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An Overview of Title Search Report

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At the outset title of the property is a flow of ownership, showing whether there exists any encumbrance or not, free from lien or not, which states that the title of the property is clear and marketable or not. The title search report is taken by the individual, company, banks, and other financial institutions by the practicing advocate. While preparing the title search report, the advocate conduct search of either 13 years or 30 years in the office of the sub-registrar, and they issue the non-encumbrance certificate in regards to the same, and the said certificate shows any charges, liens, or any pendency of the suit then it makes the title defective. The advocate can verify the ownership of the property in question through revenue records village form no.7/12 which shows the in whose name the property stands and entry no.6 which shows the certified entries. Whereas village form no.7/12 cannot be considered as concrete proof of ownership. Any title report issued by the advocate should contain the words “the said title is clear and marketable title” if the property has a clear title and if the title of the said property is defective then it may contain the words “the said title is clear and marketable subject to the disposal of the case or any other case”.

Keywords: *title, ownership, revenue records, transfer, competent authority, charge.*

WHAT IS A TITLE?

A title report is a document that outlines the legal status of a property and related information on its ownership and its chain of history. It is a very important aspect before purchasing the property, is to check if the title is clear and marketable, which means you need to confirm

whether the person selling the property is the owner and hold all the necessary rights to transfer the ownership of the property, also confirm there is no charge and encumbrance, or any pending litigation because a defective title may lead one in legal and financial trouble. It contains the historical records of the title of the property from the beginning, such as who was the original owner of the property, and how it has moved over the hands from the period of time before reaching the present transferor. It also shows whether there are any risks involved in the transaction, which may adversely affect the title of the property.

WHY THE TITLE SEARCH REPORT IS REQUIRED?

It is important for one to take the search report while purchasing the property, to know the title of the past titleholders are clear and marketable. So, there will be no future conflicts regarding this. A title report is generally required to create a valid charge over the property through a mortgage, the original title deed is a collateral security for the bank. It is a primary and basic document that is required by every bank before the creation of a charge.

WHO NEEDS A TITLE SEARCH REPORT?

An Individual: Every buyer before purchasing the property must take the legal opinion or title report, to verify that the property is free from charge and any encumbrances and there is no litigation pending on the land.

Banks, Financial institutions, and other Private lenders: Generally, these institutions provide financial facilities against immovable property as collateral security which can be called the mortgaged property. The main aim of these institutions is to safeguard their interest. In case the borrower does not hold a clear and marketable title then their interest is defeated. So, it is very important for them to take the legal opinion in regard to the title of the property in question from the senior advocate.

Companies: According to the Companies Act 2013, the company has its legal entity, and can purchase and sell the property. Many a time company has to enter into real estate transactions by way of lease, leave and license agreements or purchasing an immovable property for the

project development. For that, the company has to obtain the legal opinion of the property by submitting a memorandum of association of the company and by conducting a search of 13 years or 30 years.

WHAT MAKES THE TITLE DEFECTIVE?

A defective title refers to property that cannot be transferred due to the pendency of the suit on the property, or there is any charge or mortgage of any nationalized or private banks or financial institutions, or there is any lien on the property or any other defect that restricts the ability of the current owner of records to sell or transfer it further. Although liens are the most straightforward and transparent title defects. Common title defects include:

- Missing or incorrectly registered deeds.
- Liens such as unpaid property taxes or other fees.
- Fraudulent documents or transfers.
- Forthcoming charges and encumbrances.
- Pendency of Litigation.
- Unexplained gaps in ownership history.
- Wrong name mutated in the records of rights.

THE FOLLOWING POINTS NEED TO BE CONSIDERED.

Ownership Rights: The actual owner of the property has the absolute right, title, and interest in the property and also in the possession of the property and has the right to sell or transfer the property as per section 5 Transfer of Property Act¹ and has the clear and marketable title and enjoying this without any restrictions then it is absolute ownership otherwise it is said to be Limited. This includes every document evidencing the ownership and transfer of title, such as Sale Deed, Deed of Assignment, Gift deed, Will, Deed of Partition, etc. It should be checked and verified that each and every document is stamped and registered properly and that has also been signed by the necessary parties.

¹ Transfer of Property Act 1882, s 5

Chain Documents: In general, the property has been transacted and moved from hand-to-hand multiple times. Therefore, it is also necessary to verify the titles of the past owners along with the present owners. Inspection should be done on how the property transferred and what was the nature of the document. The original documents have to be verified with a certified copy from the sub-registrar office. For that purpose, the investigation starts with the original owner and ends with the present owner.

For example, Mr. A has purchased the property from Mr. B through the registered sale deed. On the death of Mr. A, legal heirs i.e., Mr. C become the owner of the property through the registered will. Mr. C transferred the property to Mr. D through the registered Gift Deed, thereafter Mr. D became the owner of the property. In this example, the property was transferred three times and all three documents that needed to be verified are called chain documents.

Generation of Title: The key point is to understand how the transferor has gained the title with respect to the property. However, the title derives from all the relevant documents giving the effect of transferability of the property which must be verified for legality and reviewed for the stamp. Generally, a good title is gained in the following manner:

- Registered Sale Deed;
- Will or Inheritance;
- Gift Deed;
- Deed of Assignment;
- Lease Deed;
- Deed of Partition.

According to Section 17 of the Registration Act² the above-mentioned documents or the documents that create, assign, or limit a person's interest in the immovable property having a value of more than a Hundred Rupees. It is compulsory to register the such document in the sub-registrar office.

² Registration Act 1908, s 17

Legal Competency of the Transferor: During the inspection of the title, it is necessary to ensure the legal competency of the present owner as well as the past title holders of the property. They must be major and of sound and stable mind in order to execute any contract pertaining to the ownership rights and in any other form of transfer of immovable property such as a release deed. If any of one is minor, it is necessary to take permission from the court as a competent authority and on behalf of the minor his next friend and a *guardian ad litem* will be responsible for all the consequences under the Hindu Minority and Guardianship Act, 1956.³

Verification of Revenue Records: However, the Supreme Court of India held in the judgement⁴ that the revenue records do not confer the title on a person whose name appears in the record of rights. So far as the title to the property is concerned, it can only be decided by the competent Civil Court only held by the Supreme Court in the Judgement.⁵ Revenue records include *Village Form No.7/12 and Entry No.6* and it is necessary for the transferee to mutate the name in the records of rights whenever the ownership is transferred by the registered document. It is also necessary to verify the documents with revenue records and also to verify Vera's bill and other taxes that have been paid or not.

WHAT IS VILLAGE FORM NO. 7/12 (RECORDS OF RIGHTS) AND ENTRY NO.6?

Village Form No.7/12⁶ is an online legal document providing details of the property such as its revenue survey no., area, measurement, ownership pattern, etc. Form No.7 provides details about the land owner and his rights, and Form 12 provides details about the land, including its size, type, and usage, etc. Entry No.6 shows on which date the entry of the mutation of the transactions carried out in the property, such as a change in the ownership, N.A. Permissions, divisions of the block, rural land entered in the limits of urban areas, charges, and encumbrances, etc. along with the certification of the dates.

³ Hindu Minority and Guardianship Act 1956, s 8

⁴ *Suraj Bhan & Ors v Financial Commissioner & Ors* (2007) (6) SCC 186

⁵ *Jattu Ram v Hakam Singh and Ors* (1993) Supp 2 SCR 321

⁶ 'AnyROR and 7/12 : Check Land Records on E Thara in 2023' (*AnyROR*, 1 June 2022)

<https://housing.com/news/how-e-dhara-has-changed-gujarat-land-records-system/#E_Dhara_What_is_712_utara_Gujarat> accessed 09 December 2022

Acquisition of Property and Land use: During the inspection of the documents, it is required to ascertain the nature of the property, whether it is acquired by the government or privately owned. Any property which is in the custody or in possession of the government cannot be transferred or alienated without the prior permission of the competent authority otherwise such transfer will be void ab initio.⁷ The rights and possession of the government property can be transferred by entering into a real estate transaction such as a lease, leave and license agreement, etc. in such case that deed must be registered and stamped properly. If the property is privately owned and stands in the name of the partnership firm then the partnership deed is required to be verified and if the property belongs to the sole proprietorship firm then Form F is required to be verified.

The use of land, and property can be divided generally into two categories i.e., agricultural land and non-agriculture land, and in some cases, the government has granted special permission for the specific non-agriculture purpose. If the land is classified as non-agricultural land, then a permission letter from the competent authority is required, and thereafter a zoning certificate is acquired from the local body authorities for further classification such as residential, commercial, institutional, industrial, etc. During the investigation, it is necessary to know the use of the land or status of the property, whether it is agricultural or non-agricultural land or whether special permission for the specific non-agriculture purpose has been fulfilled or not.

Permission of development & construction and Sanction of Layout Plans: If the property has some development and construction, then construction permission is required from the competent authority⁸. Verification has been done that such construction should be in adherence to the sanction plan in the same manner as passed by the municipal authorities. Before any construction, every builder has to mandatorily be registered with RERA ⁹(Real Estate Regulatory

⁷ 'What Does Void Ab Initio Mean In Contract Law (Best Overview)' (*Incorporated Zone*, 2 January 2021) <https://incorporated.zone/void-ab-initio/#Void_ab_initio> accessed 09 December 2022

⁸ 'Letter of Permission for Construction (Samples & Templates)' (*WTO*) <<https://www.wordtemplatesonline.net/letter-of-permission-for-construction/#:~:text=A%20permission%20letter%20for%20construction%20is%20usually%20addressed,you%20are%20going%20to%20work%20during%20this%20period.>>> accessed 08 December 2022

⁹ 'RERA Impact on Builders' (*Victoria Realtors*, 29 June 2018) <<https://victoriarealtors.in/blog/rera-impact-on-builders/>> accessed 09 December 2022

Authority) and has to upload each and every detail such as project starting date, project ending date, sanction plan layout, sale deed, stage-wise construction updation, etc. In addition to this, any other permissions and approval required from the competent authority have to be taken by the builder with respect to infrastructure and utility facilities like water, drainage, electricity, environmental compliance, etc.

Pendency of Litigation and Encumbrance: As per Section 55¹⁰ of Transfer of the Property Act, the seller is bound to the buyer any material defect in the property [or in the seller's title thereto] of which the seller is, and the buyer is not aware, and which the buyer could not with ordinary care discover here the concept "Caveat emptor" i.e., Buyer be aware does not allow. It is very important for the title verification that no litigation is pending before any court. It can be determined by conducting a search. The search report discloses all relevant points which may make the title defective.

Generally, the property is kept as security by way of a mortgage for availing financial facilities from financial institutions. It creates an encumbrance charge over the property which means the title of the property is subject to charge or mortgage or lien and cannot be further transferred without repaying the outstanding dues of the said financial facility. So, while conducting the verification of title it is a must to obtain the search of 13 or 30 years and also advisable to get the records of the property examined properly at the office of the sub-registrar in order to ensure that there are charges or mortgage or lien on the property in favour of any bank, person or any other financial institution. It is also required to inspect that there is any lien on the property such as outstanding property taxes or any other government taxes which are due. If their presence lies, then that doesn't mean that they are entitled to sell the properties but, whenever the property gets sold they have a right to be paid off.

Public notice: In general practice, when any chain document is lost by the transferor and/or some facts of the title remain unregistered, then it is suggested by an advocate to publish the public notice regarding the same in at least two newspaper one English newspaper and other in

¹⁰ Transfer of Property Act 1882, s 55

the regional newspaper for inviting claims and raising objection with respect of the property in question within the time limit prescribed in the publication. If any disputes arise afterward, such publication will endorse genuine and legitimate title ownership of the buyer in question. The notice must contain the name of the parties and details of the property in question and an appropriate time frame must be given to raise objections.

Search either 13 years or 30 Years: Generally, a title search is conducted for a time period ranging from 12 to 30 years. Which can be extended or reduced as per the objective of the party and the nature of the transaction. The principle on which the Limitation Act is based is that 'limitation extinguishes the remedy, but not the right'. The Act prescribes a period - 12 years for private properties and 30 years for government-owned ones - within which you have to stake a claim on your property.

WHAT IS NON ENCUMBRANCE CERTIFICATE?

It is a legal document issued by the sub-registrar office that ensures that a property in question is free from the charges and litigations and any other factors which restrain the transferor to transfer the property in question. The search is either 13 years or 30 years. A non-encumbrance certificate is of two types:

- **Form 15** - The sub-registrar's office issues this certificate if the property has existing monetary or legal liabilities during the requested time.
- **Form 16** - This is a NIL certificate that the sub-registrar's office issues indicating no disputes on the property for the requested time.¹¹

WHAT ARE THE CONTENTS OF THE TITLE SEARCH REPORT?

- Firstly, the report must specify the name to whom the report is issued.

¹¹ Sunita Mishra, ' Encumbrance certificate: All you wanted to know' (*Housing*, 16 May 2022) <<https://housing.com/news/real-estate-basics-encumbrance-certificate/>> accessed 09 December 2022

- It must clarify the name of the borrowers/owner and mortgagors/owner, and also specify in whose name the property stands. Whether the owner is an individual, company, partnership firm, trust, HUF, LLP, etc.
- It should also include the legal opinion on how the legal personality of the owner will impact the title of the property.
- It must include a detailed property description with the boundaries, which must be verified with the government records such as corporation plans, revenue records, etc.
- It must include the records of history such as chain which should be verified by the revenue records.
- It must be clarified, if there are any charges or encumbrances, or lien on the property in question by conducting a search in the office of the sub-registrar either of 13 years or 30 years whichever is recommendable.
- It must include the list of title deeds that are required to be obtained for the purpose of creating a valid mortgage.
- It must be clarified if there is any minor's interest in the property in question.
- It must include the nature of the rights of the transferor, whether it is absolute or limited in terms of possession and disposal.
- It must also clarify that the property in question is in the process of acquisition by the government.
- Last it must include the words "the said title is clear and marketable" in case there is no defect, or in case the title is defective it should include that "the said title is clear and marketable subject to the disposal of the litigation, charge and encumbrances, mortgage, lien and any other defect it has.

ANALYSIS OF CASE LAW

***Ramniklal Tulsidas Kotak & Ors v Varsha Builders & Ors*¹²**

¹² *Ramniklal Tulsidas Kotak & Ors v Varsha Builders & Ors* (1992) Bom 62

According to this judgement, the advocate must first address himself to the question as to whether the vendor, lessor, original owner, or promoter has a clear marketable title or not. If it is the advocate is entitled to issue the certificate. If it cannot be issued because the property in question is subject to any pre-existing encumbrances or charges, then the advocate has to explain hereinafter. In case the title of the promoter or the person through whom the promoter claims his title is doubtful, the Advocate must clearly state in his certificate that the title of the person concerned is doubtful, without any hesitation. In such a case the certificate of title must disclose at least the following:-

- Nature of the title of the promoter.
- Nature of the title of the vendor or the promoter or of the person through whom the promoter claims.
- Encumbrances and claims on the land;
- Steps required to be taken by the promoter for the complete title as absolute, clear, and marketable while conveying the property or causing the same to be conveyed to the organization of flat purchasers on the due date;
- Whether the agreement to sell, the flat will bind the owner of the land?
- Whether the title of the promoter or his vendor or the person through whom the vendor claims is of doubtful nature in any manner? If so, the nature of doubt entertained.
- Whether the authorization granted in favour of the promoter by the owner, lessee, or vendor is irrevocable so as to bind the owner with the agreements for the sale of the flats?
Whether an agreement to purchase the land by the promoter is revocable or irrevocable?

CONCLUSION

As per the above factual aspect, firstly researcher tries to understand the term title which means an undisputed legal right of the property. Then next we found why the title is required and to whom is required. While it is required to take legal opinion for everybody of individuals, local authorities, groups of companies, and other financial institutions because investing money in real estate is very crucial and before investing it one has to scrutinize the title of the past titleholder also and also search for the charge, lien or any encumbrance over the property, if it

has been found then it makes the title defective. Lastly, one has to take every step of precaution before purchasing the property to get a clear and marketable title. Which determines that ownership rights are free from any doubts, and risks, and clear of any kind of claims, encumbrances, and defects.