

LAND RIGHTS FOR URBAN SLUM DWELLERS: A Review of the Odisha Land Rights to Slum Dwellers Act, 2017 and the Jaga Mission

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Introduction

The discourse on economic development has emphasised the role of law in ensuring clear property rights. Legal rights over land are thought of as a solution to incentivise investment in land, optimal use of resources and market led-growth. Land rights (either through titling or restricted rights over land) have long been considered as a precondition for development. This is because governments believe that such rights increase access to formal credit. In the specific context of urban slum dwellers, the added benefit of land rights is that these rights can now be used to ensure tenure security, help provide municipal services and other social benefits.

Based on these presumptions in 2017, the Odisha Land Rights to Slum Dweller Act (OLRSDA) and the Odisha Municipal Corporation (Amendment) Act (OMC) were enacted. These enactments along with the implementation of the Odisha Liveable Habitat Mission, (also known as the JAGA mission) kickstarted a process of urban redevelopment.

In 2019, UN-Habitat recognised the JAGA mission as having a positive impact in alleviating urban poverty and conferred the Mission with the Bronze World Habitat Award. It recognised that 51,041 households were granted land rights and 15,000 homes were built.¹ The mission has also been nominated for the Asia-Pacific Housing Forum award and has received international acclaim.²

The policy measure of providing land rights to slum dwellers has been replicated in Punjab under the “BASERA” scheme³ and is under consideration in Himachal Pradesh⁴. Thus, it is critical to examine whether such policies lead to intended outcomes such as increasing tenure security, access to municipal services, subsidies and access to mortgages. If there are benefits, it is important to analyse the level and kind of government intervention required post the enactment of a law.

In this paper, I have analysed Odisha’s legislative and policy-based interventions to alleviate urban poverty through land rights. The paper presents an analysis of the background legal framework that both enables and constrains the goal of creating strong property rights to ensure tenure security, create a financial asset for the urban poor, and enable access to subsidies. My key findings in this paper are as follows: (i) land rights under the OLRSDA are not sufficiently integrated within the existing legal framework and there exist several ambiguities; (ii) land rights are beneficial yet insufficient to achieve the proposed goals and government intervention is required at each stage of the slum redevelopment process.

In the first section, I analyse the theory and critique behind land rights for the urban poor. In the second section, I evaluate the key provisions of the OLRSDA, which provides us with the relevant context to understand the existence of each of the identified benefits of land rights. In the third section, I have explored the connection between the notion of tenure security and the OLRSDA. In the fourth section, I have analysed the impact of the land rights provided by the OLRSDA on the provision of municipal services. In the fifth section, I have noted the positive interlinkage with existing social welfare schemes. In the final

¹ UN-World Habitat Awards, ‘Odisha Liveable Habitat Mission’, <https://world-habitat.org/world-habitat-awards/winners-and-finalists/odisha-liveable-habitat-mission/#:~:text=The%20project%20%E2%80%93%20known%20as%20the,for%20completion%20is%202021%2D2023.>

² Asia Pacific Housing Forum, ‘Public Policy Innovation Award’, [https://aphousingforum.org/innovation-awards/.](https://aphousingforum.org/innovation-awards/)

³ ‘Expedite Work on “Basera”, Punjab CM Tells Govt. Dept.’ The Hindu (Chandigarh, 11 May 2021) <<https://www.thehindu.com/news/national/other-states/expedite-work-on-basera-punjab-cm-tells-govt-dept/article34537992.ece>> accessed 8 August 2022.

⁴ The Himachal Pradesh Slum Dwellers (Proprietary Rights) Bill 2022.

section, I show that land rights in case of the OLRSDA do not enable financial inclusion of the urban poor, in contradiction to the logic of claims made by Peruvian economist, Hernando de Soto.

I. Land rights for the Urban Poor: Theory and Critique

Theory

Government policies that grant land rights to the urban poor like the OLRSDA have been implemented widely in many parts of the world based on Hernando de Soto's arguments in "The Mystery of Capital".⁵ This idea has had unequivocal support from international organisations such as the World Bank and the United Nations. National governments in Egypt, Peru, Mexico and Philippines have implemented measures to grant title to land or limited land rights to the urban poor.⁶

Urban populations in the global south reside in informal settlements that are often considered encroachments on urban spaces. They often reside on these lands without formal legal title or security of tenure. As a consequence, urban areas that are made habitable because of their investments are not considered their assets. Hernando de Soto identified this absence of formalisation of land rights as a key cause of urban poverty.⁷ De Soto theorised that poverty in developing countries is not caused by an absence of money but an absence of capital.⁸ Capital refers to inalienable and transferable rights over property that form the foundation of the economic system.⁹ Therefore, granting land title to the poor can provide them with the required predictability and incentives to activate 'dead capital' and participate in the free market.¹⁰

Based on this conception of property rights, other theorists have argued that capitalism can be made to work for the benefit of the urban poor if they are equipped with the tools to participate in the free market.¹¹

This thesis that the west kickstarted the creation of wealth by recognising settlement was substantiated by relying upon the history of America. De Soto identified the Pre-emption Act, 1841 and the Homestead Act, 1862, which allowed settlers to buy land from the government, as a key source of wealth in that nation.¹² Such legislation also incentivised people to make the best use of land. Based on the history of England, De Soto emphasized the importance of a bureaucratic structure that maintained accurate land records and was the sole source of information for the land market.¹³

⁵ HERNANDO DE SOTO, *THE MYSTERY OF CAPITAL: WHY CAPITALISM IN THE WEST AND FAILS EVERYWHERE ELSE* (2000).

⁶ Alan Gilbert, *On the mystery of capital and the myths of Hernando de Soto: What difference does legal title make?*, 24 INTERNATIONAL DEVELOPMENT PLANNING REVIEW 1 (2002).

⁷ (De Soto n-5), 7.

⁸ *ibid*, 8.

⁹ (De Soto n-5), 5.

¹⁰ (De Soto n-5), 30

¹¹ (Gilbert n-3).

¹² (De Soto n-5), 90

¹³ Robert Home, *Outside de Soto's Bell Jar: Colonial/Postcolonial Land Law and the Exclusion of the Peri-Urban Poor*, in *DEMISTIFYING THE MYSTERY OF CAPITAL: LAND TENURE AND POVERTY IN AFRICA AND THE CARIBBEAN* (Robert Home & Hilary Lim eds., 2004).

The implementation of land titling in Peru based on De Soto's thesis was initially considered a great success. The time period for obtaining a valid land title was apparently reduced from 15 years to 6 weeks or less and the cost of registering property decreased from \$2000 to \$50¹⁴; but in the period following the implementation of land titling, there was no increase in commercial mortgages. Once the land title was awarded the beneficiaries transferred the title to other residents or migrants to cities and ownership and reverted back to the realm of informality.¹⁵ Thus, the Peruvian experiment did not replicate de Soto's narrative of land rights enabling the poor to access capital.

Critique of Land Rights for the Urban Poor

This raises a critical question on how true the thesis presented by de Soto is. Does a right over land enable poor urban dwellers to borrow money from formal sources? Does a right over land imply tenure security and greater investments in land?

Measures that have sought to improve the lives of urban slum dwellers have been met with criticism. This is because there is a perception that recognising slums as a part of urban settlement is akin to 'rewarding pickpockets.'¹⁶ However, such criticism is misplaced when applied to all urban settlements as neither are all such settlements illegal nor are they encroachments. For instance, settlements not recognized in a city's masterplan are unauthorised and not zoned for residential use but residents in such settlements have formal purchase documents. In some cases, such settlements are also regularised in periodic intervals. Addresses of such settlements may also be considered valid proof of residence for government documents.¹⁷

As many legal scholars have pointed out, the failure of de Soto's narrative in real life arises due to his failure to understand property not as a concept, but as a bundle of rights. Property rights are not uniform, cohesive or simple even in the west and are instead competing entitlements with informal and formal systems of regulating relationships between individuals and the government.¹⁸ Technical definitions are often representations of this competition and determine the nature as well as scope of entitlements. The creation of new categories of rights and entitlements thus does not instantly lead to a 'clear' or 'strong' property rights regimes.¹⁹ Instead these changes may conflict with existing legal arrangements which are based on specific social and economic presumptions. For an efficient private market to exist and succeed, the role of rules and institutional mechanisms is crucial.²⁰

A multidimensional view of property rights also shows that the initial allocation of such rights is fraught with inequality. There is an existing psychological and social element of property ownership that often triumphs economic considerations. While law reform seeks to change property entitlements, the

¹⁴ Eliza Panaritis, *Do property rights matter? An urban case study from Peru*, (2001) GLOBAL OUTLOOK: INTERNATIONAL URBAN RESEARCH MONITOR, April 20-22.

¹⁵ Benito Arruñada, *How to Make Land Titling more Rational*, 6 BRIGHAM-KANNER PROPERTY RIGHTS CONFERENCE JOURNAL 31 (2017).

¹⁶ Almitra H. Patel v. Union of India, 2000 SCC (8) 19; Okhla Factory Owners' Assn. v Govt. of NCT of Delhi, 2002 SCC Online Del 1337.

¹⁷ Gautam Bhan, *IN THE PUBLIC'S INTEREST: EVICTIONS, CITIZENSHIP AND INEQUALITY IN CONTEMPORARY DELHI*, (2016).

¹⁸ David W Kennedy, *Some Caution about Property Rights as a Recipe for Economic Development* (2011) ACCOUNTING, ECONOMICS AND LAW.

¹⁹ *ibid.*

²⁰ *ibid.*

government as opposed to the free market plays a crucial role in ensuring the successful implementation of such programmes.²¹

Despite the limitations of de Soto's thesis, a proper title over land or recognition of rights over land have been accepted as tangible policy solutions in order to address the issues faced by residents of urban slums. These assumptions were even incorporated in the *Rajiv Awas Yojana* (2009-2014) by envisaging a mandatory recognition of ownership/ lease rights for urban slum dwellers. As a result of the acceptance of De Soto's thesis, land rights for the urban poor are presumed to lead to four key benefits. These benefits are: tenure security²², access to municipal services²³, access to subsidies, and the ability to mortgage and use land²⁴.

In the following sections, I present an overview of the OLRSDA and analyse relevant provisions of the law to evaluate whether these benefits have been secured for the urban poor in Odisha through the OLRSDA.

II. Decoding the Odisha Land Rights to Slum Dwellers Act, 2017

History of Slum Redevelopment in Odisha

Odisha's population is 44 million with 27% of households identified as slums. At the moment, Land Rights Certificates (LRC's) have been granted in Municipalities' and Notified Area Councils.²⁵ In 2022, the government has started granting LRCs in Municipal Corporations.²⁶ The state government has been at the forefront of addressing the dismal living conditions of slum dwellers in urban areas by upgrading slums, addressing issues of access to services and land and preventing the creation of new slums under the 'JAGA mission'. This was sought to be achieved through the participatory procedure specified in the Standard Operating Procedure under the JAGA mission.²⁷ The state has implemented a series of legal and policy-based measures in order to provide better living conditions and security of tenure to slum dwellers.

Schemes such as the Jawaharlal Nehru National Urban Renewal Mission (started in 2005), the Basic Services for Urban Poor (started in 2005) initiative along with the Integrated Housing and Slum Development Programme (started in 2005) were implemented in cities in Odisha such as the city of Bhubaneswar to provide security of tenure to slum dwellers. The central government scheme '*Rajiv Awas Yojana*' was also implemented for in-situ development.

²¹ Geoffrey Payne, Alain Durand-Lasserve & Carole Rakodi, *The limits of land titling and home ownership*, 21 ENVIRONMENT AND URBANIZATION 443 (2009).

²² *ibid*

²³ Darshini Mahadevia, *Tenure Security and Urban Social Protection in India* (Institute of Social Development, Centre for Social Protection 2011) 05.

²⁴ (De Soto n-5).

²⁵ A clear picture of the exact number of LRC's and LEC's granted is unavailable as status reports and real time updates have not yet been released by the State Government.

²⁶ 'Slum dwellers in five Odisha cities to get land rights', (The New Indian Express, 01 January 2022) available at: <https://www.newindianexpress.com/states/odisha/2022/jan/01/slum-dwellers-in-five-odisha-cities-to-get-land-rights-2401885.html>.

²⁷ The slum upgradation under JAGA is applicable to all areas whereas LRC's and LEC's were only limited to Municipalities and NAC's until 2022.

The Slum Rehabilitation and Development Policy was implemented in 2011 in Odisha and in 2012 a draft of a bill to confer land rights and prevent the creation of new slums was discussed. In this 19-page draft of the bill, land rights were to be conferred only on persons belonging to economically weaker sections and low-income groups. In this version, land rights were sought to be granted simultaneously in municipal corporations, municipalities and notified area councils.²⁸

Subsequently, the provisions of this draft bill were split across the OLRSDA, OMC, the Odisha Land Rights to Slum Dwellers Rules and the Standard Operating Procedure for the JAGA mission. Provisions such as defining slum areas broadly, requiring the State Government to clarify the procedure of allotment and a grievance redressal committee which were a part of the bill are conspicuously absent from the existing framework of acts.

Overview of the Act

According to the Act, every landless person residing in a slum in an urban area is entitled to a settlement of land either through LRC or a certificate of land entitlement in case of rehabilitation (LEC).²⁹ The LRC entitles the beneficiary to rights over 45-60 sq. m. of land that is currently under occupation by them.

The LEC on the other hand entitles the beneficiary to rights over land that is yet to be allotted.³⁰ The provisions of this Act are applicable to Municipal Council areas and Notified Area Councils.³¹ These areas were specifically targeted to address challenges of newly urbanised areas. The focus is not just on large cities but on medium and small towns too. The OMC allows for the applicability of these provisions to Municipal Corporations subject to government notification.

It is important to clearly identify the juridical relationships between the relevant parties in order to understand the specific entitlements conferred. A right must be split into its components to clarify the distinction in legal positions between parties. Simply understood a 'right' can mean a legal protection from interference. However, in order to be a right, there must also exist a correlative duty to abstain from interfering or enable the exercise of the right.

A breach of a duty carries with it a threat of negative consequence in case of a breach. On the other hand, where there exists no such consequence and there is no liability for the non-performance of a duty, such a legal relation is better termed as a 'privilege'. Where one party has the ability to change the existing legal relation based on a certain determined fact, the relation is characterised as 'power'. The party with whom the legal relationship may be altered has a 'liability'.³²

The tables below provide an overview of the privileges, rights and powers under the OLRSDA and the rules formulated under the Act:

²⁸ The Odisha Property Rights to Slum Dwellers and Prevention of New Slums Bill, 2012.

²⁹ S. 3(1), Odisha Land Rights to Slum Dwellers Act, 2017 (hereinafter 'OLR Act').

³⁰ S. 3, OLR Act.

³¹ S. 3(2), OLR Act.

³² Wesley N. Hohfeld FUNDAMENTAL LEGAL CONCEPTS AS APPLIED IN JUDICIAL REASONING, (1967); See also: Alan D Cullison, A Review of Hohfeld's Fundamental Legal Concepts (1967) 16 CLEVELAND MARSHALL LAW REVIEW 559.

Table 1:

Section	Privilege	No- Right
S. 3(1)	Every landless person occupying land in a slum can be given a certificate of land 'right'.	The State Government can provide the certificate of land right to eligible slum dwellers. This means that there is no right to the land entitlement certificate. Specific criteria must be met by the slum dweller in order to become a beneficiary under the Act.
S. 4	Slum dweller must be provided transit space and rehabilitation in case of eviction.	There is no clear remedy under the OLRSDA in case the State Government violates its duty to provide transit space.

Table 2:

Section	Right	Correlative Duty
S. 3(3) S. 3(5)	The beneficiary can occupy the land for residential purpose.	The State Government cannot remove the beneficiary as long as the land is used for a residential purpose.

Table 3:

Section	Power	Liability
S. 3(3) S. 3(5)	The State Government through the Authorised Officer can cancel the certificate of land right, dispossess the person in actual possession, debar the slum dweller.	The beneficiary has a duty not to transfer the land by sub-lease, lease, sale, gift. Such a violation is punishable under S. 9 of the Act.
S. 4 and Rule 4 of the Odisha Land Rights to Slum Dwellers Rules	State Government can remove slum dwellers from land identified as untenable.	The Urban Slum Redevelopment and Rehabilitation Committee shall survey the land, revise records, approve list of slum dwellers and formulate plans for R&R
S. 3(2)(d)	The Authorised Officer appointed by the State Government must take possession of the excess land.	The beneficiary who is occupying land beyond permissible limit must surrender/ vacate excess land.

Issues with the Scheme of the Act

Based on Tables 1, 2 and 3, it is apparent that the right to a LRC under the OLRSDA is better understood as a privilege as there is no correlative duty on the government to guarantee the same with consequences for breach. It also allows the government to exercise power on the manner in which rights are granted and places a correlative duty on the beneficiary. This means that there is no right to a LRC. As a result, not every slum dweller can become a beneficiary under the Act or challenge their exclusion from the settlement.

However, once such a certificate is provided there is a right to use the land for residential purposes. The legal entitlement under the Act envisages a central role for the government at each step of implementation and allows for great discretion on part of the government for exercise of these rights.

Freehold or ownership rights allow an individual to alienate, use, possess, occupy and inherit property. In contrast, under the OLRSDA, the government has configured its duties in a manner that provide a right in the nature of a lease to the beneficiaries but the manner in which even this lease right can be exercised is limited. This has been discussed in detail in the relationship of the OLRSDA with mortgage and lease rights under the Transfer of Property Act, 1882.

There are also persisting definitional problems in the Act. Under the OLRSDA, rights over land can be provided to persons living in “slums”. In the urban context, predominantly two types of informal settlements exist. The first type of informal settlement is an unauthorised development on private land. In this case, a private buyer who owns the land subdivides it in violation of planning and zoning regulations. The second type of informal settlement is a squatter settlement on private or public land that has been illegally occupied.³³ The government cannot grant land rights to slums on private land without undertaking a process of determining ownership, acquisition and payment of compensation.

The Act defines a “slum” or “slum area” as a “a compact settlement of at least twenty households with a collection of poorly built tenements, mostly of temporary nature, crowded together usually with inadequate sanitary and drinking water facilities in unhygienic conditions, which may be on the State Government land in an urban area”.³⁴

This definition is limited and does not address whether slums on private land fall within the scope of the Act. The use of the phrase ‘may be’ allows the interpretation that not all slums that fall within the scope of this Act are on government land. If the first type of settlement does fall within the scope of the Act then it is unclear whether compensation is required to be awarded to the original owner in case land rights are granted to slum dwellers living on subdivided land.

In the following sections, the distinction between ‘rights’ and ‘privileges’ becomes critical as it can be seen that the goals of granting the LRC are clearly not met where there is a privilege and no identified correlative duty.

³³ Geoffrey Payne and Alain Durand-Lasserve, *HOLDING ON: Security of Tenure: Types, Policies, Practices and Challenges* (United Nations Special Rapporteur on Adequate Housing 2012).

³⁴ S. 2(r), OLR Act.

III. Land Rights and Ensuring ‘Tenure Security’ for the Urban Poor

‘Tenure security’ refers to the risk of eviction without due process or compensation faced by settlers. This risk of eviction may be assessed by examining the legal status of the land, the perceived security of the slum dweller or *de facto* security of tenure.³⁵ Legal tenure security is assured where there is a formally recognised land right in the form of ownership or lease. Legal tenure security requires an examination of the bundle of rights that a slum dweller is entitled to, the length of time for which these rights have been enjoyed and the risk of losing these rights. *De facto* tenure security exists where settlements have existed for a long period of time and people occupying the land are able to exercise control over the same. A *de facto* sense of security also emerges where there is an acceptance of the settlement as part of the city by the administrative apparatus. The acceptance can be in the form of providing municipal services or accepting the houses in the slum as having a valid address. Perceived security is based on a subjective sense of permanence felt by slum dwellers based on the legal status of the land as well as *de facto* tenure security.³⁶

Diversity of land tenure in urban areas exists in a realm of informality but not necessarily illegality. This informality allows poorer groups to claim and settle on land in the city and even allows for the growth of urban populations. It allows urban slum dwellers the flexibility and mobility to transition from the rural to the urban and move within the urban. However, this informality places them at the mercy of the state and market forces. Ensuring legal tenure security through land rights has been proposed as a solution to protect slum dwellers from evictions.

Under the Act, a LRC is provided to persons living in slums in a Municipal Council Area or a Notified Area Council. These provisions are not applicable to Municipal Corporations till now.

Most recently, a slum eviction was carried out on government land upon which 225 households were squatting in the municipal corporation of Sambalpur (located in the western part of Odisha). These households sought relief against the implementation of the Rehabilitation and Resettlement plan as there was no survey done, notice served or suitable alternative and compensation provided.³⁷ The court denied any relief as the land is owned by the government and this does not fall within the definition of ‘acquisition’ under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.³⁸ As this area falls under a municipal corporation, the OLRSDA is not applicable and land rights under the OMC Act have not been granted as the application of the Act was only notified in 2022. Slum rights activists are hopeful that the implementation of the Act in slum areas falling under the purview of municipal corporations can protect these slum dwellers from unauthorised evictions.³⁹

Even where land rights for slum dwellers in municipalities and notified area councils have been granted there are significant concerns that emerge due to the absence of policies on rehabilitation and relocation and possibility of conflict with central laws.

³⁵ Jean-Louis Van Gelder, *What tenure security? The case for a tripartite view*, 27 LAND USE POLICY 449 (2010).

³⁶ (Payne n- 23).

³⁷ Seshadev Deep v. District Magistrate and Collector, Bargarh W.P. (C) No. 5499 of 2013 (Petition filed before the Odisha High Court)

³⁸ Rakesh Suna v. State of Odisha W.P. (C) No. 13241 of 2022 (Order of the Odisha High Court 12 July)

³⁹ Interview with Mr. Madhusudan, Jan Jagran Manch conducted on 13 July 2022.

Firstly, Odisha's comprehensive Resettlement and Rehabilitation Policy of 2006 is not applicable to relocations under the OLRSDA. This is because the policy is applicable to acquisition of private land for a public purpose.⁴⁰ S. 4(3) of the Act requires the government to provide transit housing in case of redevelopment. The Slum Rehabilitation and Development Policy, 2011 (SRDP) requires Urban Local Bodies, the District level Authority or the Odisha State Housing Board to prepare schemes on a case-to-case basis for relocation.⁴¹ As a result, when such schemes are implemented, there is no assurance that time bound relief will be provided or critical issues such as livelihood will be addressed in a relocation plan.

Secondly, there is limited guidance on what happens to the rights of a slum dweller when there is a conflict between the OLRSDA or OMC and central legislation.

In the case of *Mahendra Mohanty v. State of Odisha*⁴² and *Binod Dash v. State of Odisha*⁴³, the National Green Tribunal was confronted with a similar problem. In these cases, the Cuttack Municipal Corporation sought to provide alternative housing to slum dwellers who had been evicted from the banks of the Mahanadi River. In this case, the petitioner alleged that the land was a *Gramya Jungle*⁴⁴ and thus the Forest Conservation Act, the Environment Protection Act, Air (Prevention and Control of Pollution) Act 1981, and Water (Prevention and Control of Pollution) Act 1974 as well as the Bio Diversity Act, 2002 were applicable.

According to section 17 of the OLRSDA and section 494 of the OMC, these Acts only prevail when there are inconsistencies with other state acts. The Forest Conservation Act 1980, the Environment Protection Act, Air (Prevention and Control of Pollution) Act 1981, and Water (Prevention and Control of Pollution) Act 1974 as well as the Bio Diversity Act, 2002 are laws enacted by the centre based on subjects in the concurrent list. As forest lands are protected through these central laws which would prevail over state laws, it would be difficult for the state government to use forest land for the purpose of relocation.⁴⁵ This restricts the ability of the government to provide rehabilitation or relocation where settlements are found to be untenable. It also places the slum dwellers whose settlements are identified as untenable at risk of repeated relocations and evictions.

IV. Access to Municipal Services

One of the key benefits of granting land rights to slum dwellers that has been identified in the theoretical literature⁴⁶ is that it leads to increased access to municipal services and necessities of urban life such as sanitation, water and electricity. While the provision of such services is possible through negotiated arrangements between residents and urban local bodies, the government plays a critical role in ensuring the delivery of such services. The existence of land rights has shown mixed results in the assessment of the impact on access to municipal services.

Internationally, the impact on municipal services depends less on secure land rights and more on the manner in which such services are delivered. For instance, in Colombia, access to municipal services is

⁴⁰ S. 2(i) Odisha Rehabilitation and Resettlement Policy, 2006.

⁴¹ 9.3.2. Slum Rehabilitation and Development Policy, 2011.

⁴² 2020 SCC OnLine NGT 2161.

⁴³ 2020 SCC OnLine NGT 2337.

⁴⁴ *Gramya Jungle* are a type of local forest land recorded as such in the revenue records.

⁴⁵ Concurrent list, Seventh Schedule, Constitution of India.

⁴⁶ (De Soto n-5) See also: Arjun Anand, "Unlocking Slumbai: Raising the Economic Potential of Urban Slum Inhabitants Through Land-Titling in Mumbai" Unpublished Dissertation (NLSIU 2016).

available to those who can pay for the service.⁴⁷ In Egypt, rights over land are not linked to the provision of services and in Peru titling has not improved access to municipal services.⁴⁸

In India, policies and schemes such as Jawaharlal Nehru National Urban Renewal Mission (JNNURM), National Urban Sanitation Policy, Swachh Bharat Mission-Urban, Basic Services for Urban Poor etc. do not link ownership of land or possession of a land rights certificate with access to services.

Studies show mixed results when it comes to the linkage between land rights and basic services. In a study of 619 households in slums in Bangalore and Mumbai, researchers found that there is no direct correlation between land titling and provision of municipal services. This is because a valid title of land is not a precondition to access these services and the provision of such services is based on the discretion and initiative of the local authorities.⁴⁹ On the other hand in the states of Rajasthan and Madhya Pradesh, a positive impact was seen on the availability of services.⁵⁰

In Odisha, the slum upgradation scheme does not link the provision of municipal services to the existence of land rights. The process of giving LRC and providing municipal services work simultaneously. This can be seen in the case of the *Kathagada Parbatia Sahi* where 120 households have been granted land rights along with the construction of storm water drains, creation of open spaces, provision of electricity and construction of toilets.⁵¹ The experience of this slum also shows that the involvement of local officials and constant monitoring along with engagement is critical for the success of such initiatives.

Thus, the provision of municipal services is not predicated on the existence of land rights. The involvement of local authorities is crucial in ensuring that services are provided and infrastructural upgrades are made. The existence of land rights, however can serve as an important factor based upon which residents are inclined to pay for these services, maintain these services and hold local authorities accountable when these services are not provided.⁵²

V. Access to Subsidies and Government Assistance

Secure land rights under the OLRSDA allow the beneficiary to mortgage the land rights certificate in order to obtain housing loans from a financial institution. The land rights certificate can also be used to obtain a benefit under the *Pradhan Mantri Awas Yojana*. This scheme seeks to provide housing to all Indians. A key provision of this scheme is the provision of assistance to individuals through subsidy for beneficiary led individual house construction or enhancement. In order to be eligible under this scheme, the beneficiary must approach the relevant Urban Local Body for construction and enhancement with necessary documentation. After the approval, the central subsidy is released to the beneficiary through the State Government.⁵³

⁴⁷ Alain Durand-Lasserve and Geoffrey Payne, *Evaluating Impacts of Urban Land Titling: Results and Implications: Preliminary Findings* 19.

⁴⁸ Kareem Ibrahim and Deena Khalil, *Land Titling: A Tool, Not a Panacea Insights from Egypt* (2016) METROPOLITICS 7.

⁴⁹ Venkatesh Panchapagesan, Deepa Krishnan and Madalasa Venkataraman, *Estimating Economic Value of Regularizing Land Tenure to the Urban Poor – Evidence from India*, 33.

⁵⁰ Darshini Mahadevia, *Tenure Security and Urban Social Protection in India* (Institute of Social Development, Centre for Social Protection 2011) 05.

⁵¹ Tata Trusts, 'Slum Upgradation in Dhenkanal' available at <https://landportal.org/campaign/2021/10/slum-upgradation-dhenkanal>

⁵² Interview with Ms. Preeti Prada Panigrahi Project Head (Jaga Mission) Janagraha; See also: Indivar Jonnalagadda, *Citizenship as a Communicative Effect* (2018) 6 SIGNS AND SOCIETY 531.

⁵³ 7.2.1, Pradhan Mantri Awas Yojana Guidelines, (Ministry of Housing and Urban Affairs, 2021).

Since the enactment of the OLRSDA, there has been a significant increase in the number of beneficiaries who have used assistance in order to either build better housing or upgrade existing settlements. Sanctioned houses under this scheme have increased from 28,794 houses prior to the enactment of the Act to 114,198 post the enactment of the law and grant of land right.⁵⁴

The OLRSDA and the Jaga mission envisage secure land rights as a planning tool for slum redevelopment. This idea is also closely linked to the central scheme: Atal Mission for Rejuvenation and Urban Transformation (AMRUT) under which reforms of property tax and participation of communities in management of resources is seen as an essential component for the release of funds to state governments. The mission intends to provide access to tap water, sewage, develop green spaces, provide transport and reduce pollution.⁵⁵ The JAGA mission similarly envisages that these infrastructural upgrades will be provided through a participatory needs assessment and the provision of land rights certificate will increase the revenue (in the form of property taxes) collected by ULBs.⁵⁶ The convergence in goals of the state and the central scheme has meant that Odisha is in a better position to receive central assistance as it is satisfying the essential components for the release of funds to state governments.

The Urban Wage Employment Initiative to upgrade slums, provide drinking water, street lighting etc was also introduced to address the sudden loss in employment for urban slum dwellers. This scheme has now become a part of the (Jaga Mission). It relies upon manual labour instead of machinery in order to provide employment to urban slum dwellers.⁵⁷

Here the alignment of the policy implementation with existing central and state schemes is by design. This is because 'layering of entitlements' and 'linkages' allow for the use of existing solutions⁵⁸ and ensures that beneficiaries are less resistant to the changes being implemented.⁵⁹

VI. Ability to mortgage and use land as an economic resource

As identified above, one of the key presumptions behind land rights for the urban poor is that these rights when integrated with the existing legal system can allow for the participation of the urban poor in the free market economy. This would allow them to mortgage and use the land. However, the legal design of the measure in Odisha does not allow the beneficiaries to use the right over the land for this purpose.

⁵⁴ Aparna Das, Anindita Mukherjee *et. al.* *Improving Housing for the Urban Poor - Learnings from BLC Implementation in Odisha* (Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) & Centre for Policy Research, June 2020).

⁵⁵ Atal Mission for Rejuvenation and Urban Transformation 2.0 Operational Guidelines, (Ministry of Housing and Urban Affairs, 2021).

⁵⁶ 'Standard Operating Procedures for Slum Upgradation and Delisting in Odisha', (Government of Odisha-Housing and Urban Development Department, 2020).

⁵⁷ Antarin Chakrabarty, 'COVID-19, JAGA Mission and the Value of Already Existing Solutions' (International Institute for Environment and Development, 4 June 2020) <<https://www.iied.org/covid-19-jaga-mission-value-already-existing-solutions>>.

⁵⁸ Interview with Scaling City Institutions for India (SCI FI) initiative at the Centre for Policy Research, New Delhi.

⁵⁹ Interview with Preeti Prada Panigrahi, Janagraha.

The legal right provided under the Act is a heritable, non-transferable right over land. Further restrictions have been placed on the use of the land as it can be used only for a residential purpose.⁶⁰ The land rights certificate can only be mortgaged for the purpose of raising finance in the form a home loan from a financial institution.⁶¹ These restrictions have been placed so that private enterprises and land grabbers cannot purchase the land either through sale or acquire the land as a form of repayment of debt. If such restrictions do not exist, such practices can be used to displace the beneficiaries and redevelop the land.⁶²

Even though the intent of a 'land titling' programme is to create assets for the urban poor, these restrictions effectively require the use of this land only for the purpose of housing. Furthermore, this land right does not create a relationship of ownership between the land. Ownership comprises of a bundle of rights. This bundle of rights includes the ability to control, use, possess and alienate the property.⁶³

Such absolute restrictions are not usually permitted under section 10 of the Transfer of Property Act, 1882 because the principle underlying the Transfer of Property Act, 1882 is that free disposition of property must be permitted and the right of transfer cannot be separated from beneficial ownership of property.⁶⁴

However, the Transfer of Property Act is not applicable to the transfers by the government of Odisha because the Government Grants Act, 1895 allows the government to impose limitations and restrictions upon transfers made by the Government in accordance with this Act. This was affirmed in the case of *Union of India v. Dinshaw Shapoorji Anklesari*⁶⁵ where a grant was made by the government in the form of a long-term lease. The Supreme Court held that pursuant to the provisions of the Government Grants Act, 1895 the state government was free to impose any condition, limitation or restriction in its grant of the lease.

As the Transfer of Property Act, 1882 is not applicable to the land rights given to slum dwellers it is unclear whether the provisions on mortgage from the Transfer of Property Act, 1882 are applicable to land that is granted. The provisions on mortgage address crucial questions such as the right of a mortgagor to redeem property⁶⁶, improvement to mortgaged property⁶⁷, mortgagor's power to lease⁶⁸ etc. It is also unclear how the right of a mortgagee to foreclose on the property and subsequently sell it⁶⁹ would operate.

Section 3(3) of the OLSRDA does not allow the settled land to be leased or sub-leased. S. 108 in Chapter V of the Transfer of Property Act, 1882 governs the rights and duties of a lessor and lessee. Provisions under the chapter also allow the lessee to exit the contractual arrangement after the expiry of the term or where there is a material defect in the property or interest therein. A lease can be held as void at the option of the lessee if it is destroyed by a fire, natural event, violence etc.⁷⁰ These provisions which protect the lessee and enable the lessee to leave the property are unavailable to the beneficiaries of the OLSRDA.

⁶⁰ S. 2(m) and S. 3(5), OLR Act. (

⁶¹ S. 3(3), OLR Act.

⁶² Benito Arrunada, *How to Make Land Titling More Rational* (2017) 6 BRIGHAM-KANNER PROPERTY RIGHTS CONFERENCE J 73.

⁶³ *Union of India v. Hari Krishan Khosla* 1993 Supp (2) SCC 149; *Raja Satyendra Narayan Singh v. State of Bihar*, (1987) 3 SCC 319.

⁶⁴ *Ramesh Dutt v. State of Punjab* (2009) 15 SCC 429; See also: Darashaw J Vakil: *Commentaries on the Transfer of Property Act*, 6th Edn.

⁶⁵ (2014) 14 SCC 204.

⁶⁶ S. 60, Transfer of Property Act, 1882.

⁶⁷ S. 63 A, Transfer of Property Act, 1882.

⁶⁸ S. 65A, Transfer of Property Act, 1882.

⁶⁹ S. 67, Transfer of Property Act, 1882.

⁷⁰ S. 108(e), Transfer of Property Act, 1882.

This problem is built into the design of the Act as, in case the slum dweller does not wish to live on the settled land anymore, there is no process through which the LRC can be surrendered or compensation can be obtained from such surrender.⁷¹ Even at the time of settlement, there is no provision made for compensating those who do not accept the settlement under the Act.

Prior to the settlement, the residents pay a one-time cost that goes towards the Urban Poor Welfare Fund. Once the settlement is completed under the OLRSDA and a LRC is awarded, beneficiaries are required to pay a nominal amount as holding tax.⁷² As the existing tax amount is nominal, most slum dwellers are not averse to accepting these charges. However, there is apprehension and fear that such charges will become burdensome.⁷³

Land rights fail to unlock 'dead capital' because the perception of the beneficiaries who receive that land is that it constitutes a social asset. Households regard this property as a space to raise their family and leave an inheritance for their children. This is apparent from the fact that some beneficiaries have even incurred loans to pay a premium over the cost for settlement over and above the allotted amount of land in order to obtain a land rights certificate.⁷⁴

Having incurred costs to obtain the LRC, beneficiaries would not want to risk losing this title and prefer to make any other investments from savings as opposed to a loan.⁷⁵ This is because they do not wish to risk losing this asset and formal credit mechanisms are not easily accessible. The presumption that unlocking 'dead capital' is a viable means to provide livelihood to urban slum dwellers is also unproven and urban dwellers are aware of the hurdles that prevent them from becoming entrepreneurs within an inherently unequal economy.⁷⁶

A study of a coastal settlement in Gopalpur from Odisha reaffirms this finding. In this settlement there are several households that have received a valid land title but have not been able to construct *pukka* houses due to a lack of funds. The ward councilor interviewed pointed to the fact that banks are refusing to provide loans on the basis of the land title as land title is non-transferable. As a consequence, families in this locality continued to rely upon money lenders and savings to complete the construction of their houses.⁷⁷

Furthermore, there is no clear guidance on what happens when a slum dweller who has been given a land rights certificate dies without an heir. S. 4(1)(b) of the Act can be interpreted to mean that the State Government has the power to decide how surplus land is to be used in case a person dies issueless, the land can be considered surplus and thus reallocated. This would further lead to the question of how the land should be reallocated.

⁷¹ The provisions on surrender are only applicable in case a person has multiple land rights certificates according to the Odisha Land Rights to Slum Dwellers Rules.

⁷² Land Governance Assessment Framework, Odisha, India (2014) available at: <https://landportal.org/library/resources/land-governance-assessment-framework-odisha-india>.

⁷³ Interview with Mr. Madhusudan, Jan Jagran Manch.

⁷⁴ Shobha Rao P., Jaime Royo-Olid & Jan Turkstra, *Tenure security and property rights: the case of land titling for 'slum' dwellers in Odisha, India*, JOURNAL OF URBAN SUSTAINABLE DEVELOPMENT 1 (2022).

⁷⁵ Sebastian Galiani & Ernesto Scharfrodsky, *Property rights for the poor: Effects of land titling*, 94 JOURNAL OF PUBLIC ECONOMICS 700 (2010).

⁷⁶ (Gilbert n-6).

⁷⁷ Namesh Killemetty and Amit Patel, *Giving Voice to the Slum Dwellers- Understanding the Implications of the Implementation of the Land Rights Act in Odisha State, India*.

When these elements of non-transferability and inability to surrender are combined with the existence of taxes and charges as well as the lack of access to formal financial institutions, the land right certificate is no longer an economic resource. In fact, there is a growing fear that if the land granted can't be leased and the beneficiary must continue to pay taxes then the beneficiary is effectively trapped on the 30-60 sq. m. of land awarded under the Act.⁷⁸

Conclusion

The narrative that urban poverty can be countered merely through guaranteeing secure land rights is untrue. The understanding of urban poverty presented by de Soto presents a unidimensional view of property rights and social inequalities. The implementation of land rights in Odisha confirms that legal interventions in the form of land rights can only produce positive results where there is strong intervention by the government. An approach which rests on tenuous legal foundations and does not recognise the local context is insufficient to improve the condition of slums.

As seen in Odisha's case, there is no right for a slum dweller to obtain such a certificate. Even where such a certificate is granted the actual impact on being able to use the land to obtain a mortgage is limited. The inapplicability of the Transfer of Property Act, 1882 raises questions on how this right can be used. The impact on tenure security is limited by the lack of implementation and a patchwork of contradictory laws.

Targeted intervention must treat these areas with caution keeping in mind the complexity of how land is actually used and what it means to people. This is apparent from the success of linkages with subsidies and existing government support programmes. Increased access to municipal services and infrastructural upgrades has been observed only where there has been continuous intervention by local authorities.

It is relevant to note these outcomes where such programmes are sought to be replicated. There is a need to move beyond the emphasis on legal changes that push land rights into the free market. This is because the role of the government does not end with granting of land rights, but is in fact only a minor component of a broader plan for pro-poor policies in urban areas.

⁷⁸ Interview with Mr Madhusudan, Jan Jagran Manch.

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