

Investigation of Title

Title is a legal term; it means the ownership right to property. When search is conducted unto the property of the person who owns it, it is called the Investigation of Title.

The investigation is carried out broadly to ensure that the property is indeed in the name of the person selling, is free from liens, mortgages and encumbrances, that the property tax has been fully paid up to date and that the property is not engaged in any legal conflicts. The owner of the property/land has to prove this satisfactorily or else there is no chance at all that any buyer/creditor would take the risk & invest his funds.

Generally buyer relies upon advocate's report on title. Advocate report on title is based on scrutiny of records available in various Government departments. Buyer is required to pay some fee in advance to advocate and some times it becomes essential to pay token money to the seller and also to middle man. So many times after spending money for these initial expenses it comes to the notice to the buyer that purchasing the particular land is not feasible and that all money spent by him is gone for a waste. It is therefore essential to have fair idea of the basic knowledge of the land before selecting it.

BEFORE SELECTION OF THE LAND

In the legal term, land has a vast meaning, however, for the time being we are considering limited meaning of land. The land means surface of the ground and everything on or over or under it. Land can be classified as per its use or as per its geographical nature

Most of the people staying in urban area are treating village land as a weekend property or purchasing it for investment purpose. Agricultural land is not meant for these purposes and therefore laws related to agricultural land do not give any support to this act. Transfer of agricultural land to non agriculturist is barred under Section 63 of Bombay Tenancy and Agricultural Lands Act, 1948. Also section 65 states that the land can be assumed by the Government for management if the same remained uncultivable for any two consecutive years.

"Agriculture" includes horticulture, poultry farming, the rising of crops, fruits, vegetables, flowers, grass or trees of any kind, breeding of livestock including cattle, horses, donkeys, mules, pigs, breeding of fish and keeping of bees, the use of land for grazing, cattle and for any purpose which is ancillary to its cultivation or other agricultural purpose.

"Agriculturist" means a person who cultivates the land personally. However land is heritable immovable property, so any person belongs to any family holding land any where in India for the above purposes is agriculturist.

Some people are buying farm land with keeping main object in mind to construct bungalow. It is to be noted that farm house means dwelling place on a farm and it is not rich mans weekend bungalow property. In case of farm house plot scheme collector's permission is required to obtain. On Government level there cannot be any scheme like "farm house plot scheme". Collector is granting permission for subdivision of land for horticulture purpose. Further organized development similar to non-agricultural plot scheme is possible subject to conditions impose in Regional Plan and also Minimum size of farm house plot shall not be less than 1 acre. Intention to give permission for constructing farm building is given in the MLR Code 1966.

Agricultural plots of one guntha (100 square metres) and above: Practically in all cases, seller is violating conditions mentioned in section 8 of The Bombay Prevention of the Fragmentation and Consolidation of Holdings Act, 1947. As per section 63 of tenancy act, sell of agricultural land to non farmer is not possible without permission of Collector. Collector's permission in this is case not possible. Also considering various laws, Grampanchayat cannot be sole authority for granting building permission. I have given more information in [Gunthewari Development](#) and [marathi article](#).

Resort Non Agricultural Plot Scheme: A resort is a place used for relaxation or recreation, attracting visitors for vacations and/or tourism. Resort is commercial establishment operated by a single company. This much will make you clear that you cannot own NA Plot in resort.

While purchasing the land abutting to road most of the buyers are considering physical width of the road and not the actual width of the road and when question of road widening comes into the picture, they are required to hand over big portion of land to the Government at nominal price. Actual width of the road depends on name of the road. Before purchasing any land buyer should know rules and regulations for the development of the lands abutting to roads. The Bombay Highways Act empowers The State Government to declare any road, way or land to be a highway and classify it as a State Highway, Major District Road, Other District Road; or a Village Road. When development takes place linearly along a highway with direct access to the highway it is called "Ribbon Development"

A prospect of price appreciation of land is depending upon prospective development of the area. Development of the area is regulated under the MR&TP Act, 1966. The Regional Land Use Plan and the Development Control (DC) Regulation are the two basic instruments that regulate development. In the Regional Land Use Plan, broadly lands are divided in the zones as mentioned below:-

(1) Urbanizable Zone (2) Industrial Zone (3) Recreational Zone (4) Forest Zone (5)Green Zone

Buyer should study The Regional Land Use Plan and the Development Control (DC) Regulation of the area before selecting any land.

All lands are basically agricultural land so for agricultural activity Collector's permission is not required except for construction of farm building. However, when question comes of conversion of use of land from agricultural purpose to non agricultural purpose, holder of the land is required to obtain permission from the District Collector. Appreciation of land price is mainly coming through conversion of agricultural land to non agricultural purpose.

If the nature of land selected is Warkas/grass/fallow then in 99% of cases boundary of the land shown by farmer is incorrect. It is therefore advisable to examine Gat book plans of the relevant Survey Numbers/Hissa Numbers/Gat Numbers/Khasra numbers along with the village map. Under any circumstances no final payment should be made before carrying out official Government survey. While inspecting site easement right not entered in the record but actually existing should also be ascertained.

An easement allows another person the right to use your land for a specific purpose. It gives the holder only a right of use and not a right of "possession" of the property. Easements are attached to the land, not to person. This means that property that enjoys an easement over another will continue to enjoy the easement even if the property gets transferred to a different owner. Blocking access to someone who has an easement is a trespass upon the right of easement and creates a cause of action for civil suit. For example, putting up a fence across a long-used public path through private property may be a trespass and a court may order the obstacle removed. Turning off the water supply to a downhill neighbor may similarly trespass on the neighbor's water easement. Some examples of easements are storm drains easements, sanitary sewer easements, electrical power line easements, and telephone line easements.

In almost all cases buyer is purchasing land through local agent. These local agents do not possess necessary legal knowledge. When disputes over the land arises they try to solve problem through their muscle power or through local political contact and if they still cannot solve problem then they simply run away from the situation. No disputes over land comes forward in the presence of agent so it is appropriate that buyer should frequently visit over the land and should try to communicate with the local people in local language. One of the common problems coming in land transaction is claim of possession. Almost all claims do not stand on legal ground however they are creating lot of tensions. It is therefore necessary for the buyer to have some knowledge of this area.

POSSESSION OF THE LAND

Person can have control over land only if he is directly in contact with the land. In other words person can control over the land if the land is under his possession. It directly means word “possession” and word “ownership” goes together. Possession is most important component of the ownership. If owner is not in touch with land and somebody else is having control over the land, under the circumstances owner loses his ownership. There are legal provisions for granting ownership to the person having control on land for long period.

TYPE OF POSSESSIONS

Authorized Possession:-

When person is possessing land by way of ownership, grant, licence, lease etc. such possession is called authorised possession.

Unauthorised Possession:-

When possession is acquired by encroachment or trespass, such possession is called unauthorised possession.

Wrongful possession:-

Conversion of use of land from one purpose to other purpose requires proper permission under section 42 of MLR Code 1966. If the possessor of land has change the use of land without permission or violated any terms or conditions of N.A. order, then his possession is called wrongful possession.

If the land is under possession of the person after expiry of period of lease or tenancy or after termination of lease or tenancy or breach of any conditions annexed to the tenure then his possession is called wrongful possession.

If person is unauthorizedly occupying or wrongfully in possession of any land or foreshore vesting in the State Government it shall be lawful for the Collector to evict such person. The buyer should note that the land reserved for grazing is Government land.

Adverse possession:-

This is one of the methods for acquiring title to the land by the person having possession of the land for a long period. Once adverse possession is proved by the person, owner loses his right over land/property even though that person possesses the land through inappropriate means.

Only physical possession on land is not enough for acquiring title to the land/property. Possessor has to get it registered in his name in the village form VII-B every year during the period of crop inspection. Adverse possession is protected by law of limitation. If possessor possesses the land/property more than twelve year, real owner loses his right to take action for claiming relief against adverse possession.

During the course of time for better job employment, land owners started migrating from under developed areas to developed area, leaving their right over land unprotected. Such lands are gone into possession of local residents of the village for cultivation. Landowner’s absentee gave them peaceful, open and continuous possession. Their entry in the “village form” created proof of possession. With the result landowners have lost their right over land.

Legal possession is always protected by law whereas illegal possession is invariably discouraged by law. Provisions made in the MLR Code, 1966 under section 59 is as mentioned below:-

Any person unauthorizedly occupying, or wrongfully in possession of any land--

(a) to the use or occupation of which by reason of any of the provisions of this Code he is not entitled or has ceased to be entitled, or

(b) which is not transferable without the previous permission under sub-section (2) of section 36 or by virtue of any condition lawfully annexed to the tenure under the provisions of section 31, 37 or 44, may be summarily evicted by the Collector.

VERIFICATION OF TITLE ON PRELIMINARY LEVEL:-

Verification of title is different from Investigation of Title in respect of an immovable property. After selecting land buyer should obtain land records from revenue department. [Section 327](#) of MLR code states that Subject to such rules and the payment of such fees as the State Government may from time to time prescribe in this behalf, all maps and land records shall, subject to such restrictions as may be imposed, be open to the inspection of the public at reasonable hours and certified extracts from the same or certified copies thereof shall be given to all persons applying for the same.

"Land Records " means records maintained under the provisions of, or for the purposes of, The MLR Code 1966 and includes a copy of maps and plans or a final town planning scheme, improvement scheme or a scheme of consolidation of holdings which has come into force in any area under any law in force in the State and forwarded to any revenue or survey officer under such law or otherwise;

Under MLR Code on village level land records are maintained in 16 village forms. We are considering below the only those village forms which are important for investigation of title.

Village Form VI

This form is also called register of mutation. In the registered of mutation we are getting details of all the change in rights and restrictions taken place over the land. Change in rights may be due to inheritance, will, partition or transfer of land by way of sale, mortgage, lease, exchange or gift. Mutation entries are the basis of further investigation of the title.

Village Form VII-XII

This form is also called Record of Rights and Registered of Crops.

Buyer should obtain copies of record of rights (Village Form VII-XII), mutation entries (Village Form VI). There is no rule as to the period for and up to which the title is required to be investigated or examined. Generally as per one opinion verification of land record of 30 years is sufficient. This is on the ground that the minor requires 18 years to attain majority and thereafter, he can claim his share within 12 years. However as per my opinion considering some enactment currently in force this period is not sufficient. I would like to explain the reasons behind it.

The Section 32 Bombay Tenancy And Agricultural Lands Act, 1948 of the act provides compulsory transfer of ownership rights of tenanted lands to the tenants from 1st April 1957 which is known as the "Tillers' Day". There is complete sale and purchase on the tiller's day. The title of landlord passes immediately to the tenant on the tiller's day.

There are some cases where tenant has shown unwillingness to purchase the land. Under the circumstances landlord has to follow procedure of taking possession as per section 29 of the act. In those days instead of going through this procedure, landlord had managed to remove tenant's name from the Record of Right. Now new generation of tenants are taking advantage of this error. There are cases where Record of Right shows no entry of tenant for 45 years and afterward tenants are purchasing land from the landlord almost at no price. Also in some cases where real occupant of the land is illiterate or settled somewhere else other than his native place; his land is grabbed by antisocial elements under the name of "tenant" by preparing false evidence. For the reason mentioned above buyer should verify all records available at Talathi office and Tahasildar office and should preserve copies of them for life time.

It should be kept in the mind that,

"Entries made in record of rights are presumed to be true until the contrary is proved. Where presumption is rebutted by evidence, the entry in the Record of Right does not have its evidentiary value.

The person who raises dispute about incorrectness of the entry in the record of right has to prove his allegations. The entries in record of right, registered of mutation etc. are evidence of the fact recorded therein under section 35 of the Indian Evidence Act, though is not conclusive evidence. The entry in this record has high degree of evidentiary value but the entries create no title."

After reading the above statement any reader will immediately come to know that record of right available with the Government may not be perfect. Why this record of right is not perfect? This question is to be answered now.

Record of Right is registered where all sorts of right and liabilities in respect of every piece of land is recorded. It is duty of Talathi to update record of rights and register of mutations. Any person acquiring by succession, survivorship, inheritance, partition purchase, mortgage, gift, lease or otherwise, any right as holder, occupant, owner, mortgagee, landlord, Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue thereof, has to report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition, and the said Talathi has to give a written acknowledgement of the receipt of such report to the person making it.

In the rural area maximum changes in rights over land take place due to the inheritance. Heirs receive land as the joint holder. They partitioned the land verbally but they don't partition the land as per section 328 of the MLR Code. During the time of an internal dispute between the joint holders, if one of the joint holders decides to sell his land then any co-sharers may express opposition for executing the deed

If any joint holder dies leaving behind his minor heirs, it happens usually that minor heirs get deceived by co-sharers and minor heirs loses their right over the land. As per law, minor can claim his right within twelve years after attainment of majority.

The acquisition of property by inheritance is regulated by personal law of deceased person. As per Hindu succession act, 1956, daughter of the deceased person has same right that of son. In some cases after the death of person, his sons try and avoid giving share to their sisters. With the help of Talathi they prepare false heirship case register. Buyer innocently trusts on Record of Register prepared on the basis of false heirship case register. Aggrieved sisters can file suit against their brothers and buyer of the land.

In so many cases after the death of person, his legal heirs avoid giving intimation to the Talathi, unless they bribe him he won't work for them. As long as land remains in their possession they do not find any urgency for giving intimation. With the result, change of right over land is not coming on record.

Now Joint Hindu families are almost not in existence in actual life but they are in existence in land revenue record. It is practice of land revenue officer to register land in the name of the elder person being the head of the Joint Hindu Family. Due to the adoption of the wrong procedure by the revenue officers in the approval and certification of heirship entries in Village Form VI and also its further implementation in VII-XII elder son may get chance to sell the land without obtaining consent of other family members. Buyer may get deceived by this head of the family. Result is very clear; to settle the dispute buyer has to pay more money from his pocket.

Many person purchasing property are under impression that once document registered under the Indian Registration Act, 1908, their right over the land is secured. Under section 154 of MLR Code it is binding on the officer registering the document to intimate to the Talathi of the village in which the land is situated and to the Tahsildar of the taluka. As soon as an intimation regarding registration of documents referred to in Section 154 is received by a Talathi, he has to make separate entries in the register of mutations in respect of the mutation effected by each of the said documents. In practical life Talathi is not taking steps as per act. He is expecting buyer to come to him. If buyer fails to see Talathi, no change in right over land is coming on Record of Right.

RESTRICTIONS ON RIGHT OF TRANSFER

Section 7 of Transfer of Property Act.1882 state that, every person competent to contract and entitled to transferable property, or authorised to dispose of transferable property not his own, is competent to transfer such property either wholly or in part, and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

When we go through Village Form VII we always come across one column which reads as the "Occupant Class" (Marathi Bhogavata Varga). In terms of law, "occupant" is a person having lawful and actual possession of the land. Possession of the land is also termed as the "occupancy". Occupant is responsible to pay land revenue to the Government. Occupancy is liable to forfeiture in case occupant fails to pay land revenue to the Government. On forfeiture occupant and his heirs loses all their right on the land.

Under section 29 of MLR Code1966 persons are classified into Occupant Class I and Occupant Class II

OCCUPANT CLASS I

Person classified into this class is free to transfer the land without permission of collector in favour of any other person.

OCCUPANT CLASS II

Lands purchased by tenant under the provision of The Bombay Tenancy and Agricultural Lands Act 1948., lands granted by Government to the Schedule Cast/ Tribes persons, freedom fighter, member of army forces, ex-service man are allowed to transfer only after collector's permission. Persons holding land under this category are classified as an Occupant Class II.

In the Village Form VII there is one more column under the heading "Other Rights". As name suggest entries coming under this column is restricting "Occupant's" rights over the land. There are some enactments in force, the provisions of which have restricted the occupant's right over the land of both the Occupant Class I and Occupant Class II. Some of them are Land Reformation Acts. I have given sufficient information in that chapter.

Entire process of transfer of land completes in stages. The main stages are;

settlement of the terms of the deal between the parties particularly relating to the consideration and the land to be transferred,

preparation and execution of the agreement for sale,

investigation of title of the land,

preparation, execution and registration of sale deed, and

change of the name of person in the record of right/property card.

INVESTIGATION OF TITLE BY ADVOCATE

Once buyer is convinced that information collected by him is satisfying him for buying land he should appoint advocate for

1. preparation and execution of the agreement for sale,
2. investigation of title of the land,

3. preparation, execution and registration of sale deed.

While selecting the advocates for examination and reporting on title special emphasis should be laid on the competence of advocates having requisite expertise and reputation in the matter of investigation of title and scrutiny of title deeds.

In many cases seller of rural area is not appointing advocate in land transactions. Normally seller's agent is providing basic land records such as copy of mutation entries (Village form VI) and Record of Rights and register of crop (Village form VII-XII) [of the entire period of search] to the purchaser or to his advocate. If purchase's advocate on the first appearance finds no defect in above mentioned land record he is taking steps for preparation and execution of agreement for sale. Simultaneously he publishes public notice of the proposed sale in local news paper. The notice would be in the nature given below;

"My client has agreed to purchase property from Mr. Claims are invited in the nature of mortgage, charge, lease, lien, easement, gift, trust or any other claim against the property which is required to be notified to me within a period of 15 days. If no such claim is received it would be deemed that no such claim exists or shall be deemed to have been waived."

The publication of a notice of sale is not statutory requirement. The clauses mentioned in the notice are not binding on those who may be real claimants. The reason is the advertisements may not come to the notice of the person who has any such claim. A person can enforce his claim at any time within the prescribed period of limitation. The only object of giving such a notice is to make it known to the public that the purchaser is buying the property and to show that he is a bonafide purchaser. Sometimes such notice helps the disclosure of claims or interests which are not known even to the vendor or which are not disclosed by the vendor.

After execution of the agreement for sale, it is the function of the purchaser's advocate to examine the title of the vendor. He has to ascertain, whether the;

1. chain of title is complete and that there are no missing links,
2. property is free from encumbrances, attachments, charges and claims
3. property is heritable and transferable,
4. seller has the right to transfer,
5. there are any claims likely to come in future from minors,
6. there are adverse interests exist on the property,
7. the holding / acquisition is in accordance with the provisions of the Land Reforms Act,
8. the documents perused are original / photocopies / true copies/ registration copies etc.,

Any change in Record of Right takes place only after registering these rights in register of mutation. If mutation entry of particular land is link then all links of particular land connected chronologically is chain. Register of mutation is nothing but book of history of land and every mutation is page of history book. As already mentioned for investigation of title Registered of Mutation, Record of Rights and Registered of Crops are the most important form of village level. I have given detail information about these registers and some other subsidiary registers in "Land Record" section.

In short we can get below mentioned details through these registers.

1. Name of the village
2. Name of the taluka
3. Survey No/Gat No. and its sub division Number.
4. Name of the occupant
5. Tenure
6. Local name of the field.
7. Cultivable area
8. Uncultivable land (Marathi-Pot kharaba) class (a) and Class
9. Nature of the right (Will, Sale, Mortgage, Lease, Exchange, Gift, Development [right] or Inheritance)
10. The names of the parties to the transaction,

11. The consideration i.e. amount involved,
12. The area if the transaction relates to a part of a survey number or a sub-division of survey number.
13. The serial number of registration, if the transaction is a registered one, and
14. The Collector's/Tahasildar's order number with date.
15. The total survey number or sub-division of survey numbers affected,
16. Land in question is free transfer or not.
17. If not free to transfer, nature of the restrictions.
18. Nature of land (Agricultural/Non agricultural)
19. Uncultivable portion of the land reserved for public purpose.
20. Details of charges of attachment and decrees under the order of civil court or revenue authorities.
21. Details of loan taken by the occupant.
22. Whether the land is classified as a "fragment"
23. Easement, such as right of way.
24. If right is acquired by heir-ship, names of heirs with whom land is not in actual possession.
25. Area under building, roads and other non agricultural used.
26. Details of the taxes payable.
27. Name of the deceased occupant or the name of the deceased "other right holder."("other right holder" means person whose name is entered in "other right" column of village form VII)
28. Date of death deceased occupant.
29. Names of the legal heirs.
30. Names of the heirs with whom land is in actual possession.("Occupant")
31. If the actual possession and cultivation of the land is with the person other than the occupant, in that case name of the person cultivating land.

With the help of above information, it is possible to ascertain immediately, if the present occupant's name is entered illegally that is in contravention of the provisions of any of the relevant statute. It can also be traced whether there exists any legal claimants whose rights have either been ignored or they have not surrendered their rights in the property willingly and also validly. This also helps to decide direction of the further investigation. Records may not provide complete picture of the title. Your advocate has to carry on search in some other Government offices to find out whether the title obtained by the present occupant is absolutely legal and sound in all respects.

Search in Sub Registrar Office:

As already explained in some case change in right over land is not coming on Record of Right. The intention of the search in Sub Registrar Office is to discover, if there is any deed registered of sale or mortgage or any other mode of transfer.

Under section 51 of the Registration Act every registering office requires to maintain five Books. Out of which Book No. 1 is the register of non-testamentary documents relating to immoveable property.

Under section 55 of the Registration Act every registering office requires to maintain four Indexes. Out of which Index I contain names of the parties to every document registered and it is called 'nominal index.' Index II contains the particulars of the property which is the subject-matter of the document and other particulars of registration.

So, in case of immoveable property search is required to be taken of;

1. Book No. I,
2. Index no. I and
3. Index no. II.

In Maharashtra, Registration department is maintaining Index No. I-A. In this index copies of orders or certificates of sale issued by Courts and other officers are recorded under section 89 of the Act. It is necessary to take search of Index 1A also where it exists.

Search is allowed to carry subject to the previous payment of the fees payable in that behalf and after obtaining permission of the Sub-Registrar or the Registrar as the case may be the Superintendent in that office will allow inspection of the desired Books and Registers etc.

Section 52 of the Transfer of Property Act provides that during the pendency of any litigation affecting the immovable property it cannot be transferred or otherwise dealt with by any party to the suit so as to affect the rights of the other party under any decree or order which may be made therein. It is therefore necessary to carry out search in the civil courts within whose jurisdiction the property is situate by the advocate in order to ensure that there are no adverse interests exist on the property and that the property is not subject matter of any litigation before the courts.

1. The Tahsildar is statutorily empowered to decide and settle the land issues under various enactments such as-
2. The Maharashtra Land Revenue Code, 1966; (ii) The Mamlatdar Courts Act, 1906;
3. The Bombay Tenancy and Agricultural Lands Act, 1948;
4. The Maharashtra Land Revenue Code and Tenancy Laws (Amendment) Act., 1974,
5. The Maharashtra Restoration of Land to Scheduled Tribes Act, 1974.

It will have to be ascertained as to whether the land in question is involved in any of the suits or suomotu enquiries initiated by the Tahsildar under any of the above enactments.

Certificate of title : After the title is investigated and examined by the purchaser's advocate, on demand of purchaser advocate can issue a certificate title certifying whether the title is marketable or not.