

Land Titling – A Road Map

Report of the Expert Committee formed by Government of India

05 February 2014

Land Tilting - A Road Map

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Preliminary

Starting with One Man Commission under Prof. D. C. Wadhwa, titling has been talked in India, now and then from 1986 onwards though not on a serious scale and intensity. The first serious attempt by any Government in the country was that of by the Government of Andhra Pradesh, when they issued Government Order promulgating it to be the policy of the State to introduce the Torrens System and starting a pilot for it. They designed a comprehensive project, starting with resurvey and containing titling, legal reforms and administrative re-engineering. They also went ahead and drafted a law for bringing in the concept of titling in India that would later become the model for others including Government of India to follow. It was only in 2008 that the Government of India declared Torrens System to be the ultimate objective under the NLRMP. Under this programme, the Government of India set up a committee to suggest a legislation for the purpose of titling, apart from a Core Technical Advisory Group to look into other aspects of NLRMP. Meanwhile some other state governments also made an effort at it. The Rajasthan Government went and issued an ordinance for title certification in the year 2007 which later lapsed without much action under it. Delhi Government also attempted to draft a law and stopped at that. Even the law drafted by the Government of Andhra Pradesh has not seen the light of the day till now.

In the meanwhile, Department of Land Resources of Govt of India put up two drafts on its website, first in 2008 and second in 2011 to bring into effect an Act for titling to be introduced in the Union Territories.

Though there is no tangible progress on ground, the result of all this activity is that a considerable amount of interest is generated towards titling among various States even though there is still no clear direction as to where to begin and how to go about it. Thus it cannot be said that there is any lack of will on part of the State Governments or the Government of India.

With a view to give necessary impetus to the exercise of titling, the Government of India in DoLR, Ministry of Rural Development issued Order No. 18015/05/2011-LRD dated 05.12.2013, constituting this committee with the following composition:

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|--|----------|
| 1. Shri Vinod K. Agrawal, Principal Secretary Revenue (R&S), A.P. | Chairman |
| 2. Shri S. Chockalingam, Inspector General of Regn. – Maharashtra | Member |
| 3. Shri V. Ponnuraj, Settlement Commissioner – Karnataka | Member |
| 4. Shri B. Gangopadhyaya, Inspector General of Regn. – West Bengal | Member |
| 5. Shri Prabhat Kumar Sharma, Retired DIG, Regn., U.P. | Member |

The terms of reference of the committee was enumerated in the said order as follows:

The committee shall suggest

- (i) A Model for Land Titling

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- (ii) Its Road Map
- (iii) Location for testing the Model
- (iv) Administrative Setup required for the purpose
- (v) Broad Legal Framework (including new laws and amendments in existing Acts etc.)

The committee was also given the option of taking help from any technical person or request the States/UTs to present their case or take help of any relevant document provided by the DoLR and States/UTs. Deadline given to complete the report for above terms of reference was 31st December 2013.

This issue was discussed threadbare in a conference called 'National Conference on Land Titles: The Immediate Possibilities' at Pune wherein it was decided that wherever possible a starting should be made in the direction of least resistance and the low hanging fruits should be plucked first so as to create a demonstrative effect. The then Secretary, DoLR Shri B B Srivastava who chaired the conference, decided to constitute a small committee of some interested officers, which would put together its recommendations to start the titling work in the country wherever there is sufficient readiness.

The committee took up its work in right earnest and held its first meeting at Hyderabad on 30.11.2013.

Committee had its second meeting on 10.12.2013 at Delhi in the office of the Secretary, DoLR. The third meeting was held at YASHADA, Pune on 22nd and 23rd December 2013. In the fourth meeting again at YASHADA, Pune on 2nd and 3rd January 2014, the committee had the benefit of interaction with the new Secretary of DoLR Smt. Vandana Kumari Jena and state representatives of Gujarat, Madhya Pradesh and Tamil Nadu (apart from the committee members).

In its fourth meeting on 2nd and 3rd January 2014 at Pune, it was considered that committee must have wider consultations with all the states before it finalizes its recommendations. It was felt that committee would give its report as an interim report for the purpose of discussions, which will become final after consultations with all the states. The DoLR agreed to host a conference of Survey/Settlement Commissioners and Inspector Generals of Registration of all the states in Delhi.

Accordingly this interim report of the committee is being submitted.

The committee acknowledges the support and assistance received in its work from YASHADA and its officers & staff and officers of the Registration Department of Government of Andhra Pradesh and Maharashtra.

I. Various Models of Land Titling

1. Titling in short

Titling involves keeping a public record of titles on immovable properties which is conclusive in nature and ensuring that the entries in that record are always correct and true. There are three principles which form the basis of conclusive titling system i.e. Curtain, Mirror and Single Agency.

The essence of the Curtain principle is that once a title is registered in the title register, a curtain falls on all the past transactions on the property and the past history or transactions cannot affect the rights of the current title holder, unless and until they are mentioned as restrictions on the current rights. In other words, the rights of the current title holder is indefeasible and cannot be questioned on the basis of defects, if any, created by past history.

The essence of Mirror principle is that the record related to land should always reflect true and faithful picture of the realities on the ground. This is true of both cadastral and textual record. To ensure that the graphical records, textual records and registration records (related to any transaction in the property) are in tune with one another, it is essential that they are unified and a single agency maintains and operates it.

Conclusive titling becomes guaranteed tilting once the element of insurance is introduced. In the guaranteed tilting model, government not only keeps the records as per the principles of conclusive titling but also compensates a person who incurs loss due to a wrong entry in the records.

2. Prerequisites for a Guaranteed Titling System

Before an exercise of titling is taken up it is essential that

- 2.1. The boundaries and location of properties are described with a reasonable level of accuracy and that all the properties are uniquely identifiable without any confusion as to the identity, location and boundaries. This also entails that the graphical record and textual records are integrated and unified so that there is no gap between the two.
- 2.2. The transfer of a property is affected by the action of registration and registration alone. This calls for introduction of system of Title registration rather than the deed registration as prevalent in the country today.
- 2.3. There is no gap between the change in title and change in record of the property meaning that the transfer of property and updation of the record are integral.

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There can't be a mutation like situation where there are gaps between record and the actual position on ground.

3. Various models

There are generally three models of tilting available in the world. Systematic titling wherein an empowered public authority or an authorized agency takes up titling of all the properties in a given area suo moto without any effort or application on the part of property holders. The other method is incremental titling which could either be optional (parallel) or compulsory. These are discussed below:

3.1. Systematic Titling

Systematic Titling envisages first registration of title over all the properties in a systematic manner in a campaign mode. In this method, duly qualified, trained and empowered staff appointed by the Government would determine the title over every property in a given area. After due public notice, calling for claims and objections and adjudication of disputes, name of the title holder and nature of his title would be determined and put in a register which would be open to the public. Needless to say that there would be dedicated channels for appeals and rectifications.

3.2. Incremental - Compulsory

In Incremental - Compulsory Titling method, first registration of title is made compulsory by law when a property comes for transfer. In such a case it is the duty of Registrar to ascertain the title of the transferor before registering the transfer. This 'ascertainment' by the Registrar itself is in the nature of 'determination' of title and its 'first registration'. The Registrars are trained and empowered to decide on the issues relating to titles. Sometimes they make provisional registrations pending determination of title.

3.3. Incremental - Optional

In Incremental - Optional Titling method, the 1st registration is done by a competent authority on an application by the interested person. Whichever property comes under this would be operated under the title registration system and the rest of the properties will continue to operate under the deed registration system. Over a period of time when it is felt that most of the properties have come under the title registration system, the deed registration system is scrapped and rest of the properties are compulsory brought under the Title Registration system. UK is a good example of this where the parallel system operated from 1862 to 2002.

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4. Pros and Cons of various existing models of Land Titling

In the systematic titling, the time taken is the least of all the three models. The manpower is deployed and expenditure is done intensively over a shorter period of time and work is finalized within a given time frame. When most of the properties are covered, a separate mechanism is created for further registration of properties and the titling is said to be completed. The advantage of this system is the short period taken and uniformity of operation of the administrative system for all the properties. Though in this model, the total expenditure on titling is the least of the three models, the expenditure appears to be huge as it is made over a much shorter period of time – say about 10 years for the entire country vis-à-vis a century in other models. The effort also is intense over shorter period and therefore appears daunting.

In incremental compulsory method, the first registration goes on for decades together because it is made only when a property comes for transfer. In a country like India where frequency of transfer is not very high, it could be fairly assumed that it may take about 100-150 years before much of the properties come under the titling system and the deed registration system is scrapped. The expenditure though higher in reality appears small since it is spread over so many number of years. However, in this system, properties which do not have perfect title, either go out of circulation or resort to illegal means of transfer. Hence, they would not be able to realize their full potential value. The per-capita cost of titling i.e. cost per property also is very high. Another problem with this method is that transfer of a property takes a very high time, say about 6 to 12 months because titling has to be done before transfer is effected.

In the incremental optional (parallel system), the property with less than perfect titles also get transacted upon under the deed registration system and convert into title registration system as and when the title is perfected over time. Since the properties under title registration system command a premium compared to those under deed registration system, there remains an incentive to opt for the former. Once a property comes under Title Registration System, it remains under it for future transactions. This system takes a much longer time even compared to the incremental compulsory system. Taking a cue from the experience of UK where it took about 140 years, and given the frequency of transfer in India, it could be presumed that it would take about 200 years for the exercise to be completed in our country. In this case, the expenditure is more than the incremental compulsory as two parallel systems have to be run for many decades, nay centuries.

Taking all the pros and cons into consideration, the committee is of the opinion and recommends that systematic titling be taken up in our country. This opinion is also reinforced by the fact that we have a history of systematic surveys and re-

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surveys followed by settlements which are more or less in the nature of systematic titling. If one part of the settlement process viz. 'determination of the landholder' is upgraded by law and procedure, it is nothing but titling.

However, an essential pre-requisite of the systematic titling exercise viz. accurate description of the boundaries and location of the properties and assignment of unique ID is not available in most of the country. In its absence it is necessary to take up large scales cadastral surveys and re-surveys especially in urban areas. The time and effort involved is quite enormous which seems to be holding up the titling exercise. After considerable deliberations, the committee could find a way to start titling under a fourth model. The committee decided to call this model systematic selective model which is described below :

4.1. Fourth Model : Systematic Selective Titling

In this model, the principles of curtain and mirror are applicable as in other models. Survey/re-survey is not mandatory though assigning unique identity to every property is. Titling is taken up for the properties which have clean history and not much investigation is required. The boundaries of a property are not certified/guaranteed. Government suo motu creates a title register for such properties and thereafter properties in this register are brought under the title registration system. Objections are invited from public and opportunity of hearing is given before the title register is finalised. Though not exactly the same, a similar model was tried in Ontario province of Canada which was called Land Titling Converted Qualified (LTCQ).

Given the state of land records and cadastral surveys in our country, this model can be applied to the properties when new virgin titles are created e.g. when a builder/developer of multistoried apartments block hands over the ownership of an apartment (flat) to the first owner. Here the property has no past history and as such there is no worry about defects in the title. Of course, the title over land on which the property stands need to be verified. This model is also suitable for properties which are allotted by government agencies like DDA, MHADA etc. The past history (e.g. acquisition, disputes etc.) are handled by these agencies and buyer gets a clear title. In other words in this model virgin titles are captured and rendered dispute free for future by bringing them under the title registration system.

With the increasing urbanization and the increasing prices of lands resulting in more and more people living in flats this model could cover about 40% - 50% of urban properties in the country over next about 20 years.

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II. Locations for testing

Having recommended the two models of titling, systematic and systematic selective, the committee considered various options to pilot these models in the country. The basic area of concern was the pre-requisites mentioned in the chapter I above as well as the readiness of the state to take up the pilots. Shri S Chockalingam, Inspector General of Registration, Govt. of Maharashtra expressed his willingness to take up a pilot under systematic selective titling for the city of Pune. He also explained to the committee that there is considerable political and administrative interest in his state to take up this pilot. He further informed that he had already informally discussed this with the relevant authorities and the state may shortly issue a formal in-principle approval to take up the project. The committee, therefore, recommends that the Pune city of Maharashtra can be a location for piloting the systematic selective model of tilting. However a proper method of assigning unique ids to the properties in the given area will have to be designed and put in place before the pilot begins.

The committee also considered various options for piloting the other model of titling namely systematic. An essential pre-requisite for this is the existence of a proper cadastral survey record. On this count Nizamabad district of Andhra Pradesh is found to be the most qualified because under Bhu Bharati project all the rural properties of Nizamabad (except village sites) have been resurveyed very recently. However willingness of the state government could not be ascertained. The committee feels that if the Government of A.P. is willing to take it up, Nizamabad could be most suitable place for piloting the systematic model of titling.

The committee also felt that any other state willing to take up the pilot in an area where a reasonably accurate cadastral survey record exists can be encouraged to locate a pilot.

After considerable discussion and deliberations, the committee also noted that there are certain definite advantages in terms of time, cost and resources if the resurvey exercise and tilting are done simultaneously. To that effect, a state which has already taken up resurvey or on the anvil of starting a resurvey can be a good candidate for piloting a systematic tilting model.

Apart from the above, some states in the past had shown considerable interest in taking up tilting exercise e.g. Rajasthan and Delhi. A dialogue can be opened with them to find out if they are willing to take up a pilot.

III. Administrative Set up

1. Available Options

To implement Land Titling it is essential that a single agency handles all the jobs pertaining to the exercise of Titling viz. preparation of property maps, assignment of unique Ids, determination of titles and designing subsequent maintenance procedures as well as administrative set up. There can be three options-

1. A department of the government
2. An independent Authority
3. A corporation under The Companies Act.

1.1. Department

In many countries including the state of New South Wales, Australia, this function was carried out by the Department called as Department of Land or Department of Land Titles etc. This department has three wings which encompass all the three functions - survey, record of rights and registration.

There may be many reasons for this being done by the department.

1. During the days in which Land titling was conceived and implemented in these places, there would have been no concept of having either an authority or a company. By default Government department was the option.
2. Assuring title being a very important work, it may be proper to keep it with a sovereign body.
3. But department has its own issues like availability of funds for proper functioning (unless and until it is permitted to have its own resources), external influences, inflexibility in operation, time consuming decision making processes and frequently changing administration/administrators.

1.2. Independent Authority

To avoid the pitfalls mentioned under point 3 of the above and taking into consideration new developments in public administration, an independent body may be created which can handle specialized jobs for which there might not be enough knowledge and talent in the administrative setup. This provides independence in the day to day functioning while being accountable to the legislature.

In either of the scenarios, it is essential that titling is given proper full time attention by an independent agency rather than handled by a department, like Revenue Department which is pre-occupied with so many urgent works.

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1.3. Corporation

This is one of the models in which the entire work is done by a company under the overall supervision of a department. This method provides full flexibility in the development and implementation of IT related modules as well as hiring of necessary manpower.

Given our situation, an independent authority might be better suited.

It is suggested that while the core administrative, legal and technical functions are performed by staff of the authority, much of the field work is outsourced to external agencies. It will ensure flexibility of deployment, speed of operations and saving of cost. While so, the quality control and supervision will remain with the staff of the authority.

2. National Land Titling Authority

A National Land Titling Authority can be put in place to undertake the work of creating a system of conclusive titles throughout the country. A provision for such an authority can be made in the new law though it is not compulsory that it should be. The National Authority could be a multi-member authority with its own budget and functionaries. It will lay down the broad parameters of the programme, its methodology and content. It will provide technical and policy support besides monitoring the implementation and utilization of funds.

3. State Level Authorities

There will be a state level land titling authority for every state and union territory which will work under the overall supervision of the National Authority even though deriving statutory powers directly from the new legislation. The State Authority will consist of officers drawn on deputation from the concerned State Government. The State Authority will be responsible for detailed planning and designing the programme within the broad parameters laid down by the National Authority. It will also be responsible for executing, monitoring and supervision of the entire programme which will be mostly through outsourcing and with the assistance of the State Government functionaries. The requisite number of State Government employees from the concerned departments will be taken on deputation for assistance, supervision and quality control at local levels. After the work of creating the record of titles is completed, the State Authority will continue to do the subsequent maintenance, operation and updating of the system.

National Authority will fade away when the work is completed all over the country since subsequent operation and maintenance will be done by the designated state

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agencies. Second option is that it reduces in size, converts itself into an institute and continues to provide technical inputs to the State Authorities and Government of India.

IV. Legal Framework

1. Necessity for Legal Changes

The Committee had considerable deliberations on this and found that whatever be the model of Titling selected, it is not possible to take up the exercise without an enabling law in place. This is so because there is no law empowering the Government or any of its agencies to create a record of titles which would be conclusive. Revenue records at best are presumptive in nature so far as the title is concerned under the Evidence Act. Secondly, the titling cannot operate under the present Registration Act which provides for registration of deeds and not the titles. Thirdly, as per the Transfer of Property Act transfer of properties takes place by contract and not by registration hampering title registration system.

Apart from the above, Committee also observed that much of the information which has a bearing on the title of a property is not in public domain e.g. GPAs, Equitable Mortgages etc.. Similarly, much of such information though in public domain is not easily accessible e.g. civil disputes, land acquisition notifications, pending actions etc.,

2. Legal Changes- Options

There are two options. One is to amend all the relevant Acts e.g. Transfer of Properties Act, Indian Evidence Act, Registration Act, RoR Act, L.A.Act, Negotiable instruments Act, Civil court Procedures ,etc. etc.. Second is to enact a new law with overriding provisions.

The committee considered both the options and decided in favor of the second because it is much more convenient, less time taking and definitive.

3. Legislative competency

- i. The land including rights in or over the land is a state subject by virtue of entry 18 in list-II of the seventh schedule of Constitution of India. Even maintenance of land records and survey for revenue purposes and records of land rights is a state subject (Entry 44). There is no entry in relation to land in list-I which is the union list. The Registration Act and the Transfer of Property Act are under the domain of the Union Government probably by virtue of entry-6 in list-III which reads as 'transfer of property other than agriculture land - registration of deeds and documents'. The important conclusion it gives is that registration of deeds and documents alone are covered by this entry and registration of rights are not.
- ii. The system of conclusive titles necessarily has 3 essential elements.

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- a. Determination of the title of each one of the properties culminating in creation of Register of Titles.
 - b. The entries in the Register of Titles should be accepted by all (including courts) as the conclusive proof of title - conclusivity or indefeasibility or unassailability.
 - c. A system of transfers linked to titles or title registration system.
- iii. **A.** Examining the 1st element, Systematic Titling envisages first registration of title over all the properties in a systematic manner in campaign mode. Since this first registration of title is not 'transfer' of title, it does not fall under entry 6 and the list III. Hence the Union Government may not be able to legislate for it without states' involvement.

B. The 2nd element i.e. conclusivity can be put into place only when the entries in Register of Titles is accepted by all title holders, title seekers, mortgagees, courts, etc. as conclusive proof of title. This essentially is a function of the Indian Evidence Act. It can be achieved either by an amendment to the Evidence Act or by providing for it in the Registration Act by an amendment to that effect.

C. The 3rd element can easily be achieved by making amendment to the Registration Act and providing that every transfer of property should be accompanied by a title deed issued by a competent authority.

Both of these (B & C) are very much within the legislative jurisdiction of the Union Government but not of the state governments.

To sum up, a legislation by the Union Government alone will not be able to introduce a system of conclusive titles nor is it possible for the states to legislate on their own to introduce it. The law needs to be passed by both the state legislature and the Parliament of India to cover all the essential elements of Conclusive Title.

There are three options for this:-

- a. The states legislate and the President of India gives his assent under Article 254 (2) of the Constitution.
- b. Two or more states request the Parliament under Article 252 (1) to make a legislation which will be adopted later by other states by passing resolutions in their legislatures.
- c. The Government of India makes a model law and procedure as at (i) is followed. This will only facilitate the states in drafting the law.

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The balance of convenience lies in option (ii) since it will reduce a lot of duplication of work and bring an element of uniformity in the law throughout the country. However the states which are in better state of readiness for tilting can start with option (i) without waiting for (ii) to come.

4. Legal Frame-Work

The committee considered the nature of legislation to be made. Since it is not easy to legislate and to make subsequent amendments frequently committee found itself to be of the opinion that the legislation should be broad, all encompassing and substantive in nature. The procedural part should be left to the rule making powers of the states, so as to provide for different administrative, technical and socio-economical environment prevalent in different states. Committee also felt that the legislation should be futuristic in nature, and provide enabling provisions for future add-ons like introduction of guarantee etc..

The committee considered various options in this regard. Committee had five attempts before it for consideration :

- a. The draft Land Titling Bill (2007-2008) prepared by Andhra Pradesh but not legislated so far.
- b. The draft Land Titling Bill prepared by DoLR and put up on website in 2009 for public comments,
- c. Draft Land Titling Bill (2011) put up by DoLR on its website.
- d. The Land Titling ordinance of Rajasthan
- e. Draft of bill on Land tilting by Delhi but not legislated

The committee considered all of them and found that a and c above could be the base for the new legislation, both of them being essentially similar in nature with slight modifications. The committee worked in detailed on these two legislations, considered them afresh line by line and has suggested a revised version. This also takes care of the recommendations made in this report. This draft legislation is enclosed as Annexure. This has been drafted mentioning Maharashtra as a state had to be mentioned but can be used by any state.

V. Roadmap

1. For States

As and when a state intends to start land titling, it should formally issue in-principle approval and select a location for initiating the pilot. The state must finalize the model and its detailed design, prepare an estimate of the expenditure and determine the time period in which the pilot shall be completed. The state government may send the proposal to the Department of Land Resources, Government of India for sanction of budget. Along with the process of sending the proposal to the Government of India, State Government should simultaneously start the process of drafting the Land Titling Act and send it to the Government of India for assent of the President of India. The state has then to decide on an administrative set up to take up the titling work and administer the Land Titling Act.

State may also chose to establish a dedicated Land Titling Centre to assist them in carrying out the pilot. This Centre will extend following assistance to the state.

- a. To act as Research and Development Centre
- b. To act as Knowledge repository and nodal agency for dissemination of knowledge on Land Titling
- c. To organise the think tank meetings/ conferences for the planning & implementation of the project
- d. To take up communication and awareness building among the stake holders and in the project area.
- e. To give technical expertise & advice for the effective implementation of the project.

2. For Government of India

a. Declare National priority: allocate resources

Introduction of the Guaranteed Titling System needs to be declared as national priority and adequate allocation of resources need to be allocated for the project over the given period of time.

b. Enact the law

As discussed in this report, two or more states will request the Government of India to make the Land Titling Act and the Government of India will enact it.

c. Set up admin infrastructure : National & State LT Authorities

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As explained earlier at Chapter IV of the report

d. R & D and capacity building: set up National Institute

Since the knowledge about global trends in cadastral survey and titling related matters is limited in the country, there is a necessity to create a National Institute which will take up research and develop customized applications for the project. This Institute will also take up capacity building for the project besides serving as a storehouse of knowledge in the field. This institute can also render technical support to the GoI and the states.

e. Identify pilots

In the meanwhile interested states should be identified to take up pilots (as suggested earlier in this report), their designing should be completed and funding should be tied up.

f. Build awareness: create demand

It is necessary that a proper awareness building exercise is taken up at the national level as well as in the interested states. A detailed strategy should be drawn up and implemented after due budgetary provisions.

g. Rewrite processes: write software

In the new dispensation i.e. in the guaranteed titling system the way we deal with the land information, land records and land administration will change especially in view of the fact that the project will be highly technology driven and therefore will a lot of digital data will be generated. This will call for re engineering all the related processes and creating suitable software for them. Rather than each state reinventing the wheel GoI can take it up at the central level and states can customize it for their use wherever necessary.

h. Take up large scale resurveys / supplemental surveys

Since titling has to be necessarily preceded by a proper cadastral record, wherever such record does not exist the process of its creation may be initiated so that titling and cadastral survey could go hand in hand in the roll out phase of the project.