

VERIFICATION OF DOCUMENTS OF LAND: LEGAL ISSUES AND COMPLICATIONS

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Land is the most common cause of disputes and complications leading to legal hassles. Laws regarding title of land had gone through many changes to reach a structured shape and this process is still going on to make the land regulating system up-to-date and an ideal one. Prudence dictates a man of due diligence to protect his financial interest before he embarks upon any transaction of sale or purchase as regards land. This can be achieved by verification of documents of title at the very outset than to embroil oneself in a legal quagmire of endless litigation.

This article intends to discuss the laws and practical manners to identify title of a person on land. Different issues involved in identification of title are also discussed. It aims at raising the importance of verification of documents before purchasing land. This article deals with the laws relating to ownership of land. Practical manner of verification is also discussed. Different laws i.e. Acts of Parliament, Rules etc. and books are consulted. Personal experience of the author as lawyer and experience of verification of documents of land in different district of the country has been reflected in this article.

The article has six sections. Section 1 deals with the provisions of the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951) regarding the right to hold land. The land which can not be retained by an individual is also stated. Section 2 deals with the record – of- rights, *Khatians*, presumption of correctness in respect of different *Khatians* and other viewpoints relating to *Khatians*. Section 3 deals with various modes of transfer and different documents by which one can have title. Section 4 stresses the importance of *Mouza* map for the purpose of identification of title and section 5 mentions the offices that require visit for the verification of documents. Section 6 outlines the findings and recommendations for enhancing the efficiency of the system of identification and verification of title.

1. Progress made by the State Acquisition and Tenancy Act, 1950 regarding the right to hold land

In 1947, the Bengal State Acquisition and Tenancy Bill was introduced in the Provincial Legislature of undivided Bengal, but was not passed because of the partition of the country. After the partition, the East Bengal State Acquisition and Tenancy Act was passed by the East Bengal

Legislative Assembly in 1950 and assented to by the Governor-General on 19 May 1951.¹

The State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951)² abolished the *Zamindari* system. The *raiyats* gained their right to hold land directly under the Government. The important provisions of this law are noted below:

(a) all rent receiving interests from those of *zamindars*, *talukdars* and other intermediaries to those just above the actual tillers of the soil were abolished;³ (b) further sub-letting of lands by the ground tenants was prohibited;⁴ (c) a ceiling of holding of land was imposed, beyond which excess lands would vest in the Government;⁵ (d) all hats and bazaars, ferries and fisheries stood vested in the Government on payment of due compensation therefore.⁶

A rent - receiver, cultivating *raiyat*, cultivating under – *raiyat*, or a non-agricultural tenant can not retain the following classes of lands-⁷

(a) any land or building in a *hat* or *bazaar*; (b) any fishery other than a tank constructed solely by process of excavation; (c) any land consisting of forest; and (d) any land actually in use for ferry.

The State Acquisition and Tenancy Act declares the state as the owner of the land and all persons having possession as *raiyat* or tenant got recognition of their right over the land. The acquisition of rent receiving interest by the state abolished the *Zamindari* system. By the abolition of *Zamindari* system the *raiyats* have regained their ancient rights to hold land directly under the Government as they were under the Hindu and

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1. Hussain, T., *Land Rights in Bangladesh*, University Press Limited, Dhaka, 1995, at pp. 18 & 19.
 2. The State Acquisition and Tenancy Act, 1950 extends to the whole of Bangladesh. The words "East Pakistan" were substituted by the word "Bangladesh" by the Bangladesh (Adaptation of Existing Bangladesh Laws) Order, 1972 (President's Order No. 48 of 1972).
 3. Section 3, the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951).
 4. Section 75A, the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951). Section 75A was inserted by the E.B. State Acquisition and Tenancy (Amendment) Act, 1954 (E.B. Act XII of 1954), section 13.
 5. Section 20(2), the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951).
 6. Section 20(2a), the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951)

Muslim Governments.⁸ A *raiyat* is now the proprietor of his holding which is heritable and transferable.⁹

Every title holder over the land came to an equal standing. So far as the agricultural lands in Bangladesh are concerned they shall be held by one class of people to be known as *maliks*. There shall be no middle class between the State at the top and *malik* at the bottom. Section 81 of the State Acquisition and Tenancy Act, 1950 says that with effect from the date from which Part V comes into force in any area all holders of agricultural land under the Government be known as *maliks*.¹⁰ Practically to the whole of Bangladesh the provisions of Part V of the Act are now applicable.¹¹

2. Record- of - rights : Theory and applications

For the purpose of identification of ownership, classification of land, assessment of compensation, determination of fair and equitable rent and to serve other purposes, the Government undertook many surveys. Every survey is conducted with the aim of having the record- of- rights. *Khatian* which is the evidence of record-of-rights is principally the product of the survey conducted. Therefore, *Khatian* is the form in which the record-of-rights is prepared, showing all the details relating to any particular "interest".

The record -of- rights is prepared on the basis of possession. It is a proof of title. The entry in the record -of- rights is the presumptive evidence as to the condition of things which existed at the time the record was prepared. The record- of- rights, therefore, contains all the information regarding the land, e.g. the name of the owner, his particulars, nature of the land etc. The available surveys and the records- of-rights / *Khatians* prepared under the same can be of different types which are discussed hereinafter. In this section the preparation of record- of- rights and role of different *Khatians* are also discussed.

2.1 The CS (Cadastral Survey) *Khatian*

The word "Cadastre" means an official register of the quantity and value of real estates. Therefore, the expression means "a survey undertaken in connection with a record- of- rights".¹² The Bengal Tenancy Act, 1885

7. *Ibid.*

8. Kabir, Dr. Lutful, *Land Laws in East Pakistan*, Vol. III, Dhaka, at p. 6.

9. *Ibid.*

10. *S M Basiruddin vs. Zahirul Islam Chowdhury* 35 DLR (AD) 230.

11. Chowdhury, Obaidul Huq, *The State Acquisition and Tenancy Act, 1950*, Dhaka Law Reports, Third Edition, 2001, at p. 216.

12. Guide and Glossary to Survey and Settlement, 1917, at p. 3.

(Act No. VIII of 1885) and The Survey Act, 1875 (Bengal Act V of 1875) provided provisions for recording the information regarding the possession of a *raiyat*, kinds and quantity of land in possession of a *raiyat* under a particular *Zamindar*¹³ and to prepare a *mouza* or village map showing every plot of land and area in that particular plot. This record of rights is called as "Cadastral Survey Operation" or C.S. Survey. This survey started in the year 1888 in the district of Cox's Bazar and ended in the district of Dinajpur in 1940.¹⁴

It is pertinent to mention that the Bengal Tenancy Act, 1885 (Act No. VIII of 1885) was repealed by section 80 and the Schedule of the State Acquisition and Tenancy Act, 1950 (East Bengal Act No. XXVIII of 1951). But the surveys maintained a chain of continuity and the CS *Khatian* plays significant role to provide information for the latter *Khatians*. Therefore, a chain of a title can trace its source from the CS *Khatian*.

2.2 The SA (State Acquisition) *Khatian*

The State Acquisition and Tenancy Act, 1950 brought drastic change in the notion of title. It abolished the *Zamindari* system and the *Raiyats* or tenants gained rights to hold land directly under the Government. The Act in Section 82(8) declared them as *Malik*. The Act provides for preparation and revision of record- of- rights in its Part IV, Chapter IV. By virtue of this Act *Khatian* is prepared and that *Khatian* had maintained chain of continuity with the previous CS *Khatian* where it was conducted. This survey was conducted first in Patuakhali district in 1954 and lastly in Faridpur district in 1965.

Section 17 of the State Acquisition and Tenancy Act, 1950 provides for the preparation of record of rights. Under this Act the *raiyats* were made the owner under direct control of the Government and their names were enrolled. The rules for such preparation of record of rights are to be found in rules 18-29 of the State Acquisition Rules, 1951.

Sub-section (1) of section 17 empowers the Government to make an order for preparation of record- of- rights in a district, part of a district or local area, and for revision of record- of- rights which was prepared and finally published under the provisions of the Bengal Tenancy Act, 1885. This was intended (a) with a view to acquisition of the interests of all rent receivers and of such other interests in land as are liable to be acquired under the provisions of the Act, and (b) with a view to assessment of compensation payable for all such interests including the interests which have already been acquired under section 3 of the Act.¹⁵

13. Islam. Md. Motiul, *Jomi Jomar Ain O Alochona*, Dhaka, 2000, at p. 14.

14. *Ibid.*

15. *Supra* note 8, at p. 64.

Section 18 of the State Acquisition and Tenancy Act, 1950 provides that when an order is made under section 17, the Revenue Officer shall record in the record – of- rights to be prepared or revised in pursuance of such order, such particulars as may be prescribed. The prescribed particulars that are to be recorded referred to in section 18 will be found in rule 18 of the State Acquisition Rules, 1951.¹⁶

Section 19 of the State Acquisition and Tenancy Act, 1950 deals with the publication of record- of -rights. Sub- section (1) of section 19 deals with the stage of publication of the draft record- of- rights prepared or revised which will contain the particulars referred to in section 18. Any person aggrieved by an order passed by Revenue officer on any objection made under sub-section (1) may appeal to the prescribed Revenue Authority not below the rank of Assistant Settlement Officer in such manner and within such period as may be prescribed.¹⁷ Sub- section (3) speaks about final publication of the record- of- rights. As per sub- section (4), the Revenue – officer shall make a certificate stating the facts of final publication of record- of- rights. His name, designation and date will be there.

2.3 The RS (Revisional Survey) Khatian

In practice RS *Khatian* of both CS and SA *Khatians* are available in different parts of the country. Preparation of RS *Khatian* of SA *Khatian* is still continuing and has been completed in some parts of the country. It is still not completed in the whole of the country. Before final completion of it, the *Khatian* is termed in different names in different stages of its preparation. One premature status is DP (Draft Publication) *Khatian*. The provision for revision of record-of-rights is provided by section 144 of the State Acquisition and Tenancy Act, 1950.

2.4 Bujharat Khatian, DP (Draft Publication) Khatian and revision of record- of- rights

For preparation of record- of- rights the Government employs settlement office in a district, part of district or local area. Initially every land in a particular *Mouza* is assessed and measured and the title holder/ owner of the plots are identified. After measurement in field, a copy of *Bujharat Khatian*¹⁸ is given to the owner. If any person has any claim or if any

16. Section 18, the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951).

17. Section 19 (2), the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951).

18. *Bujharat* is a Persian word which means “giving understanding” or “explanation” to the tenants regarding the particulars recorded in the field of each plot and holding.

dispute arises, the aggrieved party can apply to the settlement officer.

When an order is made under sub-section (1) of section 144 of the State Acquisition and Tenancy Act, 1950 for the revision of record- of – rights in respect of a district, part of district or local area, the particulars to be recorded shall include, either without or in addition to other particulars, some or all of the following, namely: ¹⁹

(a) the name, father's name and address of each tenant or occupant; (b) the class to which the each such tenant or occupant belongs; (c) the situation, class, quantity and one or more of the boundaries of the land held by each tenant or occupant; (d) the rent payable at the time the record- of- rights is revised; (e) the amount payable in respect of any rights of pasturage, forest – rights, rights over fisheries and the like at the time the record – of- rights is being revised, the conditions and incidents appertaining to such rights, and if the amount is a gradually increasing one, the time at which and the amount by which, it increases; (f) the mode in which the rent has been fixed whether by contract, by order of a Court, or otherwise; (g) if the rent is a gradually increasing one, the time at which and the steps by which it increases; (h) the rights and obligations of each tenant in respect of- (I) the use by tenants, of water for agricultural purposes, whether obtained from a river, *jhil*, tank or well, or any other source of supply, and (II) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant or for prevention of the onrush of flood- water, whether or not such appliances be situated within the boundaries of such land; (i) the special conditions and incidents, if any, of the tenancy; (j) any right or way or other easement attaching to the land for which a record- of- rights is being revised.²⁰

The work shall ordinarily consist of the following stages, namely:²¹

(i) traverse survey; (ii) cadastral survey; (iii) erection of boundary marks; (iv) preliminary record – writing (*Khanapuri*); (v) local explanation (*Bujharat*); (vi) attestation; (vii) publication of draft record; (viii) disposal of objections; (ix) filing of appeals and disposal thereof; (x) preparation and publication of final record.

19. Rule 26, the Tenancy Rules, 1955, Rules framed under section 152 of the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951).

20. *Ibid.*

21. Rule 27, the Tenancy Rules, 1955, Rules framed under section 152 of the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951).

Provided that all or any of the first six stages may be omitted, or a new stage be added, according to the circumstances of the case, with approval of the Director of Land Records and Surveys.²²

After completion of attestation the Revenue – officer shall publish the draft record-of-rights.²³ Objection regarding the ownership or possession of land or of any interest in land shall be decided summarily by the Revenue officer.²⁴ Any person aggrieved by an order passed by the Revenue - officer on any objection made under rule 30 may appeal to the Revenue – officer appointed with the additional designation of Settlement Officer or to such Revenue – officer appointed with the additional designation of Settlement officer or to such Revenue – officer appointed with the additional designation of Assistant Settlement officer as may be empowered by him in this behalf, within 30 days from the date of the order appealed against.²⁵ When all objections under rule 30 and all appeals under rule 31 have been disposed of and when the draft record-of-rights has been corrected in accordance with the original and appellate orders on all objections, the Revenue officer shall proceed to frame the final record- of- rights.²⁶ The record- of- rights shall be finally published under rule 33 and the Revenue- officer shall within sixty days from the date of final publication, make a certificate stating the fact of such final publication.²⁷

2.5 Presumption of correctness in respect of CS, SA and RS *Khatians*

The Bengal Tenancy Act, 1885 in Section 103 B (5) states that every entry in record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect. The presumption of correctness as to CS *Khatians* under the Bengal Tenancy Act is not available with regard to the State Acquisition *Khatian*. There is no presumption of correctness in respect of State Acquisition *Khatian* like the one under section 103 of the BT Act.²⁸ Mere preparation of SA or ROR *Khatian* and payment of rent

22. *Ibid.*

23. Rule 29, the Tenancy Rules, 1955, Rules framed under section 152 of the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951).

24. Rule 30, the Tenancy Rules, 1955.

25. Rule 31, the Tenancy Rules, 1955.

26. Rule 32, the Tenancy Rules, 1955, Rules framed under section 152 of the State Acquisition and Tenancy Act, 1950 (East Bengal Act XXVIII of 1951).

27. Rule 34, the Tenancy Rules, 1955.

28. *Halima Begum vs. Syed Ahmed* 21 DLR 854.

does not create any title. SA *Khatian* can create presumption of possession but not of title which the CS *Khatian* can.²⁹

A record of rights is only a rebuttable piece of evidence. An entry in such records neither creates nor extinguishes any right.³⁰ When a record of rights is prepared on the basis of possession, it remains as a piece of evidence with a presumption of correctness attached to it.³¹ Section 144A of the State Acquisition and Tenancy Act, 1950 says that every entry in a record – of- rights prepared and revised under section 144 shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect. Rule 35 of the Tenancy Rules of 1955 also provides similar provision. It says that when a record- of – rights is finally published under rule 33, the publication shall be conclusive evidence that the record has been duly revised under section 144 of the Act. It also states that every entry in a record- of – rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

A finally published record- of- rights revised under section 144A of the State Acquisition and Tenancy Act has a presumption of correctness and that presumption continues till it is otherwise rebutted by reliable evidence.³² In the absence of final publication of record of right as provided in sections 19 and 144 of the State Acquisition and Tenancy Act there can not be any presumption as to its correctness. It was decided in *Akrab Ali vs. Zahiruddin Kari*³³ that no record- of- rights which was finally published under sub- section (7) of section 144 of the State Acquisition and Tenancy Act having been adduced in evidence the question of presumption under section 144A of the State Acquisition and Tenancy Act does not arise.

2.6 Different *Khatians* and purpose served by them

The surveys conducted are distinguishable and one survey was not conducted covering the whole territory. It is of various types and the surveys have not been conducted at the same time and not even termed as the same. But they are termed differently to serve the similar purpose which is interesting. For example, in Mymensingh district SA (State

29. *Chan Mahmood and others vs. Hossain Ali being dead his heirs 1(ka) Sekander Ali and others* 3 BLC 364.

30. *Keshab vs. Madan* (1935) 40 C. W. N. 22 at p. 26.

31. *Ibid* at p. 24.

32. *Dayal Chandra Mondal and others vs. Assistant Custodian, Vested and Non-Resident Properties (L & B) and others*, 50 DLR 186.

33. 30 DLR (SC) 81. .

Acquisition) *Khatian* is termed as ROR (Record – of- rights) *Khatian* and in Habiganj district the same instrument is called as the SA *Khatian*. MRR (Modified Record of Rights) *Khatian* is a revised version of ROR *Khatian*. In district of Cox’s Bazar, MRR is available instead of SA *Khatian*. So, the expressions are different in words but serve similar purpose. CS (Cadastral Survey) records are not available in every part of Bangladesh. In Gazipur RS (Revisional Survey) of SA is finally published and in Jhenaidah the RS of SA is still on process of publication.

While the settlement office continues the survey and until the RS or any survey comes out after final publication in the form of a volume, the instrument is differently termed in different stages and in one stage it is called DP (Draft Publication) *Khatian*. In some districts, Revisional Survey is yet to be started, in some places it is under process and in some places only DP is prepared. To have a published volume of the RS record, the process of Settlement Office can take long time. In some districts like Faridpur, RS of CS is also available. Because, CS *Khatians* which were finally published before the State Acquisition and Tenancy Act are revised in some district or part of district.

Therefore, the surveys conducted in different parts of the country have taken place in different times but they are similar in description. However, in doing verification it should be made clear that under which *Khatian* revenue is being collected. So, the *Khatian* which is under operation and in force should not be disregarded. The right recognized by the latest *Khatian* which is under operation is a good title unless disproved through proper process.

3. Concepts involved in “identification of title” and relevant documents

A genuine title (ownership) is of few types. As stated earlier, a title can be based on a name in the *Khatian* under operation. The name of the predecessor in the *Khatian* can be good title in case of inherited lands. In general, CS, SA and RS can be found one after another in places where survey is conducted and completed. In some places RS of CS can also be found.

This section will show the different mode and documents by which a title can be obtained. Some instances of disputed title are also discussed here. Therefore, one can have title over a land by various modes of transfer and through different instruments discussed in this section.

3.1 By deed of sale

Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.³⁴ Sale of immovable property can be

34. Section 54, the Transfer of Property Act, 1882 (Act IV of 1882).

made only by registered instrument.³⁵ In doing verification, it is important that the deed of sale showing the title is a properly registered one. Section 17(1)(b) of the Registration Act, 1908 provides that other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property shall be registered. Nothing in clause (b) of sub-section (1) of section 17 applies to any grant of immovable property by the Government.³⁶ Section 17(1)(g) of the Registration Act, 1908 says that instrument of sale in pursuance of an order of the Court under section 96 of the State Acquisition and Tenancy Act, 1950 shall also be registered.³⁷

A registered deed of sale can be verified or inspected and certified copy of the same can be taken on depositing prescribed fees from the office in which the deed was registered. Reference of the deed will be found on the back of the last page of deed. The Book number, volume number, page number, deed number and the date or year of registration is good reference for searching a deed in the office of the Registrar.

The importance of *bia* deed lies in maintaining the chain of the land. A brief description of the ownership of the property for last 25 (twenty-five) years has to be shown for the purpose of registration.³⁸ During that period a land can be transferred more than once. A former deed of the deed showing direct title is *bia* deed and there can be several *bia* deed in a chain of title. All these deeds shall form the chain and show who are the persons in possession and had title on that specific plot or land. The successive *Khatians* can be a part and can play major role in constituting that chain depending on circumstances of each particular case. In a chain of a land, there may be no sale deed, if the land is inherited one and is not transferred by the successive heirs. In that case *Khatians* and succession certificate or partition deed can prove the title.

3.2 By exchange deeds

A person can have title on a land by exchange deed. Here, by exchange, it can be meant that it is the mutual transfer of respective ownership of two persons in two different specific properties. It is different from sale, because sale is always for a price which means money. In case of

35. *Ibid.*

36. Section 17 (2)(vii), the Registration Act, 1908 (Act XVI of 1908).

37. Section 96 of the State Acquisition and Tenancy Act, 1950 deals with the right of pre-emption.

38. Section 52A, the Registration Act, 1908 (Act XVI of 1908). Section 52 A was inserted after section 52 by Act No. XXV of 2004, (with effect from 1st July, 2005).

exchange, it is not the price to be paid, but one specific property is transferred for another. A registered instrument is necessary to validate an exchange.

3.3 By deed of gift/ *heba*

The word "Gift" is defined in section 122 of the Transfer of Property Act, 1882 as a transfer of certain existing movable or immovable property made voluntarily and without consideration, by one person, called the donor, to another, called donee, and accepted by or on behalf of the donee. Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. If the donee dies before acceptance, the gift is void.

Section 123 of the Transfer of Property Act, 1882 says that for the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. Section 17(1)(a) of the Registration Act, 1908 instructs that the registration of instruments of gift of immovable property is compulsory. Registration is also compulsory for declaration of *heba* under the Muslim Personal Law (*Shariat*).³⁹ Before the coming into force of the section 17 (1) (aa), a gift under Mohamedan law did not even require a written deed. The essentials of gift under Mohamedan law are – declaration of gift by the donor, acceptance by the donee and delivery of possession of the property to the donee. Now, all instrument of gift of immovable property shall be registered. However, there is another transaction called *Heba-bil-ewaz*. It is a gift for nominal consideration under Muslim Law. Since the transaction has characteristics of sale, it also requires registration.⁴⁰

3.4 By deed of will

Will is like a future gift. A will takes effect after the death of the testator. Any document not required to be registered under section 17 may also be registered under the Registration Act, 1908.⁴¹ But it is optional. Section 40 of the Registration Act, 1908 provides that the testator, or after his death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub- Registrar for registration. Section 41 of

39. Section 17 (1) (aa), the Registration Act, 1908 (Act XVI of 1908). The clause (aa) was inserted after clause (a) of sub-section 1 of section 17 by Act No. XXV of 2004, (with effect from 1st July, 2005).

40. Relevant cases- *Abbas Ali vs. Karim Baksh* (1908) 13 Cal WN 160; *Hitendra Singh vs. Maharaja of Darbhanga* ILR (1928) 7 Pat 500, 508 (PC); *Abdul Rahman Khan vs. Parsotam Das* ILR (1930) 5 Luck 492 (PC); *Saburonnessa vs. Sabdu Shaikh* (1934) 38 CWN 747.

41. Section 18, the Registration Act, 1908 (Act XVI of 1908).

the same Act says that a will, presented for registration by the testator, may be registered in the same manner as any other document. The registration of instrument of will is not provided by section 17 of the Registration Act, 1908. Therefore, one can possess any land by virtue of a deed of will which may be or may not be a registered one.

3.5 By succession certificate or partition deed

In case of a land possessed by a successor the person claiming title has to possess the land by virtue of succession certificate or registered partition deed. Section 17(1) (f) of the Registration Act, 1908 provides that Registration is compulsory for instrument of partition of immovable property effected by persons upon inheritance according to their respective personal laws.⁴² So a registered partition deed can be a proof of good title.

3.6 Types of disputed title

A disputed title can be of unlimited types. e.g.-

- One person can have his name in the record- of -rights enrolled and another person can possess the same land for long time without or with knowledge of the discrepancy. Undisputed and uninterrupted possession for 12 years gives rise to a good claim of title. Article 144 of the Limitation Act, 1908 extends to the conception of adverse possession and includes an interest in immovable property. Adverse possession commences when the party obtains the possession. Under Article 144 of the Limitation Act, 1908, limitation begins to run when possession of the defendant becomes adverse to the plaintiff and the period is 12 (twelve) years. Article 144 is a residuary Article relating to the suit for possession and is applicable only when there is no other Article specially providing for the case.⁴³ Adverse possession of the limited interest is good only to the extent of that interest and not of the entire interest.⁴⁴ Possession to be adverse must be adequate in continuity, in publicity and in extent. It need not be brought to the knowledge of the owner, but where the assertion of right is secret and not open the possession can not be held adverse.⁴⁵

42. The clause (f) was inserted after clause (e) of sub-section 1 of section 17 by Act No. XXV of 2004 (with effect from 1st July, 2005).

43. *Abdut Rahman Chowdhury vs. Sree Sree Shambhu Nath* (1967) 19 DLR 705.

44. 2 C.L.J. 105, 35 C. 470.

45. 62 C. 921, 56 A. 111: 38 C.W.N. 400: 59 C.L.J. 157 : 1934 A.L.J.466 : 1934 P.C. 77 P.C.

The period of limitation for a suit by Government is 60 (sixty) years.⁴⁶ Title by prescription can be acquired against the Government only by the adverse possession for sixty years.⁴⁷ However, a person who has been dispossessed from his immovable property or has discontinued the possession has to file suit for that possession within 12 (twelve) years from the date of dispossession or discontinuance.⁴⁸ It is to be mentioned that at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.⁴⁹

Therefore, there can be scope of dispute between the person whose name is written in the record- of- rights or title deeds and who has been enjoying or possessing the land. It is wise to choose a land which is possessed by a person whose name is present in the deed of title or record- of- rights as an owner and which is free from aforesaid dispute.

- More than one person can be claimant of an undivided inherited land. This is an issue that gives rise to several disputes from time to time. For example, 'A' dies leaving two sons 'X' and 'Y' and a daughter 'Q'. They did not divide the property among themselves. In absence of 'will' and 'partition deed', any particular land of the deceased can be claimed by these heirs since it has not been settled among them that which of the land each of them will possess. This is a complicated situation, but still there exists no problem regarding legal identity of the land. Once it is settled among the legal heirs that which of the land will be possessed by whom, there remain no problem. As document of being heir of the deceased, the registered partition deed or a succession certificate can be shown.
- There can be instance of land purchased through a deed of sale which carries incorrect information like mistake in writing schedule of the land, mentioning wrong boundary, writing wrong reference etc. Incorrect plot number, *Khatian* number and mistake in mentioning quantity of land are serious defects in a deed of sale and in consequence, the title becomes defective. So a person who purchased a land through this kind of deed of sale does not get good title and taking land from that person on the basis of that deed is neither safe nor legally good choice.

46. Article 149, First Schedule, the Limitation Act, 1908 (Act IX of 1908).

47. 1925 Lah. 437.

48. Article 142, First Schedule, the Limitation Act, 1908 (Act IX of 1908).

49. Section 28, the Limitation Act, 1908 (Act IX of 1908).

- There can be printing mistakes in *dag* (plot) number, *Khatian* number and in amount of the total land on the published copy of the record-of-rights. It is a serious problem for any piece of land. A title is not safe on the basis of such incorrect information.
- Enrollment of land in the *Khas* list, forest list of the Government or in similar kind of lists makes the same disqualified to be possessed and owned by any person. The Government exercises its right over this kind of land. Anyone may possess that kind of land believing him to be the owner of the same. But legally, it is not a good title in favour of any individual.
- Pending suit over any land restrains the transfer/ purchase. A suit over any land can take long time and during that time no transfer is possible because of the legal restriction. Section 52 of the Transfer of Property Act, 1882 says that during the pendency in any Court in Bangladesh of any suit or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property can not be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose. The Explanation added to the section says that the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.

So, a land over which dispute is pending in a Court should not be purchased and a title over that land is not the secured one until it is settled.

The aforesaid types of complications are unlimited and tiresome.

4. The corroboration of *Mouza* map with the documents

The Survey Act, 1875 (Bengal Act V of 1875) was enacted to determine the boundary of a village and to prepare a *mouza* or village map showing therein every plot of land with its area and to record the name of the tenant and the superior landlord, the nature of tenancy, share, possession, and revenue or rent payable for the same. However, *mouza* or village map is drawn after every survey. For example, where SA *Khatian* is published, a *mouza* map is also drawn showing the plots as mentioned in the *Khatian*. That map shows the size of the plots, roads and a complete status of the land of that *mouza*. This map has significant value. By measuring the

map, the total area and amount of the land of certain plot (*Dag*) is found and that amount is taken to be accurate. The total amount of land in a particular plot is found in the map. The land not available in the map within the mentioned plot number but in the possession of claimant or possessor gives rise to suspicion regarding the excess amount of it. By measuring the map through proper scale the actual amount of land is possible to estimate completely.

5. The Government offices that require visit

Some of the relevant documents are available in more than one office and some are available only in one office. Copies of different *Khatians* are available in record room of Deputy Commissioner's office, office of Assistant Commissioner (land) and *Tahshil* office. But particulars of land revenue and mutation are found in *Tahshil* office only. The departments of the Government important for the purpose of verification of documents of land are, therefore, sometimes linked with each other and sometimes separate. By visiting all the concerned offices verification can be truly completed. So, in this section the concerned offices of the Government important for verification are mentioned.

5.1 Record room of Deputy Commissioner's office

The Deputy Commissioner's office in each district maintains a Record Room for the preservation of the records done and volumes published. This record room supplies certified copies of *Khatians* to the applicants in a prescribed form.

5.2 Office of Assistant Commissioner (Land)

Assistant Commissioner (land) plays a vital role in land administration. This office contains all information of land within its territorial jurisdiction and gives decision on mutation after a transfer is completed. This office maintains coordination with local *Tahshil* Offices.

5.3 *Tahshil* office

The *Tahshil* office is responsible for the collection of land revenue and other dues. After purchasing new land, purchaser has to get the land mutated in his name. After a mutation case is settled, the Register Nos. (i), (ii) and (ix) will be rectified and a new holding will be made open in the Register (ii) of the *Tahshil* office. This new holding of Register (ii) will be account of land of the new owner.

5.4 The office of Registrar and Sub-Registrar

The Registration Act, 1908 says that the Government shall establish in every district an office to be styled the office of the Registrar and in every sub-district an office or offices to be styled the office of the Sub-Registrar or the offices of the Joint Sub-Registrars.⁵⁰ The Government may

50. Section 7(1), the Registration Act, 1908 (Act XVI of 1908).

amalgamate with any office of a Registrar any office of a Sub-Registrar subordinate to such Registrar, and may authorize any Sub-Registrar whose office has been so amalgamated to exercise and perform, in addition to his own powers and duties, all or any of the powers and duties of the Registrar to whom he is subordinate: Provided that no such authorization shall enable a Sub-Registrar to hear an appeal against an order passed by himself under this Act.⁵¹

The office of the Registrar and Sub- Registrar maintains the records of the documents registered in different books, named as- Book 1, Book 2, Book 3, Book 4, and Book 5. All these books contain specific documents as stated hereinafter:⁵²

Book 1 - "Register of non- testamentary documents relating to immovable property";

Book 2 - "Record reasons for refusal to register";

Book 3 - "Register of wills and authorities to adopt";

Book 4 - "Miscellaneous Register";

Book 5 - "Register of deposit of wills".

The registered documents are available for the purpose of inspection by any applicant. One can take the certified copies of the same which has been entered into the aforesaid book. The Registration Act instructs that the registering officers are required to supply copies of documents entered in the Registration Books under section 51 which are admissible to prove the contents of the original.

Under section 51 of the Registration Act all registration officers have been directed to keep certain books in which all documents that have been registered are to be entered. Section 57 of the same Act directs Registering officers to give certified copies of all documents entered in such books.⁵³

After having a document registered, a person can exercise following rights by virtue of section 57 of the Registration Act, 1908 which says, "(1) Subject to the previous payment of the fees payable in that behalf, the books Nos. 1 and 2 and the Indexes relating to Book No. 1 shall be at all times open to inspection by any person applying to inspect the same, and subject to the provisions of section 62, copies of entries in such books shall be given to all persons applying for such copies. (2) Subject to the same provisions, copies of entries in Book No. 3 and in the Index relating thereto shall be given to the persons executing the documents to which such entries relate, or to their agents, and after the death of the executants

51. Section 7(2), the Registration Act, 1908 (Act XVI of 1908).

52. Section 51, the Registration Act, 1908 (Act XVI of 1908).

53. *Mukhlesur Rahman vs. Shaukat Ali* (1984) 36 DLR 285.

(but not before) to any person applying for such copies. (3) Subject to the same provisions, copies of entries in Book No. 4 and in the Index relating thereto shall be given to any person executing or claiming under the documents to which such entries respectively refer, or to his agent or representative. (4) The requisite search under this section for entries in Books Nos. 3 and 4 shall be made only by the registering officer. (5) All copies given under this section shall be signed and sealed by the registering officer, and shall be admissible for the purpose of proving the contents of the original documents”.

Section 49 of the Registration Act, 1908 categorically says that the documents, registration of which is compulsory must be registered. Otherwise these documents shall not operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property. If any document is registered by following the provision of law, the same can be available for verification. So, a registered document can be verified or inspected for identification of title by observing the above stated provisions.

5.5 Settlement office

The survey of land is conducted by the settlement office. Initial survey is conducted by the *thana* settlement office. After the completion of its work, the draft publication in the form of hand written volume is sent to the Zonal Settlement office. Then it is sent for final publication. After it is published, the volumes of finally published *Khatians* are sent to be preserved, used and maintained by the District Record Room of Revenue Deputy Commissioner, AC land office and local *tahshil* office.

6. Findings and recommendations

In conclusion, the following findings may be summed up:

- (a) The State Acquisition and Tenancy Act, 1950 recognizes the *raiyat* or tenant as proprietor of his holding and the same is heritable and transferable. Therefore, the name of the *Zamindar* in CS *Khatian* lost its proprietorship nature. The name of the *raiyat* or tenant in CS *Khatian* is available in the latter *Khatians* as *malik* in places where the record –of- rights were prepared and published. In case of death of that *raiyat* or tenant his successors become the holder of title.
- (b) A chain of title shall have a brief description of the ownership of the property for last 25 (twenty five) years and reference of the latest *Khatian* of the property prepared under the State Acquisition and Tenancy Act, 1950 shall be there.
- (c) Different types of documents may constitute a chain of title. These documents generally include various *Khatians* and different deeds.
- (d) Means of finding defects and irregularities are different in different documents. The *Khatians* are prepared by the Government and

different deeds e.g., sale deeds, *heba* deeds etc. are written by the deed writers. Mistakes in writing by individual and publications by the authority have, therefore, different implications too. For removing irregularities or for correction of *Khatians* and deeds, petitions have to be made to different authorities. The correctness of *Khatian* and the genuineness of sale deed are separate concepts though they have information in common.

- (e) A title is not good if the supporting documents are not proper. The defects, mistakes, irregularities in those documents can be of many types. There may be printing or writing mistakes, forgery or falsification of document etc.
- (f) The plots are identified from the *mouza* map. Any mistake or defect in map should be taken very seriously because this defect may result in invalidity of the title.
- (g) Visiting different offices like record room of Deputy Commissioner, office of Registrar, *tahshil* office etc. for identifying a good title is essential and without doing so genuineness of the documents remain questionable.

Therefore, it is amply evident from the above findings that the whole process is complicated and cumbersome and the same can be made easier by bringing all these documents under the purview of one department or the offices may be inter linked so that one office can provide or help to obtain all the necessary information.

Monetary and ethical corruption in the concerned departments of the Government should be addressed with concern and efforts must be made to arrest the increase in corruption. The maintenance of proper information and adequate service of the authority should be ensured.

It is under the active consideration of the Government to computerize and maintain the *Khatian*. It is essential to have all these *Khatians* published as an additional measure in order to make access to the document wider.

The terminologies used in various *Khatians* and different documents need to be made uniform as there is a tendency of inclusion of local terms which often can be misleading.

Since the whole idea of verification is a complicated one, the academic syllabus should be devised in a pragmatic fashion so as to facilitate future lawyers to grasp the intricacies of such documents.

The above measures should be taken in order to minimize the civil disputes, save time and financial resource in dealing with these disputes and to make identification of title easier. In addition, the Government may seriously consider to convene a fully consultative process involving Revenue Officers, Registrars and Sub-Registrars, *Amins*, Lawyers and different stakeholders to improve the process of identification of title.