The Impacts of Land Monopoly on Land and Housing Markets

The Case of the Bhayander Estate

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A project report submitted in partial fulfilment of the requirements for the Degree of Master of Arts in Urban Policy and Governance

Centre for Urban Policy and Governance
School of Habitat Studies
Tata Institute of Social Sciences
Mumbai
2019
DECLARATION

I, Shaonlee Patranabis, hereby declare that this dissertation entitled ‘The Impacts of Land Monopoly on Land and Housing Markets: The Case of the Bhayander Estate’ is the outcome of my own study undertaken under the guidance of Dr. Sahil Gandhi, Assistant Professor, School of Habitat Studies, Tata Institute of Social Sciences, Mumbai. It has not previously formed the basis for the award of any degree, diploma, or certificate of this Institute or of any other institute or university. I have duly acknowledged all the sources used by me in the preparation of this dissertation.

15th of March 2019

(Shaonlee Patranabis)
CERTIFICATE

This is to certify that the dissertation entitled 'The Impacts of a Land Monopoly on Land and Housing Markets: The Case of the Bhayander Estate' is the record of the original work done by Shaonlee Patranabis under my guidance and supervision. The results of the research presented in this dissertation/thesis have not previously formed the basis for the award of any degree, diploma, or certificate of this Institute or any other institute or university.

Date: 17th of March, 2019

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<td>BHC</td>
<td>Bombay High Court</td>
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<td>EICL</td>
<td>The Estate Investment Company Ltd.</td>
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<tr>
<td>MBMC</td>
<td>Mira Bhayander Municipal Corporation</td>
</tr>
<tr>
<td>MLRC, 1966</td>
<td>Maharashtra Land Revenue Code, 1966</td>
</tr>
<tr>
<td>NA</td>
<td>Non-Agricultural</td>
</tr>
<tr>
<td>NOC</td>
<td>No Objection Certificate</td>
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<td>SE(LREA), 1951</td>
<td>Salsette Estates (Land Revenue Exemption Abolition) Act, 1951</td>
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It is an arduous task to create any body of work, and an honour as well. I would like to thank the Tata Institute of Social Sciences for existing – the format of my course gave me the time and freedom to pursue the black hole that this research project was. I thank my guide, Dr. Sahil Gandhi for his motivation, candour, belief and constant nudging that kept me on track during the process of research. I thank the Centre for Urban Policy and Governance – all my faculty members who created this unique course that opened my mind to the possibilities available. I thank Leela ma’am, for teaching me how to organise myself, calming my frenzied thoughts and giving me a reason to haul myself into a mind space where I worked.

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We stand on the shoulders of giants, who love us, who nurture us and who believe in us. I could not have written this dissertation without my giants, and I am eternally indebted to them all.

In the end, I would like to thank Jimi Hendrix – you’re the little kitten that taught me the big lessons.
Chapter 1 Introduction

To live a good life, people need homes. To build a home, people need land.

One hopes the story would be simple enough, and this need of land be fulfilled by a market in it – selling it and buying it as any other good.

Unfortunately, things are not that simple. The real estate market and land markets are beleaguered by histories that have created complex institutions to govern them. In addition to these, owning land in itself is a complex feature in India, where land administration has passed through the hands of several contrasting regimes and has almost developed a mind of its own. It is the home of the “secondary circuit of capital” as Harvey puts it – the site of major speculation and valorisation.

At the heart of it all is a home. It is a scarce, durable goods that holds immense value for the city dweller – yet, there exists a gap in the literature for the study of land and housing supply at an empirical level. The impact of landholding patterns on housing and land prices is an important aspect to consider for the policy-maker, given the interplay between property rights and development as explored by various economists over the years. (Klaus Deininger and Feder 2001; K. Deininger, Ali, and Alemu 2015; Zasloff 2011; Sinha 2008; Goswami and Jha 2016)

In this context, it becomes pertinent to ask – what does it mean to own land? Who owns the land? What impact do patterns of ownership have?

The present study attempts to answer these questions for the chosen field of Study – Mira Bhayander, a suburb of the city of Mumbai. The results of the study are exploratory in nature. They create more questions than they answer.

Research Design

This study is based on the three following basic questions:
1. What does it mean to own land?
2. Who owns the land?
3. What impact do patterns of land ownership have?

Research Field

The growth of Mira Bhayander has been substantial in the past few decades as a suburb of the city of Mumbai. It is wedged between the City of Greater Mumbai and the Vasai Creek, it is connected by the
Western Express Highway and the Suburban Railway such that the travel time from the furthest Central Business District, Nariman Point is approximately an hour, respectively.

The land-holding pattern of the city is unique. Unlike the individually assessed ryotwari system followed in most of Maharashtra, the majority lands that now constitute Mira Bhayander were leased to a single land-lord in 1870, one ‘Ramchunder Luxmonjee of Bombay’ at the yearly rent of Rs 6790/- under a Crown Lease or kowl. These lands belonging in the Bhayander Estate belonged to different types of tenures, and therefore housed different types of tenants. These tenants were able to lay different claim on the lands, as allowed under the changing law in Independent India.

In 1985, the villages panchayats of Bhayander, Ghodbunder, Kashi, Mira, and Navghar were merged to form the Mira Bhayander Municipal Council. In 1990, the council was extended to include four other villages, namely Chena, Dongri – Uttan Rai – Murdhe, and Versova. The council was declared a Municipal Corporation in 2002. At present, the lands under this lease belong to the Estate Investment Company Pvt. Ltd., which the State has recognised as the legal successor to the original Grantee of the Bhayander Estate. Real estate development in the Estate must get a No Objection Certificate (NOC) that is listed on the “Prathmik Parvangi” or “Primary Permission”, which is the first permission obtained by a real estate developer before they proceed with the development.

Therefore, the tenants seeking to redevelop their properties must now seek the permission of the EICL before they can do so, and this creates an added transaction cost to the same. The existence of distorted land supply mechanisms creates a lacuna that makes us unable to provide a verdict towards its impact on the society. In this case, all the actions taken by the state become devoid of direction – they are not motivated by the public good, since the public good is unknown.

In this case, the three questions mentioned above can be answered in an especially stark manner in the city of Mira Bhayander, since the ownership of the land has an empirical impact on the development of Real Estate in the city.

Research Objectives
The primary research questions of this study are:

1. What is the institutional make-up of the ownership of land in the State of Maharashtra?

   Land is a state subject and therefore, the legislation that determines the ownership of land is expected to be uniform over any given State. However, this is not the case in Maharashtra, as the Estates in the city of Bombay come under the Salsette Estates (Land Revenue Exemption Abolition) Act, 1952 (SE(LREA), 1951) (among other legislations), in addition to the Maharashtra Land Revenue Code,
1966. The consolidation of Land law is an odious process, since it needs to change and align multiple institutions. This institutional lag, then changes the nature of property rights. The study, therefore, begins by questioning the nature of property rights in the field, before moving on to the application of the same.

2. *Is the Estate Investment Company a Monopolist in the city of Mira Bhayander?*

   It is not only important to determine if the Estate Investment Company is a monopolist, but also to understand the typology of this monopoly, if it exists. The initial lease makes it clear that the EICL did have a high degree of ownership over the lands in Mira Bhayander, but over the years, this might have changed, and any empirical analysis needs to elaborate on these ownership patterns and take them into account.

3. *What is the impact of the concentration of the land title in the hands of the Estate Investment Company?*

   A property rights approach will be taken to establish the impacts of such a pattern of land holding in the city of Mira Bhayander, which will be used to inform an empirical analysis in the future as digitisation of land databases progresses and reliable spatial and transaction data becomes available. This study, therefore, serves as a grounded theory building exercise for an empirical analysis of the land and housing markets in Mira Bhayander.

   In the future, this study can form the basis for an empirical study of the concentration of land titles for once it is established by means of a qualitative analysis, the impacts can be verified, and cross checked by the means of a spatial – econometric model.
Chapter 2 Literature Review

On Land and Land Monopolies

Land is the primary capital input in the rural and the urban economies. The way in which land rights are held, dictates the household’s ability to produce income as well as generates possibilities of access to credit markets as well as access to intergenerational wealth. (Deininger & Feder, 2001) On the other hand, the impact of land holding patterns on the equity and efficiency of urban land markets, is a fuzzier outcome to seek.

Land markets in the Decolonizing World bear the unmistakable stamp of their colonial pasts. The countries’ land markets are often characterized by concentration within land markets, with weak institutions to maintain land rights. Thus, land reform was a top priority when India gained Independence. Land reform in India has taken three forms, broadly. Abolition of Intermediaries like zamindars. Secondly, tenancy laws that aimed to provide permanent tenure to former tenants. Thirdly, ceiling laws, “meant to prevent the concentration of land in the hands of a few”. (Mearns, 1999)

The redistribution exercise in the Urban can be termed a failure. Pethe and Nallathiga note that “only 9% of the estimated excess vacant land was acquired in the 64 notified Urban Agglomerations. 26% of the excess vacant land was exempted from acquisition. 63% of the total could not be acquired due to statutory scruples – being left at various stages of acquisition. Of the land acquired, how much was used for the “public good" is unclear.” (Pethe & Nallathiga, 2017)

Thus, the urban land markets are inequitable. The results of such unequal distribution of urban land, is a question that lacks much empirical analysis. The same in the rural is found to degrade the quality of life and create further inequities. (Deininger, 2008)

In a similar vein, a concentrated supply-side to the land market can be postulated to further inequities in the urban too. Yet, the study of land supply in the urban is surprisingly restricted. As Rose notes “Interurban studies of land price … specify exogenous determinants of land demand such as population and income, they are notable for their omission of land supply variables.” (Rose, 1989). Studies on zoning restrictions delineate their effects on the price of land, clearly showing the impact of the
monopoly of the municipal government on land price. (Hamilton, 1978; Gonsalez, 1987; Quigley et al., 2005)

Yet, land monopoly by private players remains an almost non-existent subject of analysis. Coase (1972) noted that a durable goods monopoly was impossible, generating the ‘Coase paradox’. He argued that in case of the urban, land was being sold at “its highest and maximum use” and so a land monopolist could simply not exist. However, noting the work of Deng (2009), this paradox may be side-stepped by looking at land as not only having the properties of a pure durable good, but also the properties of a public good. Land in the urban can and is used for the use of all, the vast spans of network infrastructure are testimony to the same.

Within Urban Economics, the sparse literature has four approaches to land monopoly, as noted by Garza and Lizieri (2018)

- “Land owners are monopolists as a class, a statement from classical authors such as David Ricardo or Karl Marx;
- Land owners are site monopolists, in relation to the unique location characteristics of each individual plot of land;
- Land use regulation produces land monopolies, in particular the granting of development rights with a spatial schedule (Fischel, 1985; 1990);
- Land owners behave as monopolists in the microeconomic sense of the term. Evans (1991) extrapolates this from the Marxian concept of monopoly rent, but asserts that the application of microeconomics, even when outside the Marxian tradition, may help simplify the concept and its implications.” (Garza & Lizieri, 2018)

It is, however, also plausible that in the urban context, the clarity of land title provided by a monopolist reduces the transaction costs related to development of land parcels. Therefore, these monopolists might be desirable as intermediaries, smoothening the supply of land. Such a conclusion would need one to analyse transactional databases with respect to both time and selling price of the housing/land units. Such transactional data is currently unavailable for the public to use.

Considering the possible of unequal distribution of land and the lack of reliable databases for the same in a context such as India’s, this study becomes an important entry-point into the process of urbanization.
Approaches to Property Rights

On the other hand, the operationalisation of this inequity is a complex question in itself, that has been studied extensively in the literature on Property Rights. The entity that owns the land, then owns the right to determine how it is used and developed, along with land-use regulations set up by the government. Thus, the right over land and the demarcation of the same is critical “in the process of the generation and regeneration of the urban” (ibid.). The application of economic theories of property rights within the urban is popular and was endorsed due to dissatisfaction with the standard approach of Urban Economics, which lacks attention to institutions and their impact on allocation of resources. (Buitelaar, 2003; Ellickson, 1973; Fischel, 1985; Gibb & Nygaard, 2007; Lai, 1994, 1997; Needham, 2006; Siegan, 1972, Webster ,1998, Webster and Lai,2003, Zhu et al, 2007)

The cornerstone of property rights theory is a seminal paper by Ronald Coase (1960) ‘The Problem of Social Cost), wherein the famous Coase theorem was postulated, which states “that the ultimate result of the assignation of property rights is independent of the legal system, if the price system is assumed to work without costs” (Coase, 1988, p.14).

The issue is that these ‘transaction costs’ are never zero. The application of the corollary of this theorem, i.e. if transaction costs are involved, the legal system does matter in the assignation of property rights has far reaching implications. On this basis, the theoretical framework of a ‘Bundle of Rights’ approach is developed – wherein it is assumed that that property rights do impact the outcomes of economic processes. Since legal systems have developed to provide differentiated rights to different types of entities, single property may have differentiated rights assigned upon different entities, the interaction of which impacts the economic outcomes of the system.

Therefore, land ownership or property rights over land is a “bundle”, that govern various attributes of land. In terms of this framework, it is not the land that is owned, but the rights of use of that land, spatially or temporally. There are rights to use the air above the land as built space which are defined by Floor Space Index (FSI), the rights to mine the land for minerals, the right to create infrastructure. These rights are also defined temporally – freehold rights allow the entity to use the land for perpetuity, while tenancy rights are restricted by time. For example, one can own the land upon which a house is constructed for perpetuity or for a fixed period of time, but the height of the house is limited by the FSI dictated by the Government.
Thus, this un-bundling of the various use rights for land uncovers the complex nature of property rights over it. These rights can be de jure (legal) or de facto (economic) – the former is usually a prerequisite for the later.

In the case where goods are excludable and rivalrous, they behave as private goods, and there is scope to define the property rights over them. In case they are not, the goods fall into 3 other major categories as shown below:

<table>
<thead>
<tr>
<th>EXCLUDABLE</th>
<th>NON-EXCLUDABLE</th>
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</thead>
<tbody>
<tr>
<td><strong>RIVALROUS</strong></td>
<td><strong>NON-RIVALROUS</strong></td>
</tr>
<tr>
<td>Private Good e.g. A pencil, a piece of jewellery, an apple.</td>
<td>Club Good e.g. The services of a spa, golf clubs, paid subscriptions etc.</td>
</tr>
<tr>
<td>Common Property Resource E.g. Fish in a pond, grass on a meadow</td>
<td>Public Good e.g. National Defence</td>
</tr>
</tbody>
</table>

Table 2.1 Classification of goods by excludability and rivalrousness. (Coase, 1989)

The governance of property rights is dependent on the typology of the good – which determines the basic nature of the “assignment and delineation of property rights” as is known in the literature. This defines what is possible. Therefore, before the unbundling exercise, it is necessary to determine the typology of the property.

If property rights of a private good are not protected, the income stream of the holder of the property right is not protected and people are likely to value it less than they would if it were exclusive. The market in property rights therefore depends on a robust definition of property rights and delineation of the same. Different types of rights of the given land can be bundled off and sold separately. For example, it is a common practice for land owners with an obsolete property in hand to pool their rights and sell them for a short period of time to a third party named a ‘developer’ this real estate developer adds value to the property, redeveloping it and selling off housing units, while each of the older owners receives some incentive in the form of housing or monetary compensation etc. This developer is not the end user, and their rights to the

1 “Economic rights are held by anyone who benefits from a good, while legal rights are only the rights that are recognised and enforced by government.” (Barzel, 1997; Nygaard et al., 2007).
property are limited by time, but the delineation of this temporal right allows the existence of a completely alienated party in the real estate arena.

The conclusion can therefore be drawn that there is a deep relationship between the assignment of property rights, the delineation of property rights and the value of land. They interact and impact each other and within this matrix of interactions, the urban develops. (Buitelaar and Segeren 2011)

**Social Construction of Property Rights**

Therefore, it is clear that the assignment of property rights is not static, it is changed during the development process. Often, temporary land owners buy the right to develop sites, sell these rights to developers which is then sold to end users of housing. As this physical structure is changed, the institutional structure that till date governed the property rights of the site, also change, as Healy puts it, “the transformation of the physical form, bundle of rights, and material and symbolic value of land and buildings from one state to another, through the effort of agents with interests and purposes in acquiring and using resources, operating rules and applying and developing ideas and values.” (Healey, 1992)

In this train of thought, it is then pertinent to ask what motivates the agents to transact in property rights. Traditional property rights literature argues that property rights evolve in response to a change in the value of an attribute of the property or the costs or benefits of changing the property rights. If the benefit to redefining the property right outweighs the costs, a market will emerge. However, this approach fails to explain the persistence of seemingly perverse institutional structures, for example the lack of clear land titles in India. According to North (1990), this persistence emerges from the path dependency of property rights. The cost benefit metric above does not allow the property rights to changed – the costs outweigh the benefits.

Liebcap (1989) argues that “although a particular design might not lead to economically viable outcomes, it might still be selected since it is beneficial to the most powerful actors involved.” In as much, these actors may also be involved in the setting up of these institutions, making them flawed from the beginning – leading to a concentration of power that persists over time.

These very same property rights are also driven by the actions of other agents in the foray, making the transaction, assignment and delineation of property rights a social construct. They are to be taken with a pinch of salt, given the many layers of transactions that real estate market transactions under go in India.
This idea of a property rights as a social construct is then used to analyse the litigations, complaints against and communication by the Estate Investment Company Ltd. in a bid to unbundle the Bundle of Rights, theorising the reign of a monopolist over land in Mira Bhayander. Property rights are social constructions, the preferences and behaviours of actors are shaped by property rights and vice versa and land owners may have a complex part to play in determining the nature of transactions undertaken by people.
Chapter 3 Methodology and Frameworks of Analysis

To accommodate the disparate nature of the information required to piece together the curious case of Mira Bhayander, a qualitative approach to research has been deemed to be the most appropriate. As the researcher, I have taken a pragmatic stance on the nature of the data that has been collected. In the field of research in a space where adequate credible data is unavailable, one needs to depend on the triangulation of data from multiple sources.

The qualitative data sources used in this study fall into three categories:

1. Judgements by courts
2. Affidavits/Applications made to a court of law or the Collectorate
3. Deeds made between two parties and registered as per the Law of the time.

All three are written declarations and must be dealt with carefully to develop analysis that is robust and can be generalised. The first, i.e. Judgements by a court of law are the opinion of an appointed judge who has been called upon to adjudicate matters between entities. In India, these judges are appointed by the Judiciary, which is an autonomous arm of the state. While the judiciary’s outlook on matters of rights have been called into question over the years, the Judgements of a court of law are a reliable source of the interpretation of the law by the state. It delineates what the court believes to be lawful and unlawful, as well as expressing its jurisdiction over matters. In the case of property rights, which are civil matters, and not criminal, the analysis of jurisdiction is important and omnipresent. These are the primary findings from this source of data.

The second, are declarations made to an arbitrating agency – which entails that the entity who has declared the information wishes to ensure that the arbitration is won by them and therefore the facts are presented in a manner that is conducive to their case. The applications and affidavits are therefore a window in to the opinions and arguments of the entities.

The third, are expressions of terms and conditions agreed upon by both entities and therefore can be taken at face value as an agreement.

The quantitative database was derived from the following sources:

1. The Maharashtra Real Estate Regulatory Authority (MahaRERA) website
2. Maharashtra Bhumi Abhilekh Website
3. The affidavits made by the Estate Investment Company in courts of law.

The first two data sources are declarative in nature and are protected under law – lying on either is an offence against the state. In this case, the researcher has assumed this as sufficient deterrent to the falsification of data. Given these are the only sources of data available for the land records in Mira Bhayander, this study is also severely constrained in terms of reliable databases.

MahaRERA requires the real estate developer to upload documentation of the permissions that have been obtained from the various authorities. These documents have been found to find note of the legal titles to the lands, as well as whether a NOC has been received from the EICL. If it has not been received, the legal title reports of the give project were analysed, to double-check if the EICL owned the properties at some point of time i.e. if mutation of the land title was carried out before the property was slated to be developed.

Through this methodology of triangulation of declared data, it is hoped that plausibly accurate analyses have been developed for the problem at hand.

**Challenges and Limitations**

Data collection for this particular study was an especially challenging task. At the onset, it appeared that the digitisation regime for land records had made an unimaginable amount of data available for the researcher to access and analyse. Attempting to access these databases (especially MahaBhulekh and MahaRERA), one realised that while they were highly useful for a consumer, their usability for the purposes of research were little. The back-end or root databases were unavailable in the MahaBhulekh and attempts to extract them from the websites were futile due to two reasons – the frequent break downs and changes in the websites and secondly, due to the creation of multiple layers of securitisation that prevented the researcher’s computer program to collect data. While it is heartening to see that the state has attempted to protect data regarding land ownership, it is also disheartening that there was a clear unwillingness on the part of the state to promote research in the same.

The Directorate of Land Records refused to share access to these databases with the researcher (despite the information already being public) on the pretext of the databases being incomplete. This was contradicted by the fact that the data for all the districts in the Konkan Division was available then on MahaBhulekh site. It was only reluctance on the part of the state that is a viable explanation.
Similarly, documentation (as certified copies to a third party) from the High Court was sought (this documentation was eventually received via a paid service at the Ministry of Corporate Affairs) and the plea of the researcher was rejected, and they were asked to file an RTI with the Collector of Thane instead.

On the other hands, the Collectorate of Thane claimed to have no idea of the documentation pertaining to such a large estate, for they claimed to be revamping the databases, and hence they would not be able to facilitate such a research.

In a similar manner, the officials approached for interviews also refused to provide the same. All property dealers contacted also claimed to have no information of the EICL. The local media has been quiet about the same, except a few articles.

An air of secrecy and quietness surrounds the EICL, although a lot of documentation exists about the same. The researcher estimates that this is most probably due to the political capital that the EICL has by way of the family that holds the company, the Seksarias, presently based in the upmarket locality of Bandra in Mumbai. An analysis of the directorships held by the directors of the EICL shows that they control multiple companies in the real estate, infrastructure and education markets, including a charitable school and college. The Seksaria family history can be traced back to the early 19th century when they came to be prominent cotton merchants in Bombay.

The EICL is also a stakeholder in DB Realty, a firm held by Vinod Goenka – who is reported to be a close aide to the politician, Sharad Pawar. No documentation or shareholder information triangulates this. Therefore, this might be idle conjecture, but can also lend credence to the hypothesis that the status quo is protected by strong political backing.

This political backing would also explain the refusal to provide interviews, the oddly low returns filed by the EICL with the Ministry of Corporate Affairs and the persistent backing of the Collectorate after 2005. This is a question an investigative journalist might ask and answer, but the evidence available and the challenges faced in the gathering of data indicate a deliberate institutional hurdle.

**Theoretical Frameworks for Qualitative Analysis**

The qualitative analysis framework involves the development of an inductive theoretical framework from the data gathered from the sources as described. This approach in turn involved the collection of various documentation filed by the Estate Investment Company, the Collectorate of Thane,
one D.S. Gawde (an ex-employee of the EICL) as well as other publicly available documentation received from the Ministry of Corporate Affairs. The company, being a Limited one must file certain documentation with the MCA and thus, these were available to the researcher.

A grounded theory approach to data analysis was taken since the process of unbundling the property rights to land on the field required the meshing of theorizing and data collection.

The analysis of judgements by the courts of law were undertaken first. (For the ease of the reader, the data is presented in a temporal manner here). From these judgements, it was realised that the conflicts had common themes, and so did the resolutions. In light of these, the claims and arguments by the parties were then analysed to formulate the grounded theory.

### Data Collection: Sources and Respondents

<table>
<thead>
<tr>
<th>Research Objective</th>
<th>Research Questions</th>
<th>Tools for Data Collection and Analysis</th>
<th>Data Sources/Respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unbundling the bundle of property rights in the Bhayander Estate</td>
<td>How are property rights defined in the field?</td>
<td>Analysis of Present Legislation</td>
<td>Text of the laws governing the property rights in Mira Bhayander</td>
</tr>
<tr>
<td></td>
<td>Why is the present property rights scheme as it is?</td>
<td>Legal History</td>
<td>Various Revenue Codes and Rules (1870 – 1966)</td>
</tr>
<tr>
<td></td>
<td>Why was Land Revenue administration organised as it was?</td>
<td>Archival Review</td>
<td>Documentation from the East India Company (who initially settled the Estate)</td>
</tr>
<tr>
<td></td>
<td>What do the property rights mean for the holders thereof? (De-Jure)</td>
<td>Analysis of Case Law</td>
<td>Judgements passed by the High Court of Bombay, The Collector of Thane, The Commissioner, Sub-Divisional Magistrate, Revenue Minister</td>
</tr>
</tbody>
</table>
Chapter 4 The Evolution of Land Policy in India

Before one understands the possible impact of a concentrated land ownership pattern, the laws that caused the creation of such a pattern need to be understood and their origins traced. In the Indian context, land is a State subject – thus, each state implements its own set of Laws, Rules and Regulations managing the relationships between the State, the “Owners” and the “Tenants”. On an average, a study of the same reveals that the set of policy tools and institutional machinery used to accomplish this is heavily influenced by the legacy of the Raj. In many states (e.g. Gujarat) land policy is dictated by laws written in the early 19th century when these were “settled” as British territories.
Thus, there exists an institutional lag, in the form of the text of the laws and their implementation, especially from the laws written and implemented under British Rule – which were in turn largely based upon the contemporary understanding of what was ‘customary’ and a desire to ensure steady flows of revenue into the coffers of the Crown while maintaining a modicum of political stability. The following paragraphs paraphrase this reading of ‘customary texts’ like the Manusmriti (which was also the basis of the Hindu Civil Law under the British Raj) and the Ain-i-Akhbari. The translators of the same were British, and so were the law makers, administrators etc. who implemented them. From the reviews by a Select Committee of the House of Commons of the primary surveys of the villages too it is clear that the British Raj lacked a proper understanding of the state of affairs of Indian land tenure systems and proceeded to settle these matters using a priori arguments and the hope that all will be well.

**Customary Land Tenure and Revenue**

The contemporary texts from ancient India state that the Kings or Rajas and Other leaders were accustomed to the collection of Land Revenue as a large portion of their total revenue. The Manusmriti - a legal/religious/political text from c.2nd to 3rd century BCE, mentions that the Raja has a need for land revenue, and suggests a levy of 1/6th of the produce of the land. The revenue according to this text was collected from the village, and not the individual cultivator. There was a complex system of civil officials and land owners who in turn were to pass on the land revenue collected to the king. These officials were then remunerated in kind.(Gupte, 1934, p. 189) This system remained more or less stable across the many kingdoms across ancient and medieval South Asia.

This gross produce system was then converted into a tribute (khiraj) or a tithe (ashr) payable to the conquerors from Central Asia – the Timurids, at their advent. Khiraj was payable by a landowner whose land was irrigated, while ashr was levied on the actual produce of the lands that were not irrigated. However, the rapid expansion and shifting territories of these empires made the process of land revenue collection a difficult process- the first systematic attempt to standardise the same was carried out by the Institutes of Timur in the , when it was fixed at 1/3rd. The next attempt was by Sher Shah Suri - whose short reign did not allow for much effectiveness in the same.

The most famous settlement was made by the Revenue Minister of Akbar the great, Todar Mal. This system divided the land into four categories by the productivity of land after undertaking a survey. The government's share was fixed at 1/3rd, and was paid in money, instead of in kind – calculated by the produce’s average price in the past 19 years and collected on the average of last 10 years' produce. This standard assessment was known as tumar.
This system involved the setting up of a vast machinery of revenue collection consisting of multiple officials- one of whom was the Zamindar (who became the bedrock of the “permanent settlement” implemented by the British in the Bengal Presidency later). This system is described in the Ain-i-Akhbari.

Todar Mal’s settlement continued for nearly a hundred years, till the authority of the Mughal Throne declined. A number of cesses or ‘Awabs’ or additional cesses were implemented by the later rulers and their agents, about which Sir John Shore noted in his Minutes on the Permanent Settlement of Bengal, “The impositions of Jaffier Khan, Sijjah and Aliverdi, amount to about 33 per cent, upon the tumar or standard assessment in 1658; and those of the zamindars, upon the riots, probably at the same period, could not be less than 50 per cent.; for, exclusive of what they were obliged to pay to the nazims, a fund was required for their subsistence and emoluments, which they of course exacted.” (Shore 1812, 11)

The timeline of stable land revenue taxation systems then leads us to the Maratha Empire – whose rule can be split into two phases – the Early Peshwas and the Later Peshwas. Under the rule of the great Shivaji to the 3rd Peshwa, a two tier system was followed – firstly a settlement of revenue in bulk for the entire village was settled by the Mamlatdar or the Kamavisdar and the Patel (Collector of Revenue) who were aided by hereditary officers like the Deshmukhs and the Deshpandes and secondly the distribution of the amount agreed upon by the Patel over the individual holdings.

Under the Later Peshwas, the office of the Mamlatdar was auctioned to the attendants of the Peshwa for large sums, in turn, the Mamlatdar let his district out to tenants who repeated the same till it reached the cultivator. Lord Elphinstone commented on this system that a "man's means of payment, not the land he occupied, were the scale on which he was assessed.” (Gupte, 1934, pp.189)

Therefore, by the time the English came to possess the rights to collect land revenue, a cascading tax system was imposed on the cultivators, wholly unlinked to the productivity of the land under consideration – or at least, that was the perception of the contemporary chroniclers and government officials. In this context, must settlement and revenue collection be understood.

The British empire lasted for nearly 200 years, arriving in the country as traders, the English East India Company (EIC) first received a permit from the Mughal Emperor Jahangir to build a factory at Surat in 1613. The EIC then continued to set up factories, participate in politics and governance by means of their “Residents” in the courts of the local rulers. This participation in local politics culminated in the Battle of
Plassey in 1757 and the battle of Buxar in 1746 - resulting in the political control of the area that today forms the states of Bihar and Bengal.

In 1765, the British were formally granted revenue collection rights by the Mughal Throne. By 1818, they were the major political power in India and by 1860, a large portion of the present-day nation-states of India, Pakistan and Bangladesh was a part of the British Empire. Many Princely states in different parts of the country were also under the political control of the empire, but administratively independent to a fair degree.

Thus, different areas of the territory came under British control at different points in time. The differences in administrative thought and the influence of different Governors and Viceroyos meant that the administrative systems- especially the revenue systems in different areas show significant variance.

The Bengal presidency came into the hands of the British the earliest – in 1765. The rest of eastern India was conquered much later, some portions of modern-day Odisha in 1803, Assam between 1821 and 1826. Four districts comprising of the “Northern Circars” were received by grant from the Mughal Throne in 1765 – these along with other neighbouring areas then formed the madras Presidency.

Portions of Western Gujarat were conquered in 1803 and after conquering the Marathas, formed the Bombay Presidency in 1817. Some of this territory was eventually merged into the Central Provinces – the rest of which was added up to 1860. North-West Provinces were formed by the chipping away of the lands of the Nawab of Oudh – who was eventually conquered in 1856- bringing Oudh itself under British Rule. Punjab was brought under British Control by way of the Sikh Wars of 1846 and 1849.

After the Mutiny of 1857, the control of the East India Company came to an end, to be replaced by the direct control of the Crown.

**Land Revenue Systems Under the British Government**

In 1841, 60% of the total revenue raised by the British Government came from Land Revenue. Land Revenue systems were therefore the most important issue in policy debates during this time. These systems defined who had to pay the land tax to the British. On abroad level, these fell into one of the three categories of systems – the landlord-based system (Zamindari/Malguzari System), an individual cultivator-based system (Ryotwari System), and a village-based system (Mahalwari System)
Zamindari/Malguzari System

Under the Zamindari System, the revenue liability for a village or a group of villages lay under a single landlord or Zamindar. The terms for the peasants was under the jurisdiction of the Zamindar, and they could dispossess any who failed to pay the rent to them. Effectively, the Zamindar had proprietary rights on the land.

In some areas, the dues of the Landlords were fixed in perpetuity (the Permanent Settlement system, 1793), in others, the revenue was fixed for a certain number of years, post which it was subject to review. (A “temporary” settlement)

Ryotwari Systems/Individual Cultivator Based Systems

In most areas of the Bombay and Madras presidency, the individual cultivator-based systems were common, and a detailed record of rights was prepared, which served as a land title for the cultivator. These surveys are among the most detailed cadastral documentations of cultivated land, fixing a revenue commitment that was calculated depending on the money value of the estimated average annual output. Thus, it was dependent on the productivity of the land and geographical features of the parcel as well.

Mahalwari Systems /Village based systems

In the North West Province and Punjab, village-based systems were adopted, wherein the village bodies like panchayats were responsible for land revenue. These village bodies varied in size – ranging from part of a village to several villages .In other areas, the village bodies also varied in composition, in many areas the system created de facto Zamindaris, while in other areas, the village body had many members, wherein each member was responsible for a fixed share of the revenue. (Banerjee & Iyer, 2002, p. 1192)

This share was determined by ancestry (the pallidari system), based on actual possession of the land ( bhaiachara system) etc. The revenue rates were determined in these areas based on multiple factors “based primarily on solid, and secondly on consideration of the caste of the tenant, capabilities of irrigation, command of manure &c, all of which points received attention.” (Porter, 1878, p. 108)

Choice of Systems of Land Tenure

The choice of systems was often arbitrary, and as mentioned was heavily dependent upon the Administrator in charge of the exercise. It is a broad consensus that the British were motivated by two major concerns – to ensure a steady stream of land revenue and to maintain a political equilibrium. The same is
also clear in the contemporary documentation available to us. As Shore mentions in his minute, “The Company are merchants as well as sovereigns of the country. In the former capacity, they engross its trade; whilst in the latter, they appropriate the revenues. The Remittances to Europe of revenues, are made in the commodities of the country, which are purchased by them.”(Shore, 1812, para. 131)

It is also important to note that they faced a severe lack of credible databases, Shore mentions in his minute that “All the material part of this information is wanting; and to procure it, would require much time and indefatigable research.”, therefore many decisions were based on a priori arguments. For example, Sir Thomas Munro and Capt. Alexander Read introduced the Ryotwari system in 1820 – arguing that the direct collection of land revenue from cultivators by government agents would lead to higher productivity. Of the Zamindari System, the Select Committee Report on the Affairs of the East India Company states “understood by the Zemindary system, though it is properly speaking only a variety of the system, arbitrarily created by ourselves.” These “settlements” therefore were quite arbitrary in the words of the contemporary administrators themselves, and the search for efficiency or logic in the same, remains an uphill task. The fragmented tenure system, in turn gave rise to a fragmented titling system, and very little real information regarding the lands themselves – “in the Permanently-settled Districts in Bengal, nothing is settled, and little is known but the Government Assessment.”, the Finance Committee (Calcutta) in their Report from 12th July 1830.

In Maharashtra

Most of the districts that presently come under the state of Maharashtra were settled under a Ryotwari system – only 4 districts were settled with a Landlord system, while 14 were settled under a Ryotwari system (districts as defined in 1960).

The British Crown, the following major Land Tenures were found, which later were simplified into three classes of ownership rights under the MLRC, 1966.(Table 1)

<table>
<thead>
<tr>
<th>Name of Tenure</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chickul/Chikhal</td>
<td>Land taken up for cultivation from the waste at low rents from year to year</td>
</tr>
<tr>
<td>Doolundee/Dulandi</td>
<td>Sosti/Mirasi/Hereditary cultivating tenure paying full rents to the state.</td>
</tr>
<tr>
<td>Suti</td>
<td></td>
</tr>
<tr>
<td>Wuttan/Watan</td>
<td>Large estates left to proprietors called Fazenders paying a quit-rent from 4-10%</td>
</tr>
<tr>
<td>The Portuguese System</td>
<td></td>
</tr>
<tr>
<td>Varkas</td>
<td>Hill-lands</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Kowl/Koul</td>
<td>Leases for the cultivation of waste lands, generally on increasing rentals. On termination of lease, it merged into Sosti lands.</td>
</tr>
<tr>
<td>Inami</td>
<td>Wholly/Partially rent-free land which was alienated for various purposes, religious or charitable, perquisites of headmen and other village servants, some of which was liable and some not, to the payment of fees to the ordinary village servants, and some transferable and some not.</td>
</tr>
<tr>
<td>Sut</td>
<td>Rent free land thrown into large holding to make up for some disadvantage the holding suffered under.</td>
</tr>
<tr>
<td>Salt Batty Lands</td>
<td>Lands reclaimed from the sea and assigned to individuals at a nominal rental on condition of their improving them.</td>
</tr>
</tbody>
</table>

**Table 4.1** Major forms of Land Tenure under the Bombay Presidency in 1892. *(Rogers, 1892, bk. II)*

Post-independence, land reform was a priority on the agenda of the Independent Indian State and precipitated in two broad phases – 1947 to 1965 and post 1970s. The former aimed at prevention of fragmentation, abolition of intermediaries and tenancy reforms. This was followed by ceiling laws and consolidation of fragmented lands. Then came the process of redistribution of land to the landless. The need for such land reform was recognised as a prerequisite for the improvement of production in the Statements made in the First Five Year Plan as well *(Dandekar 1964)*

The abolition of intermediaries began much earlier in the Bombay Presidency, even in the regions under ryotwari tenures, the presence of intermediaries was significant – these were usually the designated revenue officials who had come to gain power using their official positions. This group was fairly large and did not fall directly under the acts designed to eliminate intermediaries, since they were unaccounted for.
Among the large number of acts brought in, many were to remove tenures involving intermediaries. Therefore, it is clear that a large amount of litigation was brought in to remove intermediaries and eventually return land to the tillers in the erstwhile presidency of Bombay. However, this project largely failed, for example, Pethe and Nallathiga note that only 9% of the estimated excess vacant land was acquired in the 64 notified Urban Agglomerations. 26% of the excess vacant land was exempted from acquisition. 63% of the total could not be acquired due to statutory scruples – being left at various stages of acquisition. Of the land acquired, how much was used for the “public good” is unclear. (Pethe and Nallathiga 2017)

In the present-day, the basic unit of Land Revenue administration in Maharashtra remains the Taluka, derived from the pargana, a classification promulgated by the Maratha empire. Legislations regarding Land Policy under the British Raj that eventually morphed into the Maharashtra Land Revenue Code 1966 are (in order of their promulgation):

1. Survey and Settlement Act, 1865.
2. Survey and Settlement (Amendment) Act 1868.
6. The Bombay Tenancy and Agricultural Land Act, 1948

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5. The Bombay Merged Territories (Janjira and Bhor) Khoti Tenure Abolition Act, 1953.
7. The Bombay Merged Territories and Area (Jagirs Abolition) Act, 1953.
8. The Bombay Service Inams Useful to Community Abolition Act, 1953.
7. The Salsette Estates (Land Revenue Exemption Abolition) Act, 1951
8. The Bombay Personal Inams Abolition Act, 1952
9. The Bombay Land Revenue Code, (Extension to Saurashtra Area) Ordinance, 1959 (II of 1959) was promulgated to extend the Bombay Land Revenue Code 1879, to the Saurashtra (present-day Gujarat) area of the Bombay state.
10. The Bombay Revenue Tribunal Act 1957
11. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 Am.1975

These different acts culminated in the present law, the Maharashtra Land Revenue Code (MLRC) in 1966. In the process of this consolidation, the MLRC,1966 transpired to have many provisions and systems in common with the Land Revenue Codes promulgated before it. The institutions developed and defined by the MLRC are therefore not significantly different from the ones that existed before it and especially, the relationships between the State, the Landlords and the Tenants were not defined any differently than before. In most cases, the nature of estates and large land holdings remained the same and the estates held in perpetuity remained under the control of a few entities.

The definition of the ‘ownership’ of the land therefore remains in the hands of the Revenue Department at present as well. In Maharashtra, this ‘title’ consists of entries in two registers, VII and XII kept in the office of the village talathi. These are textual records that form the ‘Record of Rights’(RoR) or 7/12. Spatial land records on the other hand are provided by a Cadastral map which is a legal map, defining boundaries and recording ‘ownership’ of property.

Parallel to this RoR, exists a record of the transactions in land maintained by the department of registration under the Registration Act, 1908. This records only the transaction, and not the title. The MLRC has undergone many changes over the years and the trends in the same are interesting to note, for they have shaped the present-day administration of the Lands in Maharashtra. At present, the MLRC recognises 3 types of land-owners:

<table>
<thead>
<tr>
<th>Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Class- I Occupant</td>
<td>Hold unalienated land in perpetuity, without any restrictions regarding transfer, sale etc.</td>
</tr>
<tr>
<td>-------------------</td>
<td>------------------------------------------------------------------------------------------------</td>
</tr>
</tbody>
</table>
| Class- II Occupant | 1. Hold unalienated land in perpetuity subject to restrictions on the right to transfer;  
|                   | 2. Or hold lands under a lease term longer than 50 years or perpetuity with options to renew the same. |
| Government Lessees | Occupants holding land under lease agreements with the competent authorities. |

Table 4.2 Land Tenure under the Maharashtra Land Revenue Code, 1966

Digitisation and Modernisation of Approaches towards Land Records and Titling

The Indian Government cannot be faulted in terms of the will to modernise the system of land administration, given its long history of legislation for land reform. The issue lies in the irregular and complex institutional backdrop against which any such program must work. Since the late 1980s, there have been attempts to regularise the land records system in the form of the Strengthening of Revenue Administration and Updating of Land Records and the Computerisation of Land Records Scheme. These were later merged to form the National Land Records Modernisation Program (NLRMP) in 2008, renamed as the Digital India - the National Land Records Modernisation Program (DINLRMP) in 2014. It aims to attain the following goals:

1. “A single agency for all property records, eliminating the current system where the Revenue Department prepares and maintains the textual records; the Survey and Settlement Department prepares and maintains the maps; and the Registration Department verifies encumbrances and registration of transfers, mortgages, and all other property transactions;”

2. The “Mirror” Principle, under which written records should accurately reflect the actual state of title on the ground; and

3. The “Curtain” Principle to establish conclusiveness”(Sinha 2008)

The Land Title Bill, 2011 that established these goals aims to have a Torrens System, that theoretically allows litigation to be reduced, since in the case a better claim to any given title is produced,

3According to the MLRC, 1966, “occupant” means a holder in actual possession of unalienated land, other than a tenant or Government lessee; provided that, where a holder in actual possession is a tenant, the land holder or the superior landlord, as the case may be, shall be deemed to be the occupant;
such a holder receives a sum of money from the fund maintained by the State. (Zasloff 2011, 2) A study by the Finance Research Group, Maharashtra found that of 358 tehsils in Maharashtra, 357 had digitised the textual RoRs. However, only 3.79% were found to have digitised the cadastral records. It is also to be noted that the State Government has also conducted a pilot re-survey of agricultural land using modern survey techniques – the sample RoR from the same shows significant improvement over previous RoRs. (Narayanan et al. 2017). In this state of affairs, the implementation of the Conclusive titling scheme under a Torrens principle becomes suspect.

In hindsight, it seems only natural that the land tenure systems of a post-colonial country like India will be heavily influenced by those implemented by its colonial masters. In as much as the motivation to implement land reform has been expressed by all the Governments after wards, the actual implementation of the same is minimal. Only West Bengal and Kerala have been able to show significant redistribution of land. On the other hand, the change in the nature of these land tenures has not been forthcoming too – the land holdings are still defined by the tenures that the MLRC, 1966 sought to abolish and simplify. The exercise it seems has been restricted to only reclassifying them under broad headings. The case of the Bhayander Estate, where it has actually shown impact on the life of a city is discussed in the next chapter.
Chapter 5 The Bhayander Estate

The city of Mira Bhayander is a suburb to the North of Mumbai, bounded by the Vasai Creek to the north and the neighbourhood of Borivali towards the south. A large portion of the city limits are salt-

Figure 5.1 (Clockwise from top) Location of Mira-Bhayander in the State of Maharashtra, Location of Mira Bhayander vis a vis the City of Mumbai (the peninsula to the south of the map) and the Boundaries of the MBMC, and the Bhayander Estate (Wikimedia Commons, Own Work)
pans and coastal regulation land, limiting the area usable for real estate. In the past few decades, it has seen a boom in housing projects, emerging as one of the main residential suburbs of Mumbai.

The story of modern-day Mira-Bhayander, however, begins as the Bhayander estate, a land grant of approximately 9000 acres gifted in 1871 for 999 years that presently form most of the area under habitation in the city. As discussed in the previous chapter, the act of granting an estate created large land banks in the hands of a few elite land-owners, that have persisted over time in spite of the Indian Government’s attempts to reform land ownership to redistribute lands.

In the urban context, this situation of a concentrated land lord takes on new forms, as will be discussed by using case-law, setting up transactional barriers that eventually determine the process of changing land usage patterns from agricultural to non-agricultural. This, in turn is an added transaction cost on the development of real estate. This cost is conditional on the nature of the interaction between the entity desirous of changing the land usage – it is expected to be negative if this entity has the patronage of the land lord and positive if the entity is antagonistic to them.

Also, the ‘original’ tenure of the land parcel of the land is to be noted – which determines the rights of the land lord to be consulted in the change of land usage. Some tenures of land were abolished by legislation discussed in the previous chapter, nullifying the claim that the owners of the Bhayander Estate have.

The aim of this chapter is to work out the definition of the relationships between the major actors on ground in terms of the development of real estate in Mira Bhayander by analysing qualitative data sources like lease documentation, case law and corporate documentation as well as quantitative data sources like land records. The first step, however, is to understand what an Estate is.

**Estates**

The system of awarding land to residents who distinguished themselves in Public Service was one that flourished under the Mughals as the Jaghirdar system. The EIC, continued, and considered the ‘nuzer” from a Jaghirdar (a fee collected when one came into the possession of the Estate, by succession or by award) as a source of revenue. This nuzer was often discretionary, averaging 52%, varying from 2% - 182% of the value of the forgone tax from the estate. The East India Company was thus “not averse” to the granting of land to ‘natives’. Both Malcom and Sir Thomas Munro, concurred that such land should have a mix of waste land as well, to ensure value addition to the same by the Jaghirdar. The motivation was
to “reward individuals, to promote the prosperity of the country, to excite a spirit of industry, and to raise a respectable class of landholders without injury to the public revenue.”, as is mentioned in the minutes by Shore.

On the other hand, it was also perceived by the administrators that the direct rule of the East India Company had “benefited the middle and lower orders of people “but have tended to the “gradual extinction of all natives of superior rank and authority”. This gradual extinction was then deemed to be a source of public upheaval and a loss of their allegiance to the British rulers, “they know that our unbending rules and their lax habits are irreconcilable; that their ignorance or their errors, or those of their descendants, will often furnish fair pretexts for their annihilation; and they conclude, and with justice, that while they contribute little or nothing, either in service or in money, to the state to which they owe allegiance, there must be many motives for their annihilation and few for their preservation.”, as correspondence quoted in the Committee on the Affairs of the East India Company found. Therefore, it was to preserve an aristocratic class of land lords that the maintenance of alienated landed systems was important. In as much, such an alienated village was free of assessment, but subject to other levies by the government.

**Granting the Bhayander Estate**

On 7th November 1870, the Secretary of State for India in Council granted one “Ramchunder Luxmonjee of Bombay, his heirs, executors and administrators” all the parcels of land within the villages of Ghodbunder, Meere and Bhayander (then a part of the Salsette taluka of the Thane District) under the following tenures:

1. Inam
2. Sootie (Suti)
3. Assessed Sweet Datty and Warkus
4. Eksali and Waste Land (Assessed Watan Land)
5. Khajun Land (Along with the right to all quarries etc.)

The ‘Crown Lease’ or ‘Kowl’ came into effect from the 1st of August 1863 and contains detailed instructions regarding the payment of revenue to Her Majesty the Queen’s Government, the assessment of which at that time came to be Rs. 6791 and 9 annas. This rent was fixed, till the next revenue survey was conducted, it remains the same to this date. The original lease document also lists the land parcels by tenure that were granted to the company, an updated version of which is included as an appendix (Appendix – II). The terms of this lease are often illegible in this document owing to its age and an estimation of the same has been made according to cases in which it has been quoted along with the document itself.
The terms of the lease; as can be ascertained from the original lease document (Appendix – I) are:

1. The grantee will pay a sum of Rs. 6791 and 9 annas to the Government in two instalments, one in April and December. The same clause fixes a ceiling on the land revenue to be paid for the Eksali and Assessed Watan Lands – at the rate existing at the time of the lease. Similarly, the lease also fixed the ceiling of the land revenue on the estate and the lands reclaimed from the sea therein; it may not exceed the rate prevailing on other survey lands at any point in time.

2. The grantee must keep in repair all embankments, sluices, dams and waterworks, as deemed necessary by the Collector.

3. The grantee was not allowed to seek any sum of money from the tenants beyond what the Government Survey had fixed (such a payment of tax was to be recorded via a receipt or acknowledgement as well) nor were they allowed to prevent their tenants from holding these lands i.e. they were not allowed to dispossess the tenants of the lands occupied by them.

4. The grantee also had to keep in repair all marks/boundaries created by the Government.

5. The grantee had to pay all Patels and other village servants in their villages whatever dues the Government would have had to pay them.

6. The grantee could not restrict the functioning of the salt works and had to allow maintenance work on the same.

7. The grantee could not restrict the employment of any person in the salt works.

8. The grantee had to cede land for the building of a railway station and also furnish costs and compensation for lands so ceded.

9. The grantee would inform the Collector of any transaction of land, including the mortgaging of the granted lands.

10. [Clause is illegible]

11. If Khajun lands are not rendered fit for cultivation within 20 years of the grant, the Collector or other Chief Revenue Officer had the right to resume the ownership of the land by the Government.

The *kowl* is therefore a document that essentially grants proprietary rights to the Grantee over the lands defined therein – these lands come up to a total of 2877.75 Acres over three villages. However, it is to be noted that the *kowl* differs from the terms of Permanent Settlement in Bengal, since the Grantee does not have the right to dispossess the tenant, nor do they have the right to determine the assessment charged from the tenant. This is a result of the failure of the ‘Bengal System’ as it was called which resulted in the
widespread oppression of tenants by the Zamindars in Bengal. This led to the eventual development of the Ryotwari system and the reform of the Zamindari system in Bengal.

This estate lasted until 1945 without incident. Subsequently, the lands via a series of transfers ultimately came to be in the hands of M/s Govindram and Brothers (Deed of Assignation in Appendix-3) who transferred the lands to the Estate Investment Company Limited (EICL) in 1945. The name of the EICL was entered in the ‘Occupants’ column of the Record of Rights, the total lands in this respect as of 2012, according to an application filed in the office of the Collector of Thane, measured 3220 Acres, 7 Gunthe and 4 Are. The same application states that the EICL now granted No Objection Certificates for Non-Agricultural Permissions and Development of the same – these lands then measured 610 Acres, 8 Gunthe. The area which is densely built up in the city, is approximately, 6000 acres. This, as can be seen from figure 5.1, overlap with the area that is densely built up in the MBMC.

History of Litigation: A Brief Description

In 1948, substantial damage was suffered by the occupants of the land due to a cyclone, preventing cultivation. A Shetkari Sahayakari Mandal was formed to redress the complaints of the tenants. Disputes arose between the EICL and this Mandal – eventually resulting in the tenants’ rents being adjusted against the repair of the bunds damaged due to the cyclones.

In On 28.12.1948, the Bombay Tenancy and Agricultural Lands Act of 1948 (BT and AL Act) came into force. The law according to its Objects and Reasons, attempted to establish a direct relationship between the Government and the tenants. Within three months of the BT and AL Act coming into being, the EICL and the Tenants, were informed on 29.03.1949 that the Tenants should pay 1/3rd of the crop share as rent to the landholder and that their relation with the EICL will be modified from the next year to the effect that the company will be entitled to the land revenue if it was to continue as Grantee. Thus, the company’s rights to collect revenue were protected – while the law passed three months earlier deemed the solution to the disputes between tenants and landlords to be the direct management of the lands.
The application of this law to the Bhayander Estate became even more peculiar given that the Bhayander Estate was exempted under section 88(1)(a)\(^4\), the lands in question were exempted from the application of the BT and AL Act, 1948. On 19.12.1949, two notifications were issued by the government:

1. No. 4630/45-III (a) by which the company was declared to be the landholder for the purposes of section 44 of the Bombay Tenancy Act.

2. No. 4630/45-III (b) by which the Government ordered the assumption of management of the said lands under section 44 of the Bombay Tenancy Act. This officially withdrew the exemption given to the EICL regarding the BT and AL Act, 1948. On 01.01.1950, the Collector of Thane undertook the charge of management from the EICL. The mentioned disputes between tenants and the company were therefore transferred from the EICL to the Government.

Now, the Government was the manager of the Estate Lands and was liable for the maintenance of the same. It had also expressed a desire for Land Reform via many litigations, the first five-year plan etc. and a policy of “land to the tiller”. It was to be expected that this would lead to the tenants finally enjoying the fruits of their labor and cultivation.

However, this did not happen. The then Collector doubted the validity of the proposed purported modification of relations and informed the Government by (Collector’s letter dated 29.03.1950 cited in the Thane District court proceedings Case No. C/DESK/-l/T-l/Land/ Estate / Investment/l2/07) that discontinuance of recovery of l/3rd crop share would create complications between the Government and the EICL and suggested that legal opinion may be obtained.

\(^4\) “An Act to amend the law relating to tenancies of agricultural lands and to make certain other provisions in regard to those lands. WHEREAS, it is necessary to amend the law which governs the relations of landlords and tenants of agricultural lands; AND WHEREAS, on account of the neglect of a landholder or disputes between a landholder and his tenants, the cultivation of his estate has seriously suffered, or for the purpose of improving the economic and social conditions of peasants or ensuring the full and efficient use of land for agriculture, it is expedient to assume management of estates held by landholders and to regulate and impose restrictions on the transfer of agricultural lands, dwelling houses, sites and lands appurtenant thereto belonging to or occupied by agriculturists, agricultural labourers and artisans in the Province of Bombay and to make provisions for certain other purpose hereinafter appearing”
In that context, the "Remembrancer of Legal Affairs" advised the Government that it would not be competent for the Government to recognize the kowli tenants as "Occupants" and therefore, instructions of Government to modify the relations between them and company were inadvisable. The Government, therefore, gave up the idea of modifying the relations by executive action and revoked the same.

The “Remembrancer of Legal Affairs” stated that if any tenant sought to claim any higher right, they could not do so till the relationship of landlord and tenants subsisted. To assert such a right, they had to establish such rights in a court of law, and it would not be advisable for Government to recognize them as "Occupants" of land when they had already admitted the liability of the tenants to pay the 1/3rd rent from the Eksali land occupants.

In these circumstances, the SE(LREA), 1951 came into force on the 01.03.1952. This law, in turn had the objective of “to abolish exemption from land revenue enjoyed by holders of certain estates in the Island of Salsette in the Bombay Suburban and Thana Districts in the State of Bombay”.

In the course of the Government managing the Bhayander Estate, the EICL filed a suit (Suit 123 of 1955) in the Court of the Civil Judge, Senior Division, Thane – since the Government failed to provide accounts of the management of the Estate, the enquiry for the same was held under three provisions of the BT and AL Act – Section 2, 3 and 4. The former section applied to the Eksali Lands and the later to the Waste Lands. This suit was eventually resolved in the High Court of Bombay, wherein the Court directed the Government to furnish accounts to the EICL. The Management of the land under EICL was terminated by Section 61 of the BT and AL Act by the State of Maharashtra with effect from 16.10.1957. The EICL claimed that the Government failed to handover the management, and thus its obligations as a manager still continued – it was made to render accounts till 1972 – this was upheld by the HC. (Civil appeal no.288 of 1956 and 399 of 1958 – dismissed, also a SLP in the Supreme Court was dismissed as well). This matter was eventually resolved in suit no 784/1980 and the period up to 1972, the Government was made to furnish the accounts, and it was found that the assessment of land revenue till then was deemed paid to the government – by adjusting the amounts due to the EICL.

For the lands of the Suti tenure, the assessment levied by the government was directly collected under the BT and AL Act, and therefore, the right of the EICL to collect the same had been extinguished by that Act. Therefore, the EICL did lose the title to a significant portion of the Estate then. In that matter, the Commissioner’s Report in suit 123 of 1955 says:
“I have already pointed out that after 1951-1952, Plaintiff’s right to recover assessment were extinguished and therefore, it is neither entitled to the recoveries made for assessment of the Suti land nor it is liable to pay to the Government for such lands, So, since 1952- 1953, the Plaintiffs (EICL) liability for assessment is confined to kowli lands. The annual assessment confined or kowli land is admittedly to be Rs.5,863/-The Defendant (State of Maharashtra) is therefore, entitled to a credit of Rs.17,589/- in respect of post abolition period before suit i.e. 1952-53, 1953-54 & 1954-55”

At this juncture, it is important to note that while these disputes were between the State and the EICL, there had also been friction between the EICL and its tenants. Two cases are noteworthy for the impact they’ve had on subsequent conflicts that have arisen with regards to the Estate. The first one, is that of Waman Biwaji v/s Vinayak Ramchandra Laxmanji. In 1878, a petitioner, Waman Biwaji who occupied land in the Bhayander Estate as a tenant was in a position to show that his particular land was not an Eksali land and therefore the Court held that this land be excluded from the list of the Eksali lands in the kowl. It was noted by the Judge in that case, that it will be for individual parties concerned to prove that the land with them is not Eksali Land and therefore not liable to the powers held by the Grantee over such lands. (Appeal No. 428/1878, Waman Biwaji v/s Vinayak Ramchandra Laxmanji)

On the other hand, in the case of Shapoorji Manakji Kotwal, it could not be established that the land in his possession is a Suti land and therefore the High Court directed kotwal to pay an amount equal to 1/3 crop share to the Grantee, who was by that time the Estate Investment Company. (Appeal no 230/1947 The Estate Investment Company v/s Shapoorji Manekji Kotwal)

During the mid-80s, Mira-Bhayander was developing into an important residential suburb of Mumbai, and the lands in the Bhayander Estate were beginning to be converted into Non-Agricultural lands for the purposes of housing. The standard procedure for the same was to obtain the said certificate from the Collector by the occupant of the land. This transaction was deemed to be between the State, the Occupant and the Developer However, in case of Mira Bhayander, the case was complicated by the presence of an intermediary between the Occupant and the State. This was to become a bone of contention in the subsequent years.

The Record of Rights

The EICL objected to grant of Non-Agricultural permissions to third parties, occupants of Eksali land/tenanted lands, arguing that in case of such a permission, they lost their right to 1/3rd crop share. Therefore, it was argued that they had a right to be compensated, as well as have a say in the right to the
conversion of the land. The EICL, to affect this went to the Thane District Court, in order to have this matter of revenue adjudicated upon.

It is therefore pertinent to also document the transformation of the Record of Rights with respect to the EICL over the years. This document defines their rights to have a say in the use of the land and its conversion. The District Court at Thane held the following as fact in terms of the same:

1. Name of the company was mutated as “kabjedar” in column 6 of the RoR (or 7/12) as “owner” pursuant to the order of the Collector of Thane (RTS/SR/301 dated 19.12.1950). As per the mutations by this order, the Eksali/tenanted lands as per the Grant, the name of the EICL was recorded on top of the line as grantee with a note appearing in other right column for recording their right and entitlement for recovery of 1/3rd of crop share as rent from tenants/occupiers. Below the name of the company as grantee or Holder, the name of Eksali occupiers/tenants was recorded.

2. On the basis of direction by the Government on 25.09.1951, the Revenue Authorities, without giving any notice or hearing to change the RoR, carried out the mutation entries in 1954 (939 of Bhayander, 332 of Ghodbunder and 350 of Mira). The view put forth was that the EICL was a lessee and hence, its name need not be shown as "Occupants" but in Other Rights column with right to receive 1/3rd crop share as rent as per law.

3. Thereafter the Collector issued instructions vide his Order no.T/TS/6 dated 24.11.1956 to delete the remarks of 1/3rd crop share from the other Rights Column of the record of rights too, but the court deemed that the mutation entry deleting this remark were illegal and without the knowledge of the company.

4. The Tahsildar of Thane on 24.04.1971, holding a flawed view of the SE(LREA) Act, 1952, that the right to the Eksali lands was extinguished, issued instructions without notice to the EICL to have their name deleted from even the other rights column. These mutation entries bearing 2780 Bhayander, 810 of Ghodbunder and 1021 of Mira. The Court viewed these as unilateral and illegal. Coming to know about the same, the EICL challenged these, and they were moved to the register of disputed mutation entries. This matter was adjudicated upon by the Tahsildar on 19.03.1976, who adjudged the entries to be proper.
5. The appeals for the same in the court of the Sub Divisional Officer were dismissed on the grounds that the EICL was not in possession of the lands, this, in turn was contrary to the section 3 of the SE(LREA) Act, 1952.

6. The EICL then appealed to that order and this second appeal (No. RTS-14 of 1983) was decided by Resident Dy. Collector and Ex-Officio, Addl. Collector Thane on 28.01 1989 whereby the Tahsildar’s order dated 19.03.1976, sub divisional officer’s order of 28.05.1983 were set aside and the EICL’s name with its rights to 1/3rd crop of share was restored to the other rights column. This judgement states that the Tenant stands excluded from the definition of “Permanent Holder” because they were not paying land revenue to the government directly and were, in fact, not paying land revenue assessment but 1/3rd crop share to the estate holder. They were tenants on the Eksali lands and thus, were occupying the lands belonging to the estate holder on tenancy.

The court also maintained that “the Eksali tenanted lands also known as Kowli land had never been shown or was not intended to be shown in the name of the tenants who cultivate the same.” In a similar matter, Justice Vaze of the Bombay High Court maintained according to the Collector in Case No. MAHSUL/KAKSHA-1/T-1/NAP/KAVI/198. Dated 27/08/2008 that “All that the Salsette Act has done is to change the legal status of the transferee (EICL) from Shri Ramchandra Laxmanji from one of the Sanad holder to an Owner”.

In the case of the Non-Agricultural permissions, therefore, it was held by the High Court that the EICL will be sent a notice when an application for such a permission is received if the land in question has the EICL as a kabjedar. Following which, a No Objection Certificate would have to be obtained from the
EICL by the tenant on such a land. In the spirit of ensuring this, the High Court, in their order in The Estate Investment Co. Pvt. Ltd. & Anr Vs. The State of Maharashtra and Anr also gave the EICL 10 weeks protection, while the Thane Collectorate determined the extent of the lands. It is the proceedings of that enquiry which lend the information described above. A former employee of the EICL, Mr. D.S. Gawde, in an Application to the Collector of Thane stated that the EICL charged Rs 300/- per sq. foot of land for this NOC, which came out to be around Rs. 1,30,68,000/- per acre. This is the only estimate to be found in the public domain of the same – and this adds to the cost of developing real estate in Mira-Bhayander.

In the same report, it was also noted that the tenant of the Eksali land is liable to pay the rent to the company in nominal terms – equivalent to the value of 1/3rd crop share as if paddy was grown on such land. – The BT and AL Act actually sets out rates for the rent to be paid in such a case. These rights were further established and fortified by the Order of the Revenue Secretary at that time, holding that the EICL was entitled to receive this rent.

After this order from the Collectorate of Thane, aggrieved tenants approached the High Court of Bombay to impugn it. The Collector had refused to take tenants as intervenors in the enquiry described above and this was deemed to be unconstitutional and against natural justice by the petitioners, in effect the petitioners argued that the EICL was grabbing land under the guise of this enquiry. This High Court case has multiple tenants as parties and was filed against the EICL as well as the State of Maharashtra. (Case). On the other hand, EICL argued that since it was a matter between the company and the government – therefore the petitioners were no party in the same.

In the judgement of The Estate Investment Co. Pvt. Ltd. & Anr Vs. The State of Maharashtra and Anr., the EICL were told by the BHC that the matter was beyond its jurisdiction to decide the status as well as the nature of the land – and as an opinion, expressed that this can be more efficaciously done by the concerned revenue authorities or in the alternative, the EICL interpreted this as an order by the BHC to approach the collector, so there is no issue in seeking his decision in the matter. In the judgement for Mira Bhayander Builders and Development Welfare Association and another vs The State of Maharashtra and other, the honourable BHC stated that this statement could not be construed as a direction to approach the civil court. The matter itself was about the land revenue liability that would arise on the EICL and whether that land is in the possession of the Company or in the possession of other persons.

If the order of the court is pursued, the EICL then had argued that it was not liable to pay any rent at all according to the Salsette Act, 1952. The BHC found that the Collector had not transgressed his limited
jurisdiction – he had only proceeded to implement the ramifications of the section 3 of the Salsette Act– and he did not determine the title at all. The titles of the petitioners remain open as do all presumptive titles – it remains for them to decide how they will prove their claim.

The BHC further said that since this particular petition was a Writ Petition, wherein the petitioners claimed that their fundamental rights has been infringed upon, it was also restricted by the same. It said, “To subject this matter to the judgement of the court, the court will have to delve into “disputed questions of fact” – and that constitutes a limitation of a Writ Petition under Art. 226 and 227 of the Constitution.”

The High Court drew a distinction between an enquiry regarding the extent of an estate to determine liability to pay land revenue and claim to a title. Since no claim regarding title was made according to the HC, therefore it deemed that there was no necessity of moving forward with the plea of the petitioners. The collector’s order, according to the HC did not establish these disputed questions of fact, so the petitioners were not aggrieved as they claim – and these cannot be decided in the HC either due to limitations placed by Art. 226 and 227. They were instructed to then approach a Civil Court to pursue these claims of title.

The Case of D.S. Gawde

In the application to the Chief Justice of BHC, filed by one D.S. Gawde, a wealth of information has been found regarding the perception of the EICL by agriculturists and tenants. He wrote seeking redressal and action against the EICL due to alleged violations of the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (MALC, 1966) by the EICL and other setbacks as well. An interesting perspective can be gained from this correspondence between the company and one of its adversaries in legal battles.

The petitioner in this case, Mr. D.S. Gawde, wrote to the BHC seeking justice with regards to the irregularities and illegalities committed by the Director of the EICL, Mr. Nandkumar Seksaria and Ashish Vaid.

He alleged that the EICL had not complied with the directions of the BHC in the case of The Estate Investment Co. Pvt. Ltd. & Anr Vs. The State of Maharashtra and Anr, WP 5118 of 1995, it was also alleged that the Collector of Thane had not complied with the directions of the Deputy Chief Minister on complaint applications filed by him. Both these orders pertained to the determination of the land title of the Bhayander Estate.

He also refers to proceedings in the Maharashtra Assembly on the 24.12.2008 wherein the order of the Collector dated 5.9.2008 was discussed. There was also an order by the BHC under the Maharashtra
Agricultural Lands Act (Ceiling on Holdings) Act, 1951 in Writ Petition 9456 of 2011, no action was undertaken by the Collector of Thane for the same.

The petitioner states in his application,

“In the year 1954 the Govt. of Bombay had directed the Collector Thane to shift the name of the E.I. Co. which was above the line in the Record of Rights. Accordingly, this was given effect to in the village records at the time under Mutation entries viz. Mutation Entry No. 939 (Byanander), 350 (Mira) 332 (Ghodbunder) dated 12.5.54 In the face of this position in the Record of Rights, one wonders, how the Collector Thane could pass his order dt. 5.9.2008 to bring back the name of the E.I. Co. in the occupancy column above the line superseding the Govt. direction issued in the year 1954. This same order of the Collector Thane in his rights has ordered to put a remark in the other rights column to the following effect. "Under the rules of the company" Under the provisions of the Land Reforms Act namely the tenancy Act and the SE(LREA) Act, 1951 the rights of estate holder to collect the rent are abolished and the tenants became directly responsible to the govt. for the payment of land revenue. Such a remark as stated just above in Marathi is therefore, in straight contravention of the provisions stated above.”

Thereby expressing discontent and the belief that the SE (LREA) Act, 1951 was meant to remove the intermediaries from the system of land revenue. In the assembly question quoted, the Revenue Minister also stated that the interests of the agriculturalists will be protected.

He goes on to state that “It is pertinent to note that after a lapse of about four years neither the Govt. nor the opposition leader who had raised the question the House have pursued to give justice to the agriculturists against the E.I. Co. for the reasons best known to them.”, highlighting the attitudes of omission that have existed against the EICL. Correspondence between the applicant and the Chief Minister, Minister for Revenue and Home Minister also show that the public officers and representatives have shown little concern when it comes to the plea forwarded by Mr. Gawde. He goes on to refer to them as “land mafias”. In effect, he sought protection from threats to life from the BHC.

In the application by D.S. Gawde under the Maharashatra Agricultural Lands (Ceiling on Holdings) Act, 1961 made in 2012, it is stated that the company holds approximately an area of 4143 Acres, 15 Gunthe 4 Are of Agricultural lands in the villages Ghodbunder, Mira, Bhayander, Navghar, Godddev and Khari
the Taluka and District of Thane. Now, this number is much less than what the BHC quoted in the case of \(<1960\) case quote.>. Mr. Gawde claimed in this application that the EICL has given NOCs for NA conversion for 610 Acres and 8 Gunthe.

In effect, he goes on to state that the total permissible limit for the ownership of agricultural land in Maharashtra allowed the EICL to hold only 171 Acres of land. Thus, the EICL was in violation of Section 8\(^5\) of the MAL(CLH) Act, 1961 as well as Section 12 that required them to file returns for the same.

In the same application, he also mentions that the EICL charged the tenants for the conversion of tenure at a rate of Rs. 1,30,68,000/- per acre. An enquiry had been initiated by the Collector of Thane and had been pending since. Eventually they culminated in the Writ Petition 9546 of 2011 – under which Gawde filed this application. Subsequently, multiple notices had been filed by the advocate of this applicant – reminders and requests for hearings to the collector – these failed, and thus a plea to the BHC for protection was made.

Correspondence from this advocate also revealed some interesting instances, these pleas were sent to the Home Minister, R.R.Patil. He states that “On 3\(^{rd}\) May 2010, my client filed a complaint with Bhayander Police Station disclosing cognizable offences against Nandkumar K Seksaria and his Company … the accused persons have cheated the Government, my client as well as the agriculturalists.” Such an accusation is not made lightly, one is led to believe, especially when the accused is deemed to have political capital, which is corroborated by the accusation that “The police authorities, in fact have failed to register an offence … in spite of the fact that cognizable offences are disclosing and as such …”

The application goes on to state that the EICL and Nandkumar Seksaria are land sharks and have threatened the life of Gawde and his family. He ends by stating that any delay in investigation would lead to the destruction of evidence by the EICL. Thus, the common themes in these petitions and correspondences as well as the snippets from Marathi dailies produced show a feeling of disbelief in the laws of land reform, fear and frustration with the legal proceedings.

\(^5\) Section 8 states that “Where a person, or as the case may be, a family unit holds land in excess of the ceiling area on or after the commencement date, such person, or as the case may be, any member of the family unit, shall not, on and after that date, transfer any land, until the land in excess of the ceiling area is determined under this Act.”
On the other hand, the EICL claimed that Mr. D. S. Gawde was indulging in harassment of the company and its directors – they refer to the various ligations that they have won under the BHC as proof. As for the removal of their names from the RoR, they state:

“Thereafter during the period of Management in the year 1954, Collector, Thane took view that since the Company was the lessee of Government, its name be shifted to the other rights column of Record of Right in respect of Eksali lands of the Bhayander Estate and accordingly it was done, shifting the name of The Estate Investment Co. Pvt. Ltd. in the other rights column of the Record of Rights in respect of Eksali lands, inadvertently retaining the names of the tenants in the Kabjedar column posing them as occupants of the land. Thereafter by different and/or contradictory views taken by Collector, Thane, the name of The Estate Investment Co. Pvt. Ltd. was totally removed from other rights column of the Record of Rights in respect of Eksali lands”

As was noted in the last subsection, it is this version of events that was upheld by the Collector of Thane and challenged by the tenants on multiple occasions. However, the BHC as well as the Apex Court held that this argument was tenable and that the proceedings of the Collector to rectify the same were not illegal. The EICL’s response to the application then went on to accuse Gawde of attempting to extort the company, as he had been a retainer in the company who had played a part in ensuring that the RoR showed their name as well. They thus attempted to make his claim of redistributive justice seem hypocritical and bogus. It is also brought to the notice of the BHC and the MCA that the WP 9546 of 2011 filed by Gawde was also dismissed.

On this note, the publicly available correspondence between the state, this applicant and the EICL ends. It is to be noted that the EICL refers to judgements and notifications by the judiciary and the executive – both of which have time and again confirmed its right to the lands in question.
Chapter 6 : Unbundling Property Rights : Analysis of Qualitative Data

There exist two forms of property rights at play in the data coded in the previous chapter, de jure and de facto. The distinction between the two can be gleaned from the analysis of the legislation and motivations there of surrounding land in Maharashtra. A land title, at the onset must be clarified as a de jure and de facto documentation of the assignation of property rights over a parcel of land to an entity.

The study of the rich documentation available on the administration of Land Revenue makes the following conclusions easy to draw:

1. The successive dynasties and governments formulated myriad methods to administer land taxes and formulated complex systems to collect the same.
2. Conducting settlements and land surveys was an exercise that was seldom undertaken, often citing the massive costs to the same.
3. There exists continuity in terms of the institutional framework of administration, given any two consecutive land administration regimes.

All land revenue systems described share the motivation of fixing the liability of the land revenue and not the granting of property titles. The importance of clear property rights has been discussed in the literature reviewed for this study, and the issues that plague states that lack the same, plague India as well.

This ‘settlement’ or assessment then remains dependent on a methodology that tracks transactions, and not titles. De facto, the property right of the payee of this assessment is legally assured by the contract between them and the State by way of payment of this assessment.

It has also been observed that the Record of Rights register is often torn, missing, dubious or illegible. A striking example is the case of Andhra Pradesh, where DC Wadhwa found that “Agricultural land in many areas is still recorded in the name of a person who died long ago and whose legal successors are now the owners, but their names are not entered in the records. A similar highly unsatisfactory feature exists in respect of the situation of transfer of lands by act of parties. Land may go on being transferred, without quick consequential mutations in the record, so that the record as it exists and continues to exist today hardly reflects the present-day reality regarding ownership of the land. Millions of cases of mutation and measurement are pending in the country.”(Wadhwa 1989, 2324) In such a case, the entire history of transactions is called into question.
Under the DINLRM, a titling system often referred to as the “Torrens System” is envisaged: wherein the government will register and ensure the title. A claimant may recover their claim under a public insurance scheme funded by registration charges, but the title remains conclusive. Given the margin of error in the present titles, this scheme would have to have a corpus of at least the rate of error in the RoR (90% if McKinsey is to be believed) of the land value of any unit of land to be implemented there!

The system that the Raj left as legacy was effective in determining liability on land – but ignored the land owner by and large. This is a system of deed-based registration, presumptive-titling and land records open to challenge. The new owner was simply liable to pay, and the Raj’s trouble ended there. On the other hand, there exist other issues like the lands that are a part of the revenue record, but not registered under the Registration Act. Complicating this further, most land records do not mirror property ownership. These deeds provide evidence of ownership, not guarantee and therefore the title can be held and transacted without the knowledge of the government as well, but registration adds to the evidence of owning the title – hence there is an incentive to register one’s transactions.

The question ‘who owns this land?’ remains a challenge, it was found that 2/3rds of the cases in Civil Courts pertained to land titles (Narayanan et al. 2017). A transaction registered under the Registration Act is just an evidence of a transaction – not a claim to a title. On the other hand, the judiciary in its interpretation of the law has been clear that “It is firmly established that the revenue records are not documents of title.” in its judgement in Corporation of the City of Bangalore vs M. Papaiah and anr. So, the Registration of the transaction is not the de jure title, neither is the Record of Rights entry. Therefore – the only two systems that are to be referred to while determining the ownership of land are not titles, in a conclusive sense. They are presumptive titles and are also in bad shape – digitisation is definitely a step for the better.

The legislation and the judiciary, however, seem to be in a status of limbo over the meaning of the land title. If it is a presumptive title, then why should land assessment proceedings not be considered the same as an investigation of the title? In this sense the alignment of the de jure and de facto legal rights is different.

This arises, it is theorised from the available data, from the conflict of jurisdiction over land. In the eyes of the BHC, such a misalignment is perfectly logical, for it has no jurisdiction over land revenue assessment – therefore it cannot entertain such disputes under writ petitions. On the other hand, the executive/collectorate continues to draw a line between the two proceedings and while the evidences used
for such judgements are the same, they are still not considered to be the same, as was the case of the EICL in 2005. (C/DESK/-1/Land/Estate/Investment/12/07, 2005)

On the level of unbundling of property rights, at this moment, the onus is upon the researcher to analyse not only the present type of land tenure, but also the historical one – since that will determine the delineation of property rights on any given parcel of land. To succeed in the same, it is important to analyse not only the legislation, but also the litigation over the land one is concerned with and then proceed to theorise while keeping in mind the misalignment of the two – de facto, they point to a presumptive title.

In the case of Suti lands, as the Commissioner stated, the EICL has no right or jurisdiction in assessment. Thus, the EICL is not the Class – I Occupant in Suti lands. In case of Eksali and Watan lands, however, the EICL does hold the rights as the Class – I Occupant. This originates in the Salsette Act and the BT&AL Act under which the company is liable to pay the land revenue to the state government on Eksali and Watan Lands. So, it is argued that according to the Record of Rights, the company continues to be the rightful owner of the lands assigned to them except those lands they have released for the commercial exploitation by the tenants via a NOC. This shows the delineation of property rights as hypothesised.

The BHC drew a distinction between claim to a title and the liability of paying revenue to the government. De-facto, as Chapter 4 elaborates, the two are one and the same in the Indian context. Given that the RoR is the basis for the EICL to also claim rent from the tenants and in Column 6 it defines the entity liable to pay the land revenue it defines the relationship between the State, the Tenant and the Superior Land-holder. While the tenant has the right to use the land, they do not have the right to change the purpose for which the land is used. This must be obtained from the EICL. (Refer Figure 7.1)

In the case of Mira Bhayander, which is a rapidly urbanising space, such land use conversions are common, and the mentioned NOC then becomes a bone of contention for the tenants. This delineation has been upheld both by the Judiciary and the Executive. Thus, on the ground this remains the de facto hierarchy of rights. Usually, the tenants approach a third party, a developer and hand over temporary property rights to them, in order to develop the property for sale in the real estate market. Due to the higher property right of the EICL, this act requires their NOC and approval.
It is in this transaction that the EICL chooses to levy the cost in the form of the NOC – which is discretionary- and a fee, as described by D.S. Gawde. This added transaction cost is the rent extracted by

Figure 6.1A sample 7/12 from the city of Mira Bhayander. The name of the EICL can be found in the column to the far left.
the EICL for the development of parcels on the property. By virtue of this rent, the EICL also becomes a monopolist in the third and fourth pathways suggested by Garza and Lizieri – it owns a set of land parcels, and it charges monopoly rents, respectively.

Although the management of the Estate was not with the EICL after the passing of the BT and AL Act, the court by its decree established that they were indeed the final liable institution in terms of paying the land revenue – and thereby the holders of the title to the Bhayander Estate. In the same decree it turns out that the government ended up paying the EICL arrears from the period of managing the Bhayander Estate.

On the other hand, the data coded from the applications and correspondence between the state, the EICL and D.S. Gawde bring to the fore another facet of this story – namely the frustration of the tenancy with the sheer complexity of the land laws. Since the title and the revenue assessment suits concur, one is interpreted as the other as the EICL de-facto. Once assured of their assessment duties, they continue to collect rent as well as a cost for tenure conversion, thereby exercising the right to create a barrier in the land supply chain. This cost, on one hand is marginal when compared to the gains made in the development of real estate, but as a casual analysis of the litigations above suggests, plunges tenants and the EICL into long winded legal battles that presumably add to the transaction costs exponentially. Thus, the secrecy and silence regarding the monetary cost is explained – the benefits to paying the EICL are clearly higher than the costs thereof. Thus, this cost to tenure conversion remains.

Therefore, the qualitative analysis of the available qualitative data sources conclusively vindicates two hypotheses:

1. The EICL has a superior right to certain lands in Mira Bhayander.
2. The EICL charges its tenants successfully for the right to develop these parcels of land.

The impact of this delineation of property rights is to therefore increase the transaction costs in monetary terms (by Rs. 300 per sq. ft of land) and has an unknown impact (empirically) on the time taken for the completion of projects. It is suggested that project completion time data be analysed for the same.
Chapter 7 Conclusions

What does it mean to own land?

Concluding from the study of the legislation in Maharashtra, it is clear that there exists no such thing as a conclusive and absolute title to a parcel of land. All land ownership is presumptive, and the systems that administer the same are divided amongst multiple agencies. These agencies lack coordination as well as complementarity – making the system complex and requiring a long learning curve regarding the same. On the other hand, the state of the registers is also a concern, creating errors in the assignment of property rights.

The motivations that developed this system, on the other hand have been found to be to develop a method of fixing revenue assessments – and not land titles. This has remained within the system enmeshed within the institutions, like the system of registering transactions and RoR separately.

It was found that land titles are immensely complex once one begins to delve into the record of rights. The past form of land tenure defines the terms of assessment and holding of the land and therefore all the customary land tenures present in the State from the pre-British and British era are still relevant in the definition of land-owning. In the

Is the Estate Investment Company a Monopolist in the city of Mira Bhayander?

The EICL was found to be a large land owner in the city of Mira Bhayander, to say that they are a monopolist in the microeconomic sense of the word would be faulty, but they do have a fair degree of market power, owning 2/3rd of the land by some means or the other. This market power is also proved by the existence of monopoly rents and the extra transaction costs of obtaining a NOC that are taken upon by the tenants.

The analysis of property rights also places them firmly at the top of the food chain in this case, given that even though they may not occupy that land or even take any action regarding the same – yet they must be consulted if the land use is to be changed.

What is the impact of the concentration of the land title in the hands of the Estate Investment Company?

The impact of the concentration of land titles was found to be threefold. Firstly, the EICL was found to have de-jure and de-facto control over the land use of the lands assigned to them – effectively
creating a barrier in the supply chain of the city. Secondly, the EICL was found to be extracting rents from the tenants for the development of the land parcels they occupied. This is a clear market distortion for there exist land parcels where the EICL does not have this right, creating a segmentation of the land market in Mira Bhayander.

Thirdly, there is a macro impact in terms of the definition of property rights themselves. As evidence from the correspondence suggests, the futility of the land reform legislation is brought to the fore due to the constant litigations fought against the EICL by their tenants etc. Even the relationship with the state of a large land holder is therein made clear. These litigations afford us the clarity to justify the conclusion that the aim of abolishing intermediaries, the system of redistribution of land holdings and the protection of the rights of the occupant of the land have all failed.

The bleak existence of large estates is a testimony to the costs of changing the ownership of property, given the distribution of power in the urban space. There are massive gains to be made in the arena of land – and the legislative and administrative structure is stacked against the masses in terms of inequity.

Not only so, this project fills the gap in the Urban Economics literature, especially pertaining to the Indian context of the possible impacts of a concentrated and complex land title on the development of real estate and land markets.

Future Research

In the course of this dissertation large datasets were collected which did to make way into the main body of the project due to the lacunae found within them which would have led to an unsound methodology. The researcher hopes to continue on the path found in the course of this research. The next step is to prove this subdivision of markets with the help of quantitative databases in order to prove beyond doubt the significant impact of concentration of land in the hands of a few.
Appendix – I : Secondary Sources of Data


Governor of Maharashtra. 2016. MAHARASHTRA ACT No. XXIX OF 2016.
Appendix – II : Cases/Documentation Referred To

Letter No. ROC/IPC/pnm/38500/15 To D.S. Gawade from the Registrar of Companies, Maharashtra, Mumbai. Dated 13/02/2015
Deed of Indenture between Smt. Jayabai widow of Bhadraasn Chhabildas and Ramnarayan Shrilal and Chiranjilal Shrilal and Govindram Brothers Ltd. S.No. 1573 signed on 15/02/1943.


Deed of Indenture between Secretary of State for India in Council and Ramchunder Luxmonji. Signed on 21/02/1871.
Bibliography and References


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