

Property Registration Systems Concepts & Practices

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There are over a million land-related disputes pending court resolution in Pakistan composing 40 percent of all court disputes (FIAS, 2005b)

**Khasra
No.?**

**Survey
No.**



Latha Parcha/ Cadaster/ Masavi

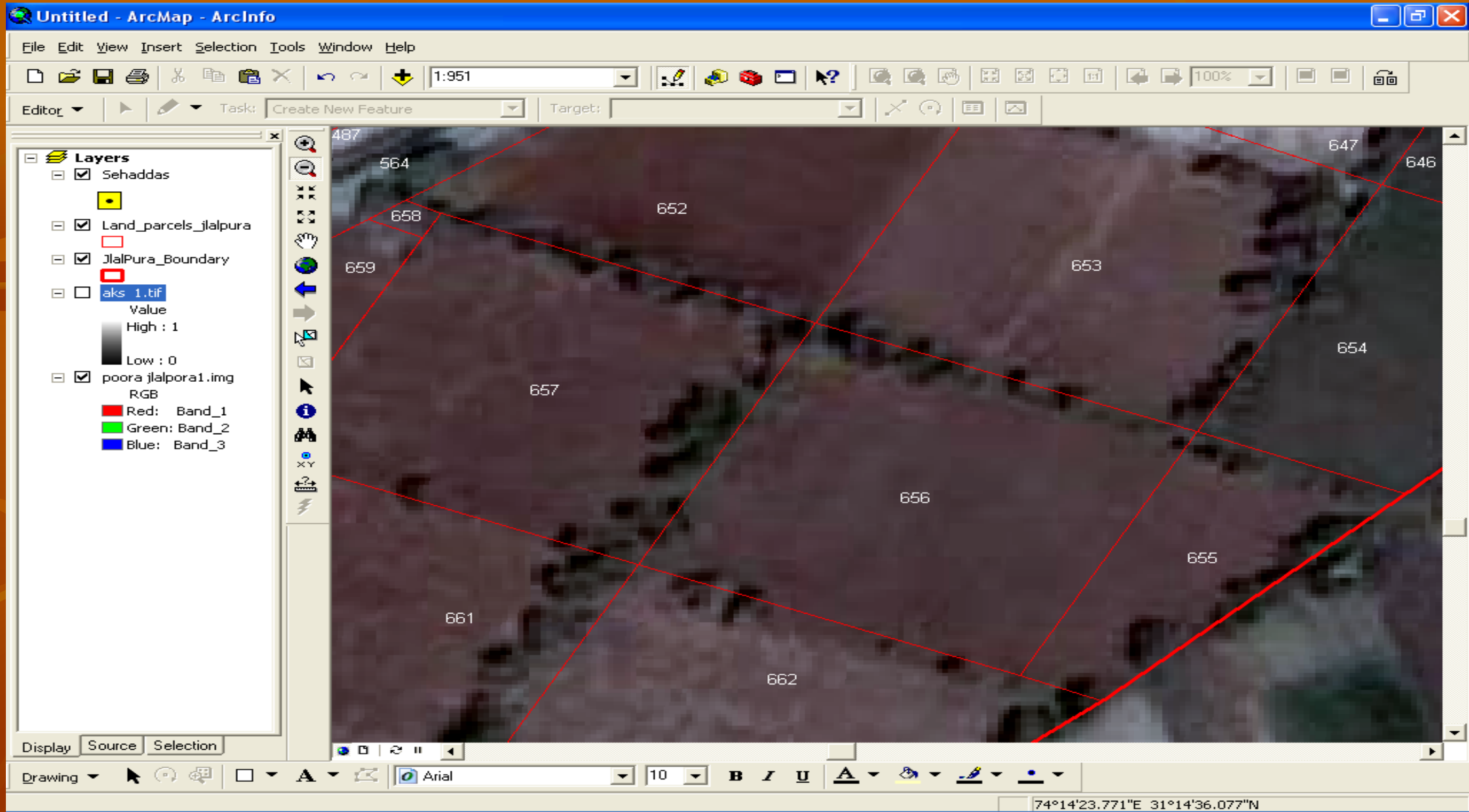
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Layers

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 - Green: Band_2
 - Blue: Band_3







The Punjab has a Land Administration System- rules & regulations regarding sale, purchase & use of land resources, mainly linked to collection of land revenue.

Present land legislation- *constituted mainly of:*

- West Pakistan Land Revenue Act, 1967 (Mutation) &
- Registration Act of 1908 (Registration of document)

Both do not profess to provide for A State Certificate of Title to land under aegis of a public authority.

The records of rights & other documents based on land records, by virtue of provisions in the land laws are presumed to be accurate.

Many court rulings maintained that:

Entries in land revenue records are Contestable

Revenue records are Not Documents of Title, &

it is Permissible to challenge the entries for determining the title to land

Hence, **No Title Registration Of Property** is maintained by any authority in the country, which is not only a major reason for the huge number of disputes in the justice system, but also acts as a chief impediment to the investment.

The West Pakistan Land Revenue Act 1967 excludes the site of a town or village from its preview under Sec. 3

Hence, in all of the urban areas of the province there is no legal justification for Patwaris to maintain/ keep the land revenue records.

To be substituted to the memorandum

number & date.

Form No. 2355-

From

Mr. G. A. Gardezi, PCS,
Deputy Secretary to Government, West Pakistan,
Revenue Department.

To

All the Commissioners in West Pakistan,
(except Karachi, Hyderabad & Khairpur Divisions).
All the Deputy Commissioners in West Pakistan,
(except Karachi, Hyderabad & Khairpur Divisions).

Memorandum No. 3417-68/1203-(S),
dated the 8th July, 1968.

Subject: Exemption from the payment of land revenue and
abandonment of revenue records in respect of
lands located within "Rating Areas" of the
Urban Immovable Property Tax Act.

Reference: In supersession of this office memo. No. 321-65/1958-
(S), dated the 31st July, 1965, on the above subject.

Memorandum:

Under Section 56(1)(d) of the West Pakistan Land
Revenue Act, 1967, land on which Property Tax under the West
Pakistan Urban Immovable Property Tax Act, 1958 (West Pakistan Act
V-1958), is payable, is exempt from the assessment of land revenue.
This Act came into operation in the Province with effect from
1st January, 1968. In view of the above provision in the Act, the
instructions issued in the memorandum under reference stand
superseded. You are, therefore, requested kindly to direct the
field staff not to assess land revenue with effect from Rabi 1968
in respect of properties which are subject to assessment of
Property Tax.

2. The shortfall in revenue due to the above orders
should please be reported for the information of Finance
Department.

3. So far as the preparation of record of rights in the
Rating Area is concerned it has been decided that the instructions
contained in paragraph 2 of Board of Revenue's memorandum No. 3210-
65/1859-(S), dated the 31st July, 1965, should be followed with
slight modification as under. Only the existing staff should
however, be employed for this work and no additional staff be
entertained :-

- 1) The practice of maintaining revenue records in
Rating Areas may continue as before. All transactions
which have been completed after 8th July, 1968, should
be incorporated in the revenue records. If a piece
of land has since been sold or otherwise

any number of blocks, the mutations of all the
transactions should be recorded, datewise.

(ii) Areas which have been built up may be treated as
'Abadi Deh' for the purposes of revenue records
and further maintenance of record in respect
thereof should be discontinued. It may be made
clear that only those Khasra/Survey numbers should
be treated as Abadi Deh, which have entirely been
covered by construction. It would not be advisable
to treat a portion of a field number as Abadi Deh
and discontinue further maintenance of records
in respect thereof.

(iii) If a field/survey number is covered by buildings,
it would not be necessary to change entries in
Jamabandi (Revenue Records) forthwith, but new
entries may be made at the time of preparation
of the next quadrennial Jamabandi (Revenue Records).
At the time of revising the quadrennial Jamabandi
(Revenue Records) the Tehsildar/Naib Tehsildar
concerned should personally inspect the existing
Abadi Deh and compile a report about the field/
survey numbers which were covered by buildings
during the last four years. He should then submit
a proposal to include that area in the Abadi Deh,
for orders of the Collector. After obtaining the
orders of the Collector the Tehsildar/Naib
Tehsildar should make entries in the new Jamabandi
(Revenue Records) accordingly.

If any difficulty is experienced in the implementation
of the above instructions, a reference may be made to the Board of
Revenue for clarification.

Sd/-
Deputy Secretary to Government, West Pakistan,
Revenue Department.

No. 3417-68/1204-S.

A copy is forwarded to all the Deputy Commissioners/
Commissioners in Southern Zone with reference to memorandum No. 3417-
68/1208-(S), dated the 8th July, 1968, for information and necessary
action.

Sd/-
Deputy Secretary to Government, West Pakistan,
Revenue Department.

No. 3417-68/1205-(S).

A copy is forwarded to the Deputy Secretary (Revenue),
Board of Revenue, with reference to this office order No. 3210-65/
68-(S), dated the 31st July, 1965, for information and necessary
action.

Sd/-
Deputy Secretary to Government

Cont'd...

Memo expressively stated that under section 56 (1) (d) of the West Pakistan Land Revenue Act 1967, Land on which Property Tax under the West Pakistan Urban Immovable Property Tax Act, 1958 (West Pakistan Act V-1958), is payable, is exempted from the assessment of Land Revenue.

This Act came into operation in the province of West Pakistan with effect from 1st January 1968.

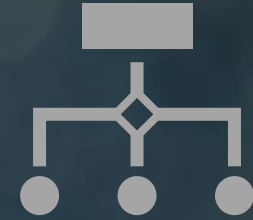


The Memo further clarified:

“Areas which have been built up may be treated as ‘abadi deh’ for the purpose of revenue records & further maintenance of record in respect thereof should be discontinued.”

“While preparing for new jamabandi Tehsildar/ NT should personally inspect the existing abadi deh & compile a report about the field/ survey numbers which were covered by buildings during the last four years” &

“ then submit a proposal to include that area in the abadi deh for orders of the Collector.



“After obtaining orders the Tehsildar/ NT should make entries in the new jamabandi accordingly.”

In another Memo No. 1519-84/1114 – LR, dated 27th May, 1984 of the Revenue Dept Punjab, addressed to all Commissioners, DCs, & ACs in the Punjab, & DLR, while reminding “**The Collector acting under the special or general powers of the Board of Revenue, is empowered to fix and from time to time vary the limits of the site of a Town of village under section 3 (2) of the Land Revenue Act 1967**”, conveyed the following instructions in no unambiguous words:

“It is to be ensured that khasra numbers entirely brought under construction in the Rating Areas of Municipal Corporations, Municipal Committees & Town Committees are delimited & included in ‘Abadi Deh’ after every four years at the time of preparation of quadrennial Register Haqddaran- Zamin”

From

The Deputy Secretary (Settlement),
Government of the Punjab,
Revenue Department.

To

- i) All Commissioners of Divisions in the Punjab.
- ii) All Deputy Commissioners in the Punjab.
- iii) All Assistant Commissioners in the Punjab.
- iv) Director of Land Records, Punjab, Lahore.

Subject:

EXEMPTION FROM THE PAYMENT OF LAND REVENUE AND
ABANDONMENT OF REVENUE RECORDS IN RESPECT OF
BUILDINGS LOCATED WITHIN THE RATING AREAS OF
THE URBAN IMMOVABLE PROPERTY TAX ACT, 1958.

MR. MAQBUL AHMAD SHEIKH, MEMBER (REVENUE), BOARD OF REVENUE, PUNJAB.

Memorandum:

Under Section 56(1)(d) of West Pakistan Land Revenue Act, 1967, land on which Property Tax under the West Pakistan Urban Immovable Property Tax Act, 1958 (West Pakistan Act V of 1958), is payable, is not liable to the payment of Land Revenue with effect from Rabi, 1968, when this Act came into operation. As such the assessment of Land Revenue on such urban properties is not required.

2. So far as the preparation of record of rights in the Rating Area is concerned, the detailed instructions issued by West Pakistan Revenue Department's memo. No. 3417-68/1203-(S), dated 6.7.1968 (copy enclosed) to all the Commissioners and Deputy Commissioners in West Pakistan (except Karachi, Hyderabad and Khairpur Divisions) are re-iterated. These instructions inter-alia provided as under :-

- i) Areas which have been built up may be treated as 'Abadi Doh' for the purposes of revenue records and further maintenance of record in respect thereof should be discontinued. It may be made clear that only those Khasra/Survey numbers should be treated as Abadi Doh, which have entirely been covered by construction. It would not be advisable to treat a portion of a field number as Abadi Doh and discontinue further maintenance of records in respect thereof.
- ii) If a field/survey number is covered by buildings, it would not be necessary to change entries in Jamabandi (Revenue Records) forthwith, but new entries may be made at the time of preparation of the next quadrennial Jamabandi (Revenue Records). At the time of revising the quadrennial Jamabandi (Revenue Records) the Tehsildar/Naib Tehsildar

2003
received
initials
open
1984

the number of entries, the mutations of all the transactions should be recorded, datewise.

ii) Areas which have been built up may be treated as 'Abadi Doh' for the purposes of revenue records and further maintenance of record in respect thereof should be discontinued. It may be made clear that only those Khasra/Survey numbers should be treated as Abadi Doh, which have entirely been covered by construction. It would not be advisable to treat a portion of a field number as Abadi Doh and discontinue further maintenance of records in respect thereof.

iii) If a field/survey number is covered by buildings, it would not be necessary to change entries in Jamabandi (Revenue Records) forthwith, but new entries may be made at the time of preparation of the next quadrennial Jamabandi (Revenue Records). At the time of revising the quadrennial Jamabandi (Revenue Records) the Tehsildar/Naib Tehsildar concerned should personally inspect the existing Abadis Doh and compile a report about the field/survey numbers which were covered by buildings during the last four years. He should then submit a proposal to include that area in the Abadi Doh, for orders of the Collector. After obtaining the orders of the Collector the Tehsildar/Naib Tehsildar should make entries in the new Jamabandi (Revenue Records) accordingly.

If any difficulty is experienced in the implementation of the above instructions, a reference may be made to the Board of Revenue for clarification.

Sd/-
Deputy Secretary to Government, West Pakistan,
Revenue Department.

No. 3417-68/1204-S.

A copy is forwarded to all the Deputy Commissioners/Commissioners in Southern Zone with reference to memorandum No. 3417-1208-(S), dated the 3th July, 1968, for information and necessary action.

Sd/-
Deputy Secretary to Government, West Pakistan,
Revenue Department.

No. 3417-68/1205-(S).

A copy is forwarded to the Deputy Secretary (Revenue), Board of Revenue, with reference to this office order No. 3210-65/1205-(S), dated the 31st July, 1968, for information and necessary action.

Sd/-
Deputy Secretary to Government,



The same Memo showed concern that:

“instructions passed in letter of 1968 are not being complied with by the field officers

It even devised a Performa for sending reports regarding status of implementation on instruction pertaining to this “very important matter”.



No compliance report could be found!

At the time of checking & inspection of kharif of the estate within 'Rating Area' of the Urban Immovable Property Tax Act, for which new Register Haqdarani Zamin is to be prepared the field Qanungo should visit the existing abadi deh & make a report in Patwari's diary about fields which have entirely been covered by constructions in period intervening between two Register Haqdarani Zamin.

The field Qanungo should also send a copy of his report to circle revenue officer, who is duty bound to personally inspect existing abadi deh before middle of December & make a self contained report about field numbers newly covered by building that he would propose to include in abadi deh for order of Collector.

On receipt of Collector's order the Patwari shall enter a dakhil kharij-Extension of abadi deh area – in respect of field numbers, covered by buildings in favour of abadi deh & put up the same to the revenue officer for necessary orders.



The circle revenue officer must attest such dakhil kharij before 15th of June.

Title

It is a legal term for a bundle of rights in a piece of property in which a party may own either a legal interest or an equitable interest.

It may also refer to a formal document that serves as evidence of ownership.

It is distinct from possession, a right that often accompanies ownership but is not necessarily sufficient to prove it.

Conveyancing

- It is transfer of title of property from one person to another or granting of an encumbrance- *a mortgage or a lien*
- **Conveyancing transaction** contains two major things:
 1. exchange of contracts (whereby equitable title passes)
 2. completion (whereby legal title passes)
- Conveyancing occurs in three stages:
 1. *before contract,*
 2. *before completion, &*
 3. *after completion.*

- A system of conveyancing is usually designed to ensure that buyer secures title to land together with all rights that run with land, & is notified of any restrictions in advance of purchase.
- In most developed jurisdictions, conveyancing is facilitated by a system of land registration which is designed to encourage reliance on public records & assures purchasers of land that they are taking good title.

Possession

It is actual holding of a thing, whether one has any right to do so or not.

The 'right of possession' is the legitimacy of possession (*with or without actual possession*), evidence for which is such that law will uphold it unless a better claim is proven.

The 'right of property' is that right which, if all relevant facts were known (& *allowed*), would defeat all other claims.

Each of these may be in a different person e.g., suppose Aslam steals from Bashir, what Bashir had previously bought in good faith from Kalsoom, which Kalsoom had earlier stolen from Danish, which had been an heirloom of Danish's family for generations, but had originally been stolen centuries earlier (*though this fact is now forgotten by all*) from Ehsan.



Here Aslam has the possession,



Bashir has an 'apparent' right of possession (as evidenced by the purchase),



Danish has the 'absolute' right of possession (being the best claim that can be proved),



the heirs of Ehsan, if they know it, have the right of property, which they cannot prove



Good title consists in uniting these 3 things:
the possession,
the right of possession, &
the right of property in the same person(s)

England & Wales

1862

A system of land registration was first attempted under Land Registration Act 1862.

Present

System was brought into force by the Land Registration Act, 1925.

1998

It became compulsory to register land when a mortgage is created on it in 1998.

This system proved ineffective, following further attempts in 1875 & 1897

1875 & 1897

In 1990 there came compulsory registration order. Inheritance and gift became compulsorily registerable in April 1998.

1990

Compulsory introduction of electronic conveyancing using electronic signatures to transfer & register property came in 2005. England & Wales Land Registry is connected to the European Land Information Service (EULIS).

Torrens System

System of land title where a register of land holdings maintained by state guarantees an indefeasible title to those included in the register.

Torrens System operates on 3 principles:

1. **Mirror principle** - the register (Certificate of Title) reflects (mirrors) accurately & completely current facts about a person's title- *if a person sells an estate, new title has to be identical to old one in terms of description of lands, except for the owner's name.*
2. **Curtain principle** - one does not need to go behind the Certificate of Title as it contains all the information about the title- *ownership need not be proved by long complicated documents that are kept by the owner, as in the Private Conveyancing system. All the necessary information regarding ownership is on Certificate of Title.*
3. **Insurance principle** - provides for compensation of loss if there are errors

Deeds Registration System

To establish one's title to land, a person (*purchaser*) will have to ascertain that:

All the title documents are properly executed

“A chain of title” is established

There are no (hidden) encumbrances on the land that probably will harm the title of the land.

Landowners are needed to prove their ownership of a particular piece of land back to earliest grant of land by Crown to its first owner

This event could have occurred hundreds of years prior & could have been intervened by dozens of changes in the land's ownership

A person's ownership over land could also be challenged, potentially causing great legal expense to landowners & hindering development

In Punjab's case first settlement record has sanctity of conclusive evidence

Here, neither title search for checking veracity of the chain of title is legally binding nor is it a popular practice either by a lawyer/ buyer or the sub-registrar

'*Fard*' simply is perceived to be proof of a *bona fide* (presumed) owner (seller) if current record of rights also has entries in his/ her name

Disputes regarding titles go to civil courts for decisions, putting extra burden on civil justice system

Even an exhaustive search of the chain of title would not give purchaser complete security, largely because of principle '*nemo dat quod non habet*' ("*no one gives what one does not have*") & ever-present possibility of undetected outstanding interest.

Resultantly, transfers of land, in such systems, render slow, expensive, & often unable to create certain title as this may involve lengthy inquiries, examinations and prolonged litigation

In Torrens system, a prospective purchaser is not required to look beyond the record that is contained in the Title register.

Ireland & Hong Kong have both systems with the Torrens system gradually superseding the older system.

The Torrens title system ensures "title by registration" (i.e., indefensibility of a registered interest) rather than "registration of title."

Each parcel of land is given a separate folio (unique number) in the title register & is identified by reference to a registered plan.

The folio records:

- 1. Dimensions of the land & its boundaries,*
- 2. Names of the registered proprietors, &*
- 3. Any legal interests that affect title to the land.*

The State guarantees title & is usually supported by a compensation scheme for those who lose their title due to the State's operation.

Claims for compensation are very rare.

To change boundaries of a parcel of land, a revised plan must be prepared & registered.

Once registered, the land cannot be withdrawn from the system.

New Zealand also adopted a similar system in 1875



Majority of states in the US employs a system of recording instruments that affect title of real estate as exclusive means for publicly documenting land titles & interests

This system differs significantly from land registrations systems, such as Torrens System that have been adopted in a few States

The principal difference is that the recording system does not determine who owns the title or interest involved.

That determination is ultimately made through litigation in the courts.

The system simply provides a framework for determining whom the law will protect with relation to those titles & interests when a dispute arises.

Even though a Recording Act does not require recording, the market dynamics do create strong incentive for a buyer to record.

→ Recording provides constructive notice to any subsequent purchasers that a prior conveyance occurred and therefore protects the prior purchaser in the event of a subsequent conveyance.

→ To protect themselves from defects in the title, buyers frequently purchase title insurance at this time, either for themselves or for their lender.

→ The Recording Systems are established by State Statute, which usually provides for the office of a recorder in each county.

Singapore

Due diligence checks at several agencies can be done online through a one-stop portal called 'Intereq'.

They include:

- *Inland Revenue Authority of Singapore (for Property Tax);*
- *Land Transport Authority,*
- *National Environment Agency,*
- *Public Utilities Board,*
- *Urban Redevelopment Authority (planning regulations),*
- *a land register check at the Singapore Land Authority,*
- *a bankruptcy check, in order to ascertain if the seller is affected by winding up actions.*

The stamp duty is also paid online.

Finally, transfer is lodged through Singapore Land Authority's Singapore Titles Automated Registration System Portal.

The entire process takes about 5 to 8 days, involving 3 major steps.

In Thailand, seller & buyer, or their representatives, must go to Land Office where land is located, & submit an application to register sale of land & buildings thereon.

The Land Officer compares original title deed with original copy kept at Land Office & calculates all registration fees & expenses.

The cheque for the taxes is payable to the Ministry of Finance but collected by the Land Office.

Seller will need to produce construction permit & household registration of building to transfer building.

As Seller owns both land & buildings upon land, transfer of building occurs in same process at same registry as for transfer of land.

This exercise takes about 2 days to complete.

A comparative analysis of various Land Registration & information systems in vogue in different countries of the world, it becomes clear that

- ✓ basically all systems were developed for fiscal & legal purposes;
- ✓ All systems gather similar basic information

It is the design of the system & the way it maintains the information that makes the difference: either making it the most transparent & efficient one, ensuring guarantee of title or rendering it the most sluggish one, exhibiting the inefficiency and corruption, wherein generations parish in search of justice!



Advanced systems maintain all the information in the form of a unified single register, having distinct parcel based identifiers, backed by certain guarantee/ insurance/ state certificate to title.



Land Titling Registration System ?

- Registration Deed, & Fard- **not documents of title** to property (Supreme Court of Pakistan)
- Fard is copy of Register of Record of Rights of land use only- kept for the fiscal purpose
- Registration of deeds is documentation of agreement between two or more parties

Title Register
declares the
land title i.e.
ownership
based on legally
backed
possession with
detail of all
encumbrances

Titling Register is
based on 3
principles:

Mirror Principle

Curtain Principle

Insurance Principle