

# WHAT GETTING LAND TITLE REALLY MEANS: AN “ANTI- COMMONS” IN AHMEDABAD, INDIA?

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## ABSTRACT

This paper documents, for a neighborhood in Ahmedabad, India, what would be involved for current occupants to regularize tenure and register legal title. We show that the process of clearing title can be expensive, fraught with risks, and perhaps impossible to complete for either the current occupants or the owners of record. Staying on the land in their current ambiguous status seems viable for now, but investing in further development is very risky. We discuss these findings in the context of the debate about providing secure tenure to slum dwellers from two perspectives: (i) the practicality of providing legal tenure as part of neighborhood upgrading programs; (ii) the impacts on the real estate market of a system that leaves many private plots, in slums or elsewhere, in legal limbo and difficult to develop—in essence an anti-commons. Both issues are of critical interest as India faces the challenge of urbanization.

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## I. Introduction

This paper looks at urban land tenure in an Indian city and discusses its impact both on the real estate market and on the households in the specific neighborhood under study.

Understanding these issues is of importance as India proceeds with its urban transformation. Currently 377 million persons are estimated to live in India's cities, and over 100 million of them live in slums. Our analysis of the property rights of the occupiers and owners sheds light on the dynamics of the real estate markets, which in turn play a substantial role in forcing such a large part of the population to find affordable shelter in slums. It also sheds light on the prospects for the Government of India's program to achieve 'Slum Free Cities' in India, which relies heavily of providing clean tenure to the inhabitants of slums. Our findings contribute to the debate about the role of granting tenure, upgrading slum neighborhoods and market-wide reforms as solutions to the challenge of improving shelter in India's cities.

Adapting land tenure systems to the social and economic dynamics of cities is always a fundamental challenge for governments managing the transformation of settlement patterns and land use that is inherent to urbanization. As McCauslan (2003) and (1998) has discussed, land, among all other assets is multi-dimensional, with anthropological, political and developmental aspects. At the same time, land is one of the three factors of production identified by economists. Demsetz's (1967) seminal treatment of the economics of property rights illustrates how individual property rights in land can be used to find effective and cost efficient means of internalizing externalities that are a natural consequence of social interdependence, and how they can help ensuring proper management of land resources. The potential for externalities is very much present and significant in cities; hence the centrality of functional property rights systems. However, property rights systems face considerable pressure in the transition from agrarian to urban societies.

Throughout history, and most recently in the period of rapid urbanization in developing country cities starting shortly after World War II, legal and regulatory systems have not changed at the same pace as economic activities have grown and households have moved to take advantage of new opportunities, especially in cities. (In the case of Gujarat, land is still managed according to the provisions of the Bombay Land Revenue Code of 1879.) As a result, various forms of informality are superimposed upon or develop in parallel to the property rights systems that were developed for traditional agrarian systems. Depending on how quickly urbanization takes place, and how flexible the system is, this growth in informality means that large numbers of properties in cities may have substantial defects in title and significantly compromised marketability—a key feature conferring economic value on land and a requirement for using it as collateral. Owners of such land have an interest in clearing the defects in their titles at some point. Government may also wish to clear those defects as they impede property taxation and recovery of user charges for municipal services.

Properties so affected may or may not host low cost 'affordable' housing. They may be occupied by prosperous and influential members of the community. Nonetheless a very important thrust of public policy interest in land tenure, especially in the development community, derives from concern to improve the living conditions and overall economic security of the poor living in cities. Ever since large informal neighborhoods with low quality housing and services, usually referred to as slums or squatter settlements, started to appear in developing country cities, those wishing to improve the living conditions there have grappled with how to handle the land tenure status of households who benefit. (See for example, Turner :1968). This is relevant because, unlike the United Kingdom, (see Harloe:1990) many of the residents of urban slums in developing countries are owner occupiers not renters. Furthermore, by the 1960's, disenchantment with neighborhood expropriation and relocation practiced in urban renewal projects in the United States had set in. Improvements *in-situ* became a more acceptable approach and the debate began about how what forms of tenure security should be extended to occupiers in improved neighborhoods.

That debate was considerably enlivened by the strong claims made for providing full legal title and heavily promoted by Hernando de Soto (2000). Reviewing and summarizing this voluminous literature is beyond the scope of this paper. See Durand Lasserre (2002) Fernandes (2011) and Deininger and Feder(2009) Payne, Durand Lasserre and Rakodi (2007) Durand Lasserre and Selod (2009) for discussions of this debate. Instead, we seek merely to summarize some of the key issues raised in this debate to provide a context for interpreting the findings of our case study.

On one side of the debate, the 'gradualists' have argued that measures such as an occupancy permit or a guarantee not to evict could provide many of the benefits of tenure regularization with much less time, administrative effort, and political capital. Since land tenure systems are often highly complex and resolution of multiple claims to property can be slow and difficult, full tenure regularization for poor slum dwellers should wait until later. There is a continuum of tenure security and moving up this continuum can offer substantial benefits to poor communities. The perception of *de facto* security is seen as the key to mobilizing occupants to invest in improved housing once services are improved. Angel et alia (1983) Doebele (1983) Fernandes and Varley (1998) Payne (2002) Durand Lasserre (2002) Macedo (2008) and Fernandes (2011) provide examples of many alternative systems that increase security of slum occupants and mobilize investments in the neighborhood.

In addition to recognizing practical obstacles to providing legal tenure, the proponents of tenure security as opposed to *de jure* tenure, also see disadvantages in granting full marketable tenure. The primary issue seems to be concern that marketable legal tenure would lead to resale of the parcel to middle class households, possibly on disadvantageous terms and gentrification of the neighborhood, resulting in the relocation of the original beneficiaries in a new slum. It is feared that this process will lead to a loss of affordable housing and it

could therefore aggravate the pressures that lead to slums rather than improving conditions for those living there.

There is only sparse empirical evidence to support this claim probably because there are very few cases in which full tenure security in the formal mainstream registry or land recording system has actually been granted. Even in the much documented case of COFOPRI<sup>2</sup> in Peru, the titles were registered in a parallel land cadaster, not the public land registry used to ascertain legal title for transactions and mortgages. Banerjee (2002) also documents a number of examples from India where ‘title’ was provided in slum improvement projects in India but the actual tenure security had many limiting conditions. Programs that actually sought to obtain clean title for slum occupiers with expropriation of existing owners of record or of central agencies whose public land hosted slums met with stiff resistance that ultimately curtailed those programs. These limitations on the feasibility of providing clean legal title illustrate the appeal of the gradualist approach on pragmatic grounds. See Roy (1983) and Banerjee(2002)

Beyond the limited evidence that providing full legal tenure actually leads to gentrification<sup>3</sup> in practice, the gentrification argument is somewhat paternalistic. Slum households’ investments in better housing are seen as a desirable outcome of neighborhood improvement schemes and the investment response has been documented in many instances, even when full legal tenure was not provided. However, it seems that while slum households are to be encouraged to invest, the assets they create should not be marketable because that can lead to gentrification and loss of affordable housing stock. Yet marketability is one of the fundamental drivers of asset value.(Pratt:2009) No matter how much one may be attached to one’s house as the hearth and home, one of its key attributes is as a store of value that can be tapped when needed. Concern with gentrification, therefore, leads to solutions that encourage the poor to invest in assets with inherently less value than others so that they can protect the supply of affordable housing for newcomers.

While pragmatic in the short term, a gradualist approach to tenure endorses compromising the long term value of investments of the poor. This seems a heavy burden to ask in the name of protecting the supply of affordable housing, and it neglects that all participants in the real estate market, not just poor slum dwellers, consume housing services and affect prices. Furthermore it fails to take into account a host of factors such as policies, regulations, and

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<sup>2</sup> Comisión de la Formalización de la Propiedad Informal

<sup>3</sup> The risks of gentrification in many contexts are easily exaggerated. It is not easy for developers to amalgamate a large enough plot to develop commercially by buying from multiple owners with clear and defensible legal rights on very small plots. If the existing lower standards for roads and public spaces to which slums are typically built are legalized when tenure is provided, the owners have no urgent need to sell, and neither developers nor individual higher income households will find individual plots particularly attractive. See Patel et alia (2011) for practical proposals for managing the risks of gentrification while providing full legal title in slums.

infrastructure investment that affect prices and housing options in a given real estate market. In practice, it seems that the poor limit their exposure to such low value investments, as Fernandes (2011) has documented in the case of the Special Zones of Social Interest (ZEIS) in Brazil and in the *ejidos*<sup>4</sup> in Mexico. When the special rights provided are too difficult to trade, the occupants either sell on the grey market or resist participating in the program. Arguments against providing legal tenure in order to maintain neighborhood continuity also neglect that informal titles coexist with active and relatively liquid informal markets. Slum dwellers can and do sell their homes in improved slums once they can afford to live in a better neighborhood whether they have informal title or not.

As Hammam (2011) has pointed out, the likelihood of gentrification is much increased when programs for regularizing title focus only on poor neighborhoods. The problem is typically far more widespread than slums and land with clean title is necessarily scarce. In such circumstances, the price premium on land with clean tenure is likely to be very high and thus makes selling out a more inviting prospect for beneficiaries of tenure regularization programs. But in such market conditions, there will also be other powerful pressures for gentrification. When good sized and well located parcels with clean tenure are difficult to find, developers, industrialists and large businesses are likely to press government to expropriate valuable lands, including well located slums—whatever their tenure status. Some slum rehabilitation schemes in India may be seen in this light<sup>5</sup>. Fortunately in principle at least, such programs are intended to provide housing *in situ* for the original slum dwellers.

The other side of the debate on tenure and slums, referred to here as ‘absolutist’, contends that regular title, fully marketable and mortgageable, has unique advantages for the poor as it does for other actors in real estate market. Widespread access to such title is essential (although not the only requirement) for establishing a well-functioning housing market, and should be a priority in programs to improve housing for the poor. The extreme version of this view proposes that such market wide reforms should be a higher priority than limited project level interventions that improve living conditions but sacrifice access to full tenure regularization. (World Bank: 1993) De Soto (2000) has further argued that clean title to land can unlock the value of assets in the hands of the poor by ensuring access to formal credit markets. The credit so obtained could go a long way to reducing poverty. In a slightly different vein, UN agencies and governments have from time to time declared support for security of tenure for all. While they do not necessarily specify what type of tenure is to be provided and what type of obstacles need to be surmounted, these pronouncements nonetheless support ambitious goals such as striving to ‘remove all possible obstacles that may hamper equitable access to land’. (United Nations: 1996:41) More recently, the Government of India’s Slum Free Cities Program has required that States pass laws to

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<sup>4</sup> Ejidos are communally owned properties that, until reforms in 1992, had strong protections against resale to outside parties.

<sup>5</sup> See: <http://www.indianexpress.com/news/scrap-slum-dwellers--nod-for-redevelopment-projects-says-hc/1190661/> (referenced on November 15, 2013)

provide legal tenure to households in slums as a pre-condition for receiving central government funds under the program.

Latin America has been most active in supporting programs of this kind, not only in Peru but in Mexico, Bolivia, and Argentina. When political support was strong, these programs progressed rapidly and were able to provide title to large numbers of households quickly and effectively. They have achieved many of the benefits claimed for regularization, including increased investment. This investment effect seems to be negatively correlated with the perceived likelihood of evictions in the absence formal tenure which for example, was quite low when the Mexican program was established (Angel et alia: 2006). Field (2005) has further documented increased labor force participation, especially among women, and better education outcomes since family members need to spend less time on site protecting fragile, informal property rights. However, the expected impact on access to credit has been disappointing, in Latin America and other regions of the world as well. See for example, Field (2005), Deininger and Feder(2009) Kerekes and Williamson (2010) Fernandes (2011) and Angel et alia (2006). Why this has occurred has not been analyzed in detail but it is commonly attributed to limitations in credit markets. While access to marketable title may be a necessary condition for using one's home or business as collateral, this is not a sufficient condition for obtaining a loan. Furthermore, access to title does not necessarily increase the title holder's desire or capacity to take on additional debt.

Much has been made of this very real limitation of title regularization for alleviating poverty, but it is worth noting that, the absolutist approach—provided it can actually be implemented—has value in the long term. Once currently binding constraints in the credit market disappear, the value of clear title may come to the fore. Complementarities across policy interventions, although not always recognized<sup>6</sup>, are significant, and the political opportunities for reform are not always as multi-dimensional and comprehensive as one would like to think. Failing to recognize even much deferred benefits of any of these structural reforms robs us of insights into the process of reform.

To summarize, there are strengths and weaknesses in both sides of this perhaps too polarized debate about full or partial tenure, and the case study below is meant to elucidate how to think through the respective roles and proper structuring of both approaches in government programs and policies, particularly in the Indian context.

## II. Case Study

This case study examines the prospects for tenure regularization in a well-located informal neighborhood in the city of Ahmedabad. It is located on private land occupied by households that have purchased this land in the kind of informal transactions using official stamp paper,

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<sup>6</sup> Hammam: 2011 is a noteworthy exception on affordable housing interventions.

quite common in Indian urban real estate markets. The neighborhood is less than 10 kilometers from the Gandhi Bridge in Western Ahmedabad, inside the ring road and centrally located in a very urbanized area. (See map). It is just adjacent to, but inside the green belt designated in the 1965 development plan. The land parcel, occupied by 40 families, 31 of which have purchased their land on the informal market, covers 2710 square meters.

Figure 1. Location in Ahmedabad



In 2000, the Mahila Housing Trust of the Self Employed Women's Association (MHT) started work in the area to organize participation in the Slum Networking Program (SNP).

For a fuller description of the program, see Ahmedabad Municipal Corporation<sup>7</sup> (AMC) (2005) or Kundu (2002). SNP provided a variety of environmental improvements at the neighborhood and household level which include in-house water and sewerage connections, street paving and lighting, drainage and solid waste collection infrastructure. As part of the program, the AMC also offered a 10 year “no eviction” guarantee to all the households in the neighborhood.

Figure 2a. Neighborhood before Upgrading



Figure 2b. Neighborhood after Upgrading



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<sup>7</sup> The Ahmedabad Municipal Corporation is the urban local government responsible for the city of Ahmedabad. Ahmedabad is the sixth largest city in India, located in Gujarat, one of India’s fastest growing and relatively urbanized states. Its population as of the 2011 census is about 5.5 million people.

Several years after the completion of the project, the beneficiary households approached MHT for help in regularizing their titles and obtaining legal ownership of the land they had purchased informally and were currently occupying. Some of them wished to make further investments in their homes financed by a mortgage loan. Many were also concerned with recent high profile evictions of a different group of SNP beneficiaries that had also been given a ‘no-eviction guarantee’ but who had been relocated nonetheless. Since the 10 year period would be drawing to a close soon, they were motivated to seek more secure land tenure to consolidate the gains they had achieved through the SNP project. Before seeking legal advice, the occupiers of the land collected their documentation, consisting of 31 different sale agreements registered on official stamp paper for different sub-parcels. The oldest of these agreements was dated 1984, and the most recent 2009. The results of their efforts and the process of researching their legal status—which took over 18 months—are described below.

The first step in the process was to collect official ownership and land use documents from the State agencies. Although in principle the Revenue department is in charge of holding all land ownership records with the original title, trips to several different offices were required: (i) the district collector’s office for the revenue maps pertaining to the plot in question; (ii) the sub-Registry office for a title clear search, to obtain a record of mutations of the parcel on village form 6<sup>8</sup> and (iii) the office in charge of administering the Urban Land Ceiling Act to obtain proof that the land had not been acquired under the Act, and thus could be sold. The papers obtained were the 7/12 Form stating that this plot was under the old tenure<sup>9</sup> and could be freely sold, the F-form of the Town Planning Scheme (land readjustment) completed in 1984, which designates the plot as new tenure, which cannot be freely sold. Both the F-form and the 7/12 form cite the nine descendants of the last legal purchaser of the land in 1964 and none of the occupants as legal owners. The 8-a Form retrieved in the process indicates that the land is only valid for agricultural use. Regarding the Land Ceilings Act, an order was made to acquire the parcel under the Act in 1997. However, acquisition had not taken place in 1999 when the act was repealed. Therefore the State had no valid claim on this parcel now.

As can be seen from this drawn out process, information allowing one to draw conclusions about ownership is dispersed across a wide network of offices. There is no one site for finding all relevant ownership information, and there are no clear service standards for document requests from the general public<sup>10</sup>. This organization of the system makes for high transaction costs and enhances the value of insider knowledge and connections.

Having collected the State documents on ownership, the team then turned to examining any reservations on the land under the urban planning regime. They found a long history of

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<sup>8</sup> Transfer in 2001 the widow and 9 descendants of the most recent purchaser;

<sup>9</sup> Ballaney et alia (2009) explain in detail the different designations of land tenure in Gujarat State

<sup>10</sup> It is important to recall that the expert advisor to the study who helped obtain documentation was an individual with excellent access in the system. As such, an ordinary citizen might not be able to obtain the documents as expeditiously as they were for this case study.

intervention. As of the 1965 development plan, this land was reserved by the Municipal Corporation for public housing<sup>11</sup>. The Town Planning Scheme, completed in 1984, reconfirmed the reservation of the remaining plot (after giving up 35 per cent of the land for the readjustment scheme) for public housing. The 1987 development plan reconfirmed this reservation. Throughout the 22 years that these reservations were in place, however, no move was made by the AMC to take over and use this land for the intended purpose. In 2002, the reservation was lifted, and the land is merely zoned as permissible for residential occupation. However, the existing structures are not compliant with municipal building codes, and are thus not eligible for building use permission.

The occupiers are thus faced with two challenges to regularize their status. With regard to the State authorities, they must obtain legal ownership with permission to sell (old tenure) and convert to non-agricultural use. At the municipal level, they must regularize the status of the structures on the property. Getting to this point is not only difficult. Whoever tries to do this could risk the property and its structures. The basic steps for resolution are as follows:

- To regularize current land use, tenure conversion from new to old tenure (freehold) is required. This requires a payment of roughly US\$20,000<sup>12</sup> or over 50 times the annual median family income in Ahmedabad as of 2010<sup>13</sup>. Before approval, each individual request for land tenure conversion must be approved by the Revenue Minister of the State.
- Only after tenure conversion has been completed can permission for non-agricultural use be submitted. However, the Revenue Department may re-appropriate the land instead since its current non-agricultural use is a violation of land use restrictions.
- Only after non-agricultural use permission has been granted can the owners of record apply for building permission. However, since the present buildings violate building standards, the AMC may proceed to demolish the existing buildings.

In sum, regularizing the current land use would be costly and slow, and it puts the ownership of the land and all the structures on it at risk of government expropriation of the land and demolition of the structures. The above three steps may only be undertaken by the owners of record. For the current occupiers to become the owners of record, all nine potential legal owners would have to renounce any ownership claims. But neither party has much to gain in reaching such an agreement. To regularize the title, the current occupiers must leave and demolish their non-conforming structures, which constitute an illegal non-agricultural use. On the other hand, the current owners of record have little interest in regularization. They do not

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<sup>11</sup> Reservation in this context means the land is subject to expropriation when the government sees fit.

<sup>12</sup> 13,000,000 Rupees at 65 rupees per US \$

<sup>13</sup> Based on the National Sample Survey data for Ahmedabad. See Annez et alia (2012) for further details on this computation.

possess the land, and cannot sell without the consent of all occupiers. The occupiers may use their sale deeds to resist eviction.

Given the conflicting claims and draconian sanctions in the hands of government, for now at least, it seems the most likely scenario for this land is to stay just as it is. No single party has a viable enough interest in pursuing full regularization. Even incremental improvements are risky and difficult to finance for the current occupiers, since such investments would raise the profile of their illegality. The occupants retain some comfort that it will be difficult for the owners of record to evict them. Should the value of the land rise high enough, however, it becomes profitable to persuade or force the occupants to leave, clear the land and then regularize the land use to allow for complete redevelopment. This, at least, is the option that the current owners of record retain, although it may never materialize.

Government regulation plays a decisive role in creating and maintaining this impasse, both at the State Revenue level with regard to permission for Non-Agricultural use and at the municipal level with regard to building permissions. Both these regulations put the property at risk if there is an attempt to regularize the current land occupation. These regulations also probably led to creating the conflicting ownership claims between owners on record and occupants with informal sale deeds in the first place. Once the land was reserved for public housing in 1965, it was not possible to sell the property in the formal market and it was not worth the trouble and expense of obtaining a non-agricultural use certificate. Parcels were sold out in the informal grey market to poor households who probably did not know they were getting something less than legal tenure. This creates the conflicting ownership claims.

Because the government is empowered to take punitive measures against properties that do not conform to these regulations (expropriation and demolition) there is no sense in resolving the separate problem of conflicting ownership claims. Given the legal remedies for infractions of these regulations, the only way out of this impasse and into marketable formal tenure is clearing the site, demolishing the structures, and then paying a substantial fee to government to regularize use. There is no legal avenue for incremental investments and improvement of the neighborhood. Because of the existing legal framework and sanctions in the hands of both State and local government, the only way to redevelop this neighborhood legally is to displace all its occupants.

### III. Implications for project level interventions

This case study offers many insights for designing a project level intervention for neighborhood improvements. First, the legal situation of these households illustrates very well the practical impediments to full regularization that the gradualists in the tenure debate

invoke. Surmounting the legal difficulties faced by these households, if it were even feasible, would take years in the current system. At the same time, the improvements achieved in this neighborhood through the SNP show how tangible the benefits of neighborhood improvements can be. See AMC (2005). Withholding access to services for neighborhoods with such legal problems could delay critical environmental improvements for many years. Such pre-conditions are not necessary to successful implementation of the project either. These households came together and contributed their 10 percent of project costs. The community came together and negotiated their own plan of necessary demolitions and neighborhood reconfiguration to accommodate infrastructure improvements. Many have also invested in improving the structure of their homes, in nearly all cases five times the value of the original infrastructure costs incurred under the program, and in many cases, much more. In some cases, families have added space to accommodate more family members or renters. All this was done in the absence of clean title.

Second, this case study illustrates that the sorts of reform required to regularize the titles of the current occupiers and resolve competing claims to the property reach well beyond the authorities of the local government sponsor of the project, the AMC. The State Revenue department is on the critical path for upgrading from new to old tenure, for resolving conflicting claims to the land, agreeing to non-agricultural use, registering the transfer of ownership and updating the cadaster. Each of these steps requires a number of internal approvals within the Revenue Department, and the city has little leverage to speed this process. The Revenue Department erodes its revenue base with every parcel converted from agricultural to non-agricultural use, so there is little sense of urgency to complete this process expeditiously. Patel et alia (2009: 185) estimate that conversion from agricultural to non-agricultural use alone takes over a year for each plot converted. Regularizing land use within the municipal government system also requires a number of complex steps across a range of different municipal offices. If the current land use pattern is to be ratified and legalized—an essential step if this set of households is to remain on this land with legal title, exemption to the General Development Control Regulations (GDCR) must be granted<sup>14</sup>. But the municipal government would not take this under consideration until the problems at the State level are resolved.

Third, it is difficult to imagine that the current procedures could be completed expeditiously on the large scale needed to benefit even a fraction of the over 400,000 households living in slums and chawls<sup>15</sup> in Ahmedabad (Annez et alia: 2012:16). Therefore making regularization of tenure in the current system a condition of benefitting from neighborhood infrastructure upgrading schemes could be punitive and counterproductive. Indeed, it appears that given the

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<sup>14</sup> Patel et alia (2009) provide more details on the complexities of the state land management system and difficulties of coordination with the city land management system.

<sup>15</sup> Chawls are very small low quality homes built originally to house industrial workers in Ahmedabad's mills. Often they have no better services than slums. While these units are usually rented, the ownership status is often very unclear.

government of India's emphasis on provision of tenure in its slum improvement program, local officials seek to exclude *ex ante* from the planning for "slum free cities" those neighborhoods where land ownership is difficult to ascertain or potentially contested. Unfortunately, many slum households on contested land would likely pay for obtaining basic infrastructure improvements even without promises of security—as evidenced by the common practice of paying substantial sums for illegal infrastructure connections.

Finally, these tenure problems are not limited to slums alone, so solutions need not be framed around slums. Many other households suffer from the uncertainties and rigidities in this system, owning homes on land that has similar defects in title, irregularities in land use and impediments to marketability and mortgaging. A program that eases the path to regular title for slum dwellers alone while ignoring the thousands of households across the income spectrum that are penalized by this poorly functioning tenure system both ignores many potential allies and supporters of change and seriously risks alienating the middle class.

#### IV. Effects on Land Markets

This case study illustrates a number of constraints the system of land tenure places on the functioning of the urban real estate market in Ahmedabad. First it discourages both investment and land trades in plots with defects in tenure. Occupiers of land often cannot prove legal ownership and hence mortgage their property to fund improvements. Trades in land to purchasers with funds to make changes are likewise discouraged because of the defects in title. The threshold for a profitable legal sale is very high because of the need to clear parcels and demolish structures to establish clean tenure. Because all these effects tend to lock in current land use patterns, they force extensive urban growth onto new land parcels to meet the demand for new housing and commercial space. Thus, they blunt the impacts of recent measures to reduce regulatory restrictions and help the city use land more efficiently, in particular, increases in the Floor Space Index, reduction of reservations, and repeal of the Land Ceiling Amendment Act. Finally, because there are so many potential sources of title defect managed by so many different agencies, the problems of each parcel are *sui generis*. As the case study has shown, the costs and risks are such that they can only be borne by an investor with substantial resources, influence, and the wherewithal to demolish everything on the site before requesting a conversion to non-agricultural use. This doubtless contributes to the concentration in the developer industry that so many observers of the Ahmedabad market decry. The costs of clearing the defects and hence the impact on the supply of land and housing in the local market are for all intents and purposes, impossible to quantify and in some senses invisible to the electorate and policy makers. Because of these market-wide impacts, facilitating full legal tenure regularization should be seen as much more than a design feature for a poverty program. It is an essential step in modernizing urban land markets.

The process for revealing the tenure status of the plots under study shows how costly and complicated it is to understand the legal ownership status and property rights, most especially marketability, associated with urban land parcels. It took roughly 18 months of visiting offices, compiling documents to obtain a clear view of the potential claims on the land and to understand the potential pathways to regularizing tenure—all of this guided by an experienced expert. Pursuing the actual clearing of title would take much longer. Multiple agencies have potential claims on the land, and may have overlapping and inconsistent rules. A long process whose duration is difficult to predict must be endured to clear encumbrances on the title. Costs associated with clearing the encumbrances could be high, and once all that process has been completed, registering the mutation of ownership too can take a considerable time and effort. That lapse of time, as is well recognized, whether it be in recording or registration systems increases the risk of inaccuracies and ambiguities in the ownership information (Arruñada:2011) which can, in turn, compromise ownership rights. By the very nature of the system, no one knows how many properties are affected by these problems. This lack of transparency forestalls an informed policy debate on the need for reform.

The inherent opacity of the system notwithstanding, there are strong indications that the problems identified in the case study are not limited to a few unfortunate poor neighborhoods. Property records and title are only known to be reasonably clear for land that has been purchased from the government, usually after expropriation<sup>16</sup>. Such lands typically command a high price premium. For example, when land was auctioned by the Ahmedabad Urban Development Authority subsequent to the completion of land readjustment schemes in the late 1990's, prices were often two or three times those for similar plots not sold by government. For property owners across the spectrum, defects in tenure are common and also unpredictable. A recent newspaper report recounts the immanent bankruptcy of a multi-million dollar real estate development in Mumbai plagued by a tenure problem that took so long to resolve that cyclical difficulties with credit access ultimately derailed the project.<sup>17</sup> The Town Planning Schemes, which are a form of land readjustment<sup>18</sup>, used for expansion of urban serviced land under the local Development Plan, show signs that clearing tenure is an important bottleneck in greenfield development. The town planning schemes required for servicing urban expansion under the 2002 Development Plan cover thousands of individual land parcels. Implementation of this aspect of the master plan has moved forward

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<sup>16</sup> It is not common for lands that have been in government hands for any amount of time to be put up for sale. However, development authorities have the right to acquire land for various purposes, such as building housing and to resell the property, which is then considered to have clean title. In Gujarat, government also practices voluntary expropriation through land readjustment schemes.

<sup>17</sup> For one example, see Kenneth Bradsher and Neha Thirani Bagri “Real Estate stunted by rupee’s fall” **International Herald Tribune**. Thursday September 12, 2013.

<sup>18</sup> Ballaney:2008 provides an exposition of how this particular form of land sharing is practiced in Ahmedabad, India.

exceptionally well, and all the planned schemes are well underway. In most cases, the infrastructure for servicing the land has been completed. However, as of 2011, not one scheme had completed the parcel by parcel process of approving revised land boundaries, revising title, and delivering a certificate allowing urban use for the plots in the scheme. (Annez et alia: 2012). This is the case, even though these areas have been declared suitable for urban use in the Development Plan, and are now receiving services. An unknown but potentially large number of landholders are waiting for the tenure issues to be resolved and a certificate for urban use issued. Until this is done, they risk expropriation if they develop their land.

Another indication that a considerable number of properties may have encumbrances on title is the substantial percentage of housing added to the new housing stock that does not conform to municipal building codes<sup>19</sup>. Annez et alia (2012:16) estimate that only about 25 percent of additions to the housing stock between 2001-2011 conform to the code. Likewise, a large portion of the existing housing stock does not conform. The reason for this is the cost of well-located housing built to these standards is beyond the reach of somewhere between 40 and 50 percent of households in Ahmedabad. There is considerable demand for more modest homes and that is what gets built. It is likely to be costly to regularize those properties. Although many of them are more spacious and more pleasant than the improved slum dwellings in our case study, they still do not conform to the municipal requirements. (Annez et alia: 2012:37-46)

These properties may be ‘frozen’ as were those in our case study. As discussed above, in order to obtain a permit from the AMC for legal building or improvements on the land, any structures not conforming to the GDCR would have to be destroyed, making full regularization of a large share of the existing housing stock difficult at best. This problem illustrates one of the main drawbacks that critics of titling systems have noted, and is seen as one cause of gentrification when titles are regularized. See Durand Lasserre and Selod (2009) for example. A simple solution is to regularize the existing land use and buildings when regularizing title. This offers an opportunity to loosen the tight constraint of excessively high building standards and constraints on non-agricultural use in specific areas, where they have been shown to be largely irrelevant.

We conclude that, although the residents in the case study may have particularly grave obstacles in the way of obtaining a marketable tenure, similar problems are probably common, and have market-wide effects. The most important market effect is dynamic. These constraints impede investment even as purchasing power to service loans increases and demand for built space increases. Our case study ends in a sort of stalemate, a form of the anti-commons, where all potential claimants, including government agencies, have a right to

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<sup>19</sup> These are known as the General Development Control Regulations or GDCR

prevent other claimants, from doing anything with the land. Because these issues are so widespread, as long as the occupiers maintain the status quo, there are some risks in their illegality, but those risks are familiar and shared by the many other households in similar circumstances. But should they wish to make substantial improvements, they risk attracting the attention of the authorities and face a host of virtually unsolvable problems.

Those households with the wherewithal to service a more substantial loan that would require mortgage collateral cannot obtain the title needed to secure the loan. But, as noted above, access to credit may not be possible for a number of reasons. These include lack of proof of income for the self-employed or those employed in the informal sector and unattractiveness of small borrowers for mortgage loans. Interestingly, entrepreneurs in India are developing business models for estimating informal income and reaching small borrowers profitably, even without using mortgage collateral. These entrepreneurs recognize, however, that there is a business niche of borrowers with capacity to service larger loans that require formal collateral, and who cannot obtain them because they do not have clean title for their homes. For these cases, easing the pathway to clean title can also heighten the impact of innovation in financial markets, and expand the reach of government subsidies to housing finance<sup>20</sup>.

Widespread compromised title also affects market dynamics through its impact on de-regulation. Our case study revealed that various regulatory takings had affected the property in question, starting as far back as 1965. These include reservations in successive development plans that earmarked this land for public housing in 1965, 1984 and 1987 and, in 1997, a reservation by the Revenue Department of the State under the Land Ceilings Act. Throughout the 37 years that regulatory reservations were in place, government never took possession of the land, but it could not be sold legally. Starting in the 1980's, the land was sold informally to 31 households occupying the land. Since that time, the State of Gujarat and the Municipal Corporation have taken various measures to reduce government involvement and free up land markets. The Land Ceilings Act was repealed in 1999. The development plan of 2002 took away the reservation for housing and merely zoned the area as suitable for residential purposes. In 2005, the Municipal Corporation explicitly removed the reservation for public housing. Those regulatory encumbrances are gone as of today.

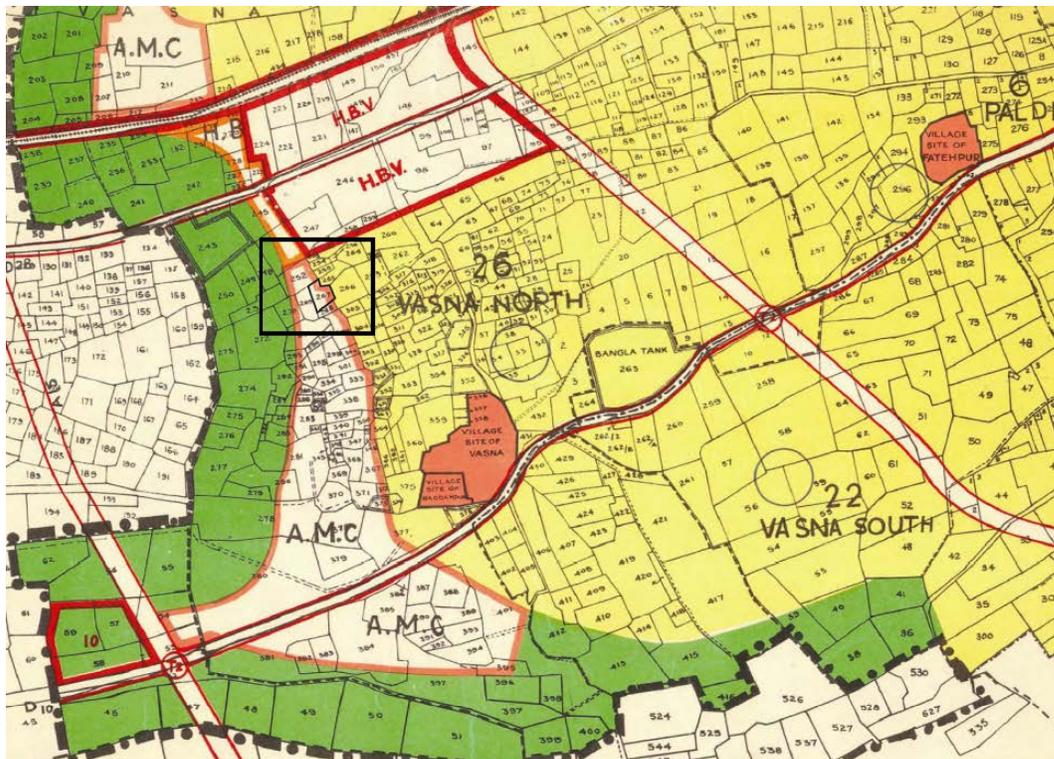
But such de-regulation does not mean much for this land today. The reservation for public housing was made in 1965. Government was planning ahead. This land was on the outskirts of the city and the area was not very developed. But by the time paying for a conversion to non-agricultural use became worthwhile, the housing reservation precluded any legal market

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<sup>20</sup> Government programs to subsidize housing finance sponsored by the National Housing Bank do not offer even limited support to smaller loans unsecured by mortgages. This strongly limits the penetration of such programs for lower income borrowers. Instead the Ministry of Housing is developing a program of small borrower loan guarantees for slum dwellers modeled on a costly program in Morocco, which failed to attract private banks (See Hammam:2011).

transaction or redevelopment. The only avenue to realizing the increasing economic value of the land was a sale in the grey market. Those sales in the grey market led to the current muddled tenure situation of today and the construction of structures that do not meet today's municipal building standards. As the case study shows, resolving those problems today would be risky and very costly. Even though the regulatory limitations are gone, de-regulation will not much affect this land nor the many other plots with muddled tenure or substandard construction. It will benefit neither the occupiers nor the owners of record. A marginal increase in the FSI from 1 to 2 for example, is unlikely to be sufficient to make more intensive development worthwhile. A gradualist response initiated by current occupants is precluded. Replicated over thousands of plots in the city, this substantially blunts the impact of de-regulation.

Moreover, de-regulation is not likely to be welcomed by the current occupants of this neighborhood and many others in the city. The normally expected positive impact city-wide on the effective supply of well-located built space and hence on the price of housing is blunted because a large number of properties face such title problems. Meanwhile de-regulation, by allowing more intensive land use in principle, removes a hurdle facing the owners of record in realizing their option on the land. Deregulation may well be seen to hastening the day when the current occupants must fight eviction with their limited ownership rights.



Through the various pathways described above, widespread compromised title has a constricting effect on the supply of built space. More intensive use of the land is prevented by a version of the ‘anti-commons’ (Heller: 1998), where incomplete property rights prevent exploitation of a valuable resource—well located urban land. Expanded demand for built space must be met through more extensive use of serviced urban land in less settled and usually less well-located neighborhoods.

## V. Concluding Remarks

The specifics of this case study offer considerable perspective on the debate about land tenure. This case illustrates why in programs meant to improve the living conditions of slum dwellers,—Bertaud(1989) terms them ‘relief’ projects—it is quite impractical to wait until tenure problems are resolved before providing basic services. Ample precedents exist in India and other countries that allow cities to provide services without assuring tenure. Updating these mechanisms merits more attention now, since rising property values in prosperous cities make it more contentious to improve conditions in slums on privately owned parcels and non-municipal public lands<sup>21</sup>. Too much emphasis on obtaining clean tenure for all slum dwellers could lead in practice to providing fewer services to many of them.<sup>22</sup> But thinking about tenure issues should not stop with government slum improvement programs. It is at the level of what Bertaud terms ‘structural’ change, change that helps the market work better, that sorting out the impediments to clean titles should take place. This type of reform is very much needed as a complement to the ‘relief’ programs.

As this case study shows, even for the recipients of ‘relief’ projects, their aspirations and sense of security can change over time. It is not safe to assume as has sometimes been argued by the gradualists, that these tenure problems will eventually be resolved (presumably by themselves). Reforming the property rights system in Ahmedabad and other cities is one critical element in getting the real estate market working better, in improving what Hammam (2011) terms the system of supply of land and housing. This process of improving the supply system is inherently multi-dimensional.<sup>23</sup> Creating a system of regularizing titles and undoing the impasses created by extensive regulation in the past deserves urgent attention. Excepting eliminating the draconian sanctions of expropriation and demolitions for

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<sup>21</sup> Higher levels of government, and the powerful para-statal they own typically resist slum improvements even if they do not have the wherewithal or the intent to clear those slums in the foreseeable future.

<sup>22</sup> As mentioned earlier, Government of India’s program is likely to exclude many such cases by default. Mexico’s Habitat program of neighborhood improvements explicitly excludes neighborhoods where land disputes are active.

<sup>23</sup> See, for example, Ballaney et alia (2009) for a detailed discussion of desirable land management reforms in Gujarat.

infractions of land use regulations, this is not a stroke of the pen reform. Instead it will involve a long process of improvements that will benefit not only the poor in slums but businesses and households across the income spectrum. It will involve streamlining arduous processes, each of which has stakeholders that benefit from the status quo. It will involve the tedious process of improving institutions such as cadasters and registry offices. It would involve more flexibility on government's side to convert more liberally to non-agricultural use, and to grandfather non-conforming land use and buildings. An improved system would have the flexibility to promote fast tracked consensual resolution to ownership disputes as an alternative to the slow and costly process of litigation<sup>24</sup>. Without such an option, the 'anti commons' affecting so much land in Ahmedabad will continue to distort development.

If the experience of the United Kingdom is any guide, reform could take decades to come to fruition. See Spring (1977), Offer(1977) and Anderson (1992) for detailed discussions of the interplay of broad economic interests against narrow professional prerogatives in the legal profession in the decades long struggle to reform land law there. However, the impacts could be dramatic. In England, the New Domesday Book of 1874 showed that 80 per cent of land was owned by less than 7,000 persons. Yet in the first quarter of the 20th century, a quarter of English land changed hands. Most of the sellers were large landholders and many of the buyers were tenant farmers. Among the many factors leading to this breaking up of the estates system was reform of the land laws. (Spring:1977 )

Perhaps it is because of the breadth of changes required and the diffuse group of potential beneficiaries that it has been difficult for the development community to advocate strongly over the long term for such reform. However, it would be wrong to assume that reform with such widespread benefits is the most likely outcome of development and modernization in countries like India. The benefits of a good property rights reform could be very broadly spread, but recent events in India suggest that an alternative and less inclusive solution may well be adopted. The booming economy over the last 15- 20 years and government promotion of expanding industry and agriculture have put considerable pressure on urban and peri-urban land markets. The system of land tenure and regulation has made it extremely difficult for industry to amalgamate the large parcels required. Accordingly, private interests have sought recourse to public expropriation of land to meet their needs for purchasing large parcels. Expropriation under the old land acquisition act had become socially divisive given the meager compensation paid, among many other reasons. After fifteen years, the central government has passed a revised law that offers more protections for those expropriated and somewhat richer compensation for the displaced, but has left open an expansive concept of public purpose. Thus, there has been progress on making it easier for large influential consumers of land to acquire the parcels they need. However, the debate and the reform did

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<sup>24</sup> Patel et alia (2011) propose consensus based approach to resolving these conflicts that draws on the principles successfully used to make Town Planning Schemes work in Gujarat.

not touch upon one of the key drivers of public expropriation for private purpose—the antiquated land management and property rights system. This system, which has left both the owners and occupiers in our case study and countless others in a stalemate which makes private land markets rigid and unresponsive, remains unchanged. Solutions that meet the needs of households like these are yet to come.

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