

S. S. Hussain I.A.S. (Ex)

Chief Executive Officer

Ref. No. MCHI/CEO/18-19/008

August 21, 2018

Sub: CREDAI-MCHI's Suggestion on the Draft Land Titling BillMy Dear *Chokalingam,*

With reference to our last workshop on draft of Land Titling Bill, we would like to submit our suggestions, which can be considered and incorporated to finalize the said bill draft.

Kindly consider the same and oblige.

*best regards*Yours *Sincerely*

(S. S. Hussain)

To,
Shri S. Chokalingam (I.A.S.)
Settlement Commissioner and Director
Land Records
Government of Maharashtra
Pune - 411 001

OBJECTS AND REASONS FOR THE LAND TITLING BILL BY WAY OF AMENDMENT TO THE MAHARASHTRA LAND REVENUE CODE, 1966.

- I. The Bill proceeds on the basis that there is no system of recording conclusive Titles over the property by a Public Authority and it is left to the Purchaser to investigate and come to his own conclusion about the Title of the property intended for purchase. There is further difficulty and delay in Mutation and updating of Land Records pointed out as necessity to introduce a system of conclusive Titling and Registration of Title to ensure ease in land based credit and optimum utilization of land with reduced litigation.
- II. It needs to be considered whether the proposed Bill fulfills the aforesaid objects and reasons.

SCOPE OF BILL:

1. The Bill proposes Amendment by way of introducing Schedule – “L” comprising of 69 Sections / Regulations / Paragraphs to the Maharashtra Land Revenue Code, 1966 (“Code”).
2. It provides that upon notification being issued under Paragraph 11 of the Schedule no transaction affecting any immoveable property notified shall take place except in accordance with the provisions of Paragraphs 22 to 29 of the Schedule and for such transaction Section 148 to 159 of the Code will not be applicable.

OBSERVATIONS ON THE BILL:

- (i) Historically before the formation of State of Maharashtra on 1st May, 1960 earlier, the Bombay Land Revenue Act, 1876 and Bombay City Survey Act, 1915 were in force in the City of Bombay. The boundaries and survey of lands in the Bombay City has evolved through the times earlier to East India Company and thereafter.
- (ii) As regards provisions for Survey of land and maintaining Land Record there is already detailed and time tested provisions applicable and in force by way of Section 148 to 167 of the Code. The aforesaid provisions are applicable in the State of Maharashtra and they have survived the test of time through decades.
- (iii) Land Survey and Land Record is connected with and/or related to the Land Revenue and settlement of revenue of the State.
- (iv) The Bill now undertakes herculean task of defining “immoveable property” which includes land and buildings, Flats, Apartments and any other premises.

- (v) It is material to note that the task of Land Titling presupposes and requires as Condition Precedent to have digitalization of Land Record. In the absence of digitalization of Land Records it is neither practicable nor possible to undertake the task of Land Titling and creating the Registers as proposed by the Bill. The Bill proposes following Registers to be prepared, maintained and up dated i.e.

- (i) Register of Titles;
- (ii) Register of Disputes;
- (iii) Register of Charges and Covenants.

- (vi) The role of the State in promoting Information and Communication and Technologies (ICTs) is significant. The computerization of Land Records (CLR) is now re-designed as the National Land Records Modernization Programme (NLRMP) and is one of the biggest national governance plan initiated by India since 1990s. It is interesting to note that though the subject of land is listed in the "State List" in the Indian Constitution, it is the Central Government which has been the real driver of the change. It is only in the recent year that the modernization of Land Records has once again acquired policy importance. After inauguration of NLRMP in 2008 its implementation was undertaken extensively in Karnataka. Karnataka completed up-dating the Record of Rights for all its Villages in January, 2012. Unless the computerization of Land Records is completed, introducing Land Titling Act on the basis that State Government may by notification establish a system of Title Registration is a wishful thinking. There has to be underlying system strength available for introducing new Regulation appointing Authorities to prepare various Registers and in turn certify Extracts from such Register to be conclusive proof of Title. At the same time it will be risky and disastrous to either do away with or ignore the existing Land Record survey and system existing in Maharashtra as evidenced by the Code. It is true that Bombay City being a Presidency Town with a long history has its own problems and nuances to the land survey, land assessment and land revenue matters. (See Bombay City Land Revenue Act, 1876 and Bombay City Survey Act, 1915). However throughout Maharashtra we have the Code applicable and which has stood the test of time.

- (vii) The statement of objects and reasons of the Bill contemplates pillars of Land Titling system as follows:-
- (i) Mirror principle;
 - (ii) Curtain principle;
 - (iii) Single Agency;
 - (iv) Guarantee of Title;
 - (v) Compensation.

The Bill does not satisfy or pursue any of the aforesaid pillars and does not provide for any discernable methodology for achieving the said objects and purposes.

- (viii) In fact in the statement of objects and reasons there is reference to propose amendments, Code to provide for

compensation if possible either by Private or Public Insurance (in respect of Land Titling). On perusal of the proposed amendment, nowhere in the 69 Paragraphs there is any provision found for compensation by Private or Public Insurance. It was expected of the proposed amendment to come out with scheme of Holder or a Purchaser of an immoveable property can take Title Insurance and be protected against any challenge or dispute to the Title by a third party. The Bill is completely silent on the aforesaid subject.

- (ix) Most of the provisions of the proposed Bill are already existing in the Code (See Sections 148 to 167). The Bill not only duplicates those provisions but creates various multiplicity and tedious repetition without achieving any object or purpose of the Bill.
- (x) In the absence of any conclusive and reliable Land Survey Data which is digitally accessible, the further preparation of Register of Titles, Register of Disputes and Register of Charges and Covenants will be time taking and inconclusive at the State Level.
- (xi) Like various other endeavours the subject of Land Titling will have to work from the grass root level. The Bill is obviously silent on the aforesaid areas and to that extent there is serious disconnect between the ground reality and the legislative aspiration of the State.
- (xii) It is clear that the significant area of providing Insurance Cover for the Land Titling and Land Title Certification is missed out by the Bill and requires to be looked into by the Government. There should be spelling out of ground Rules for Title Insurance and the Insurance Companies which will undertake providing of Insurance Policies and their liability in future.
- (xiii) The Bill provides for various interlocking provisions. For example, Paragraph 11 provides for Notification of Preliminary Records by the Title Registration Officer and Paragraph 12 provides for no transaction affecting any immovable property notified under Paragraph 5 shall take place except in accordance with the provisions contained paragraphs 22 to 29 of this Schedule.
- (xiv) The proposed Para 48 which provides for a non-obstante class superseding Transfer of Property Act, 1882 and Indian Registration Act, 1908 and any other Laws for the time being in force to file transfer Applications or Report on transaction with the Title Registration Officer in such manner as may be prescribed. The said Para 48(2) provides that such Application or a Report would be considered to be "Instrument" under the Indian Stamp Act and Maharashtra Stamp Act for the purpose of levy of stamp duty under the relevant Act. The aforesaid provisions will lead to levy of stamp duty (obviously on Market value of the immoveable property) in respect of which Application or Report is filed with the Officer and thereby increasing liability of twice payment of stamp duty by the Applicant. It does not stand to reason why such provision is

introduced by the Bill which generates duplication of financial liability without serving any object or purpose of the Bill.

- (xv) There is necessity to provide time bound provisions for making Application, raising objection, disposal of objections, finalization of Register of Titles and for several other connected steps and disposal thereof by the Authorities. In the absence of such time bound provisions, the entire Scheme of the Bill is surely likely to be derailed and leading to chaos which will not be resolved under the Bill.