

# **Legal Aspects of Tenure and Housing Finance in Informal Settlements**

## **Law and Practice in Indian States**

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# 1 Objective

████████████████████ seeks to enhance access to sustainable housing finance for low income households, to enable them to purchase, build or upgrade their dwellings. To reach the low income households for whom the project is intended, primary lending agencies (PLIs) will need to reach households with informal incomes and/ or informal tenure. These households are significantly underserved categories of potential borrowers.

This study identified types of informal settlements, and examined their legal characteristics of land tenure and planning status. The objective of the legal analysis was to deepen broad brush characterisation of these settlements as illegal or no-go areas for PLIs. The study seeks also to support assessment of what types of the type of lending may be appropriate in these settlements. Broadly, the study looked at three types of settlements: unauthorised colonies, urbanised villages and slums. These terms have been elaborated in section three of the report, followed by classification of informal settlements into a lending typology. Sections five, six and seven provide the background study of state laws and frameworks which forms the basis for the typology.

As legal frameworks applicable to land and planning are largely state-specific, and in some cases city specific, three case study states (Andhra Pradesh, Madhya Pradesh and Orissa) were selected for study. In these states, for interviews with local officials and in order to understand local administrative practice relating to informal settlements, the cities of Vishakapatnam, Gwalior and Cuttack were selected for study.

There were sharp differences between states in the nature of tenure in slums. Slum households that have tenure regularisation (allotment of patta) in Andhra Pradesh and Orissa have clear private property rights, while Madhya Pradesh slum households that have been granted patta have only temporary rights which can be modified by administrative decision.

In Madhya Pradesh and Andhra Pradesh, slum households with no tenure or temporary rights might perceive a higher level of security than is borne out by their legal status. This sense of security is backed by administrative practices in relation to the settlement that provide official recognition and services infrastructure to the settlement. Households with temporary or insufficient tenure may be listed in property tax registers, have house connections for water supply and electricity, and may even (in Andhra Pradesh) be given state housing finance or housing subsidies. In most cases however, this sense of security did not really mean there was any certainty that temporary tenures would be regularised in situ, except in some cases in Andhra Pradesh where households with provisional pattas obtain mortgageable “possession certificates” by which they climb a significant step in the tenure ladder.

In all of the states a settlement may be listed as a slum on the basis of its physical condition and not tenure status, even though in popular perception the lack of tenure status (unless granted by a state welfare measure) is seen as part of its slum status. Each of the states also have settlements that were listed as slums, but in which residents had private property rights as the settlement was also an urbanised village or an unauthorised colony. These settlements may have become slum-like on account of lack of integration with city infrastructure, lack of clear title or evidence of title, small and ad hoc subdivision of plots and low income of occupants and purchasers.

Urbanised villages in all of the states have private property rights, but the extent to which potential borrowers can present evidence of title and an approved building plan may vary between states, and even between one settlement and another in the same city. The issue with respect to urbanised villages however relates to land records, and whether or not evidence of title could be provided to lenders. All three states have taken steps to improve land records, and have processes in place for demarcation of plot boundaries and issue of records of rights documents in urbanised villages.

Loans for construction of houses in unauthorised colonies are barred by directions of the National Housing Bank, but the regularisation of these colonies presents opportunities for

lending. In Orissa individual property owners may apply for regularisation, while in Andhra Pradesh and Madhya Pradesh, such applications have to be made on behalf of a resident's collective. In Madhya Pradesh subsequent purchasers of illegally subdivided and developed lands cannot acquire legal title. The regularisation process in Madhya Pradesh however resulted in confirmation of the occupants' title, irrespective of whether they originally acquired the property through unregistered power of attorney sales. In the other two states, there was no universal legal bar on sale and purchase in unauthorised colonies, though Andhra Pradesh has issued administrative directions for land registration offices to prevent registration of such sales. In Andhra Pradesh, occupants of unauthorised colonies who acquired their property through unregistered sales were not eligible for regularisation. In Orissa the regularisation process presumed that occupants had registered sale deeds in the first place, but would be able to have their purchases recorded in land registers only after regularisation.

Banking regulations also mandate that potential borrowers should have an approved building plan for the proposed construction, without which banks are barred from providing loans for house construction. This was, in all states, an issue for low income borrowers and in informal or unplanned settlements. However, regulatory agencies are of the view that this issue can be addressed by state governments if they create simplified building approval rules and standard designs applicable to small plots and informal settlements. As it stands at the moment though, lack of building approval may be an obstacle for lending in many settlements that have stable property rights. This issue has been examined with respect to each settlement and tenure type identified in the study.

Broadly the study confirms the typology of settlements prepared as part of the *Social and Environmental Assessment* (MHS, 2012). However, building approval has been added to the SEA typology in this report, and the characterisation of right to sell has been revised, focussing on formal right to sell. This is in view of banking regulations and secured lending requirements. Consequently, a revised typology has been presented in this report.

## 2 Legal Aspects of Housing Finance

This study focussed on formal rights in property and legal planning status in informal settlements, as distinguished from 'perceived security'. Occupants of informal settlements may derive perceptions of security from long practice of being tolerated by administrative agencies, and by the recognition accorded to their occupation through municipal service connections and government welfare programmes.

Perceived security is quite important, and households make durable investments in house improvements, access to services and sanitation on the basis of perception of security. Recognition by local bodies in the form of slum notification, implementation of local improvement works and levy of civic tax (for example the combined tax for water and sanitation in Madhya Pradesh) also paves the way for formal water supply and sewerage connections and improvements in the living conditions in informal settlements. Moreover, legal planning status – especially in smaller towns with lower enforcement capacity – may be something that exists only on paper.

Local bodies and state water boards are quite pragmatic about tenure and planning status, and can usually extend basic services infrastructure to notified settlements irrespective of tenure and planning status. Municipal councillors and MLAs (elected members of state assembly) have local area planning funds, which may be deployed to provide basic services even in the most insecure settlements, with a little bit of adjustment of local records. Households living in these settlements may lobby bureaucracies and local politicians for such incremental forms of official recognition, even without expectation of formal title.

However, the reason for focus on formal rights in this study is that housing finance has certain legal requirements imposed by the Reserve Bank of India (RBI) and National Housing Bank (NHB):

- Housing finance is most commonly secured by mortgage, for which transferable rights in property are a fundamental pre-requisite. In niche portfolios of specialised lending agencies, the mortgage requirement may be replaced by personal guarantees, security against income and salaries. These portfolios however require intensive local management, and only specialised lending agencies can participate in this market.
- RBI and NHB norms mandate that applications for housing loans must be supported by an approved building plan. These norms are applicable to all scheduled commercial banks and housing finance companies, and would also cover MFIs if they seek NHB re-finance. The circulars of RBI and NHB also mandate that no loans should be extended for properties that fall in the category of unauthorised colonies unless they have been regularised and all development and other charges paid. (See Box 2.1)

While ownership and mortgageable title is obviously fundamental to mortgage based lending, microfinance institutions (MFIs) have worked with community networks and face-to-face interactions to provide small non-mortgage loans to borrowers who do not have title deeds. However, most of these borrowers are also unable to obtain approved building plans, an issue which is likely to constrain the expansion and further development of MFI strategies in these markets.

In NHB, which is the primary regulatory and financing agency for housing loans, the issue of building plans is viewed as an obstacle that may be resolved at the initiative of state governments – if they were to issue standard building plans and create a simplified system of 'one window' building approval for certain categories of houses. We were informed that the Ministry of Housing and Urban Poverty Alleviation proposes to issue directions to state governments to take up such a policy in order to facilitate construction and improvement of houses by low income borrowers.

### Box 2.1 Directions on lending for unauthorised construction and in unauthorised colonies

In the hearing of a writ petition in the Delhi High Court on unauthorised construction, the High Court constituted a Monitoring Committee on Unauthorised Construction, Misuse of Properties and Encroachment of Public Land<sup>1</sup> which issued the following directions to banks and financial institutions:

- A. Housing Loan for building construction
- i) In cases where the applicant owns a plot/ land and approaches the HFCs for a credit facility to construct a house, a copy of the sanctioned plan by competent authority in the name of a person applying for credit facility must be obtained by the HFCs before sanctioning the home loan.
  - ii) An **affidavit cum undertaking** must be obtained from the person applying for such credit facility that he shall not violate the sanctioned plan, construction shall be strictly in accordance with the sanctioned plan and it shall be the sole responsibility of the executant to obtain completion certificate within 3 months of completion of construction, failing which the HFC shall have the power and authority to recall the entire loan with interest, costs, and the other usual bank charges.
  - iii) An Architect appointed by the HFC must also certify at various stages of construction of building that the construction of building is strictly as per sanctioned plan and shall also certify at a particular point of time that the completion certificate of the building issued by the competent authority has been obtained.
- B. Housing Loan for purchase of constructed property/ built up property
- i) In cases where the applicant approaches the HFC for a credit facility to purchase the built up house/ flat, it should be mandatory for him to declare by way of an affidavit-cum-undertaking that the built up property has been constructed as per sanctioned plan and/ or building bye-laws and as far as possible has a completion certificate also.
  - ii) An architect appointed by the HFC must also certify before disbursement of the loan that the built up property is strictly as per sanctioned plan and/ or building bye-laws.
- C. No loan should be given in respect of those properties which fall in the category of unauthorised colonies unless and until they have been regularised and development and other charges paid.
- D. No loan should also be given in respect of properties meant for residential use but which the applicant intends to use for commercial purposes and declares so while applying for a loan.”

These directions of the Delhi High Court appointed Monitoring Committee were issued to Housing Finance Companies by NHB in its Circular NHB (ND)/ DRS/ PI-No. 18/ 2006 of Nov 23, 2006 (reiterated in subsequent circulars). ‘Housing Finance Companies’ have not been defined in the NHB Act, but housing finance institutions have been defined to include ‘every institution, whether incorporated or not, which primarily transacts or has as one of its principal objects, the transacting of the business of providing finance for housing, whether directly or indirectly’. Similar directions have also been issued by the RBI to all Scheduled Commercial Banks, and most recently reflected in its updated *Master Circular – Housing Finance* dated July 2, 2012 in a section on ‘Activities Not Eligible for Bank Credit’.

The implication of these circulars and directions on housing finance is that: (1) PLIs require a copy of a sanctioned building plan, and certification to ensure that construction is in accordance with sanctioned building plan for loans for housing construction or for purchase of built up property; and (2) PLIs not to lend in respect of properties which fall in the category of unauthorised colonies, unless they have been regularised and development and other charges paid.

The directions of the Delhi High Court Monitoring Committee do not make any actual reference to encroachment of public land (in spite of the name of the committee), and so do not have any implication in respect of squatter settlements or settlement in which occupants have received right to occupy/ patta/ no eviction certificates, except to the extent that borrowers in these settlements cannot get approved building plans.

<sup>1</sup> Kalyan Sanstha Welfare Organisation v. Union of India (CWP 4582/03 of the Delhi High Court)

## 2.2 Title and evidence of title

Under Indian law, title and evidence of title is made up of some of the following elements:

- Land survey record of ownership, which includes a map of plot boundaries and numbering of plots. Most land survey records date back to 1900-1910, but some states have updated this from time to time with re-survey and survey of new lands brought under settlement. Transfers are meant to be recorded through 'mutation' of land records by the land revenue department. (However, in some states like in Delhi, the jurisdiction of the land revenue department may cease after an area is notified as urban or land vested in the development authority – this was not the case in any of our case study states.)
- Record of right or pattadar pass book issued by the revenue department to land owners on the basis of revenue record. (All three states included in the study issue ROR or pass books, but this is not a universal practice across Indian states.)
- Document of allotment of land – if land is allotted by the development authority or state government.
- Registered sale deed, which is backed up by record of registration maintained by the state government under the Registration Act. (This is universal for sale properties as sale deeds are valid in Indian law only after they have been registered.)
- Document of inheritance, if the present holder is the heir of the previous owner whose name is recorded in land records, allotment registers and/ or registration records.

Evidence of possession, without any other document of title, cannot by itself be considered title. A possessor with continuing evidence of possession may however seek to have his or her title confirmed through land survey operations or by seeking 'declaration of title' by civil suit.

Generally, registration of land transfers is a fundamental condition for transfer of right, title or interest in immovable property, except in the case of inheritance, which need not be registered under law. For all cases other than inheritance, an unregistered instrument of transfer of immovable property is not considered valid under the Transfer of Property Act, 1882.

In addition, in terms of the Indian Registration Act, 1908, registration is compulsory for any document or instrument that creates, declares, assign, limits or extinguishes any right, title or interest in immovable property. Registration is therefore compulsory for:

- Instrument of gift of immovable property
- Any non-testamentary instrument (i.e., instrument other than a will) which purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to and in immovable property.
- Non-testamentary instruments that acknowledge the receipt of any payment or consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest.
- Leases of immovable property from year to year, or for any term exceeding one year, or for reserving a yearly rent.

Registration is not however a certification or guarantee of title, it is only a certification that the sale transaction took place. Title may still be invalid, if the registered sale deed pertains to land for which transfer is barred, or where the seller's title or right to transfer is subsequently declared to be invalid.

The land record (and records of rights documents) also provides evidence of title, but is also not in itself a certification of title.

Consequently, a purchaser's or a lending agency's 'due diligence' for a piece of land must include checking of multiple records as well as confirming evidence of possession and occupation. In cases where land records are not properly maintained or where the property has a complex history of legacy and succession it may be impossible to be certain of ownership and title.

### 2.3 Informal Transfer of Land

In cases where the 'owner' does not have legal title, or his/ her title is not transferable (as in patta allotments), informal market transfers may take place though unregistered or 'power of attorney' sales.<sup>2</sup> Power of attorney sales may also be used to evade stamp duty, especially where land is transferred to intermediaries who will develop land and sell it on to subsequent purchasers.

Power of Attorney sales typically consist of one or more of the following features:

- Irrevocable Power of Attorney/ General Power of Attorney executed by the seller in favour of the purchaser
- Agreement to Sell executed by the seller in favour of the purchaser
- Will executed by the seller by which the property is bequeathed to the purchaser on the death of the seller
- Affidavit stating seller's (and seller's heirs') intention of renounce all interest in the property
- Transfer of possession of the property in favour of the purchaser
- Transfer of purchase consideration (i.e., payment) from the purchaser to the seller.

In some cases the Agreement to Sell may be replaced by a Construction or Development Agreement. Power of Attorney sales may be registered as Powers of Attorney/ Agreement to Sell etc., though not as Sale or Conveyance Deeds. However, not all Power of Attorney sale transactions are registered, and it is not compulsory by law for Power of Attorney documents to be registered.

Power of attorney sales do not confer any title or ownership in the property (and this has been confirmed by the Supreme Court in a recent case)<sup>3</sup>, but "part performance" of the Agreement by transfer of possession and purchase price to the seller, combined with the General Power of Attorney does confer some specific and limited rights to the purchaser. However, as this is not a right or ownership in the immovable property, it is not a right that can be mortgaged.

Moreover, power of attorney sales may relate to lands for which the seller did not have a right to transfer in the first place, such as government grants of patta or government allotted plots. Unauthorised transfer of such properties could be a ground for cancellation of the lease or allotment by the government allotting authority. In some cases, allotting authority rules may permit such transfers to be subsequently regularised by payment of a penalty, but not all person who hold such property may avail of formalisation procedures. Unauthorised use (such as partly commercial development), unauthorised construction (without building approval, in contravention of building regulations) or high penalty fees may be reasons why buyers do not avail of regularisation schemes.

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<sup>2</sup> Land and flats allotted on leasehold basis by government owned development authorities in middle and high income neighbourhoods may also not be freely transferable, and power of attorney sale is considered a commercially acceptable practice in these neighbourhoods as well. It is for example common practice DDA (Delhi Development Authority) developed properties in Delhi.

<sup>3</sup> *Suraj Lamp & Industries (P)Ltd. vs. State of Haryana & Anr*, 2009 (7) SCC 363 and *Suraj Lamp & Industries Pvt. Ltd. vs. State of Haryana & Anr*, SLP (C) No. 13917 of 2009 decided on 11.10.2011.



## 2.4 Legal Requirements for Building Plan Approval

Title (and evidence of title) is a fundamental pre-requisite for building plan approval, and evidence of title has to be submitted as part of mandatory documentation that must accompany a building plan application<sup>4</sup>. Leaseholders can apply for building plan approval if construction is permitted within the terms of their lease, but occupiers who have limited license right (to occupy and use, but no interest in property) cannot apply for building plan approval.

In addition, proposed construction should be in conformity with the master plan, local area plans and building regulations applicable to the area. The master plan and local area plans may impose 'reservations' in certain areas for proposed public projects, green belts and other uses. No building plan approvals can be given for such areas, even if applicants have title.

The lack of evidence of title may also be a problem in some areas – where for example land records have not been updated to reflect plot boundaries in village settlement lands.

Building regulations may also mandate a minimum plot size for building approval. In some cases this is interpreted to mean that building approval is not required (Andhra Pradesh), but mostly it is understood to imply that no authorised building activity can be taken up in such small plots.

In cases where building regulation requirements (road widths, set backs) do not fit – as may be the case in traditional settlement and low income areas, planning authorities have the power to relax application of regulations or to impose alternate standards. These powers may not be exercised in practice in most states, except in Gujarat where development authorities/ municipal corporations may take up special measures to integrate traditional settlements with planned areas.

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<sup>4</sup> This principle is generally not stated in a master statute, but is reflected in building control laws and building regulations.

### 3 Legal Aspects of Informal Settlements

This section discusses legal characteristics of the following types of informal settlements:

- Unauthorised colonies
- Regularised unauthorised colonies
- Urbanised village settlements
- Slums with tenure
- Slums with temporary tenure
- Slums with no tenure

This classification is made on the basis of recognisable administrative categories, though we are aware that settlements may have interchangeable characteristics. Moreover, the classification is based variously on land tenure status, planning status and condition of physical dilapidation. A slum area classified on the basis of physical condition, may for example, have all the land tenure characteristics of an unauthorised colony or an urbanised village settlement.

#### Unauthorised colonies

Unauthorised colonies are housing settlements built in violation of planning control for change of land use, sub-division and development of land.

Change in use of agricultural land is generally controlled by land revenue laws<sup>5</sup>, even after a master plan has been notified and master plan controls on land development have been imposed under planning and municipal legislation. Owners of agricultural land may need permission to 'divert' land to non-agricultural use, or to sub-divide agricultural land. In addition, land revenue laws may control and restrict certain types of transfers of agricultural land.

Planning laws also control the development of land, and for development and subdivision within notified planning areas, specific permission of planning authorities is generally required. Planning laws may also require that the person or company that undertakes to develop the land is first registered as a coloniser. This has the effect of imposing a threshold minimum scale on private development activity, and it bars small scale owner-led development of agricultural land.

If planning laws have not been followed for the development of land, it is usually not possible for a subsequent purchaser to get building plan approval, and therefore all subsequent construction on such lands is also treated as unauthorised construction.

In addition, in some states the law may provide that sale deeds relating to illegal subdivision and land development are not to be considered valid transfer of right title and interest in immovable property. States may also issue directives to registration departments not to register such sale deeds, and as we know an unregistered sale deed does not transfer right title or interest in immovable property. Sale transactions for such lands take place by way of power of attorney/ agreement to sell. However, some power of attorney purchasers may be able to pay the full stamp value at the time of registration of the power of attorney document<sup>6</sup>, which has in the case of Andhra Pradesh been considered valid title by the state government for the purpose of regularisation of unauthorised colonies.

Unauthorised colonies may also come up on restricted lands, such as lands previously allotted by patta to landless persons for farming, or lands in protected areas belonging to

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<sup>5</sup> Land revenue is the default legal framework that applies to all land. The land records system is also a part of the land revenue legal framework. Planning laws apply only in notified planning areas, and may not entirely abrogate the application of land revenue laws.

<sup>6</sup> In order to plug the revenue loss from power of attorney sales, stamp duty rates for registration of general power of attorney in respect of land is equal to the stamp duty of a sale transaction in most states.

scheduled tribe members. Such land sales are not valid even if sale deeds have previously been registered and full stamp duty paid.

Unauthorised colonies may also be in contravention to master plan prescriptions for such land. Unauthorised colonies may also be built on private land that has been 'reserved' for development by state led development authorities or other state agencies, for which purpose it has been earmarked for subsequent state acquisition.

Unauthorised colonies are however built on private land, and the original owner of this land would have usually received sale price for the land. Therefore, occupants of unauthorised colonies who may or may not have legal title on account of the state legal restrictions on transfer, would still have legal possession of their properties.

### **Regularised unauthorised colony**

Unauthorised colonies can be regularised by process of law if state authorities have legal powers, rules and processes for this regularisation. Failure to take permission from land revenue (land conversion, sub-division) and planning authorities (plots layout, sub-division, construction) is absolved as part of the regularisation process, and layout plans are brought into the public record. Occupants may also be required to give up some portion of their land for development of roads and public amenities, and may have to pay development charges to the residents' association or to an agency of state or local government which is responsible for the regularisation.

The law in Madhya Pradesh provides for formalisation of land title as part of the regularisation. Competent authorities under Madhya Pradesh law are required to 'take over management' of unauthorised colonies and reallocate plots to occupants. Title becomes legal and formal through this process of re-allocation. The Andhra Pradesh law specifically excludes occupants without registered legal title (though it recognises registered power of attorney holders) from its layout regularisation schemes. Unauthorised developments without record of rights are not considered for regularisation in Orissa.

Regularisation of buildings that have been constructed without prior building approval may be part of the regularisation process, or may require a separate application. In Andhra Pradesh there is a separate building penalisation scheme through which existing unauthorised constructions are regularised. In terms of the building rules, it is mandatory for owners to take permission before making subsequent construction after regularisation.

In Madhya Pradesh existing unauthorised construction may be regularised as part colony regularisation. In theory it is also compulsory for plot owners in regularised colonies in Madhya Pradesh to apply for building plan approval before making subsequent construction, but there are no special rules (for example with lower setback requirements, open space and such conditions) for such settlements. It is less likely, but not impossible for subsequent construction in low income unauthorised colonies in Madhya Pradesh cities to have building plan approval.

In practice, regularised unauthorised colonies may not become entirely like planned developments. In Andhra Pradesh or Orissa, plots for which the owners do not have registered sale deeds are not eligible for regularisation. As a result, only some houses within a colony may be regularised, or some may be left out. Also, the spatial layout of an unauthorised colony cannot be significantly changed at the time of regularisation, and planning authorities may not have the clout or enforcement capacity to make people give up land, demolish constructions to make way for required road widths and public amenities. Even after regularisation, it is usually not possible for formal building regulations to be applied to small and intensely built up plots, unless there are special rules customised to the area (planning authorities may be reluctant to formally apply a special set of rules, but may tolerate a certain amount of rules violation). Services infrastructure in regularised colonies While the ban on providing formal water supply and other house connections is lifted after regularisation,

## Urbanised Village Settlement

Village settlement land known variously as gram khantam land, gramakatha paramboke land, abadi land and gauthan land, is the residential part of the land. The original occupants of village settlement land would tend to have formal rights in property, but it may be difficult for them to establish documentary title. The reason for this is that rural land surveys in all Andhra Pradesh and Madhya Pradesh did not demarcate plot boundaries and award separate survey numbers to house sites in village settlement land, and traditionally the reason for this was that village settlement land was of little importance to the revenue administration. Moreover sales, inheritances, subdivisions and other transfers may not have been updated in the revenue records. Village settlements in Orissa were however surveyed and have demarcated plot boundaries in revenue records.

In all three states, land records in urbanised villages are meant to be updated to reflect plot boundaries, and occupants should be able to obtain a record of rights document if their plot has been re-surveyed. However, sub-divisions, transfers, property disputes and the construction of extensions and accretions to the original village settlement houses may pose problems for resurvey in some of these settlements.

Urbanised village settlements in all three states may sometimes be listed as slums on account of the income and housing condition of residents, and they may also be underserved by city infrastructure. Squatter housing may have also come up in the periphery or in open spaces in such settlements, and original properties may have been sub-divided or transferred. In such cases there may be practical problems to establishing title and for ascertaining that the house or property is on private village land.

Obtaining building approval in such settlements is difficult if occupants do not have a legal document of title. It is also an issue the city building regulation does not fit the pattern of settlement, and makes it impractical for occupants to apply for building approval. In practice, we were informed that occupants and owners of village settlement land seldom approach public authorities for building approval in Gwalior, and up to two floors of pucca or semi-pucca construction seems to be an accepted norm for which there are no demolitions or penal action by Gwalior Municipal Corporation.

## Slum<sup>7</sup> with tenure rights

Tenure rights in slums could be formal rights in property, or alternatively, a right to occupy. Patta documents held by slum dweller households may constitute legally valid title in some states, and this depends on the legal framework under which patta is granted and the terms of the patta document itself. Patta may also be in the nature of license or occupancy rights, without any right, title or interest in the property with respect to which patta is given.

- Regular patta-holders in Andhra Pradesh have title in land for which they hold pattas. Local authorities in Andhra Pradesh also allot provisional pattas, which confer more limited rights than regular pattas, but are often seen as equivalent in administrative practice. Regular pattas in Andhra Pradesh confer perpetual rights, but are non-transferable.
- In Madhya Pradesh pattas may be temporary or permanent, but even permanent pattas may be relocated at any time by a decision of high-powered city level committee. Patta rights in Madhya Pradesh are limited in duration, and are non-transferable.
- In Orissa land revenue authorities would previously issue records of rights (ROR) for public lands in occupation in urban areas, which gave ROR holders lease ownership rights, but included a restriction on transfer of such allotments<sup>8</sup>. These rights are perpetual.

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<sup>7</sup> In this report the category of “slum” is applied to settlements that are identified, listed or notified as slums by the municipal corporation or other competent authority. It is recognised the tenure types may vary within a slum, and the legal status of the slum has little effect on the eligibility of the borrower. For this reason, “notification” of a slum by municipal corporations is of little relevance even though slum notification usually precedes allotment of pattas.

<sup>8</sup> Orissa Government Lands Settlement Act, 1962

As tenure in slums is usually non-transferable, only original allottees and the heirs have legally valid patta. However, pattas are sold in the informal market, and “purchasers” of patta may also be treated as persons with patta in administrative practice in Madhya Pradesh and Andhra Pradesh.

Tenure in slums could also include other ad hoc local categories, such as grantees of rural landless patta or homestead schemes. These lands may have been sub-divided or developed as the area becomes urbanised, and many of the present occupants may be power of attorney purchasers.

It is possible for patta holders to apply for building plan approval in Andhra Pradesh, and there are administrative directions to this effect issued by the state government. Patta holders in Orissa can also apply for building approval, and they may do so in order to get legal water supply and utilities connections. However, not all patta holders are likely to apply for building approval in either of these states, especially if plot sizes are too small for application of building bye laws.

In administrative practice in Madhya Pradesh building rules are not applied to patta lands, and municipal authorities believe that no permanent structures are to be built on patta lands. In terms of master plan classification also patta lands in Madhya Pradesh are considered too small for permanent building. However, in actual practice, structures of up to two storeys, and sometimes three storeys are commonly built in Madhya Pradesh slums without any risk of obstruction or demolition by municipal corporations. However, without a clarification or no-objection certificate from municipal corporations in this respect, inability to provide an approved building plan may preclude extension of housing finance in such areas.

### Slums with temporary tenure rights

In Madhya Pradesh slum dwellers may be issued with temporary patta under the MP Patta Act. In Andhra Pradesh local authorities may notify slums and issue documents equivalent to temporary pattas, or land revenue authorities may issue provisional pattas pending formal issue of pattas. In Madhya Pradesh and Andhra Pradesh, temporary pattas or equivalent are also issued in respect of slums on non-conforming land, or on land which may be required for public purpose. There are instances in Madhya Pradesh where households within the same slum settlement have various types of pattas including 30-year (permanent patta), 5-year temporary patta and even 1-2-year temporary patta. Temporary patta holders may have access to municipal infrastructure and basic services and perception of tenure security. They cannot however obtain building plan approval for permanent construction on patta sites. In Andhra Pradesh, provisional pattas may be seen as equivalent to regular pattas in administrative practice.

Orissa does not have any system of issuing temporary patta.

### Slum with no tenure

In general, state government powers under land revenue legislation to grant patta or to ‘settle’ lands in favour of occupants or any other beneficiaries extends only to ‘nazul’ lands, i.e., lands vested in the state government in public trust. Therefore, squatter settlements that acquire *post facto* regularisation of tenure are mostly squatter settlements on nazul land. In some cases, other land owning agencies and development authorities may also surrender land owned by them for grant of tenure rights to occupants, but these are limited cases.

For the rest, which include squatter settlements on lands owned by central or state government agencies such as the railways, defence forces, ports authorities, public sector enterprises, universities etc., occupants may have no formal rights in property or right to occupy. Occupants of notified forest lands may also not be granted rights in land<sup>9</sup>.

Squatter settlements on private land (where they are tenants, squatter-tenants or unauthorised occupants) also do not have any formal rights in land or right to occupy, except

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<sup>9</sup> Occupants of forest lands may however have a claim to homestead lands under the Forest Rights Act.

to the extent that this may be asserted in title suit for adverse possession.<sup>10</sup> The law in Andhra Pradesh empowers the competent authority to acquire such private lands for improvement and grant of tenure<sup>11</sup>, and government policy in Orissa encourages implementing authorities to make a deal with the private owner which results in clearing some land to be returned to the private owner, while transferring tenure rights and making housing improvements in the rest of the land over which the private owner relinquishes his or her rights<sup>12</sup>. These provisions have, however, almost seldom been implemented even in Andhra Pradesh where the law has been in existence for several decades.

Slums with no formal rights may include:

- Slums on state government land (nazul land), but without grant of patta or occupation rights
- Slums on land belonging to other state and central government land owning agency
- Slums on notified forest land
- Slums on private land, where residents may or may not have permission of the land owner

Municipal and other local agencies may recognise occupation of such lands, and some of these slums may be notified and may also have access to some degree of public service provision. However, there is no right of occupation or protection against eviction, and it is not possible to get building plan approval for construction in such settlements.

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<sup>10</sup> In this context it is worth noting that occupants of private lands may also be “eligible” slum dwellers under the Maharashtra law, and may be thika tenants under West Bengal law. Occupants who are tenants of the lawful owner may also have claims under applicable rent control laws.

<sup>11</sup> Andhra Pradesh Slum Improvement (Acquisition of Land) Act, 1956

<sup>12</sup> Housing for All: Slum Rehabilitation & Development Policy for Odisha, 2012

## 4 Legal Typology of Settlements

### 4.1 Typology in Social and Environmental Assessment Report

To better understand and compare the context of poor and low-income settlements locations across India, the *Social and Environmental Assessment of Low Income Housing Finance* (Micro Homes Solutions 2012, commissioned by the World Bank) adopted a typology classification developed by Micro Homes Solutions based on legal characteristics. The classification relied on four parameters: title, tenure, right to sell and zoning (land-use) as described by the Master Plans and Town Plans. The typology did not however look specifically at whether or not it was possible to get building plan approval, which was a point of inquiry in this study. The Micro Homes study looked, in addition, at informal rights to transfer (i.e., through power of attorney sales) as criteria for classification.

The typology created by the Social and Environmental Assessment is reproduced and summarised below for reference

**Table 1: Typology in Social & Environmental Assessment**

	Title/ Ownership	Tenancy	Right to Sell	Correct Zoning
<b>Type A1</b>	✓	✓	✓	✓
<b>Type A2</b>	✓	✓	✓	✓
<b>Type B</b>	✓	✓	Informal	✓
<b>Type C</b>	✓	Partial	Informal	No
<b>Type D</b>	Limited	✓	Informal	✓
<b>Type E</b>	None	Limited	Informal	Either
<b>Type F</b>	None	None	Informal	No

#### **Type A1**

This category usually refers to planned colonies in the urban area; suitable for formal, secured mortgage finance. Settlements are characterized by registered title, right to tenancy and appropriate zoning. In these settlements the formal approval system is in place, this guarantees safety in construction and decent quality of the units. Locations are appropriate and activities are appropriate to the zoning bylaws. These locations are served by basic services, transportation and physical and social infrastructures.

#### **Type A2**

Settlements classified as Type A2 are home to households that possess clear titles and full tenancy as a result of a land title regularization process. This gives them the same status as A1 communities legally, but usually residents in this category belong to a lower income segment and possess smaller plot sizes. As a result of their history as illegal settlements, they are also likely to have less sanitation and unsafe structures and more likely to be located in unsafe zones. Residents of these types of settlements are likely to be employed in the formal economy, but to a lesser extent than residents of Type A1.

#### **Type B**

Settlements classified as Type B are home to Households that have titles, but may not be registered in the formal revenue records, and full tenancy. Usually they can only trade the property through an informal system, because their legal right to sell is restricted. Most urban and rural villages fall into this category, which means the level of construction is quite low as houses are closely built together and sanitation is generally low. However, they are located

in environmentally sound zones and its residents are mostly employed in a formal economy, at least in the urban context.

#### **Type C**

Settlements in type C have households that have proof of land ownership/Power of Attorney, through which they have bought the land after an illegal division of the land (usually not falling under residential zone as per the master-plan or other statutory document governing the land-use of a city) into small plots. The majority of settlements in this group are unauthorized colonies built on agricultural land. The quality of construction is poor. The access to basic services varies across settlements depending on their tenure on their land.

#### **Type D**

Settlements in type D are households that share a lease/license document, varying from 5 to 99 years, usually given by the government, but with the restriction of selling. Despite the restrictions it is common practice to trade through Power of Attorney documents. There may be prescribed formal laws regarding the construction of homes in these settlements, but are not practiced and exercised in most cases. As a result the quality of construction is mostly poor and not safe. These settlements usually have access to basic services that are not necessarily installed or made available to the people, at the time of resettlement. The occupation of the people involves small/large scale informal/formal business to a formal government job.

#### **Type E**

Settlements in Type E are households that have no right to ownership for their land. As for tenancy, they merely possess the right to occupy. In terms of zoning, these settlements may or may not fall under residential land, but predominantly on encroached land. The quality of construction may depend from Tier to Tier but at an average it is poor and the construction type ranges from *kaccha* to *semi pucca* structures. Depending on the type of construction the houses maybe single storied or at an average two storied. Access to basic services varies across settlements. The occupation for most of the households in this category is at a household level and community based.

#### **Type F**

Settlements in Type F are households that have no ownership or tenancy right, since they are encroached settlements in protected land or hazardous sites or simply in a zone that is not specified for residential purposes by bylaw. Quality of units are extremely poor, the type of construction mostly *kutcha*. The houses are usually single storied. These settlements do not have access to basic services for water supply (drinking and other uses, mostly on natural sources of water). Occupation of the people residing in this typology range from rag picking to other informal activities.

## **4.2 Proposed Revision to Typology**

Broadly the study confirms the typology proposed by the *Social and Environmental Assessment*. However, this study focussed more narrowly on title, legal right to transfer and building approval. Case studies in Andhra Pradesh, Madhya Pradesh and Orissa also provided more local detail on the characteristics and nature of legal rights in these settlements.

For these reasons, a revised typology has is proposed below (Table 2). Subsequent sections contain a more detailed state specific discussion on legal aspects of the various settlements categories.

The distinction between A1 and A2 settlements may need further explanation, as in terms of land tenure and planning status A2 settlements may be considered equivalent to A1 settlements after regularisation. However, because of the nature of past transactions, existing built structures and informal pattern of layout and housing, A2 settlements may continue to pose difficulties in terms of (i) evidence of title might not be clear, (ii) it might not be possible to obtain building approval even after regularisation if special building rules have



not been notified for the area. Moreover, some houses or parts of the settlement may not have been regularised if it did not meet eligibility conditions for the regularisation or did not participate in the process. For these reasons perhaps, commercial banks may label such settlements as ‘illegal colonies’ even though they are no longer illegal.

**Table 2: Revised Typology of Settlements**

<b>Type</b>	<b>Settlements that may fit this type</b>	<b>Legal characteristics</b>	<b>Type of lending</b>
<b>Type A1</b>	Planned colonies	Legal title and evidence of title Right to transfer Development and building approval	Secured
<b>Type A2</b>	Regularised unauthorised colonies Urbanised village settlements	Legal title and evidence of title Right to transfer Development and building approval (May be more difficult to confirm title and obtain building approval as compared to Type A.)	Secured
<b>Type B</b>	Regularised unauthorised colonies Urbanised village settlements Orissa “authorised” slums with stithiban (freehold) rights	Legal title, but may not have evidence of title Right to transfer Have development approval but may not be able to get building plan approval	Secured (but only if building approval requirement can be satisfied or relaxed by state government)
<b>Type C1</b>	Unauthorised colonies <ul style="list-style-type: none"> <li>■ Orissa unauthorised colonies</li> <li>■ Andhra Pradesh unauthorised layouts</li> </ul>	Legal title Right to transfer No development or building approval	Lending barred on account of development violation, though households have mortgageable title
<b>Type C2</b>	Unauthorised colonies <ul style="list-style-type: none"> <li>■ Madhya Pradesh illegal colonies</li> <li>■ Andhra Pradesh unauthorised layouts</li> </ul>	No legal title No have right to transfer No development or building approval	No lending
<b>Type D</b>	Slums with tenure <ul style="list-style-type: none"> <li>■ Andhra Pradesh house site pattas</li> <li>■ Orissa “authorised slums” with pattadar rights</li> </ul>	Legal title No right to transfer Have development approval but may not be able to get building plan	Unsecured loans

		approval	
<b>Type E</b>	Slums with temporary or limited occupation rights <ul style="list-style-type: none"> <li>■ Madhya Pradesh pattas issued in slums</li> </ul>	No title, only right to occupy No right to transfer No development or building approval	No lending
<b>Type F</b>	Slums on forest land, environmentally hazardous land, central government land	No title, no right to occupy No right to transfer No development or building approval	No lending

## 5 Madhya Pradesh

### 5.1 Legal Attributes of Informal Settlements in Madhya Pradesh

#### Summary of legal attributes

A brief overview of land ownership, tenure and development control in informal settlements in Madhya Pradesh is presented in below. This is elaborated in the subsequent sub-section.

Table 3: Madhya Pradesh Summary

Type of Settlement	Title	Right to Occupy	Right to Transfer	Development Approval	Building Approval
Regularised unauthorised colony	Yes	Not required	Yes	Yes	Yes/ No
Unauthorised colony	No	Yes	No	No	No
Urbanised village settlement	Yes/ No	Yes (if required)	Yes	Yes	Yes/ No
Slum with tenure	No	Yes	No	No	No
Slum with temporary tenure	No	Yes	No	No	No
Slum with no tenure	No	No	No	No	No

#### Legal Description of Informal Settlements in Madhya Pradesh

##### Regularised Unauthorised Colonies

Conversion of agricultural land in Madhya Pradesh (referred to as ‘diversion’ of land in local law) requires specific permission of revenue authorities under the Madhya Pradesh Land Revenue Code, 1959. Title of land that is purchased without approval for diversion is void in terms of the Land Revenue Code, and registration authorities are directed not to register sale of land for which permission for diversion is not obtained<sup>13</sup>.

Land development also requires planning permission under the Madhya Pradesh Gram tatha Nagar Nivesh Adhiniyam, 1973 (translated Town & Country Planning Act) and the Madhya Pradesh Municipal Corporation Act, 1956. For this power is municipal corporations with respect to land that falls within notified municipal limits, and outside of these limits, control is exercised by the Directorate of Town & Country Planning (DTCP). Land may be sub-divided and developed only by licensed “colonizers” approved by either the municipal corporation or the DTCP.<sup>14</sup> Colonisers are also required to take specific layout approval and permission for development from local authorities.

Unauthorised colonies in Madhya Pradesh that fall within the notified are of municipal corporations may be regularised by municipal corporations, for which powers are vested

<sup>13</sup> In practice, such sales may also be registered. However, in terms of S. 165 of the Land Revenue Code, such title is not valid. The Municipal Corporation Act also considers transfers made by colonisers in areas of illegal diversion to be void, and titles are to be confirmed through allotment by the municipal commissioner that is made as part of the regularisation process.

<sup>14</sup> In terms of rules under the Madhya Pradesh Municipal Corporation Act, 1956 or the Madhya Pradesh Gram tatha Nagar Nivesh Adhiniyam, 1973 (translated Town & Country Planning Act) respectively.

under the Municipal Act. As occupants of unauthorised colony land do not have valid title prior to regularisation, the regularisation process entails allotment of title to occupants by the municipal commissioner, and extinguishes title of the illegal coloniser in the land. Formal title is acquired by occupants through regularisation, and approved layout plans are made part of the public record. Contravention of land revenue restriction on diversion of land and master plan violations, if any, are absolved as part of the regularisation process. Buildings constructed in unauthorised colonies may also be regularised, but it is not clear if this is always part of the regularisation process.

The municipal law provides that owners may mortgage their properties to pay development charges for regularisation. However, as there is no title to the property until regularisation is completed, implementation of this provision may require sequencing and close coordination between lenders and municipal authorities. In practice this provision is seldom implemented.

For unauthorised colonies developed outside the municipal area, DTCP is the competent authority for regularisation. Powers, rules and processes equivalent to that in the municipal law are vested in DTCP through the Town & Country Planning Act.

Owners of property in regularised colonies are expected to take building plan approval before making subsequent constructions, but this rule is not always followed in practice.

### Unauthorised Colonies

In terms of the Madhya Pradesh Land Revenue Code, occupants of unauthorised colonies do not have formal legal title to their property, whether or not they have registered sale deeds, if the land was formerly the subject of illegal diversion.

Unauthorised colonies are built without development approval, and may have been developed by intermediaries or original land owners who do not have a “coloniser license”. Unauthorised colonies may be in contravention of the master plan, but they could be illegal even if there was no master plan violation.

Occupants of unauthorised colonies cannot obtain building plan approval. There are however special legal provisions for water and electricity connections in illegally built colonies, for which competent authorities are required to issue a no-objection certificate. Occupants of unauthorised colonies may therefore have evidence of possession and occupation, but specific terms in the no-objection certificate state that this cannot be considered evidence of ownership.

### Urbanised Village Settlements

Occupants of village abadi lands have formal title, and do not need development permission for constructing on their property. Rural land surveys did not demarcate plot boundaries and award survey numbers to abadi lands, but revenue survey rules provide that individual plots are meant to be surveyed in urban areas. It is therefore possible to provide evidence of formal title, but land records may not always be accurate for these areas and may not reflect sub-divisions, inheritances and transfers.

Building plan approval is required for any construction in village settlement lands in the master plan area, but this is rarely enforced in practice. There are no special rules or building codes which apply to these areas. Village settlements may also sometimes be notified as slums on account of the physical condition of the settlement.

### Slums with tenure

Pattas are awarded to slum dwellers on state government nazul land by land revenue authorities under the Madhya Pradesh Patta Act<sup>15</sup>. In order to be eligible for grant of patta, the household should be able to provide evidence of at least 3-years of unauthorised occupation and residence on government land. Pattas are usually granted in tenable settlements that are in conformity with the master plan, but these conditions are not always followed in practice. The Madhya Pradesh Patta Act provides for grant of regular 30-year pattas and temporary pattas.

Pattas in Madhya Pradesh are granted by land revenue authorities on the basis of a patta survey, which have been conducted once every decade since the enactment of the law in 1984. However, there is no binding obligation on the government to conduct patta surveys or to allot pattas.

Thirty-year pattas are commonly *perceived* to be a stable interest in property, based on which patta holders construct two to three storey permanent houses. However, this perception of security is not actually backed up by the legal rights granted through patta. In terms of the Patta Act, any patta holders may be relocated at any time on the basis of the recommendations of a high-powered committee headed by the district collector.

Patta holders cannot get building plan approval for construction on their patta sites. In interviews we were informed that the reason for this is that patta sites are considered too small for pucca construction, and that building bye-laws are not applied by municipal corporations to such settlements. In theory, patta holders are only supposed to make temporary dwelling structures. In practice however, most patta holders construct up to two storeys without disturbance from municipal authorities.

Patta rights are not transferable, but to facilitate mortgage the government had previously issued directions stating that it would stand guarantee to house loans given by commercial banks to slum dwellers. We were informed that this did not however result in loans being issued, perhaps for lack of other documentation and implementation support. The impermanent nature of the patta may also deter potential lenders.

### Slums with temporary tenure

As in the states in Rajasthan and Andhra Pradesh, substantial numbers of households in squatter settlements have been able to obtain patta. However, there is considerable variation in the legal value of different types of patta granted in Madhya Pradesh, and patta granted with respect to settlements that are in untenable or non-conforming zones may be of only 10-year validity. Temporary pattas may be granted to occupants of sites and settlements that are in non-conforming zones, environmentally hazardous areas or on land that is required for public purpose. There is no fixed term for temporary pattas, and revenue authorities have been known to award 10-year, 5-year and even 1-year pattas. It is also not uncommon for 30-year regular pattas and temporary 10-year/ 5-year/ 2-year pattas in the same settlement. Households adjacent to/ or in the neighbourhood of households with patta may have no patta at all, but may draw a perception of tenure security from their proximity to households with patta. Notification of the slum, implementation of slum improvement works by municipal corporations, allotment of household water and utility connections, and their entry into municipal property tax registers<sup>16</sup> may create additional level of perceived security. In practice, holders of temporary patta may also remain on the site without disturbance long after the term of their patta has lapsed.

While temporary patta rights and other types of perceived security drawn from municipal actions and proximity to other patta holders may add up to an expectation of future grant of permanent status, there is no legal certainty against eviction or relocation. Holders of temporary patta also cannot obtain building plan approval.

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<sup>15</sup> Madhya Pradesh Nagariyon Kshetra ke Bhumiheen Vyakti (Pattadhruiti Adhikaron ka Pradan Kiya Jana) Adhiniyam, 1984

<sup>16</sup> For payment of a 'samekit kar' or combined tax for water/ sewerage and other services.

#### Slums with no tenure

These could be slums on lands that are earmarked for another purpose in the master plan, environmentally hazardous land, land which is in notified forest areas or close to defence installations. They could also be slums on land belonging to central government or state government agencies and enterprises, and slums on private land owned by third parties.

It is not possible to obtain building approval in such settlements.

## 6 Andhra Pradesh

### 6.1 Legal Attributes of Informal Settlements in Andhra Pradesh

#### Summary of legal attributes

A brief overview of land ownership, tenure and development control in informal settlements in Andhra Pradesh is presented in below. This is elaborated in the subsequent sub-section.

Table 4: Andhra Pradesh Summary

Type of Settlement	Title	Right to Occupy	Right to Transfer	Development Approval	Building Approval
Regularised unauthorised colony (2007 Rules)	Yes	Not required	Yes	Yes	Yes
Regularised unauthorised colony (earlier schemes)	Yes/ No	Yes	Yes	Yes	Yes/ No
Unauthorised colony	No	Yes	Yes/ No	No	No
Urbanised village settlement	Yes/ No	Yes, if required	Yes	Yes	Yes
Slum with tenure	Yes	Not required	No (but could be mortgaged in some conditions)	Yes	Yes (may not be required)
Slum with temporary tenure	Not clear	Yes	No (but could be mortgaged in some conditions)	Yes	Yes (may not be required)
Slum with no tenure	No	No	No	No	No

#### Legal Description of Informal Settlements in Andhra Pradesh

##### Regularised Unauthorised Colonies

Subdivision and development of agricultural land in Andhra Pradesh only requires approval of revenue authorities for conversion of land use. If land is in the master plan area and the proposed new use is not in conformity with the master plan, then approval for change of master plan use has to be obtained from the master planning agency. If there is no change of master plan required, then the developer or intermediary has to seek planning approval for the propose layout and development.

For settlements that are built without planning approval, it is possible to get ex post regularisation, and the state government has from time to time undertaken amnesty schemes for regularisation of unauthorised developments. Presently, unauthorised developments are regularised under the Andhra Pradesh Regulation of Unapproved and

Illegal Layout Rules, 2007<sup>17</sup>. The cut-off date for applying for regularisation under these rules was recently extended to 30-06-2012. Under these rules, an unauthorised layout may be regularised upon preparation of a regularisation plan and payment of a regularisation fee. These rules are applicable to master plan areas in the state: municipal commissioners have the power to issue regularisation certificates in municipal areas, whereas development authorities may issue such certificates in areas directly developed and managed by them. In rural or semi-rural areas that have been included in the master plan, approvals under these rules are granted by gram panchayats.

The rules provide that only layout/ plots that have registered sale deeds prior to the applicable cut-off date are eligible for regularisation under the present scheme. A later clarification issued by the government states that transfers by way of registered power of attorney are considered eligible for the layout regularisation scheme.<sup>18</sup> Unauthorised colonies developed on “assigned lands”, i.e., lands for which transfer was restricted under the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977 and which were illegally transferred, may also be considered for regularisation under this scheme with permission of the District Collector.

Lands with registered sale deeds would have had good title even prior to regularisation. By accepting regularisation applications from certain other categories of Power of Attorney sales, the government has also accepted title status of these Power of Attorney holders. (However, for regularisations under earlier rules and schemes formal legal title may not have been insisted upon. For such colonies, property owners may not have a registered sale deed, but would usually have their holdings recorded in the approved layout plan.)

The regularisation process confers regularisation of both revenue control and development control violations, and absolves the settlement of development of master plan violations, if any. The rules however provide that no approvals may be granted for unauthorised development in certain master plan zones, such as for sites marked for industrial use zone, recreational use zone/ water body, or in the beds and immediate periphery of water bodies, or in 500m vicinity of defence installations, airports etc. The approval process itself may require some reorganisation of the layout in order to conform to minimum planning conditions for approval, but after the process is completed the layout plan for the colony is considered approved.

Owners of buildings in unauthorised colonies were also expected to complete a separate process for approval of existing construction in unauthorised colonies, which was issued as the Andhra Pradesh Regulation and Penalisation of Unauthorisedly Constructed Buildings and buildings constructed in deviation of sanctioned plan Rules, 2007 (also known as Building Penalisation Scheme, 2007)<sup>19</sup>. Under these rules the Greater Vishakapatnam Municipal Corporation (GVMC) was the competent authority within the municipal area, and VUDA was the competent authority for areas falling within the master plan notified area but outside municipal area.

The building rules applicable in Visakhapatnam make it mandatory for owners to take permission before making subsequent construction in regularised unauthorised colonies. The rules contain special provisions development in village settlement and similar areas which may be applied by VUDA/ GVMC for densely developed low income unauthorised colonies that have been regularised.

Unauthorised colonies may only get services formally only after regularisation, but in practice they may be able to get services even without regularisation. Low income unauthorised colonies may also be notified as slums.

## Unauthorised Colonies

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<sup>17</sup> G.O. Ms. No. 902 of 2007 dated 31-12-2007 of the Municipal Administration & Urban Development Dept, and updated through subsequent government orders.

<sup>18</sup> Memo No. 3135/M1/2008 dated 08-05-2008.

<sup>19</sup> G.O. Ms. 901 dated 31-12-2007 of M.A.& U.D. (M1) Dept, Govt of Andhra Pradesh.



It is not clear whether there is a blanket restriction on registration of sale deeds in illegally subdivided lands, and it seems likely that some of these settlements may have good title and registered sale deeds. However, Andhra Pradesh has a practice of a 'Prohibitory Register' which is maintained by the office of the Commissioner of Land Administration, and registration of land sales with respect to lands entered into the register is barred.

The Andhra Pradesh Layout Regularisation Scheme makes it compulsory for all unauthorised colonies prior to the cut-off date to apply for layout regularisation. A few extensions of the cut-off date after notification of the 2007 rules also gave time for power of attorney/ agreement to sell transferees to register their sales. However, not all unauthorised colonies existing on that date were eligible for regularisation. Colonies developed on restricted lands, or colonies in which minimum planning conditions could not be satisfied were not regularised. Owner/ occupants may also not have been able to register their purchases for a variety of reasons.

The 2007 Layout Regularisation Rules provide that lands/layouts that have not been regularized under the scheme will be entered into the Prohibitory Register, and that subsequent land sales are not to be registered no infrastructure is provided by the ULB/concerned authority for such lands.

### Urbanised Village Settlements

Village settlements in rural areas in Andhra Pradesh do not have individual plot boundaries or revenue survey numbers in revenue records, and therefore owners of such lands may not be able to provide evidence of formal title, though this land is usually freehold private ownership land. Moreover sales, inheritances, subdivisions and other transfers may not have been updated in the revenue records. As village settlements become urbanised, they may also become densely built-up in a way that makes it difficult to demarcate plot boundaries.

Land records in urbanised villages in Andhra Pradesh are meant to be updated to reflect plot boundaries, and occupants should be able to obtain a record of rights document if their plot has been re-surveyed. However, sub-divisions, transfers, property disputes and the construction of extensions and accretions to the original village settlement houses may pose problems for resurvey in some of these settlements.

There are no restrictions on transfer of village settlement land, unless the land was assigned originally as a homestead plot by the government as is covered by prohibition on transfer under the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977.

Building regulations are applicable in Andhra Pradesh for construction on village settlement land, whether in rural or urban areas, and property owners are expected to get building approval for new constructions. Building regulations may be relaxed in small plot/ densely built up settlements. However, obtaining building approval in a village settlement could prove to be difficult without document of evidence of title, and for this the process of demarcation of plot boundaries and updating of land records should have been completed first.

Urbanised village settlements in Vishakapatnam may sometimes be listed as slums on account of the income and housing condition of residents, and they may also be underserved by city infrastructure. Squatter housing may have also come up in the periphery or in open spaces in such settlements, and original properties may have been sub-divided or transferred. In such cases there may be practical problems to establishing title and for ascertaining that the house or property is on private village land.

### Slums with tenure

In Andhra Pradesh the term patta means record of rights (ROR) with respect to interests in land. The government grants various types of pattas as social welfare measures to the landless poor. Private land owners may also obtain pattadar pass books which provide of a copy of land records with respect to their land holding.

'House site pattas' are granted in urban poor in squatter settlements in Andhra Pradesh under various government orders of the department of land revenue<sup>20</sup>. While the nature of rights created by grant of patta needs to be investigated in each and every case, generally speaking patta-holders in Andhra Pradesh have perpetual title in land for which they hold pattas. These rights are however not transferable under the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977, but may be mortgageable under special conditions (See Box 5.1 below).

Prior to grant of pattas in urban areas, revenue authorities seek planning approval from the Directorate of Town & Country Planning if the settlement is not in conformity with master plan prescription of land use. This approval for change of land use is granted as long as the site does not fall in certain prohibited areas such as water bodies, notified green areas etc.

Patta rights in urban areas may also have been granted under other social welfare schemes of the government, such as the Indiramma programme which also provides support for construction of houses. In peri urban areas that were formerly rural, pattas may have been granted as part of homestead, housing and land redistribution programmes. The transfer of these assigned lands is also prohibited under the Andhra Pradesh Assigned Lands (Prohibition of Transfer) Act, 1977, but they may have since been informally transferred and sub-divided. Subsequently such areas may also come to be notified as slums.

It is possible for patta holders to apply for building plan approval, and there are administrative directions to this effect in Andhra Pradesh. However, the minimum plot size for building plan approval is 60 sq yds, and many patta holdings in slums may be below this threshold size. For this reason, they may not need to apply for building approval, but unapproved construction in such cases is not a building violation.

#### Box 5.1: Provisions for mortgage of house site pattas in Andhra Pradesh

House site pattas confer leasehold title on beneficiaries, but as they are not transferable they could not be mortgaged prior to 1997. However, since then the government has issued directions to District Collectors in rural areas and Municipal Corporations in urban areas to issue 'possession certificates' in exchange for house site pattas<sup>21</sup>. This provision was made in order for A.P. State Housing Corporation to extend mortgage finance for house construction. The process for issue of possession certificates however involves coordination between the Housing Corporation, Revenue Department and Municipal Corporation, and it may not be possible for individual prospective borrowers to complete the process on their own. Moreover, only the original allottee or his/ her heirs can apply for a mortgageable possession certificate under these rules, as the original pattas are non-transferable. However, we were informed in interviews that a large number of loans continue to be processed under these rules.

#### Slums with temporary tenure

A provisional patta is an interim patta that is generally issued before a normal patta is issued. The provisional patta confers similar right to occupy and enjoy the property as a normal/formal patta, but is limited by time to a specific period. In principle, provision pattas are meant to be replaced by regular pattas after completion of clearances, but it is not uncommon for provisional patta to be accepted by many entities (such as housing finance corporations, housing departments, ULBs etc) for undertaking housing and developmental

<sup>20</sup> G.O.Ms.No.508, Revenue (ASN-I) Department, G.O.Ms.No.940, dated 24.11.1998 and G.O.Ms.No.972, dated 04.12.1998. The competent authority for award of pattas under these rules is a committee headed by the Collector, having the Joint Collector, Municipal Commissioner, Vice-Chairman of the Development Authority and the District Revenue Officer as members.

<sup>21</sup> G.O. Ms. No. 546 dated 30-06-1997.

works. There have been instances where no formal patta has been issued and the provisional one being considered an equivalent document.

The degree of tenure security conferred by a provisional patta may however depend on other attendant circumstances. Provisional pattas may have been issued for non-conforming lands in order to provide temporary service connections, where such pattas may be subsequently replaced by regular pattas for a relocation site.

### Slums with no tenure

While legal tenure status of the poor in Andhra Pradesh may be better than in several other states because of the regular practice of granting house sites pattas, this practice is now being discontinued at least with respect to urban slums. Instead, the government is now looking to allot built up dwelling units, either in situ or in relocation sites. With this changed policy direction, slums without patta or with provisional pattas may be relocated rather than having their status confirmed in the same site.

These are also slums on lands for which no formal tenure or patta can be granted, such as with respect to lands that are earmarked for infrastructure and other uses, or is environmentally hazardous or part of water bodies, or in notified forest areas or close to defence installations. They could also be slums on land belonging to central government or state government agencies and enterprises, and slums on private land owned by third parties. In principle, competent authorities notified under the Andhra Pradesh Slum Improvement (Acquisition of Land) Act 1956 have the power to acquire private land for taking up improvement of slums which are on private land, but these provisions have rarely been implemented.

## 7 Orissa

### 7.1 Legal Attributes of Informal Settlements in Orissa

#### Summary of legal attributes

A brief overview of land ownership, tenure and development control in informal settlements in Orissa is presented in below. This is elaborated in the subsequent sub-section.

Table 5: Orissa Summary

Type of Settlement	Title	Right to Occupy	Right to Transfer	Development Approval	Building Approval
Regularised unauthorised Colony	Yes	N/A	Yes	Yes	Yes
Unauthorised colony	Yes	N/A	Yes	No	No
Urbanised village settlement	Yes	N/A	Yes	Yes	Yes
Slum with tenure	Yes	N/A	Yes	Yes	Yes
Slum with temporary tenure	N/A	N/A	N/A	N/A	N/A
Slum with no tenure	No	No	No	No	No

#### Legal Description of Informal Settlements in Orissa

##### Unauthorised Colonies

Owners of land classified as agricultural in Orissa are not allowed to sub-divide and sell their land as plots, and registration of such sale deeds is barred. However, the land owner can apply directly to the local land revenue officer (tehsildar) for change of classification, after which s/he can directly sub-divide and sell land.<sup>22</sup> This permission is quite easily obtained, and the owner does not need to submit a proposed layout of development plan as part of an application for change of classification.

The Cuttack Development Authority (Planning and Building Standards) Regulations 2001 issued under the Orissa Development Authorities Act 1982 also contain provisions for approval of sub-division of land, which entails a proposed layout plan.

However, in practice Development Authority powers in this respect have not been exercised, and lack of approval from the Development Authority does not result in the development being considered unauthorised or illegal. A land owner or intermediary needs to apply only for change of land use classification from the revenue officer before making subdivisions, sale and development of land. It is also possible for subsequent owners to obtain building plan approval with respect to such plots. This has however been viewed by development authorities and planning agencies as a cause of subsequent planning problems, and presently, tehsildars are being advised not to issue changes of land use without clearance from planning authorities. However, there has been no change in actual practice, and permissions continue to be issued by tehsildars.

<sup>22</sup> We were informed that this permission is given using powers under the Orissa Land Reforms Act, 1982, of which a copy could not be obtained.

For the reason that the bar on legal sub-division and development of land is relatively low, we were informed that there is a lower likelihood of development of unauthorised colonies as such. The Cuttack Development Authority however informed us that there are a few settlements in the Cuttack urban area that are being considered unauthorised colonies. The Cuttack Development Authority has issued notices to some such settlements and the matter is presently sub judice.

There is no restriction of registration of land sales in such unauthorised colonies, and therefore purchasers and occupiers have valid title even if the subdivision and development is illegal. However, if the subdivision has been carried out without permission or subsequent regularisation, owners will not be able to have their purchase recorded in land revenue records (mutation) and ROR (records of rights) documents will not be issued to owners.<sup>23</sup>

It is not possible to get building plan approval for construction in unauthorised colonies. Subsequently, it is also not possible to water and other utility connections in unauthorised colonies.

### Regularised Unauthorised Colonies

Cuttack has regularised unauthorised colonies, which were regularised by the Cuttack Development Authority under its Planning and Building Standards Regulations 2001.<sup>24</sup> These regulations provide for regularisation if colonies are on unobjectionable lands (for example, not in a way of trunk infrastructure, not environmentally hazardous etc.) and after compounding fees is paid.

To be eligible for regularisation, settlements must have clear title, appropriate approach roads and layouts plan, and should be in conformity with land use as per Master Plan. Cuttack Development Authority has previously had a one-time regularisation drive in which several such settlements were regularised.

Individual property owners in unauthorised developments can apply for regularisation of their properties. Applications can also be made by residents associations for regularisation of the entire (or part of settlement). Cuttack Development Authority obviously prefers collective applications, but there is no bar against individual applications.

It is possible to get an approved building plan for new or incremental construction in a regularised unauthorised colony.

Privately developed layouts, whether unauthorised or not, may also be classified as slums if the physical condition of the settlement warrants such classification.

### Urbanised Village Settlements

Village settlements within the notified urban area (Cuttack Municipal Corporation area) are called “units” in local administrative parlance. In some cases they have been declared slums by Cuttack Municipal Corporation.

Village settlement land in Orissa, whether within the urban area or outside, has clear revenue records and plot boundaries are marked on revenue maps. Even small plots have

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<sup>23</sup> This creates some degree of ambiguity in the public record of land, but does not invalidate title. Not all states issue records of rights documents. In states that do, records of rights help create additional evidence and certainty of title.

<sup>24</sup> It is not clear how revenue department control and development control provisions relate to each other. Developments are considered unauthorised for failure to take revenue department approval, but are regularised by the development authority using its own powers to compound and regularise developments that have been undertaken without its permission. This mismatch is presumably resolved through administrative coordination and taking of ‘no objection certificates’ between departments.

individual plot numbers. Based on this, property owners in such settlements are able to have records of rights documents issued to them which provides evidence of title.

Village settlement land is generally freely transferable and subdivisions are permitted. Land sales are generally registered and mutation of revenue records is carried out by the tehsildar after such registration. Based on this, new records of rights documents are issued to the owners.

It is possible to get approved building plans for new or incremental construction in such lands, and we were informed that in actual practice owners tend to apply for permission for new construction. The main reason for this is that they are able to get legal water and electricity connections if they have approved building approval.

### Slums with tenure

There are broadly two types of land tenure that are relevant to urban lands in Orissa:

- Freehold private land is called “stithiban” land. Stithiban land is freely transferable and heritable. For these lands a Record of Rights (RoR) is issued after transfer and due process of mutation by Tahasildar office
- Lease land grants from the government are called “pattadar” land. Various types of lease grants may have been given by the government over time with respect to nazul land vested with it. In urban areas, occupants (or encroachers) have been given “homestead” leases under the Orissa Government Lands Settlement Act, 1962, the term of which is generally 99 years. These leasehold rights are heritable, and owners are entitled to construct permanent structures on their land, but these rights are not transferable. In general, leasehold rights granted by the government may be converted to freehold, after which owners would have the right to sell, transfer or mortgage their land – but it is not clear if slum households are using these provisions to convert their land.

Slums with tenure in Orissa may be on stithiban or pattadar land, in which case they would be considered “authorised slums” in local administrative usage. Such slums may also be urbanised village settlements or low income colonies developed on privately subdivided land, whether unauthorised or not. Owners of property in such slums have title. Stithiban rights are freely transferable, but pattadar land is not transferable. The state government has previously cancelled pattadar allotments in cases where allottees transfer their rights or make unauthorised use of their land.

It is possible to get building approval for construction in “authorised slums”. Buildings regulations may be relaxed for development in such areas, though there is no special provision for this in the Planning and Building Standard Regulations.

### Slums with temporary tenure

There is no such category of slums in Orissa as the government has no practice of allotting temporary pattas or temporary right of occupation.

### Slums with no tenure

Such slums are called ‘unauthorised slums’ in local administrative parlance. They have no rights in property, no right to occupy and may not obtain development approval or permission to build.

In the past, some such settlements became “authorised slums” after pattadar rights were allotted to occupants under the Orissa Government Lands Settlement Act. However, this practice has been discontinued by the government, and new tenures are not being allotted by the government in unauthorised slums.

## Notes on Context in Orissa

Orissa has an elaborate legal framework applicable to slums in the Orissa Municipal Corporation Act, 2003 which gives primary responsibility for slums to municipal corporations, and gives municipal corporations powers to undertake slum improvements, rehabilitation and resettlement schemes, grant patta and change the master plan classification of slum lands. This law also provides for modification of land use status of all slums to “high density mixed use” and provides very narrow criteria for classification of settlements as untenable. The law envisages the grant of full property rights, in situ or in resettlement sites as appropriate.

However, in practice, municipal corporations seem to have gone only as far as listing, identification and provision of services. The municipal corporations of Orissa do not grant tenure to squatter settlements and cannot initiating master plan change to “high density mixed use” for such settlements. This is because functions relating to slums were never entirely transferred to the municipal corporations, and that land for allotment of pattas was never vested in municipal corporations.

The state Land Revenue Dept has parallel control over land related aspects of informal settlements. Accordingly, the tenure status of a settlement depends on whether households in the settlement have been issued with Record of Right (ROR) documents. Informal tenure may be converted to formal tenure if it is recognised in land settlement operations by the land administration, but this is rarely extended to unauthorised occupants of urban land.

The state government has recently issued a slum policy policy and making changes to the legal framework applicable to slums, which may result in settlement of in situ rights in tenure to slum dwellers in the future. It is however too early to comment on what the implications of these legislative or policy changes might be.

## 8 Conclusion

Tenure security in informal settlements is tricky. Densely built up settlements, with water connections, electricity, ration cards tend to have some degree of tenure security at the level of the settlement. This might be with reference to state laws pertaining to slum notification, notified cut-off dates regularisation, or from a state resettlement or rehabilitation law or policy. Incomplete tenure security may also be made up of incremental steps needed to establish tenure with reference to these laws, but which has not as yet been recognised as tenure – registration in voter lists, obtaining ration cards and proof of residence and obtaining settlement level basic services such as public taps are steps towards establishing tenure security.

The incremental steps leading to tenure tend to be based on administrative actions of state agencies that recognise the existence of the settlement and its households, but these state agencies may be different from the land granting agency. These acts of recognition do not therefore have the effect of granting rights in land.<sup>25</sup>

Quite significantly, the study revealed that incremental steps of recognition do not necessarily lead up to full tenure (i.e., ownership) at some future date. Even where legal frameworks and state policies offer routes through which in situ occupation may be converted to tenure, this could depend on the family having the correct documents and being occupiers of state government 'nazul lands' which were not assigned to defence, educational or other agencies of state and not in the way of future infrastructure or development projects.

One of the better forms of tenure available in low income settlements tend to be grants of in situ or resettlement leases which are granted by state governments. Of our case study states, this was in Orissa and Andhra Pradesh, but not in Madhya Pradesh. Almost all such in situ or resettlement tenures are however in the nature of non-transferable lease rights, and are often – in terms of the conditions of grant – cancellable if they are transferred without authorisation. As a matter of practice, such tenures are actively traded in the informal market through the modality of power of attorney sales. Legally, such transfers also do not grant any rights in the land.

On the other hand, legally valid claims of title may be found in unauthorised colonies, regularised unauthorised colonies and urbanised villages. While these title claims may be difficult to prove in terms of title documents in some states, government agencies in all three case study states claimed that they have processes in place for updating land records and providing record-of-right documents to occupants who make valid claims of title that they cannot prove for lack of title documents. These legal claims of title, may however be mixed up in the same settlement, and sometimes even in the same built structure, with claims that are based on undocumented transfers and power of attorney sales. Not all households in the settlement may, therefore, be eligible for regularisation or issue of record-of-right documents. In Andhra Pradesh and Orissa unauthorised colonies this was even more likely, as households without registered sale deeds were not eligible to apply for regularisation. Madhya Pradesh applies a different principle to unauthorised colonies, which results in regularisation for the colony as a whole and confirms title for all households, irrespective of whether they had registered sale deeds before the regularisation.

In this context, it is worth noting the value of 'perceived security of tenure'. Slum households may consider themselves secure if public authorities recognise the settlement as a whole and provide settlement level access to basic services. Households may also consider themselves secure if other households in the same neighbourhood have tenure, even if they themselves have none as it demonstrates to them that the settlement is unlikely to be removed. Densely built up settlements may also be considered more secure than individual scattered houses. Similarly, slum households in Madhya Pradesh appear to consider

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<sup>25</sup> But there is no conclusion case law or legal clarification on the point. In recent case law pertaining to slum demolitions, courts have tended towards recognising the right to resettlement of those who make eligibility conditions, but not those who do not. *Sudhama Singh & Others v. Govt of Delhi & Another* (WP(C) Nos.8904/2009 of the Delhi High Court).



temporary occupation rights as akin to security of tenure, even though those occupation rights can be cancelled at any time. Based on perception of security households make long term investments in housing upgrades, but are in fact usually (except in Andhra Pradesh) unable to access formal housing finance.

It is important for a housing finance project to note also that only some of the legal routes for establishing ownership and evidence of title can be initiated by individual households. Generally, individual households cannot apply for patta grants, even if they make the eligibility conditions and are within conforming land use zones. Households in unauthorised colonies may be able to apply individually for regularisation under Andhra Pradesh regularisation policies, but in Madhya Pradesh only collective applications on behalf of a residents association are accepted.

This study also dealt, in some detail, with the issue of planning approval as banking regulations mandate that housing finance should not be extended for houses without an approved building plan. Even in conforming zones, households in informal and low income settlements may be unable to obtain an approved building plan for reconstruction or housing improvements, if they do not have title or evidence of title. In addition, households in regularised settlements or urban villages may be unable to obtain building approval because their plot sizes and settlement layout may not conform to building regulation standards (which are developed with only formal planned layouts in mind). In this, as with perceived tenure, there is obviously a big gap between theory and practice. Planning authorities may ignore or tolerate construction without approval in such settlements, with the implicit understanding that up to two or three storeys are acceptable. As a result, these settlements could appear to be quite built up, but without any formal planning approval.

These findings should help focus the efforts of PLIs that seek to participate in this project to households that have formal tenure, which may exist in previously unauthorised colonies, urban villages and slums with tenure. However, state and local authorities could considerably expand the scope of housing finance for low income borrowers by developing special regulations, standard form approval processes and model building plans for plots below a certain size in regularised colonies, urban villages and slums with leasehold tenure. This would help the project, and lending agencies in general, reach low income borrowers and in turn, help ensure that these households have adequate funds and planning guidance for safer building design and sanitation.