

A Game of Titles: The effectiveness of the Implementation of the current Land Title Registration programme under the Registration of Titles Act No. 21 of 1998 in Sri Lanka

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Abstract—A definite title to one's land is essential before one can reap the full benefits of such land. In order to obtain a definite title to a land, a landowner must register such land legally in order for him to fully enforce his rights to such land. The law relating to the registration of lands in Sri Lanka at present is governed under the law relating to 'registration of deeds' system in the Registration of Deeds Ordinance 1927 Sri Lanka. However, this system of registration of lands is fundamentally flawed and therefore was replaced with 'registration of title' system by the Registration of Titles Act No 21 of 1998. The land registration programme, popularised as 'Bim Saviya' was the programme implemented under this Act entrusted with the main task of registration of lands in Sri Lanka and issuing title certificates to such lands. However, this programme, ever since its implementation has shown a very slow progress in the registration of lands in Sri Lanka. The objective of this study is to analyse the current land title registration programme in Sri Lanka in order to ascertain its effectiveness in registering lands and issuing title certificates to lands. The research uses a mixed approach of analysing both doctrinal and non-doctrinal data pertaining to this area, the non-doctrinal approach will analyse quantitative data collected so as to identify the loopholes in the present land registration programme implemented under the Title Registration Act and thereby to provide effective solutions to the slow procedure in land title registration.

Keywords— Title Registration, Land law, Sri Lanka, Bim Saviya

I. INTRODUCTION

"No one shall be arbitrarily deprived of his property." So declares article 17 of the 1948 Universal Declaration of Human Rights. Land is a fundamental resource and its owner can only enforce its full when the rights to land are registered. In order to safeguard one's property, a person needs to be able to prove his or her ownership to such property. Land is undisputedly one of the key property components that a man can own. Therefore, the ability to prove the ownership of one's land is essential so as to ensure that one maybe able reap the full benefits of such land. In order to prove an ownership to a land, a

land must be registered. The present system prevalent in Sri Lanka to register lands is the procedure present under the Registration of deeds ordinance, however this system is flawed and therefore a new system for the registration of lands has emerged with the Registration of Title Act No. 21 of 1998. The registration of title system has now become a widely used system in land administration and has been successfully implemented in many countries such as Thailand, Malaysia, Australia, New Zealand to name a few, due to this reason both the United Nations and the World Bank recommends the adoption of a title registration system for effective land registration. The need for a proper land registration system in Sri Lanka led to the formation of "Bim Saviya" a program that is implemented under the provisions of Registration of Title Act No. 21 of 1998 as a national program in year 2007. Under this programme, the lands are surveyed demarcated, ensured ownership and issued a Title Certificate, free of charge. However, since its implementation in 2007 and up until 2017 it has not been able to register a significant number of lands despite the passing of 10 years since its implementation in 2007 and this research will analyse the short comings in this programme so as to find an effective solution so as to maximise the process of Title registration of lands in order to guarantee safeguards for private land owners through the process of title registration.

II. LITERATURE REVIEW

Literature suggests the adoption of the titling system over the present deed system as crucial in order for a country to develop. Most experts would agree on the fact that some type of land registration system is a necessary element of a developed market economy. (Larsson, G. 1991). The 'Torrens system', named after Sir Robert Torrens and initially introduced in the year 1858 in South Australia, is one of the most widely known system of registration of title (Willoughby and Wilkinson, 1995). Land tenure security in itself is not sufficient for the full protection of the rights of an owner to a land, and land title security too should be afforded to a land owner to ensure maximum security to his or her land. (Michael Roth et al., 1989). With the existing legal pluralism in Sri Lanka along with other

factors such as unclear boundaries to separate lands, ongoing land disputes, it is understood that resorting to a proper land registration procedure is the only means available to put an end to the issues relating to land tenure. (Perera, P. 2011: 92). However, despite spending 5 million US Dollars under the World Bank Funds for the "Sri Lanka Land Titling and related services project" (2002-2004) as per the evaluation made under the Implementation Completion and Result Report (ICRP Report) 2007, the land titling project was deemed unsatisfactory.

III. METHODOLOGY

For the purpose of this research the administrative and the legal set up of the registration of lands (deed registration and title registration) were analysed to identify the shortcomings in both systems. Primary data have been collected through face to face and over the phone interviews held with officials in the Bim Saviya programme to obtain current information regarding the implementation of the Bim Saviya programme. Practical limitations to the collection of primary data were faced as a result of the busy schedules of said government officials and unavailability of data in the required form. Secondary data was obtained through various journal articles, reports and literature with regard to the implementation of title registration in Sri Lanka and other countries.

IV. *Registration of lands under the deed registration system*

The system of registration of documents was introduced to Sri Lanka in 1863 by the Land Registration Ordinance No 08 of 1863. Independent to this there was a start-up for the registration of title in 1877 by the Registration of Titles to Land Ordinance no 05 of 1877 as a trial in areas such as Wellawatte, Kirulapana and Dehiwala, the plan was to continue the registration of title via this ordinance to the rest of the island, however this was not possible as this process is very costly.

The present system of land registration in Sri Lanka, is based on the "registration of deeds" as per the Registration of Documents Ordinance of 1927 along with the Prevention of fraud Ordinance 1980 and Notary Ordinance of Sri Lanka. In this system it is the deed, which is registered. A deed is a record of a particular transaction between parties and this serves as evidence of this specific agreement. Therefore "registration of deeds" is a system for registering legal documents and it is not a system of registering title to land. Usually in a deed registration system, recording a deed does not automatically guarantee the relevant rights with regard

to land. A deed in itself does not act as sufficient evidence as to who owns the land; it only records an isolated transaction.

The collection of such individual records of land transactions in a series, thus forming a chain of records forms the title. Transactions in land are as a result are very expensive and time consuming because it is essential to establish the full historical record of all transactions to establish the legality of a transfer and requires individual copies of evidence going back decades of years.

In the deed registration process the accuracy of the contents of the document registered is not investigated by the registering authority and as a result no guarantee is given to the contents of the deed such as the ownership of land, neither the boundaries nor the extent of the land is stated by the Registrar. In certain extreme situations, there can even be two or more deeds registered for one particular land and also there can be a deed registered for a land that is not even in existence. Anything in between these two extreme situations is possible in the deed registration system.

V. *Registration of lands under the title registration system*

The shortcomings in the deed registration system paved the way to the Title Registration Act No. 21 of 1998. As observed by the reports of the Land Commissions held in 1955, and 1985, which recommended a modernized procedure for the registration of lands thus paved the way to implement the Title Registration Programme. The objective of this Title Registration System is to establish a complete database on the land resource of the country, and the proper land management. The project was commenced under the World Bank funds as a "Learning and Innovation Project" titled as the "Sri Lanka Land Titling and related services project" with the support of the Land Settlement Department, Survey Department, and Registrar General's Department, which was implemented successfully until December 2006.

Presently this programme is implementing under local funds namely 'Bim Saviya' since 2007.

VI. *The Bim Saviya Programme*

"Bim Saviya" a program that is implemented under the provisions of Registration of Title Act No. 21 of 1998 as a national program in year 2007. The objectives of this programme are as follows,

- Introduce title registration instead of deed registration practised currently

- Settle or make arrangements to settle the ownership of the lands which are currently unsettled
- Establish a Digital System for Land Information.

Four governmental departments under the Ministry of lands and Ministry of Public administration work alongside Bim Saviya in order to survey, demarcate, ensure ownership and issue title certificate to the respective owner. (Figure 1.1) (Source Bim Saviya 2017)

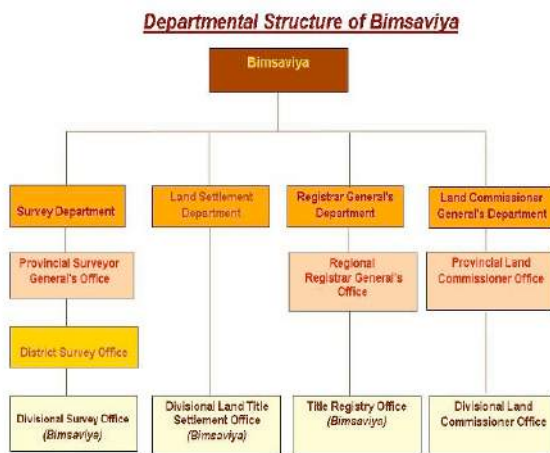


Figure 1.1
Source: Bim Saviya (2017)

Further this programme provides for online registration and online access to relevant land registration, it further organizes relevant awareness programs with regard to land registration. The Bim Saviya website provides a detailed procedure as to how the title to land is provided via this program but so as to summarise this process, the Bim Saviya Programmes is ensured with the task to,

- Make the public aware of the land titling procedure
- Survey land parcels and prepare the cadastral map
- Investigate and determine the title
- Register the title and issue title certificate

(Source Bim Saviya, 2017)

VII. Analysis of the progress of Bim Saviya programme and its issues

After the enactment of the Title Registration Act, the Sri Lanka "Land Titling and related services project" funded by the world bank (2002-2004) assisted in the commencement of the registration of lands in Sri Lanka, and thereafter ever since its implementation in 2007, the "Bim Saviya" programme funded locally was bestowed with the responsibility for the registration of lands. However, from the year 2002 -2004 and from 2007- 2016

both these programmes together have only been able to only register 539,359 land parcels (including state lands) as opposed to the 12 million land parcels present throughout the country (Source: Bim Saviya Head Office) and this programme has been implemented in the relevant divisional secretariats of Homagama, Dehiwala, Moratuwa, Kesbewa, Ratmalana, Minuwangoda, Ja Ela, Dompe, Mahara, Katana, Wattala, Biyagama, Gampaha, Attanagalla, Mirigama, Kalutara, Panadura, Horana, Udapalatha, Udunuwara, Harispattuwa, Yatinuwara, Gangavatakorallaya, Dambulla, Pallepola, Kotmale, Nuwara Eliya, Galle, Hikkaduwa, Kadawatsathara, Matara, Weligama, Thihagoda, Beliatta, Lunugamwehera, Tissamaharama, Hambantota, Ridigama, Pannala, Malawapitiya, Kurunegala, Wariyapola, Kegalle, Warakapola, Wennappuwa, Puttalam, Anuradhapura, Thalawa, Rajanganaya, Nagenahira Nuwara palatha, Madirigiriya, Hingurakgoda, Lankapura, Ridimaliyadda Mahiyanganaya, Moneragala, Ratnapura, Balangoda, Ayagama, Kuruwita Nivithigala, Weligepola, Godakawela, Nallur, Karachi, Kilinochchi, Musali, Vavuniya North, Vavuniya South, Vakarai, Manmunai North, Trincomalee, Kanthale, Ampara so far.

An analysis of the data clarifies that the amount of lands has been registered within the period from 2002-2016 is rather negligible (bearing in mind this was the number of land parcels registered and not the number of land titles issued)

compared to the total number of land parcels present and that this program is not showing any progress because at the rate at which the programme is registering lands it will take over 300 years to register all lands in Sri Lanka.

The main issues identified by the surveyor general's department was the lack of understanding and knowledge of citizens with regard to the land titling procedure. The lack of employees who are knowledgeable as to the whole process of title registration. Lack of government funds to support this programme and lack of proper machinery to survey the lands to be registered.

Along with the aforementioned issues the overwhelming number of Governmental institutions involved in the procedure as displayed in figure 1.1 can be identified as one of the reasons for the long period of time taken for the completion of the project. In countries such as Thailand only one institution which is the "Department of Lands" acts as the implementing agency of land titling and this leads to the smooth functioning of such procedure as only one governmental department is involved, therefore the presence of many governmental institutions involved in the process of title registration in Sri Lanka can be seen as a drawback to the effective implementation of this programme.

VIII. Recommendations

The Bim Saviya programme was also entrusted with the task of providing awareness programs and workshops to citizens in order to educate them as to the land titling procedure, (Bim Saviya, 2017) however even though such workshops and programmes were organized by the Bim Saviya Programme in the past, that is not the case at present and as it was brought to light in the series of interviews held with the officials of the Bim Saviya Programme, one of the key reasons why this project is lagging behind is due to the lack of knowledge and awareness as to this program. Therefore, both the public and the employees working under this programme should be educated as to the process of land titling in order to make this program more effective. As only then will the public be able to understand the importance of this procedure and give its fullest cooperation in the process of titling of lands. Hosting awareness and educational programmes with regard to land titling is the most cost effective procedure that can be adapted in order to maximise the efficiency of the land Titling process with the limited number of funds entrusted for this process.

IX. Conclusion

In conclusion it can be stated that considering the value given to land at present and its importance to a developing country like Sri Lanka, the issues with regard to the land titling programme and its implementation is an essential factor to consider in order to advance the development of a developing country. However, the present system of land titling in Sri Lanka is not very effective when considering its progress for the last 15 years ever since the Sri Lanka Land Titling and related services project in 2002. Having a proper land titling system would give rise to a greater number of foreign direct investments, lesser number of land disputes, it reduces the cost of dealing with land, it makes land records much simpler and protects a bona fide purchaser in a case of fraudulent dealing. These are few of the advantages which a proper title land registration system is able to secure. With the existence of many personal laws in the country, the best way to enforce one's rights to a land is by obtaining a title certificate to such land and this title certificate can only be obtained if the existing title registration system in the country is effective in its implementation. Title registration is a more simplified and effective procedure as opposed to the deed registration system, resorting to the title registration

system is more beneficial to a country's development in the long run.

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Bibliography

'Implementation, Completion and Results Report' on Sri Lanka Land Titling Related and Services Project (ICRP), (2007) World Bank. Available at <<http://documents.worldbank.org/curated/en/293851468308634964/Sri-Lanka-Land-Titling-and-Related-Services-Project>> [Accessed on 1st May 2017]

Land Commissioners Report 1985 Report of SP III of 1990. pp. 44-45

Land Commissioners Report 1955 Report of SP X pp. 168-169

Land Title Registration Programme: Bim Saviya. [ONLINE] Available at: <http://www.bimsaviya.gov.lk/web/> [Accessed 30 May 2017].

Larsson, G. (1991). Land Registration and cadastral systems: tools for land information and management. New York: Longman Scientific and Technical.

Perera, P. (2011) 'Implementing land registration systems in Sri Lanka: Being Pragmatic', *Sri Lanka Journal of Real Estate*, no 4, pp 74-96, [ONLINE] Available at: <<http://journals.sjp.ac.lk/index.php/SLJRE/article/view/114/48>> [Accessed 26th April 2017]

Roth, M., Barrows, R. and Carter, M. (1989). 'Land Ownership Security and Farm Investment', *American Journal of Agricultural Economics* Vol. 71, No. 1 (Feb, 1989), pp 211-214, Available at: <<https://academic.oup.com/ajae/article-abstract/71/1/211/90168/Land-Ownership-Security-and-Farm-Investment>> [Accessed 28th April 2017]

Sarath, R. Bim Saviya Programme. 2017. in person.

Willoughby, Peter, G. and Wilkinson, M. (1995) Registration of Titles in Hong Kong (Butterworths: Hong Kong).

Land Registration Ordinance No 08 of 1863, Sri Lanka

Registration of Documents Ordinance of 1927, Sri Lanka

Registration of Title Act No 21 of 1998, Sri Lanka

Registration of Titles to Land No 05 of 1877, Sri Lanka

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