

---

# Title Test Methods of Land in Bangladesh: An Overview

*Md. Mahmudul Hasan Raziv<sup>1</sup>*

---

## Abstract

Land is closely related to our livelihood, economic functions and social norms. In various aspects it is also another cause of disputes in different areas of Bangladesh. Due to not following the proper methods of title test, the right of ownership is not being perfect. Under this situation it is essential that to know the mechanism of searching various documents relating to title and methods of verification of title of that document initially. Without proper verification of the title it can't be possible to buy any unencumbered land. In addition, this paper seeks to explore about historical development of ownership, various modes of acquiring absolute ownership, steps to be taken by the interested buyer or mortgagee for title test i.e. documentary and in person. It also focuses that many more relevant laws and practical ways to identify the title of property held by a person. Lastly, this paper assesses the categories of core causes of disputes and recommendations.

**Keywords:** Land, Title test, Ownership, Disputes.

## Introduction

In Bangladesh there are no visible methods of title test in purchasing land but it is common cause of dispute which is increasing day by day. Many people have been illegally occupying massive land and they sell the same land to different persons. Any land can be transferred by several ways. For example, if someone buys a land property, he/she becomes the owner of that land by the virtue of sale deed and he/she can transfer it to other person by the ways of sale, gift, exchange, inheritance etc. The children and relatives of the deceased person have the right on the remaining property by the way of inheritance. This is the continuous process of transfer of property. In such a long journey of transferability, the documents relating to a landed property often seems or found to be forged. Such landed property is a major sector for the companies, banking institution, financial institution etc. Someone uses the property as a security against the loan disbursed or someone takes the property as a focal point to invest by way of developing the land. The companies like developer

---

<sup>1</sup> The author is a Lecturer at Department of Law of World University of Bangladesh (WUB), Dhaka, Bangladesh. He obtained his LL.B. (Hon's) and LL.M. from the University of Dhaka. After completion of his post-graduation, he got appointed in the LABAID group and Shikder Group as a Legal officer of Legal department. He has written one law text book and several articles which have also been published on reputed journals. His email address is [rajib.legalconsultant@gmail.com](mailto:rajib.legalconsultant@gmail.com)

or the Banking institutions which take the land as a security verily suffers injury when it transpires and in fact no legitimate connection to the person who claims it as his/her own property. Without profound awareness of relevant land laws and methods of title test it might not be possible to purchase unencumbered land. It might also face assorted problems which can only be removed by in person visiting and verification of documents of title at the very beginning. In this regard, to check the title of a property, a purchaser or developer or mortgagee ought to maintain structured process, searching and collecting all relevant information related to the title as well.

The objectives of this article are to find out the proper methods of title test (i.e. documentary and in person) in Bangladesh. Moreover this article covers to determine various modes of acquiring absolute ownership. In addition to that this article will help to identify the practical ways of cause of disputes and recommendation.

On the other hand, this article is based on the primary and secondary sources. Secondary data has been collected from books, journal articles and reports etc. In completing this study, mainly qualitative approach has been adopted to make an analytical reasoning in identifying the relevant laws as to title test in land of Bangladesh. Practical experience as a legal officer and associates of Law Chambers has been included in this article and methods of authentication are also reflected.

## Historical development of ownership of land

Land, sometimes referred to as dry land, is the solid surface of earth that is not permanently covered by water.<sup>2</sup> It also includes not only the soil, but everything attached to it, whether attached by the course of nature, as trees, herbage, and water, or by the hand of man, as buildings and fences. In section 2(16) of SAT Act, 1950<sup>3</sup> has clearly mentioned:

*'land' means land which is cultivated, uncultivated or covered with water at any time of the year, and includes benefits to arise of land, houses or buildings and also things attached to the earth, or permanently fastened to anything attached to the earth.*

In ancient period, the king was the whole proprietor and real owner of the land from 5<sup>th</sup> century to 13<sup>th</sup> century. Because of the partition of the country in 1947, the Bengal State Acquisition and Tenancy Bill was introduced in the Provincial Legislature of undivided Bengal, but was not passed.<sup>4</sup> The East Bengal State Acquisition and Tenancy Act, 1950, passed by the provincial

<sup>2</sup> Michael Allaby, Chris Park, A Dictionary of Environment and Conservation (2013), p. 239.

<sup>3</sup> The State Acquisition and Tenancy Act, 1950. (East Bengal Act XXVIII of 1951), s 2 (16).

<sup>4</sup> Arif Jamil, Verification of documents of land: Legal issues and complications, June (2006), Journal of the faculty of law, vol. 17, Number 1.

legislative assembly<sup>5</sup> on the basis of the recommendations of the Floud Commission, was a landmark in the history of tenurial legislation. The State Acquisition and Tenancy Act, 1950 (*East Bengal Act XXVIII of 1951*) abolished the '*zamindari*' system by acquisition of all types of intermediary rent receiving interests that existed between the government at the top and the tenants cultivating the land at the bottom.<sup>6</sup> Section 3 of SAT Act, 1950 gives to the provincial Government the power or discretion to acquire simultaneously, or from time to time, as was considered to expedient the interest which have been decided upon to be terminated.<sup>7</sup> The abolition of '*zamindari*' made the way for introduction of '*raiayatwari*' system in this region. The State Acquisition of Tenancy Act, 1950 derives that state is the owner of the land and all people having possession as '*raiayat*' or '*tenant*'. Raiyat have regained their ancient rights to hold land directly under the Provincial Government as they were under the Hindu and Muslim Government.<sup>8</sup> A '*raiayat*' is now the proprietor of his holding which is heritable and transferable.<sup>9</sup> In the modern period, the '*raiayat*' is not treated as the real owner of the land of Bangladesh within the spirit of the SAT Act, 1950 since he/she cannot leave his/her land at will and is thus getting deprived of his right of leaving the land at will in the fear that his/her right to land will extinguish<sup>10</sup>. If he/she doesn't pay rent to the Land, his right to land will distinguish as well. According to Section 81<sup>11</sup> of the State Acquisition and Tenancy Act, 1950 with effect from the date from which Part V comes into force in any area all holders of agricultural land under the Government be known as '*malik*'.<sup>12</sup>

### Various modes of acquiring absolute ownership

Ownership denotes the legal rights to hold and use of the land. The methods of ownership are fairly complex: one can gain, transfer, and lose ownership of property in a number of ways. In our constitution Article 13<sup>13</sup> derives that principle of ownership. Article 42<sup>14</sup> of the Constitution of Bangladesh derives that each and every citizen can exercise his right to property but this right is not unfettered as he got to conform to certain guidelines framed by the state

<sup>5</sup> T. Husain, *Land Rights in Bangladesh*, University Press Limited, Dhaka, 1995, at pp. 18 & 19.

<sup>6</sup> The State Acquisition and Tenancy Act, 1950, s 3.

<sup>7</sup> *Jivendrakishore v. Province of East Pakistan* (1957), 9 DLR (SC), 21.

<sup>8</sup> Dr. Lutful Kabir, *Land Laws in East Pakistan*, Vol. III, Dhaka, at p.6.

<sup>9</sup> *Ibid.*

<sup>10</sup> Mohammad Towhidul Islam, *Text, Cases & Materials*, Second Edition, Centre for Human Rights & Legal Research 2018.

<sup>11</sup> The State Acquisition and Tenancy Act, 1950, s 81.

<sup>12</sup> *S M Basiruddin v. Zahirul Islam Chowdhury*, 35 DLR (AD) 230.

<sup>13</sup> The Constitution of the People's Republic of Bangladesh, A 13.

<sup>14</sup> The Constitution of the People's Republic of Bangladesh, A 42.

from time to time. At Article 143<sup>15</sup> derived that the list of the property of the Republic which he doesn't own or enjoy, it belongs to the state. In Article 144<sup>16</sup> also derives that Executive authority can interfere in relation to property, trade etc. of the citizen. In this part, various modes of transfer of ownership are discussed which can be a proof of good title.

### (a) Sale

Section 54<sup>17</sup> of the Transfer of Property Act, 1882 says that, sale is completed by (a) execution of deed and registration (b) transfer of the property by the seller, and (c) payment of consideration by the buyer. In this regard, the buyer gets '*right in rem*' over the property. The seller gets the price for the transfer of property and the price must be a certain amount.<sup>18</sup> It is necessary that the deed of sale must be registered. For creating legal obligation between the seller and buyer, Section 54A<sup>19</sup> was inserted by the Transfer of Property (Amendment) Act, 2005. Because of this amendment, registration of the Contract for sale (*bainanama*) is made compulsory.<sup>20</sup> Section 17 (1) (g) of the Registration Act, 1908 says that, instrument of sale in pursuance of an order of the Court under Section 96 of the State Acquisition and Tenancy Act, 1950 shall also be registered.<sup>21</sup>

### (b) Gift

Transferring interest of property (movable or immovable) from one living person to another without any consideration is called '*Gift*'. It is a gratuitous and '*inter vivos*' in nature. Under Section 122, of the Transfer of Property Act, 1882,<sup>22</sup> '*Gift*' is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. Section 17(1)(a)<sup>23</sup> of the Registration Act, 1908 derives that the registration of instruments of gift of immovable property is compulsory. '*Declaration of heba*' under Musim Personal Law (*Shariat*) must be made through a registered deed according to Section 17(1)(a)(a)<sup>24</sup> of the Registration Act, 1908. It can be made to grandparents, parents, children, grandchildren, siblings and wives. There is another term of registration of

<sup>15</sup> The Constitution of the People's Republic of Bangladesh, A 143.

<sup>16</sup> The Constitution of the People's Republic of Bangladesh, A 144.

<sup>17</sup> The Transfer of Property Act, 1882, s 54.

<sup>18</sup> *Messer's Chittagong Engineering Electric Supply Company Ltd. v Income Tax Officer*, 22 DLR (SC) 443.

<sup>19</sup> The Transfer of Property Act, 1882, s 54A.

<sup>20</sup> The Transfer of Property Act, 1882, s 17A-17B.

<sup>21</sup> The State Acquisition and Tenancy Act, 1950 deals with the right of pre-emption, s 96.

<sup>22</sup> The Transfer of Property Act, 1882, s 122.

<sup>23</sup> The Registration Act, 1908, s 17(1).

<sup>24</sup> The Registration Act, 1908, s 17(1)(a)(a).

*heba* to prescribe new few relatives; one has to submit a fixed registration fee.<sup>25</sup> Mulim Law called '*Heba-bil-ewaz*' also shall be registered. Section 17(1)(aaa)<sup>26</sup> of the Registration Act, 1908 also derives that the registration of instruments of gift under the Hindu, Christian and Buddhist Personal Law is also compulsory.

### (c) Exchange

In generally exchange is the mutual transfer of ownership of two persons in two different properties and both or either of these things may be movable or immovable. Under Sections 118 to 121 of the Transfer of Property Act, 1882 deal with the provisions of exchange. According to Section 118<sup>27</sup> of the Transfer of Property Act, 1882, when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an "exchange". It will not be exchange if money is given for the transfer of thing. It also can be similar kinds of properties or dissimilar types of properties. Therefore, if money is given to equalize the price of property exchanged, then the exchange will be valid. According to Section 17(1)<sup>28</sup> of the Registration Act, 1908, registration of instruments of exchange of immovable property is compulsory.

### (d) Will

The Arabic synonym of will is '*Wasiyat*'. A will is an instrument by which a person makes the disposition of his property to take effect after his death. A document embodying the will is called '*Wasiyatnama*'. According to Section 2(h) of the Succession Act, 1925,<sup>29</sup> '*Will*' means the legal declaration of the intention of a testator with respect to his property which he/she desires to be carried into effect after his/her death. Section 40(1)<sup>30</sup> says that, the testator, or after his/her death any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub-Registrar for registration. Section 41(1)<sup>31</sup> also says that, a will or an authority to adopt, presented for registration by the testator or donor, may be registered in the same manner as any other document. Therefore, will is not provided by Section 17<sup>32</sup> of the Registration Act, 1908 and anyone can possess any land by virtue of deed of will which may be or not be a registered one.<sup>33</sup> In Muslim Law probate is not essential

---

<sup>25</sup> The Registration Act, 1908, s 78A.

<sup>26</sup> The Registration Act, 1908, s 17(1)(aaa).

<sup>27</sup> The Transfer of Property Act, 1882, s 118.

<sup>28</sup> The Registration Act, 1908, s 17(1).

<sup>29</sup> The Succession Act, 1925, s 2(h).

<sup>30</sup> The Registration Act, 1908, s 40(1).

<sup>31</sup> The Registration Act, 1908, s 41(1).

<sup>32</sup> The Registration Act, 1908, s 17.

<sup>33</sup> The Registration Act, 1908, s 18.

but in other case for execution of Will prior permission of Civil Court is also necessary and Court shall serve a notice to the heirs.

### (e) Waqf and Trust property

The concept of '*Waqf*' derived from the Islamic tradition. According to Section 2 (1) of the Mussalman Wakf Validating Act, 1913<sup>34</sup> '*Wakf* means the permanent dedication by a person professing the Mussalman faith of any property for any purpose recognized by the Mussalman law as religious, pious or charitable'. On the other hand, a '*Trust*'<sup>35</sup> is an obligation imposed on one or more persons (trustees) with regard to the 'trust property' that has been transferred to the trustees by the creator of the trust. It must be a clear and certain 'purpose' or 'purposes' of creating the trust. It does not affect the rule of Muslim law relating to the '*waqf*' or mutual relations of members of an undivided family.<sup>36</sup> As per the provisions of the Registration Act, the trust deed has to be registered, if the trust property is an immovable one (e.g. land).<sup>37</sup> If, on the other hand, the property in issue is not fixed but movable, like, money or otherwise, then there is no legal compulsion to register the trust instrument.<sup>38</sup>

### Steps to be taken by the interested Buyer or Mortgagee for title test (documentary)

The interested buyer or purchaser should verify the land documents which are directly related to title with skilled person i.e. lawyer or surveyor etc. He/she will also try to find out and analysis these documents relating to title on the proposed property.

### (a) Record-of-rights (*Khatiyān/porcha/shatvalipi*)

Bengali word '*Khatiyān*' is called Record-of-rights and it also called as traditional term '*Shatvalipi*' or '*Porcha*'. Basically, it is one kind of form showing all the details of rights of '*raiyat*' or '*malik*' relating to ownership. It is prepared under direct control and guidance of the Department of Land Records and Surveys and maintains its own '*Settlement press*' with collected in the Register No. 1 locally called '*Jamabandi*' Register. Firstly, the Bengal Tenancy Act, 1885<sup>39</sup> had recognized rights over land held by various interests, such as, landholders, tenure holders and raiyats. Thereafter, it is gradually prepared by operation of the Sylhet Tenancy Act, 1936<sup>40</sup> and the State

<sup>34</sup> The Mussalman Wakf Validating Act, 1913, s 2(1).

<sup>35</sup> The Trust Act, 1882, s 3.

<sup>36</sup> [http://en.banglapedia.org/index.php?title=Trust\\_Act,\\_1882](http://en.banglapedia.org/index.php?title=Trust_Act,_1882), accessed 6<sup>th</sup> August, 2018.

<sup>37</sup> The Registration Act, 1908, ss. 17 & 28.

<sup>38</sup> The Trust Act, 1882, s 5.

<sup>39</sup> The Bengal Tenancy Act, 1885.

<sup>40</sup> The Sylhet Tenancy Act, 1936.

Acquisition Tenancy Act, 1950, consecutively. Every entry of 'khatiyani' is shown its own khatiyani no. (taken from *Register No. 1*), plot number, bata plot number, area, mouza, touzi, *J.L.* number, names and shares of the possessors and description to their rights and superior interest etc. It has been prepared during several surveys such as *C.S., S.A., R.S., and B.S./City Jorip* etc. It also shows the plot (chak) holder's name and his father's name, nature of right, nature of the tenancy, area of the plot and amount of rent. A map was prepared for every Mouza and contained all the plots marked with individual numbers. All the khatiyans of a Mouza are kept according to serial number in a bound volume that is preserved in the 'Collectorate Record Room' and 'Judge Record Room' and also in the 'tahsil/rent collectorate office' for reference. The holder of each plot has a right to get a certified copy of the khatiyani.<sup>41</sup> Latter record-of-rights will prevail and get preference over the earlier one. S.A. Khatiyani itself is not the document of title but it can create presumption of possession<sup>42</sup> but C.S. Khatiyani can create both i.e. possession and title. Every record-of-rights should be presumed to be correct until it is proved to be incorrect by evidence or revised under Section 114 A of the SAT Act, 1950.<sup>43</sup> But until the record-of-rights is finally published, no presumption of correctness arises. Record-of-rights creates neither title nor destroys it. Presumption of khatiyani does not prevail over the recital of kabala.<sup>44</sup> Presumption of correctness of record-of-rights ceases when a decision by a civil court is given under section 42<sup>45</sup> of the Specific Relief Act, 1877.

### **(b) Mutation (*Nam-jari/jama-khariz/jama-bhag*) and Land Development Tax payment receipt (*Khajna*)**

Mutation is the change of title ownership from one person to another when the property is sold or transferred by way of kabala, will and gift. This khatiyani prepared under Section 144 of SAT Act, 1950 and duties of Tahsildar and Revenue officer for mutation regulated by rules (22 to 24) of the Tenancy Rules, 1955.<sup>46</sup> By mutating a property, the new owner gets the property recorded in his/her name in the land revenue department or the government is able to charge property tax on the rightful owner or creates a separate 'holding' or 'jote'. That means it is a process of updating of Record of Rights (ROR). It does not confer any title on any person.<sup>47</sup> It is proof of present possession.<sup>48</sup> After completion of the process of mutation the owner of land will get the following documents: *a. D.C.R (Duplicate Carbon Receipt, Form*

<sup>41</sup> <http://en.banglapedia.org/index.php?title=Khatiyani>, accessed 5<sup>th</sup> July, 2018.

<sup>42</sup> *Chan Mahmood v. Hossain Ali*, 3 BLC, 364.

<sup>43</sup> *Vested and Non-Resident Properties (L & B) & others DLR 186* at para 8 (at per Gour Gopal Saha).

<sup>44</sup> *Goru Charan Mondal & others v. Sree Bhaba Sindhu Sarkar & others*, 13 MLR (AD), 6.

<sup>45</sup> The Specific Relief Act, 1877, s 42.

<sup>46</sup> The Tenancy Rules, 1955, r (22 to 24).

<sup>47</sup> *Mohammad Azim v. Nur Islam*, 4 BLC, 195.

<sup>48</sup> *Shahera Khatun v. State*, 53 DLR, 19.

no. 222) b. Namjari proposal application (*which is proforma form that is used to create and record the grounds for mutation of property*) and c. Mutation khatiyani (*which is mostly hand written or printed and also valuable as other khatiyani*). Office of the Assistant Commissioner of Land (AC land) issues this khatiyani. Thereafter, the land owners will pay his/her Land Tax (*khajna*) in his/her name and will collect receipt of payment.<sup>49</sup>

### (c) Guardianship certificate

Guardianship means legal authority and corresponding duty of a person to care for another person (a child, a disabled, an aged old etc.) relating to his body or property. During the British regime the law of guardianship was developed and that the father is the natural guardian of the children and after his death, mother is the natural guardian of minor children. The provisions of the Guardians and Wards Act, 1890<sup>50</sup> is applicable in Bangladesh. According to Majority Act, 1875,<sup>51</sup> minor means a person who has not completed the age of 18 (Eighteen) years and this Act is also applicable to all citizens in Bangladesh. According to that Act, every minor or whose person or property a guardian has been appointed by any court and superintendence has been assumed by a Court of Wards, is deemed to have attained his majority at the completion of the 21 (Twenty one) years; and in all other cases, at the completion of the 18 (eighteen) years. Guardians may be a. Natural or de jure guardians b. Guardians appointed by father by a will (testamentary guardians) and c. Guardians appointed or declared by the Court. Consequently, provisions of Family Court Ordinance, 1985<sup>52</sup> is applicable to all citizen of Bangladesh irrespective of religion.<sup>53</sup> In appointing a guardian, the Family Court must follow the provisions of the Family Court Ordinance, 1985 and if any conflict arises between the provisions of these two, the Family Court Ordinance, 1985 shall prevail. In case of minor property the certificate of guardianship is compulsory.

### (d) Rajuk/Dit documents

Most residential property especially in cities is leased from the Government such as Rajdhani Unnayan Kartripakkha (RAJUK), Department of Public Work, and Chittagong Development Authority (CDA) etc. In all cases permission of these agencies are required for any kind of activities in those leased land. The Rajdhani Unnayan Kartripakkha (RAJUK) had been emerged through the ongoing crisis of planned and controlled development of Dhaka City. RAJUK established in April 30, 1987 by replacing Dhaka Improvement Trust (DIT). The prime intension of the organization was to develop, improve,

<sup>49</sup> Land Development Tax Ordinance, 1976, (Ordinance No. XLII of 1976).

<sup>50</sup> Guardians and Wards Act, 1890, (Act No. VIII of 1890.)

<sup>51</sup> Majority Act, 1875, (Act No. IX of 1875.)

<sup>52</sup> Family Court Ordinance, 1985. (Ordinance No. XVIII of 1985.)

<sup>53</sup> *Pochon Rikssi Dasi v. Khuku Rani Dasi and others*, 50 DLR 47.



extend and manage the city and the peripheral areas through a process of proper development planning and development control. In the light of 'DHAKA' Metropolitan Development plan (DMDP), RAJUK has prepared Detailed Area plan (DAP) within its jurisdiction. In case of apartment or land the proposed buyer should verify the membership of developer from Real Estate & Housing Association of Bangladesh (REHAB), deed of agreement, power of attorney, approval plan; all permission letters etc. to make sure that the building is constructed according to the plan or agreement.

### **Steps to be taken by the interested buyer or mortgagee for title test (*in person*)**

The interested buyer or purchaser should also visit the property in person with skilled person i.e. lawyer or surveyor etc. He/she will also try to find out any difficulty.

#### **(a) Easement Rights**

The term 'easement' in its wide and literal sense means a definite right acquired for the ease, conveniences or accommodation of the person entitled to exercise the same.<sup>54</sup> Every person has got certain rights over his own land. He also may acquire certain other rights over his neighbour's land for the beneficial enjoyment of his land by virtue of the ownership of his own land. These rights may be termed as easement.<sup>55</sup> According to Section 2 (5) of the Limitation Act, 1908,

*"easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to or subsisting upon, the land of another.*

Section 4 of this Act, says that, an 'easement' is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own. As there are various modes of acquiring easement such as express or implied or local custom or estoppels and at last by long continued enjoyment for this statutory period of 20 (Twenty) years or 60 (Sixty) years in the case of Government property.<sup>56</sup>

#### **(b) Pre-emption or co-sharer**

The term 'pre-emption' is derived from the Latin terms '*prac*' which means '*before*' and '*empto*' meaning '*purchase*' the equivalent of Arabic term

<sup>54</sup> Mozaharuddin Ahmed, Land Laws of East Bengal (Published by the author, Dhaka, 1963) 69-79.

<sup>55</sup> Hamid Ashraf, Land Laws of East Pakistan (published by Salman Usmani, Dhaka) 75-120.

<sup>56</sup> The Easement Act, 1882, s 15.

‘shufaa’. It has not been defined in any of the statutes in Bangladesh. According to *Osborn’s Concise Law Dictionary*, pre-emption as ‘the right of purchasing property before or in preference to other persons’.<sup>57</sup> It is a right of opportunity of purchasing land in priority to other people, which is ensured in some provisions in various acts of our country. It may be allowed only in the case of transfer of the land to a co-sharer tenant.<sup>58</sup> Section 96<sup>59</sup> of The State Acquisition and Tenancy Act, 1950 and Section 24<sup>60</sup> of The Non-Agricultural Tenancy Act, 1949 have described the provisions for pre-emption of land falling within the municipal area.<sup>61</sup> Section 4<sup>62</sup> of the Partition Act, 1893 derives that right of pre-emption to the members of a joint family having a dwelling house against a stranger who has purchased interest in the joint family. This section has bearing on Section 44<sup>63</sup> of the Transfer of Property Act, 1882. By Section 13 (1)<sup>64</sup> of the Land Reform Ordinance, 1984 says that where the owner intends to sell the ‘barga’ land, he shall ask the ‘bargadar’ in writing whether he is willing to purchase the land but this provision shall not apply where the owner sells the land to a co-sharer or to his parent, wife, son, daughter or son’s son or to any other member of his family. Under Section 27<sup>65</sup> of the Restoration of Vested Properties Act, 2001 also provides the right of pre-emption. If government attempts to sell or lease any unclaimed vested property, the co-sharer (by inheritance) of the holding will be given preference to other prospective purchasers or lessees.

### (c) Abandoned or Enemy property or Hat bazar

During the liberation war many of the owners of properties left the country or abandoned their properties without making any arrangement. Thereafter, under *Ministry of Land* abandoned properties are being managed in accordance with the provisions of Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (PO No. 16 of 1972)<sup>66</sup> and the Bangladesh Abandoned Property (Land, Building and any other property) Rules 1972.<sup>67</sup> In Bangladesh all abandoned properties shall vest in the Government. The proposed buyer should check the abandoned property list from AC land office and hat bazaar according to hat bazar policy. DCs were

<sup>57</sup> Roger Bird, *Osborn’s Concise Law Dictionary* (Sweet and Maxwell, London, 7<sup>th</sup> Edition, 1996), 260.

<sup>58</sup> *S.M.Basiruddin v. Zahurul Islam Chowdhury*, (1983) 35 DLR (AD) 230.

<sup>59</sup> The State Acquisition and Tenancy Act, 1950, s 96.

<sup>60</sup> The Non-Agricultural Tenancy Act, (East Bengal Act) 1949, s 24.

<sup>61</sup> *Md. AbdurRouf and others v. Ahmuda Khatun and others*, 1 BLD (AD) 269.

<sup>62</sup> The Partition Act, 1893, s. 4.

<sup>63</sup> The Transfer of Property Act, 1882, s. 44.

<sup>64</sup> The Land Reform Ordinance, 1984, s. 13(1).

<sup>65</sup> Restoration of Vested Properties Act, 2001, s. 27.

<sup>66</sup> Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (Po No. 16 of 1972.)

<sup>67</sup> Bangladesh Abandoned Property (Land, Building and any other property) Rules 1972.

given the supremacy on over all administrative and management of hat bazar.<sup>68</sup>

#### **(d) Khas land**

The term ‘*Khas*’ derive from Arabic meaning exclusive, special, definite or personal etc.<sup>69</sup> It means that the land owned by the Government which is under the ownership and guardianship of the Ministry of Land. According to Section 2 (15) of the State Acquisition and Tenancy Act, 1950:<sup>70</sup>

*“khas land” or “land in khas possession,” relating to any person, includes any land let out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity.*

Khas land recorded in the ‘*Khatiyon No. I*’ in the name of the Collector in the Register No. VIII. This register is preserved in the Bangladesh Form No. 1072 in four parts.<sup>71</sup> There has been a significant amount of khas land in Bangladesh with direct or indirect ownership of the Government. Many khas plots were grabbed by local elites and powerful quarters that have strong political nexus. The East Bengal State Acquisition and Tenancy Act, 1950 was the main frame legal document which was promulgated to abolish the ‘*Zamindari*’ System (Permanent Settlement of 1793). This law was the basis for all subsequent laws on ‘*khas*’ land. There are two khas land management policies: *a. Agricultural Khas land Management Policy*<sup>72</sup> and *b. Non-agricultural Khas land management and settlement Policy 1995*.<sup>73</sup> The basic doctrines of these policies are to provide institutional structure and procedures for locating khas and distributing it particularly to landless. The non-agricultural khas land management policy was framed in order to address the issue of land grab by powerful elites and lease procedure of non-agricultural khas land. Considering the serious consequences of grabbing non-agricultural khas land, the related policies are not adequate in terms of their coverage and plan of action. The policy does not provide any guidelines on how to recover grabbed land from powerful elites as well as how to distribute non-agricultural khas land to urban poor or landless. The proposed buyer ought to go to the AC land office to check the Khas land.

#### **(e) Pending suit or certificate cases on land**

As a result of legal restriction no transfer of land is possible during the pendency of suit. Section 52<sup>74</sup> of the Transfer of Property Act, 1882 says that,

<sup>68</sup> The Hat And Bazars (Establishment and Acquisition) Ordinance, 1959.

<sup>69</sup> Kabeedul Islam, Glossary of Land and Land Revenue Affair, Mowla Brothers, Dhaka, 2003, P. 43 (In Bengali).

<sup>70</sup> The State Acquisition and Tenancy Act, 1950, s 2 (15).

<sup>71</sup> The Government Estate Manual 1958.

<sup>72</sup> Agriculture Khas Land Management and Settlement Policy, 1997.

<sup>73</sup> Non-agricultural Khas land management and settlement Policy 1995.

<sup>74</sup> The Transfer of Property Act, 1882, s 52.

during the pendency in any Court in Bangladesh of any suit of or proceeding which is not collusive and in which any right to immovable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on which terms as it may impose. The explanation says that the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force. Under this circumstance any disputed land which is pending in Court (Judge Court or Supreme Court) should not be bought until it is settled. The interested buyer also is required to be conscious about certificate cases which is regulated by the Public Demand Recovery Act, 1913.

**(f) Searching in Deputy Commissioner's- DC office: District level, Assistant Commissioner's- AC Land: Upazilla level and Tahsil office: Union level**

Deputy Commissioner or District Collector is the head of the authority as to land and revenue in the District and maintains a record room for the preservation of the records. ADC (revenue) also works very close to the DC in the Revenue Administration. Upazilla Land Office conducts all the functions with the cooperation of Kanungo, Surveyor, Accountant, Nazir, Mutation Clerk, and Assistant Certificate Clerk, Credit Checking cum Sairat Assistant, Process Server etc. He generally keeps land records up-to- date, determines land development tax to be demanded each landowner and dispatches tahsildars to collect land development tax and also administers khas land and vested or abandoned properties etc. Union Land Office is a local revenue collector i.e., tahsildar and one or more assistant tahsildars and process servers. They work under the authority of AC (Land) conducts preliminary enquiries regarding petitions to update land records, maintain list of khas lands, inspect incident of alluvium and diluvium making related map corrections and rent adjustments etc. under the Land Administration Manual, 1990<sup>75</sup> along with related acts and circulars.<sup>76</sup> This office of the government under the Ministry of Establishment keeps control over a certain area consisting of a collection of Mouzas. This office deals with Mutations, and other Quasi-judicial matters. Land Tax must be paid in the Tahsil Office designated for a given area. Tahsildar is burdened with the daily duty to collect current and arrear taxes from the land owners, maintains records of the

<sup>75</sup> Land Administration Manual, 1990.

<sup>76</sup> Howes Mick, Land Policy and Administration in Bangladesh: A Literature Review, CARE SDU Reports and Studies, Care Bangladesh Rural Livelihoods Programme, 2003.

collected taxes and deposits them with the District treasury. He also enlists defaulters to instituting certificate cases and other suits as per the Public Demand Recovery Act, 1913<sup>77</sup> and the AC Land disposes of certificates cases as well. However, land records are maintained by the Ministry of Land. There are 5 register books in tahsil office which are used for collection of land revenue. *Register 1* having the record of rights, *Register 2* contains the classification of land, rate of land taxes etc. *Register 3* the officer keeps the daily account of the taxes of this register, *Register 4* is also called cash book and through the *Register 5* taxes are collected and deposited in the branches of the public bank. This is the government office under the Ministry of Land which keeps record of Land Tax for particular pieces of landed property.

### **(g) Searching in Sub-Registrar office**

Registration is the process of documentation which is to be recorded in the Government held by registry office. As per Section 89<sup>78</sup> of the Transfer of Property Act, 1882, every transfer shall be registered instrument. Section 17 of the Registration Act, 1908 derives that a guideline as to documents for which registration is compulsory<sup>79</sup> but if not registered, it does not have any legal effect and any legal value in the eye of law and it would have been difficult to prove the contents. Section 49<sup>80</sup> also derives the effect of non-registration. It says that,

*No document required to be registered under this Act or under any earlier law providing for or relating to registration of documents shall- (a) operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent to or in immoveable property, or (b) confer any power to adopt, unless it has been registered.*

To prevent difficulties, any transfer of ownership needs to be documented in due process of execution and attestation. It prevents fraud or any kind of fraudulent changes in the transfer and also ensures evidence as to transfer of title. All registered deed has a record of the original deed in the Sub-Registry Office. This Act directs Register officers to give certified of all documents.<sup>81</sup> It is possible to obtain a certified copy of the deed by paying government fees to the Sub-Registrar. In case of sale deed reference of the deed will be found on the back of the last page of deed. The Book no., deed no., date and year of the registration are the basis of searching a deed in the Register office. Via-deeds are lies in maintaining the chain of the land. A brief description of the previous ownership of 25 (Twenty five) years has to be shown for the purpose

<sup>77</sup> The Public Demands Recovery Act, (Bengal Act) 1913.

<sup>78</sup> The Transfer of Property Act, 1882, s. 89.

<sup>79</sup> The Registration Act, 1908, s. 17.

<sup>80</sup> The Registration Act, 1908, s. 49.

<sup>81</sup> The Registration Act, 1908, s. 57.

of registration.<sup>82</sup> There can be several Via-deeds in a chain of title and show who are the persons in possession and had title. In a chain of a land, there may be no sale deed, if the land is inherited one and is not transferred by the successive heirs. In case of ownership by inheritance partition deed or Bontonnama deed or any other deeds or succession certificate can prove title and also be supposed to be checked. Thereafter, it is also necessary to check whether the property is transferred or mortgaged or gifted or willed or exchanged or executed by Power of Attorney etc. and the genuineness of title deed and the record of previous year by a search in the relevant Sub-Registry Office through taking *Non Encumbrance Certificate (NEC)* which is signed by authorized person. And According to *Land Holding Limitation Order, 1972* and the *Land Reform Ordinance, 1984* if the total land of person exceeds 100 (One hundred) bighas of which 60 (Sixty) bighas is the ceiling for the agricultural land, the person can voluntarily abandon the excessive land to the government.<sup>83</sup>

### Categories of disputes and recommendations

Under the above circumstances, I have tried to identify the relevant points and recommendations for the interested buyer or mortgagee which are as follows:

Firstly, sometimes Government surveyor or deed writer can erroneously record or insert any name of the owner or dag of land in the Record-of-rights or title deeds or other deeds but in reality the land owner's actual possession is in another place. It may create dispute between any purchaser and seller. In this regard, it needs to be cautious to choose undisputed land and also have to justify by the surveyor (locally called '*Amin*') whose actual name is present in the '*Record-of-rights*' as an owner and where is his/her actual possession.

Secondly, when any person possesses any land for long time he/she can claim that property as of right. According to Article 144 of the Limitation Act, 1908<sup>84</sup> any undisputed and uninterrupted possession for 12 (Twelve) years gives rise to a good claim of title. In addition, title by prescription can be acquired against the Government only by the adverse possession for 60 (Sixty) years.<sup>85</sup> In the context of this situation, it may be the cause of dispute to determine the ownership of title and also need to talk about the aforesaid matter with local people.

Thirdly, when any successor does not divide his/her property by partition among them it may raise several disputes. Any particular land of the deceased

---

<sup>82</sup> The Registration Act, 1908, s. 52AA.

<sup>83</sup> Article 3 of the Bangladesh Land Holding Limitation Order 1972 and Section 4 of the Land Reform Ordinance 1984.

<sup>84</sup> The Limitation Act, 1908. (Act IX of 1908), A 144.

<sup>85</sup> The Limitation Act, 1908 (Act IX of 1908), A 149, First Schedule.

can be claimed by these heirs since it has not settled among them, which of the land each of them will possess. In this situation, the registered partition deed or a succession certificate can be the only solution for diminishing these disputes.

Fourthly, any erroneous information of *deed of sale or heba deed or via deed or khatians or mouza map* etc. carries mistake in schedule of the land, wrong boundary, wrong dag no., wrong plot no., quantity of land and any printing mistake are grave mistake. In this regard, every purchaser or mortgagee should be cautious about the aforesaid mistakes which are neither safe nor good title.

Fifthly, various documents constitute a chain of ownership which includes various title deeds, via deeds, Khatians (*C.S./S.A./R.S./B.S./City Jorip etc.*), Mouza Map, Mutation (D.C.R and namjari proposal application), rent receipt etc. and shall have brief description for last 25 (Twenty five) years. In this regard, every purchaser or mortgagee ought to maintain and verify the documents carefully which are recorded manually, otherwise this defect may result in invalidity of the title or may be a questionable one.

Sixthly, the whole process of title test is very complicated because of non-linkage of every department like DC office, AC Land and Tahshil office. So, it can be easier by brining all these documents and department under the purview of Ministry of Land and maintenance of proper information of the authority.

Seventhly, the idea of verification is troublesome because register books (locally called '*balam book*') of Sub-Register Office and Land offices are almost destroyed and our Government may introduce computerize and digitalize documents to make identification of title easier which will also minimize civil suit, time and money in dealing with these disputes.

Eighthly, the corruptions of different offices are gradually increasing due to lack of proper or inadequate monitoring or visit of the Land Reform Commissioners, ADC Revenue. In this situation, monitoring of corruptions in the concerned departments must be increased by proper take care of the concerned authority of the Government.

Ninthly, Assistant Commissioner's-AC Land plays major role in land management and administration of upazilla level but in most cases they do not have ample knowledge of land laws and policies. Therefore, they rely on *kanungo* and *surveyor* to deal with land issues and under this situation proper professional training must be increased to the AC land.

Tenthly, various types of disputes have been arisen due to lack of appropriate information but according to the Rights to Information Act, 2010,<sup>86</sup> every Government offices are supposed to assign information officer which will reduce package deal of service recipients.

## **Conclusion**

Learning about title test methods is very essential part for the proposed buyer or mortgagee before purchasing or settlement of mortgage of any land. In Bangladesh it is dire necessity for the buyer to acquire knowledge about the title test methods as it does not have any visible methods in virtually. Many countries have their formal procedures to make purchase of land. But in Bangladesh there are numbers of structural and institutional restrictions in existing land administration and management. Organizational gap is one of them which are mostly noticeable in policy formulation and execution. Through the study it has been found that in Bangladesh there have no specific rules and procedure regarding the justification of title before purchasing any land. Considering the matter it is urgent for the government to take proper initiative and adopt strong policy through enacting relevant laws with consulting Ministry of Land and other stakeholders for removing existing irregularities and introduce a strong accountable mechanism.

## **REFERENCES**

### **Legislations**

- The State Acquisition and Tenancy Act, 1950.
- The Non-Agricultural Tenancy Act, 1949.
- The Constitution of the People's Republic of Bangladesh.
- The Transfer of Property Act, 1882.
- The Registration Act, 1908.
- The Succession Act, 1925.
- The Stamp Act, 1899.
- The Waqfs Ordinance, 1962.
- The Mussalman Wakf Validating Act, 1913.
- The Trust Act, 1882.
- The Specific Relief Act, 1877.
- The Tenancy Rules, 1955.

---

<sup>86</sup> The rights to information Act, 2010.



- Land Development Tax Ordinance, 1976.
- The Survey Act, 1875.
- Guardians and Wards Act, 1890.
- Majority Act, 1875.
- Family Court Ordinance, 1985.
- The Limitation Act, 1908.
- The Public Demands Recovery Act, 1913.
- Land Administration Manual, 1990.
- Non-agricultural Khas land management and settlement Policy 1995.
- Agriculture Khas Land Management and Settlement Policy, 1997.
- The Government Estate Manual 1958.
- Restoration of Vested Properties Act, 2001.
- Bangladesh Abandoned Property (Control, Management and Disposal) Order, 1972 (PO No. 16 of 1972.)
- Bangladesh Abandoned Property (Land, Building and any other property) Rules 1972.
- The Hat and Bazars (Establishment and Acquisition) Ordinance, 1959.
- The Partition Act, 1893.
- The Easement Act, 1882.
- The Rights to Information Act, 2010.
- The Land Reform Ordinance, 1984.
- The Bengal Tenancy Act, 1885.
- The Sylhet Tenancy Act, 1936.

### **Books**

- Husain, Land Rights in Bangladesh, University Press Limited, Dhaka, 1995.
- Dr. Lutful Kabir, Land Laws in East Pakistan, Vol. III, Dhaka.
- Mohammad Towhidul Islam, Text, Cases & Materials, Second Edition, Centre for Human Rights & Legal Research 2018.
- Kesari, U.P.D., 'Modern Hindu Law', Central Law Publications, Allahabad, 2007.
- Mozaharuddin Ahmed, Land Laws of East Bengal (Published by the author, Dhaka, 1963).
- Kabledul Islam, Glossary of Land and Land Revenue Affair, Mowla Brothers, Dhaka, 2003, P. 43 (In Bengali).

- Hamid Ashraf, Land Laws of East Pakistan (published by Salman Usmani, Dhaka.)

### **Journal Articles**

- Arif Jamil, Verification of documents of land: Legal issues and complications, June (2006), Journal of the faculty of law, vol. 17, Number 1.
- Howes Mick, Land Policy and Administration in Bangladesh: A Literature Review, CARE SDU Reports and Studies, Care Bangladesh Rural Livelihoods Programme, 2003.

### **Websites**

- [http://en.banglapedia.org/index.php?title=Trust\\_Act,\\_1882](http://en.banglapedia.org/index.php?title=Trust_Act,_1882)›
- <http://en.banglapedia.org/index.php?title=Khatiyān>›
- <http://en.banglapedia.org/index.php?title=Mouza>›
- <http://www.rajukdhaka.gov.bd/rajuk/dapHome>›