

# Creating better working land markets

## Learnings from Rajasthan

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# Rethinking land markets

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## What is a well functioning land market?

1. Ease of entry, Ease of use, and Exit.
2. All underpinned by adequate information, secure tenures, and robust registration and recording systems.

# Land as a factor of production

Land markets are critical. They also affect other factors of production:

1. Land has a significant share in the total asset value of Indian households. Land and buildings comprise 94 percent of value. (NSSO 2013)
2. Land is considered safe collateral and therefore an useful source for accessing credit.<sup>1</sup>
3. Land tenure systems affect labour:
  - 3.1 Research in other countries shows that tenure insecurity leads to migrants settling for longer to prove ownership, which increases land scarcity.<sup>2</sup>
  - 3.2 In rural-urban migration in China, tenure security and rights to transfer have strong correlation with migration.<sup>3</sup>

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<sup>1</sup>Krishnan, Panchapagesan, and Venkataraman 2017.

<sup>2</sup>Sward 2017.

<sup>3</sup>Mullan, Grosjean, and Kontoleon 2011.

# Components of efficient land markets

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- **Exit**

1. Right to sell.
2. Right to replace unproductive use with productive use.

- **Market infrastructure**

1. Market infrastructure - A set of systems, processes, persons and legal rules that enable exchanges in the market.
2. Market infrastructure allows participants to exchange easily, at low cost and risk.
3. The current systems of registration, updation of revenue records i.e. the land titling system can be thought of as market infrastructure.
4. Land titling systems must be designed to allow the transfer of land rights so as to enable the land market.

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- **Summary:** The land market can be thought of as consisting of two parts -

1. The market for rights in land, and
2. The market infrastructure to enable transactions of rights in land.

# Government intervention in land markets

Various reasons exist for why governments intervene in land markets:

1. Reduce dominance in existing markets (zamindari abolition, ceilings on holdings)
2. Allotment of land for specific categories of persons (war widows), transfer restrictions (for SCs and STs, non-agriculturalists)
3. Land use restrictions, zoning policies, etc.

These affect:

- transfer rights
- rights of usage
- length of tenure

Question for analysis: To what extent do specific restrictions:

1. impair the efficient functioning of the land market by affecting security of land tenures?, and
2. justify the costs of imposing them?

## **Analysis of existing land market: Rajasthan**

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# Analytical framework

1. Land is a state subject under the *Constitution*. The state is our unit of analysis.
2. Study of rights in land i.e. the scope of the market for rights in land (and restrictions), and
3. Study of the state of the market infrastructure i.e. the administrative system for supporting the land market.

# Land rights in Rajasthan

Question: What is the nature of rights in land in Rajasthan?

1. Three broad categorisations possible: rights in agricultural and rural land, rights in non-agricultural and/ or urban land, and community/ forest rights.
2. We find distinct regulatory frameworks for each.
3. The nature of rights i.e. rights to buy, sell, transfer, use, mortgage are different across these categories.

# Categories of land markets

**Table 1:** Distinct categories of land markets

Type	Legal sources	Relevant market infrastructure	Transferability (in general)
Forests	The Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006	Forest Rights Committee; Gram Sabha; District and State Level Committees	Heritable; not alienable or transferable
Urban	Municipal Laws, Rules	Municipal Corporation	Heritable, transferable subject to zoning laws
Rural	State Acts, Rules	Revenue, Registration, Survey & Settlement Departments	Heritable, transferable subject to use purpose

Administrative systems and the nature of rights in land differ across three categories.



Question: What kind of restrictions affect land tenures in Rajasthan?  
(Preliminary analysis)

## 1. Steps:

- analysed provisions of the Rajasthan Land Revenue Act and the Rajasthan Tenancy Act.
- mapped all restrictions on: ownership, buying and selling, mortgage, lease, use and transfers.
- analysis shows large variations in tenure security, transfer rights.

2. Initial findings show need for deeper analysis of the impact of restrictions on the land market.

# Analysis of rights and restrictions

Some findings:

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- Transfer restrictions on land allotted for agricultural purposes in rural areas, but not in urban areas.
- Excessive restrictions / protections in some cases:
  - SCs and STs may not sub-lease to persons other than SCs and STs. Additionally, there must be a mandatory 2 year gap between successive leases.
  - Transfers can only be made if the use is completed.
  - Mortgages can be made only to scheduled banks and Rajasthan cooperatives. In addition, all mortgages are valid for 5 years, after which the land reverts to the mortgagor.
  - Excessive penalties - cancellation of allotment or ejection. No gradation of penalties.
  - Tenancy law places a cap on rents chargeable for share-cropping at one-sixth of the produce (in kind).
- Allotment periods in some cases are very little: as little as 5 years in some cases; usually subject to renewal.

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- destruction of incentive to invest in land.

A systematic analysis of other relevant laws will provide a complete picture of scope of impact on the land market:

- Are some of the restrictions still valid today?
- Which restrictions need to be done away with to improve transferability and security of tenure?
- Is there a rational reason for continuing to differentiating between agricultural rights in land and other rights (commercial, residential) other than food security?
- Impact of legal restrictions on the land market.

Market infrastructure allows participants to exchange easily, at low cost and risk.

- The registration and mutation recording system is market infrastructure.
- NIPFP's recent study report titled "DI-LRMP implementation in Rajasthan" finds issues with the land recording system on two counts:
  - slow progress of digitisation, and
  - public administration issues.

# Analysis of market infrastructure

- Large number of vacancies in lower level posts in all three departments. For example, in the Revenue Department:
  - Tehsildar/Naib-tehsildar : 827 (52%) out of 1598 sanctioned posts are vacant;
  - Patwari / LRI : 6986 (43%) of the 16251 sanctioned posts are vacant.
- Lowest levels of administration suffer from capacity gaps, and lack of basic facilities.
- Patwaris' perform a large number of functions not related to land records administration.

# Analysis of market infrastructure

- Gram panchayats have the authority to sanction certain mutations, but they are not part of the computerised land records network.
- There is no legal provision for updating cadastral maps in between two Settlements.
- There are no explicit provisions for resolving situations where the measured area of land does not tally with the recorded area. This is pertinent in view of re-surveys currently underway.
- When any regulations are changed, the software being used for land records management (e-Dharti) is not updated.
- There is no uniformity in format or contents of recording data in RoRs. In Girwa tehsil the caste of a title-holder is not recorded, while in Uniara it is.
- Encumbrances other than mortgages are not recorded.
- Possession is not recorded.

Many of these issues require legislative fixes. Sole focus on technological improvements is not enough.



# Analysis of market infrastructure

Question: **What can court cases tell us about issues with the market infrastructure? (Preliminary)**

We looked at all court cases in the Rajasthan High Court from January 2015 to December 2016 relating to the Transfer of Property Act, 1882.

Findings:

- The record in the Record of Rights was disputed in a total of 8 out of 105 cases.
- The agreement/ transfer document was disputed in 18 out of 107 cases.
- Two biggest causes of dispute: eviction/ adverse possession related issues (34 out of 107 cases), and lack of clarity on registration and stamping requirements (18 out of 107 cases).

**Table 2:** Categorisation of issues in High Court cases in Rajasthan 2015-16

Fraudulent document/ Illegal sale	Legal interpretation	Registration/Stamping	Eviction/ Adverse possession	Multiple claimants to land	Public interest and trusts	Others
12	11	18	34	10	6	16

# Analysis of market infrastructure

- In 39 cases out of 107 under these heads, we see an underlying problem with the *land titling system*. Examples:
  - *Rajkumar and Ors. vs. Nathi Devi and Ors.*: The respondents claimed that the sale deed and other documents were a sham meant to keep them from land that was rightfully theirs; in reality, someone else operated the land. Internal family disputes.
  - *Municipal Board, Jhunjhunu vs. Gokul Chand and Ors.* The property was issued to the plaintiff's father by a Thakur before independence. The issue was whether relief for declaration of title in respect of the disputed land could be given by the lower Courts to the plaintiff on the basis of the unregistered patta.
- Sources of disputes must be systematically identified and reformed. Analysis of cases under other relevant laws will enable legal fixes for better market infrastructure.

## **Issues for discussion**

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- How can a systematic analysis of land rights help improve land markets?
- How do we study the public administration in land in closer conjunction with the market for land rights?
- Can a good titling system exist in a restricted market for land rights? What are the administrative costs vis-a-vis a more liberal market?
- Will a good land titling system create a more efficient market for land rights if the scope of rights and restrictions remains unchanged?
- What learnings can we hope to derive from a study of court cases regarding land? Can some of these help in improving land titling systems i.e. legal reforms in laws?

Thank you.

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