess considerable evidentiary significance. They, (i) are relevant *in themselves*, thus overriding the rule against hearsay, (ii) may be given presumptive value, thus displacing the ordinary rules as to burden of proof in litigation, and (iii) can be proved by certified copies, thus modifying the strict and rigid rule of 'best evidence'. Notwithstanding these special facilities, such entries do not rise to the level of certification of title. They cannot become the source of title. It is in this respect that revenue records stop at the borders of the law of evidence and cannot enter the substantive territory of the law of ownership. As late as August 1989, it was affirmed by the Supreme Court of India, "It is firmly established that the revenue records are not documents of title...."<sup>3</sup>

The book under review,<sup>4</sup> which grew out of the author's chairmanship of the one-man Committee on Records of Rights in Land set up by the Planning Commission, has been written with the precise object of describing the system as in force in India, and certain other countries, (including Australia, Canada and England) and with the further objective of putting forth a case for adoption of some system of documentation that will establish, with certainty and finality the title to land. The last chapter of the book gives an outline of the concrete proposals and suggestions. Whether one may or may not fall in love with the system at the first sight, the Torrens system is worth serious consideration and the book should prove to be highly useful for everyone interested in the subject. It is readable, concise, informative, brief but lucid and should go a long way towards facilitating an informed debate on the subject. Of course, the book rightly describes itself as a preliminary study. Final proposals to incorporate a new system of guaranteeing title to land in India will have numerous aspects to attend to, and the most important aspects that are likely to arise, appear to be the following :

- (a) The administrative one.
- (b) The legal aspect.
- (c) The scientific aspect.
- (d) The constitutional aspect.
- (e) The connected legislative proposals.

P. M. Bakshi\*

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2. Esp. ss. 35, 74-90.

3. *Corporation of the City of Bangalore v. M. Papaiah*, J.T. 1989(3) SC 294, 296.

4. D.C. Wadhwa, *Guaranteeing Title to Land : A Preliminary Study* (1989).

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