

An Introduction to the Legislation on Hi-tech Survey and Settlement of Lands in Odisha

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Abstract

Survey and Settlement is a continuous process. Digitalization of land records is a sine qua non. The success of the land laws depends upon better and accurate maintenance of digital land records. It also helps to curb corruption and, encourage a healthy and transparent economy dependent on land. Legislature these days are making laws which give intend and purpose to take help of modern technology for the survey of the lands, and preparation of various land records. The Orissa Special Survey and Settlement Act, 2012 is one such hi-tech legislation. The paper explores the law on the methods and procedures taken by the revenue officials for updating the records with the help of hi-technologies. The paper concludes with a hope for the revenue officials to inculcate the culture of using digital records for the day to day official transitions affecting public life.

Keywords Survey, Settlement, Digital Record of Rights, Digital Maps, DGPS.

1. Introduction

Survey and Settlement is a continuous process. Owner and various rights over the land changes hands in a decade as it is one of the factors of production and subject to commerce. Also for the development of the nations effective utilisation of the land is necessary. Public sectors undertakings or private sector companies require land for the expansions of the business. Also clarity on the rights over the land rights helps a farmer to exercise better agricultural activities over it to secure the food production.

The records of rights in digital forms shall also *suppress the fraudulent activities* that take place rampantly on the transactions over the land. Sometimes it is taking such ugly turn that, in “Odisha, a man of Scheduled Tribe being frustrated due to running from pillar to post in the Tahasil Office, Rengali under district of Sambalpur to resolve his land disputes where by some unscrupulous persons sold his lands causing forgery on land records torched the office with petrol fire”¹. This happened, even if the government gives primacy of protection to rights of Scheduled Tribe over his land. The intent of the government is from Regulation 52 and Section 22 and 23 of Orissa Land Reform Act, 1960 which put embargo on the sale of land by ST to a non-ST person without permission. So, digitalisation of land records shall help suppress fraud and curb corruption, there by shall give fillip for the creation of conducive environment for the investment

The success over the land laws, better and accurate maintenance of digital land records is necessary. For this, legislator has taken the advantage of latest technological advancements to achieve the desired goals. One such example is in the State of Odisha, ‘Orissa Special Survey and Settlement Act, 2012²’ that not only gives scope for the Modern Hi-Tech tools for the survey work but also, linked the law to other operations like consolidations of land, land acquisition process and mutation proceedings. The scope of this paper is to introduce the Act, 2012 and concludes with a hope that best forms of digital land records shall be facilitated through it.

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2. The Special Act

State of Orissa laid the Orissa Special Survey and Settlement Act on the 28th September, 2012, by retrospective effect on 12, July, 2012, from the first section of the Act itself. Orissa has earlier Survey and Settlement Act, 1958. However this new legislation is in addition to the earlier Act. But it is a prevailing Act. The Act, 2012² states that it shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom or usage having the force of law or contract. Thus, through this Act, 2012³, only the Ordinance for this Act is repealed not the earlier laws regarding survey and settlements. However, if the earlier laws are in inconsistency with Act of 2012 this Act shall, being special, prevail.

3. The Objectives of the Legislation

The objectives of this Legislation are to achieve the survey and settlement operations in the State of Odisha by adopting modern technology. The use of the technology shall minimise the time often consumed by the lengthy manual survey works with its own limitation of perfection. So, it is also the purpose of the legislation to minimise the time span assuring the quality of the work. While doing the survey operation it is also to maintain transparency of the work by protecting the rights of the 'Land Holder, Raiyats and Tenants'⁴ by providing effective framework of the redressal including keeping open the right to redress substantive rights in the traditional forums of the principal civil court and the constitutional court at different stages of the process.

4. The Introduction of Modern Hi-tech Technology

This Act introduces the use of Modern hi-technology for the operation of survey work. The Act, 2012 includes technologies like Aerial Photography, High Resolution Satellite Imagery, Differential Global Positioning and Electronic Total Station as 'Modern Technology'⁵ for the operation of the survey.

"Aerial photography, generally flown from an airplane, is still widely used in the creation of topographic maps worldwide, and represents a relatively cheap and accessible data source. Photography can provide black-and-white, color, or color-IR data in either film or digital form³". "Satellite imagery are images of Earth collected by imaging satellites.⁴". It can be used for diversified purposes. It is also used to address the food demand which is the key objective of Land Law. "High-resolution satellite imagery can serve as a phenotyping tool for the assessment of crop varieties, thus assisting plants breeders in the process of selecting high-yielding, stress (abiotic and biotic) tolerant variety that can contribute to addressing world food demand amidst climate change⁵". "High-resolution satellite imagery can be used for human rights-related documentation, monitoring, and advocacy efforts⁶".

"Different modern instruments and techniques are used in surveying such as DGPS (Differential Global Positioning System) and Total Stations. These instruments and techniques are used for the planning and designing of different projects in many areas such as developing the township, construction of roads, irrigation, mining etc. The DGPS has provided more accurate, reliable and faster field surveying data⁷". "The DGPS provides the more reliable and accurate data which can be used for medium to small scale maps. The accuracy of data improves with repeated observations and it depends on the taking of averages of data⁸".

This Act also leaves open for any other technologies, to understand *ejusdem generic*, that are relevant for the purpose of survey during operation, if approved by the State Government. Since, for doing these, technically qualified and experienced persons who can 'measure, draw sketch map according to the scale of the plots⁶' is necessary, the Act gave scope for those technical personals to obtain a license from the Office of the Director of Land and Survey and become a 'Licensed Surveyor'⁷ to do the survey works. The Director publically invites applications to enrol the name as licensed surveyor⁸. After issuing the license, the Director sends the list of enrolled Licensed Surveyors to the Collector of the respective districts.

² Sec 20 of the Act, 2012

³ Sec 29 of the Act, 2012

⁴ Sec 2(e) 'Land Owner' under the Act, 2012

⁵ Sec 2(f) 'Modern Technology' under the Act, 2012

⁶ Sec 2(g) Licensed Surveyor under the Act, 2012

⁷ Ibid.

⁸ Sec 15 of the Act, 2012

5. The Comparison between Traditional Survey and Hi-tech Survey

“Traditional Survey: 1. In traditional method survey were being made manually. 2. Re survey is required. 3. Gunter chain, Plane Table method, Prismatic Compass and Theodolite are used. 4. It is time consuming. 5. It is more costly and man power required. **Hi-Tech Survey** 1. Through Hi-Tech Survey the map is prepared digitally with highest level of accuracy which can be preserved and updated digitally. 2. Re-Survey is not required. The map is Co-ordinate based having Latitude and Longitude of each point or location of the village which helps in post survey demarcation. 3. This Survey Process is less Time Consuming. 4. It is more Cost effective, 5. The map prepared through it is of high level accuracy”⁹.

6. The Survey and Settlement Operation

6.1 The beginning of the operation:

A notification is issued by the Government to begin operation of survey work. The notification is issued u/s 3 of the Act, read with sub-rule-(1) of rule -4 of Odisha Special Survey and Settlement Rules, 2012, and it remains in operation till the final publication of the Map and Record of Rights prepared or updated through this survey operation. Like most of the land legislations, this legislation too, suspected the power of the civil court to entertain the matters arising out of the survey and settlement operation till the finalisation of the Map and Record of Rights prepared under this Act, 2012. Sec 23 of the Act, 2012 provides that after the Final Publication u/s 11, the Civil Court can entertain matters. In between 3 to 11, for any quasi-judicial action, the options for the writ application before the High Court and Supreme Court are open.

Soon after the notification u/s 3 is issued, the Tahasildar proclaims the notice in the respective village or villages. This notice calls for the submission of the documents for declaring as to the rights, title and interest over the lands or plots by the Raiyats, Tenants, or the Land Lords. The declarations are submitted before the Office of the Tahasildar or if the Tahasildar lays a camp the village or villages in that camp. These records are verified by the Tahasildar.

6.2 Preparation of Draft Record of Right and Sketch Maps

Then the Sub-Collector makes a team which shall be consisting of an employee of Tahasil Officer⁹, generally to assist and oversee survey and settlement works, the Licensed Surveyor and if any other agency or agencies, engaged by the Director. The agency is responsible for the preparation of preliminary record of rights for revenue village or villages coming under/section 3-notification as well as preparations and services of the notice to the land owners¹⁰. And the Licensed Surveyor is included in the team by the authorisation of the District Collector out of enrolled list of Licensed Surveyors send to him by the Director¹¹. The Director also is having the power to authorise any other person to authorise a Licensed Surveyor¹². This is in short, out sourcing the survey works to a private agency but overseeing it through an employee of the government.

The Team takes care for preparation of the Record of Rights (RoR) and Maps. While making Record of Rights, it is duty of the team to take note of the latest ground realities of the lands and various transactions like sale, mortgage, gift, lease, exchange, gift, sub-divisions, partitions, hereditary devolution, if any, made there on. It is also incumbent upon the team to identify or remarket Land of Sarbasadharan or Nazul or common. In the preparation of this preliminary Record of Right if any claims or objections are made, such are redressed by the Tahasildar. The sketch maps prepared by the Licensed Surveyor are also verified by the Tahasildar. And if at time, the Tahasildar finds any discrepancies or finds the works unsatisfactory he can advise back in writing to the Licensed Surveyor to make afresh the maps¹³.

6.3 Publication and Hearing

The draft RoR and the Map are published in the respective revenue village or villages to invite any claims or objections thereon¹⁴. A land owner can file an objection before the Additional Sub-Collector¹⁵. As noted earlier during the preparation of draft RoR and Maps, claims or objections if any can be made before the

⁹ Sec 7(3) of the Act, 2012

¹⁰ Sec 7(1) of the Act, 2012

¹¹ Sec 17 of the Act, 2012

¹² Ibid.

¹³ 18 (3) of the Act, 2012

¹⁴ Sec 8 of the Act, 2012

¹⁵ Sec 9 of the Act, 2012

Tahasildar before the publication, the same person in the capacity of Additional Sub-Collector, should not hear matter after the publication, as that shall be violative of the principle of natural justice. This order, to reiterate, since is made exercising a quasi-judicial power, can be judicially reviewed by the High Court and Supreme Court in the Writ jurisdiction. The power of the Civil Court to entertain dispute till the final publication is made suspended by the Act, 2012. However, the Act, 2012 has not as it cannot, foreclosed the judicial review power of the writ courts¹⁶.

When the case records of objections are finally disposed or when there is no objection on publication of the draft RoR and Map, as the case may be, the team shall then go for the final preparation of the documents. This is known as recess¹⁷. In this recess period, the documents are made fair, taking note of the decisions, compared and arranged¹⁸. Since, these clerical activities required time, a recess period is provided under the Act, 2012 before going for the final publication. After these operations, the final publication of the RoR and Map are made¹⁹. The final publications of these records are made by the Collector under his seal and signature²⁰. A person aggrieved by this final publication, can file objection within three months before the Additional District Magistrate²¹. Here it is to note that, after the final publication by the Collector or District Magistrate, objection is heard by the Additional District Magistrate. The copy of this final publication is sent to Tahasildar as the record keeper for the collection of the revenue comes under operation of his office. The Tahasildar updates the record as per the final publication. Since this Act mandates to create the RoRs and Maps in digital forms, the Tahasildar is enjoined to maintain these digital records of RORs and Maps²².

7. Value of the Record of Right prepared under the Act of 2012

The data collected during the survey can be used by the Revenue authorities for other operations like consolidation²³ and land acquisition. The records prepared under this Act are conclusively taken as true for the fact and date of final publication, as if in sometime in future, if the very signing authority of Collector is not there, and since it is not a public document, it can be proved by the land owner for the fact of publication. The Act, 2012 also makes it mandatory for the court to draw presumption as to the correctness of the entries of the RoR unless and until it is disproved by the party alleging thus²⁴.

8. The Progress on the Ground

The State of Odisha has formed a Society for the Modernisation of Land Records (OLRMS) under the aegis of the Revenue Department. Its objective is to oversee the projects for collection of the digital data through hi-tech survey and to storing it in the data centre with 24x7 security measures. It has a sub-committee to look into the storage, security and usability of the data. Representatives from National Informatics Centre (NIC), Directorate of Land Records, Odisha Remote Sensing Application Centre (ORSAC) and Odisha Computer Application Centre (OCAC) are members of the committee. So far, “as per the statistic of 2016, Around 9,656 villages had been notified for hi-tech survey and survey of about 1500 villages had been completed. This re-survey were done in the first phase in nine districts namely Cuttack, Khordha, Ganjam, Keonjhar, Deogarh, Sundargarh, Bolangir, Subarnapur and Sambalpur. The government mooted to replicate it in rest of the districts. As per the available statistic till, 2016, the Govt of Odisha has computerised Record or Rights and Maps of 51,675 revenue villages and put to online in Orissa Bhulekha Web Site. Out of 317 Tahasils, in 279, Modern Record Rooms have been developed. That apart, 185 registration offices have been computerised including, registered deeds from 1995 onwards have been digitised and that is open for the online verification by the Registration Officer to see encumbrance status on the lands and other matters. Transaction based online mutation software to tap real-time mutation of the land records is put in place under the State Wide Area Network (SWAN). Till 2016, this software has been put on pilot in 5 tahasils namely Jatani, Khordha, Nayagarh, Chhatrapaur and Jharsuguda”¹⁰.

¹⁶ Sec 23 of the Act, 2012

¹⁷ Sec 2- J, ‘Recess’ under the Act, 2012

¹⁸ Sec 10 of the Act, 2012

¹⁹ Sec 11(1) of the Act, 2012

²⁰ Ibid.

²¹ Sec 11(2) of the Act, 2012

²² Sec-14 of the Act, 2012

²³ Sec-13 of the Act, 2012

²⁴ Sec 12 of the Act, 2012

9. CONCLUSION

However, even if land records are updated for the suppression of the fraud and other advantages, the true success of the legislation shall come only when the records are utilised for the redressal of disputes pre-litigation disputes and bringing confidence of people while dealing day to day activities of revenue offices making those records integral to office culture.

CONFLICT OF INTEREST

None

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