Salient features of the Title Registration Act from the point of view of owner, notary and counsel

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Discussion 1

A] The law relating to the execution and attestation of forms under Registration of Title Act, No. 21 of 1998 with reference to

- The Prevention of Frauds Ordinance No. 07 of 1840
- Notaries Ordinance No. 01 of 1907
- Gazette No 1886/58 31 October 2014

B] Authority for Notaries to draft the required Forms for land transactions and the law relating to protocols --The Gazette No 1886 --Page 1A to 5A

- Instrument of Transfer or Sale form - Pages 4A to 5A

Discussion 2

Registration of Title Act, No. 21 of 1998

- **Section 33** [court procedure]

  The Central law or the hallmark law of Registration of Title Act, No. 21 of 1998 -'Indefeasibility of title' with reference to judicial precedence

- **Section 59** -Inclusion of judicial precedence of other jurisdictions --- accretion to negate the Indefeasibility principle referred to as 'Deferred Indefeasibility'

Discussion 3

Penal sections for fraud for the first time enacted for land fraud section 64 and 65 of Registration of Title Act, No. 21 of 1998

Discussion 4

Crown and Swarna boomi Land

SESSION 3

Sri Lanka Land Titling is Persuaded by Torren's System

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No person owes a single perch of land, when he is born in this complex world. Subsequently he starts claiming his rights to a property by inheritance, possession or by a purchase. Then he comprehends that there is a disparity between good title and bad title of a property according to legal speculation. This distressing state of affairs gives him a shock as he has never expected. Eventually he starts to suffer throughout his life for a fault which he had never done. To eradicate this unpleasant experience and to do away with discrimination of title of a property namely good and bad, legislator had to give a birth to a new piece of legislation and that paved the way for "Title Registration".

This paper is meant to show the advantages of title registration act and some criteria and suggestions to develop this method to enable title registration system to function properly within Sri Lanka.

Definition of a Title

Title is a legal term for bundle of rights in a piece of a property by which a purchaser may own either a legal interest or an equitable interest. The rights in the bundle may be separated and held by different parties. Title is distinct from possession, a right that often accompanies ownership but is not necessarily sufficient to prove it. In many cases, both possession and title may be transferred independently of each other.[1]

History of Registration

In an ancient times, land was basically a social asset than a private property. Grantee had certain obligations over the grantor as the consideration in relation to a grant. For an instance, there were "Nindagamas", Sannasa which were grants by the king and "Viharagamas" and "Devalagamas" which were cultivated by people but were belonged to temples. The "Gabadagama" lands were Cultivated by tenants for the benefit of royal people.

Under Rajakariya system, grantee had to perform certain duties to the grantor as the consideration. Foreign invasion was also influenced land titling in Sri Lanka. Under Roman Dutch law, title to an immovable property did not pass unless the conveyance is duly executed. The Sannases and the old deed Ordinance No. 6 of 1866 was enacted to compel the registration of old deeds and other instruments of title. Subsequently Registration of Documents Ordinance No. 23

1 www.wikipidia.org

of 1927 was introduced under which immovable property need to be registered, so as to ensure priority to such instruments. Although, in law, such registration is not essential for the validity of such instrument. But if a Vendor fraudulently sells the same piece of land to two different parties without sending it for registration, what will happen to the bona fide purchaser? Apart from that, a notary has to check whether that land has a clear, unblemished history of previous records for 30 years. Even though a notary did an exhaustive title search for ownership of a person's land could be challenged and that did not give a complete security because of the principal of ***nemo dat quod non habet*** which means "no one can give what he does not have". Accordingly, if a vendor's common-law title is defective the purchaser's title is also defective. Hence purchaser need to ensure that the vendor's title is perfect and due to this reason inquiries and an examination of the chain of title need to be carried out.

Registration of deeds system is slow, expensive, and often unable to create certain title. Furthermore uncertainty of land ownership and the cumbersome procedure of land transferring is one of the main reasons which depreciates the value of the land market in Sri Lanka. The system of deeds registration, leaves room for fraud. Officials at the land registries have no duty and, as the law stands, have no competence to verify the authenticity of registrable documents. Hence fake deeds are produced. Fraudster may sells another person's land to an innocent buyer and gets the money without genuine owner not noticing it.

No system could eradicate frauds nevertheless could mitigate provided take precautionary methods. Therefore land registration process should be simple, transparent and efficient. Land registration should also be reliable, punctual, affordable and well suited to the needs of the society.

Torrens System in South Australia

Torrens title is a system of land title where a register of land is maintained by the state guarantees an indefeasible title[2] to those included in register. The system was formulated to combat the problems of uncertainty, complexity and cost associated with old-system title', which depended on proof of an unbroken chain of title back to a good root of title[3]. This was introduced by Robert Torrens in South Australia in 1858 and became pervasive around the commonwealth of nations and very common around the globe. This was introduced in order to resolve the deficiencies of the common law and deeds registration system and that influenced to departure from common law.

The basic difference between the deeds registration and Torrens registration s systems is that deed registration involves registration of instruments whereas Torrens registration system involves registration of title. Torrens title system is based on "title by registration" that is registration of title instead of registration of interest. The system do away with the need for a chain of title which is tracing title through a series of documents. The State guarantees title and is usually supported by a compensation scheme for those who lose their title due to the State's

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2 Indefeasible title is a title that cannot be set aside on the ground of a defect existing in the title before the interest was registered.

3 www.wikipidia.org

operation. Torrens land is said to have an indefeasible title and title can be challenged only very limited circumstances.

The Torrens system works on three principles namely mirror principle which is the Certificate of title which reflects accurately and completely the current facts about a person's title. Second category is curtain principle under which one does not need to go behind the Certificate of Title as it contains all the information about the title. Third one is insurance principle by which provides for compensation of loss if there are errors made by the registrar of titles.

Under Torrens system a land is given a unique number and it helps to identify the land in registered plan. The folio records the ownership. To change the boundaries of a land, a revised plan need to be prepared, registered and that cannot be withdrawn once it is registered. Changes can only be done by the Registrar of Lands. The accuracy of the register is guaranteed by the state and compensate rights which are harmfully affected by an administrative error. Claims for compensation are very rare. General public can rely on information at land registries and it is paramount under Torrens title. A prospective purchaser is not obliged to check beyond the records which are at land registries and not necessary to check even the certificate.

Under this system very freehold estate is represented by a certificate of title. Every certificate of title is guaranteed by the Government. Every registered person in certificate can be treated as the person who is possessing the ineffaceable title. Any person who deals with the proprietor is in fact the person who owns the property.

Torrens system is criticized because it has failed to cope adequately with multiple ownership, especially shares in land. It had great difficulty in coping with ownership of high rise flats and apartments. It cannot cope with multiplicity of titles. It has ignored customary tenure. It is impossible to tell who owns unregistered land. The records do not contain all relevant data. It has failed to cope with the rapid urban expansion. It provides minuscule support for land management and taxation purposes[4].

Registration of title in Sri Lanka

Sri Lanka contains an area of 65,600 sq, km which has 20 million population and has 8.5 million land parcels out of which there are 20% of state lands and 80% private lands. It reveals that more are private lands and protection of such lands are very useful to protect personal rights of a citizen. Sri Lanka government had a taken a step forward by implementing a national programme which is called Bimsaviya in 2007 upon passing an act namely Registration of title Act No 21 1998 to eradicate burdensome procedure in land titling. Under this programme it is expected to demarcate lands by surveying it and to ensure the ownership of that property and issue title certificate free of charge to every Sri Lankan in a time frame of fifteen years. Vision of the Bimsaviya is "Towards a prosperous and dispute and free society" and the mission is to strengthen the ownership.

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[4] International Real Estate Society Conference '99 Kuala Lumpur, 26 - 3A January 1999, a case for Torrens system of title registration, Trevor Mills.

By doing that it is expected to provide better opportunity to personal development of people and optimum and efficient utilization of land for development through an efficient and scientific Land management. under the title registration system, it would show to whom the ownership of land belongs to. Accordingly, a person who has a title for absolute ownership considered as a first class title and unless qualify for first class title considered as a second class title. Second class title will automatically be converted to first class title after 10 years of uninterrupted and undisturbed possession. Any land owner can obtain a title registration certificate for his or her land instead of a deed situated anywhere in the country within a matter of a few minutes with the help of a computer network set up at the divisional secretariat level under the title registration act. Even though there is no period of time specified for such registration in respect of immovable property in registration of document ordinance, under title registration act, an attested instrument has to be submitted to the registrar within seven days and by which unnecessary delays as earlier cannot be encountered. Title registration has been commenced in areas such as Gampaha, Negambo, Ratnapura, Gampola, Anuradhapura, Homagama, Delkanda, Kurunegala, Kandy and Hambanthota. Title registration is being carried using computerized system and therefore it is easier in making subsequent transfers. Title registration process is carried out at the district level and 42 land registries have been established for the purpose.

It will be easy to check and maintain the records under title registration act. No land can be rejected by financial institution due to the defective title because all lands are categorized under first class or second class title and any one can mortgage their lands at least with a title insurance cover. No uncertainty or perplexity of title and can easily mortgages. Selling of a land is also very easy and it will be just a matter of filling a form. Method is simple and convenient. Since there are no defective titles that will appreciate the market value of the property. It costs much less than deed system and can facilitate land transactions speedily Retrospective investigations are not required. Government assurance is also provided. Any person who deals with the registered owner is in fact the owner of the property which makes the conveyancing process simple and effective. Reduction in Land disputes is another benefit under title registration act and there will be stimulation of the Land market:

Awareness of the title registration act among general public is very essential to develop and speed up this procedure. An attempt to introduce title registration had become unsuccessful in some to the countries due to the fact that the support given by the registration institutions and legislation were inappropriate Legislator will have to amend some laws and regulations to make a favorable environment to implement title registration. Staff and land registrars will have to be optimistic and need to be flexible to favor the new introduction as it will be favorable for development of the country.

Having a clear title to a land, is one of the main element for a speedy growth of a country. With a view to eliminate these unfavorable conditions and to use lands for the development purpose, introduction of proper system of title registration is vital. With necessary amendments, if title registration had taken care of all Sri Lankan lands equally, it could have mitigated the frauds and eliminated the discrimination faced by the owners who hold defective title.

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