

## LAND RECORD SYSTEM IN BANGLADESH: AN ANALYSIS OF PROBLEMS AND POSSIBLE SOLUTIONS

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*Land Record System in Bangladesh forms an integral part of Land Administration encompassing preparation of record of rights through surveying and mapping of land plots, registration of deeds during transfer of land and updating ownership record. These are functions performed by agencies under three different ministries making operations compartmentalized and complicated. Despite a long history of land survey dating back to the period of Sher Shah, a lack of public confidence in the system features prominently due to inconclusive land record failing to authenticate landholder's rights. This has resulted in a major burden on the court system since majority of court cases involve land disputes. The author examines existing problems before coming up with recommendations suggesting a Coordinated Land Record System suitable to authenticate land ownership.*

### INTRODUCTION

Land record system in Bangladesh comprises preparation and maintenance of Record of Rights (ROR), and registration of land transfer deed. Three sets of documents as output of the system are ROR (Khatian) including mauza-maps, mutated (updated) ROR and registration deed. These documents are prepared and maintained by three offices - Directorate of Land Record and Survey (DLRS), Regional Administration and Registration Office quite independent of each other and are meant for ensuring property rights in land along with quantification and classification of landholding.

In olden times when population size was small and land was plenty, recording property rights in land was not all that important. The produce was the focus of interest for both peasants and the king. Manu Sanghita states, "The land belongs to him who clears it of jungles and makes it fit for cultivation".<sup>1</sup> Possession of land preceded ownership. The king claimed a share in the produce of the land not as owner but as sovereign protector for meeting security cost of owner. Gradually, with increase of population it was felt necessary for recording land ownership to facilitate collection of land revenue. Emperor Sher Shah (1540-1545) was the first to conduct survey in the subcontinent.<sup>2</sup> Later another survey was conducted during the rule of Akbar (1556-1605).<sup>3</sup> After survey,

1. Rahman, H., Land Laws and Land Management in Bangladesh, Chittagong, New Concept Ltd., 2002, p.317

2. Debnath, N.C., Land Management in Bangladesh, Dhaka, Shahitya Prokashani, 2000, p.15

3. Ahmed, K.U., Land Survey Methods and Technical Rules, Dhaka, Payara Prokashani, 1994, p.6

pargana wise revenue demand was assessed. Both were limited surveys conducted solely for the purpose of assessing rent payable by individual peasant.

During the rule of British East India Company, Major John Renel, termed as the father of modern survey and who later became Surveyor General of India, conducted survey of riverine routes and prepared maps. In 1893, Lord Cornwallis introduced permanent settlement regulation, wherein Zaminders were given the ownership of land that caused peasants to lose their ownership rights on land reducing them as tenants at will.

Upto promulgation of East Bengal State Acquisition and Tenancy Act, 1938, land record had always been a tool for assessment and collection of revenue. After abolition of permanent settlement with Zaminders the recording system needed to emphasize protection of tenant's right. The effectiveness of such a system depends on its ability to provide an authentic, conclusive and contemporaneous document containing landholder's right. But it has failed to provide an effective title vesting document and thereby lost the confidence of common people. Its inherent complexity has resulted in over 80% existing civil and criminal litigations.<sup>4</sup>

## **AIM AND OBJECTIVE**

The study aims to analyze the existing problems in the land record system and suggest possible solutions so as to make it an effective one capable of providing an authentic, conclusive and contemporaneous plot based document for land ownership. It is based on content analysis along with interviewing concerned government officials, Union Parishad (UP) chairman, members of civil society and landowners.

The paper is divided into three chapters. Chapter 1 throws light on the existing Record of Right (ROR) system in Bangladesh, its different stages and their problems. Chapter 2 offers a proposal on the Coordinated Land Record System (CLRS) and the possibilities within the system, and Chapter 3 concludes the paper with some recommendations.

## **RECORD OF RIGHTS (ROR) SYSTEM IN BANGLADESH**

### **ROR Preparation**

The preparation of ROR consists of two parts. The first part is to draw a mauza map showing location, area and characteristics of land. The second part

4. Rahman, H.Z., Rethinking Land Reform, In: Faruque, R., Bangladesh Agriculture in 21st Century, Dhaka, UPL, 1998, p.77

is to prepare the khatian indicating ownership, area and character of land. These two parts together are called the Record of Rights (ROR). Since in Bangladesh Cadastral Survey (CS) had already been completed in all districts excepting three Hill Districts, the present survey is actually a revisional survey focusing on modifying maps and khatians prepared during CS. But in areas where topographical changes are more than one third or landmass consists of newly accreted land (char), a complete new survey instead of a revisional one is conducted.

The Directorate of Land Record and Survey (DLRS) are entrusted with the responsibility of carrying out preparation of ROR in every parcel of land in the country. According to original plan, 22 Zonal Settlement Offices and 460 Upazila Settlement Offices were supposed to have been established. As of now, only 14 Zonal Settlement Offices and 209 Upazila Settlement Offices are functioning. Zonal Settlement Officer (ZSO), head of the zonal office is assisted by 2 Charge Officers, 1 Assistant Settlement Officer (ASO) and 24 other survey staff. An ASO heads the Upazila Settlement Office and is assisted by two Sub-Assistant Settlement Officers and 16 other survey staff. DLRS have 3803 full-time and 6141 part-time survey staff on its payroll.<sup>5</sup> Part-timers are employed only during field season (November to May).

## **PROBLEMS AND LIMITATIONS OF ROR**

**Time-Consuming System.** The main problem of ROR is that it is a time-consuming system. At present there are about 40 million land holdings in the country to be represented in khatians accommodating about 100 million plots. About 80,000 mauza maps are to be maintained, mostly of a scale 16"= 1 mile (larger scale in urban areas).<sup>6</sup> Since commencement of Revisional Survey (RS) operation in 1965, only 6,121,885 khatians have finally been published up to 30 June 2002, which is only 21% of the ongoing program and 15% of the total work of the country. There are at present about 2047 survey teams working in DLRS to prepare maps and update ROR. Each team prepares records of 1.5 mauza maps equivalent to 1875 plots and 750 khatians on an average in a field season. At this rate it would take 22 years to update remaining maps and khatians of the country. But by that time products would become obsolete and useless due to topographical and ownership changes.<sup>7</sup>

**Inconclusive Ownership of Khatians.** Khatians are not conclusive evidence of ownership, as it does not possess the legal status to do so. They

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5. Government of Bangladesh, Annual Progress Report, 2002, DLRS.

6. Siddiqui, K.U., Land Management in South Asia, Dhaka, UPL, 1997, p.341

7. Ibid., p.342

merely provide basis for possession at the recording time. Under the prevailing legal system khatians along with deeds and mutated documents together are relevant for ownership decision by a civil court. The lengthy and complex process of ownership determination further enhances conflicts adversely affecting social harmony.<sup>8</sup>

**Nonspecific Individual Rights in Khatians.** The existing family based khatians do not specify individual rights on a plot. A khatian contains particulars of khatian holders, plots, total area of plots. But it is not clear which specific portion of a plot belongs to an individual owner. So during transfer, he faces problems for handing over possession. Addressing such a problem calls for a plot based instead of a family based document containing not only spatial description but also a sketch map and appurtenant rights and encumbrances.<sup>9</sup>

**Absence of Local Government (LG) Participation.** The present system does not provide ample scope for involvement of people's representatives. Common people mostly illiterate and incapable of understanding intricacies of khatians are vulnerable to cheating. Participation of LG representatives particularly during Khanapuri and Bujharat could bring about a more transparent system.<sup>10</sup>

**Corruption.** Field level survey staff has earned notoriety for corruption. Temporary nature of their job and insufficient supervision of higher officers often induce them to adopt corrupt practices. A powerful landowner may try to exert undue pressure to get a parcel of land recorded in his favour depriving cosharers. Absence of a group of honest and motivated field workers has worsened the situation to the extent that rich and powerful people can easily twist decisions.<sup>11</sup>

## REGISTRATION OF LAND TRANSFER DEED

Registration of transfer deed on land in Bangladesh is basically meant for recording a transfer. It shows that a particular transaction takes place but it does not establish whether parties are legally entitled to enter into such a transaction. In fact it takes place without any critical examination of relevant records and does not even validate the transaction.

Registration department is under the jurisdiction of Ministry of Law Justice and Parliamentary Affairs (MLJPA) and looked after at the centre by Inspector General of Registration. Below him, there are District Registrars (DR) and Sub-Registrars (SR) at District and Upazila levels respectively. Actually a SR does

8. Mia, S.R., Rules on Mutation, Dhaka, Naya Dunia Publication, 1996, p. 66

9. Department of Land Administration, Report on Bangladesh Land Administration Reform, Dhaka, DOLA, 2001, p. E-15

10. Wachter, D., Experience in Rural Land Titles, In: Research Observer, vol. 2, The World Bank, 1999, p.32

11. Siddiqui, K.U., Land Management in South Asia, op. cit., p. 343

registration, and all others in the hierarchy above him are supervisors in their respective jurisdictions. When any deed is registered in SR Office, land transfer (LT) notice is to be sent to Assistant Commissioner (Land) Office. DR is supposed to inspect the office of SR once in 2-3 months. But it is mostly a routine inspection.<sup>12</sup>

## **Problems and Limitations of Registration**

**Registration - A Mere Record of Transfer.** As per existing laws, ownership is not checked before registration of a transfer deed. So one without being owner of a parcel of land can register transaction. Many fake owners exploit the inadequacy of this legal provision and cheat many transferees. Since SR is not legally obliged to check the genuineness of ownership, he cannot be held responsible for false transaction. As a result, incident of false registration occurs frequently particularly in urban areas where land value is very high. Even one plot of land sometimes is sold to more than one parties leading to ownership litigations.<sup>13</sup>

**Lack of Cooperation with Land Functionaries.** After registration of transfer deeds LT notices are to be sent immediately to the AC (Land) Office. But in reality this does not happen. LT notices in bundles are sent from SR Office in an interval of 1-2 months.<sup>14</sup> When false transaction is discovered AC (Land) Office merely rejects the mutation without informing SR Office. The gap between two offices complicates the whole process of land transfer. In the late 1980s, an administrative reorganization committee,<sup>15</sup> commonly known as Mueyed Committee identified the shortcomings and recommended for bringing functions of registration and record-keeping under the executive authority of AC (Land). This, as per report, would ensure a crosscheck at the stage of registration on the authenticity of deed being transacted. The recommendation along with suggestion on simplification of a transfer deed sparked uproar among SRs and Deed Writers who feared of losing their prevailing stakes in the proposed system.

**Lengthy and Corrupt Process of Registration.** The deed prepared by Deed Writers contains a lot of unnecessary words and sentences, which could be avoided. A phase in the registration process is copying the deed in a specified Volume (Register) maintained in the SR Office that takes about 9-12 months.<sup>16</sup> This job is so reluctantly done that only copyist understands what he has copied.

12. Siddiqui, K.U., Land Management in South Asia, op. cit., p. 351

13. Rahman, H.Z., Rethinking Land Reforms, op. cit., p. 73

14. Siddiqui, K.U., Land Management in South Asia, op. cit., p. 351

15. Government of Bangladesh, Report of the Study for the Future Land Policy and Land Reform Measures in Bangladesh, Ministry of Land, Dhaka, 1993, p. 55

16. Mia, S.R., The Registration Act and Procedure, op. cit., p.167

The SR Office is noted for institutionalizing corruption<sup>17</sup> with a fixed rate on the value of land, which is to be paid for officials. The staff of SR Office and Deed Writers colludes which frequently leads to lowering of Immovable Property Transfer Tax by understating land value.

## MUTATION OF LAND RECORD

Mutation is the process of revising and updating ROR on transfer of land ownership and also on subdivision and amalgamation of landholdings. Ownership changes of land that takes place during this intervening period of consecutive regular survey operations need to be reflected in the ROR. An AC (Land) working under Deputy Commissioner (DC) does this revision.

The process starts in the case of transfer on receipt of LT notice and in all other cases with applications from the tenants or proposals from Tahsildars.<sup>18</sup> AC (Land) initiates a mutation proceeding and sends the proposal to the concerned Tahsildar for inquiry. Tahsildar verifies the genuineness of ownership and possession of the transferor. He then determines whether any public demand is due on account of Land Development Tax (LDT), any certificate case lies pending on the land and whether with the proposed land transferee's holding exceeds the ceiling (60 bighas). On consideration of the report and if the land on verification is found not to be under the category of khas, abandoned and vested property, AC (Land) passes order for mutation. Accordingly ROR and relevant registers are updated.

### Problems and Limitations of Mutation

**Lack of Awareness among Tenants.** Many people are not aware of the legal requirement of mutation as a means for consolidating ownership. They hardly go to the AC (Land) Office to get their right of inheritance on land updated. Without applications from tenants, AC (Land) cannot start suo moto mutation proceeding in favor of heirs of the deceased landowners. Union Parishad (UP) which is supposed to maintain the Death Register is reluctant to record it and even if it records occasionally on insistence of relatives of the deceased is not obligated to send the information to AC (Land) Office. This gap along with ignorance of the people obstructs mutation to be undertaken on account of inheritance.<sup>19</sup>

**LT Notice: An Unreliable Basis for Mutation.** As mentioned earlier, LT notices instead of being sent to the AC (Land) Office as soon as registration is completed, are sent irregularly in lots. Again carbon copies of them are mostly

17. Siddiqui, K.U., Land Management in South Asia, op. cit., p. 351

18. Siddiqui, K.U., Land Management in South Asia, op. cit., p. 351

19. Debnath, N.C., Land Management in Bangladesh, Shahitya Prokashani, Dhaka, 2000, p.172

illegible and incomplete.<sup>20</sup> As such they fail to form dependable bases for mutation proceedings. SR Office sends them as a routine formality and does not care much about their efficacy in subsequent recording phases. AC (Land) Office also does not take specific initiative to get the notices accurately filled in by sending them back. Functional compartmentalization thus complicates the mutation process with added suffering of tenants.

## **THE COORDINATED LAND RECORD SYSTEM (CLRS): A PROPOSAL**

The Coordinated Land Record System (CLRS) takes into consideration remedial measures for identified problems and limitations. It also appreciates recommendations of Public Administration Reform Commission,<sup>21</sup> which stressed for devising a plot based land ownership system to replace the existing family based one.

CLRS concentrates on Certificate of Land Ownership (CLO), which will be an official document to be held by a landowner as an alternative to khatian. A translated version of CLO is shown in annexure. Its preparation requires survey and mapping functions to determine plot descriptions in each mauza. Survey teams each consisting of a Kanungo, a Surveyor and two Chainmen are to work under supervision of Assistant Land Officer (Survey and Mapping) in Upazila Land Office (ULO). An upazila in rural areas and a specified zone in city corporations are to be considered as basic tier of CLO operation. The first step is to establish geodetic survey control network in the entire unit. This network provides unique reference framework so that ground position can be reestablished at any later time even if ground marks from previous surveys are disturbed or have disappeared. **The Cadastral Survey (CS) and Mapping methodology based on ground survey or aerial survey supplemented by ground survey is to be adopted.** The operation on completion would provide digital mauza maps. To establish connection of CS to geodetic network, **Control Survey would be carried out using Global Positioning System (GPS).**<sup>22</sup>

After establishing plot descriptions the next step will be recording ownership in each plot. Record preparation teams each consisting of a Kanungo and a Surveyor will be working in the preparation phase. This team will be linked up hierarchically first to ALO (Recording) and then to Upazila Land Officer. Ownership will be determined through investigation of the documentary and other forms of evidence of ownership presented by the owner.

20. Mia, S.R, Rules on Mutation, Naya Dunia Publications, Dhaka, 1996, p. 35

21. Government of Bangladesh, Report on Modernization of Land Administration, PARC, Dhaka, 2000, p39

22. Department of Land Administration, Report on Bangladesh Land Administration Report, op. cit., p.C-6

The team would collect evidence of possession and ownership of land in open meetings with participation of LG representatives (UP Chairman and Members) and local elite. Alongside ownership rights, the same team will determine other interests relating to lease, mortgage, encumbrances and appurtenance using various sources including financial institutions.

Draft CLOs and mauza maps will then be displayed in the notice boards inviting objections, if any, from all concerned within a specific period. Complaints would be heard by ALO (Recording) or ALO (Survey and Mapping) depending on the relevance of objections. There would be yet scope for appeal to Upazila Land Officer, whose decision would be final. Hearing and appeal each would be confined to a definite timeframe of 30 days to avoid unusual delay. After disposal of appeal, ownership records would be finalized. Landowners would get final copies of CLOs from ULO. Computerization of the documents would be done with sufficient master copies to back up making it easier to be preserved in record rooms in DLRS and DC Office. Once CLO is complete, it along with mauza map will be maintained in the ULO on an ongoing basis.

**Landowners requiring transfer of ownership will register it through conveyancing without going through hassels of SR Office.** Conveyancing is the process of documentation necessary to transfer ownership of a land plot from one party to another. At present registration involves employing a lawyer and a licensed Deed Writer. The proposed system starts with a petition from the parties in a simple prescribed form showing schedule of land and particulars of involved CLO. Parties may take the help of licensed conveyancers who will be trained to get the form filled up correctly in exchange for a fixed fee. ULO would then verify the particulars from the computerized records. In case of correct ownership of transferors, required stamp duty and tax would be realized and then the transfer would be registered with official seal and signature by ALO (Recording). At the same time ULO would update CLO accommodating ownership changes.

Recording changes of ownership due to inheritance and inclusion of other rights involves submission of an application in simple prescribed form. But it will not require any stamp duty or tax. Particulars of the involved land would first be verified and then ULO would update CLO with changes of ownership in case of inheritance and recording of encumbrances and rights in others. **In case of any changes of plot boundaries as a result of subdivision or amalgamation, licensed surveyors would verify the matter before modification and issuance of CLO.**

**Information Technology (IT) as a component of CLRS.** This would involve land plots and relevant attribute to be stored in a computer database. Gradually, the database structure design would take into account the long-term objectives of bringing the land information into the public domain and creating a comprehensive Land Information System (LIS) with the following design criteria:

- a. **Upward scalability-** gradually building from upazila to district and to national databases facilitating easy access to offices and Courts;
- b. **Open data format-** non-proprietary format that can be accessed by all industry standard systems; and
- c. **Modularity for horizontal expansion-** in data structure allowing addition of new data blocks or elements to the database.

To guarantee the security of land record and map, a form of advanced technology of digital data with both a long life and higher damage-tolerances should be introduced. Appropriate and suitable legal, institutional and copyright related policies will have to be developed and implemented in support of working with digital information.

## **CONCLUSION AND RECOMMENDATIONS**

This study was based on the existing land record system analysis along with interviews of concerned government officials, UP chairman, members of civil society and landowners, and after a thorough understanding of the matter, it can be said that the present land record system suffers from many administrative as well as structural limitations. Keeping all the limitations in mind, possible solutions are suggested so as to make it an effective system capable of providing an authentic, conclusive and contemporaneous plot based document for land ownership.

### **Legal Measures**

- a. *The existing legal framework should be modified* to bestow conclusive validity on CLO. The Officials concerned with its preparation and recording have to be legally authorised to conduct proceeding and make ownership vesting orders.
- b. *The Registration Act,* so far as it relates to land transfer, *should be modified to make ownership checking as a mandatory obligation before registration.* Only owners with valid title should be allowed to transfer their land.

### **Institutional Measures**

- a. Measures should be undertaken to establish the proposed CLRS. *The recording role of DLRS should be transformed into supervisory role with authority of active technical supervision on ULO, which will be the operational hub.* The existing field staff of DLRS could be made available to be posted in ULOs. Five posts of ALOs should be created where AC (Land) will be working as ALO (Revenue).
- b. *Land Registration Power should be vested to ALO (Recording)* An officer working under Upazila Land Officer. Officers, at present working as SR may be given an option to join as ALO (Recording) to ease any dismay that may arise from such modification. Registration on properties other than land may continue as usual under registration department.

### **Functional Measures**

- a. *A timeframe should be given within which all heirs of deceased owners would get their ownership mutated from ULO.* For facilitating mutation, functional linkage should be made to collect particulars of dead landowners from UP in rural areas and pourashava /ward office in city corporations which maintain death registers.
- b. To expedite CS and mapping, *aerial survey supplemented by ground survey should be adopted.* An arrangement can be made with Space Research and Remote Sensing Organization (SPARRSO) to conduct aerial survey in a cost effective manner.
- c. *A computerized LIS involving land plots and relevant attributes should be established based initially on Local Area Network (LAN) and later on Wide Area Network (WAN).* WAN would link up ULO with Ministry of Land, DLRS, Divisional Commissioner Office and DC Office. It would consist of land recording and land pricing systems facilitating wide use in land planning and infrastructure development.
- d. To effectively activate CLRS, a large number of trained personnel will be necessary. *The training capability of Land Administration Training Centre and Survey Training Institutes should be expanded to cater for the enhanced training needs.*
- e. Transforming the whole country into CLO fold being a gigantic task, *there should be a pilot phase before full-fledged implementation.* For successful implementation, political and resource commitment would be essential prime movers.

- f. *Mass media should be used to sensitize landowners to extend their all-out cooperation during implementation of CLRS.* Equally significant is the community awareness, which also needs to be generated through seminars and workshops for facilitating accelerated implementation of the project and thereby ushering in a people-friendly land record system throughout the country.

It can be hoped that the government along with its partners will realize the importance of a revised land record system, and will take necessary actions to reform the existing structure to enhance administrative efficiency as well as to benefit its citizens

### **Annexure : A Translated Version of CLO.**

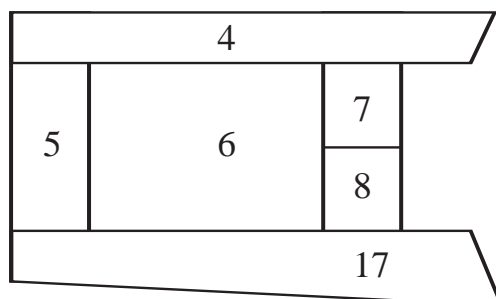
#### **CERTIFICATE OF LAND OWNERSHIP**

NO.-----

Certified that the person(s) in schedule-1 is/ are owner(s) of the land described below with encumbrances stated in schedule-2 and under conditions mentioned therein.

Seal and Signature  
of Authorised Officer

DESCRIPTION OF THE PLOT							
District	Thana	Mauza	Plot No.	Description of Land			Class
Comilla	Sadar	Araiura	6	Sq.m.	Acre	Dec.	Agri.
12	11	102	6	725.57	0	17.9	Nal



FIRST SCHEDULE		
Owner's Name and Address	Means of Ownership Deed No.	Share of Ownership
Md Abdul Malek, S/O Md Abdul Jalil, Vill. Araiura, Sadar, Comilla.	Gift, 1775, Dated 12.12.1980	0.5
Md Abdul Hamid, S/O Md Abdul Jalil, Vill. Araiura, Sadar, Comilla.	Gift, 1776, Dated 12.12. 1980	0.5

SECOND SCHEDULE*			
Description of Deed		Descriptions	Date of Registration
Type	No.		

\*Lease, mortgage etc. are to be listed.

Source: Bangladesh Land Reform Proposal, DOLA

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*He participated in a number of training courses both at home and abroad. At home he undertook courses on Law and Administration, Financial Administration, Training of Trainers and Land Administration. He attended MATT (Managing at the Top) training of course in the UK in 1998, jointly organised by DFID and GOB for selected mid level civil servants of Bangladesh. He also participated in courses such as Entrepreneurship Development in India, Study of District Administration in courses such as Entrepreneurship Development in India, Study of District Administration in Malaysia, Distance Learning in Indonesia and Development Assistance of IDA in Srilanka.*

*Mr. Aziz served in various capacities in the field administration. As Upazila Nirbahi Officer he worked in three upazilas of Netrokona and Chittagong districts. He served as Deputy Commissioner in two districts-Habiganj and Dhaka. Besides he worked as Deputy Secretary in Economic Relations Division, Ministry of Commerce and Ministry of Establishment and as Joint Secretary in the Ministry of Land.*