Legal land tenure programmes: security and precarity of the poor in Urban India

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ABSTRACT

This essay discusses the veracity of legal tenure granted to informal settlers on public land in the context of top-down neo-liberal policies superimposed on an already existing regime of urban regulations and welfare measures. It raises questions regarding the fairness of practices where the poor pay the price for changing development models. Insights from Madhya Pradesh (MP) state in India show that legal tenure documents stimulate incremental investment in building and are considered robust enough for channeling government funding for housing improvement. Such investment is secure until the land becomes valuable enough to support profitable redevelopment or is required for high-profile infrastructure projects to refashion cities. This leads to a mixed bag of security and precarity of the poor in a temporal framework of land markets, law, dramatic reordering of city spaces and dualistic policies catering to the market and to welfare. (143 words)

The fluid landscape of land in cities

Cities and city life are influenced by numerous policies, regulations, rules, directives, norms and ideas, which are simultaneously active in a particular setting. They often do not work together and on occasion they may contradict each other, but relationships might change with time. What was acceptable in the past may not be acceptable today or in the future. Dynamics around urban land development, when seen in this perspective, are perhaps the most important in determining the security and acceptability of occupying space in cities, leading to the larger question of inclusion and exclusion in a temporal framework. This argument might explain the seemingly anomalous attitude and actions of the state in dealing with the question of land tenure and housing investment in informal settlements. However, state interventions that disregard or undermine past policies and practices of formalising land occupation are a cause for concern if they lead to social and economic disruption in the lives of poor urban dwellers.

In the last two decades, urban policy and practice in India have changed radically from a basic needs approach to a transformation approach which seeks to create globally competitive cities while at the same time making them inclusive. A spate of urban programmes with large financial outlays have been launched on a mission mode to realise these ambitions, for example, Jawaharlal Nehru National Urban Renewal Mission (JNNURM) followed by Smart Cities Mission, Atal Mission for Rejuvenation and Urban Transformation (AMRUT) and Housing for All Mission. Using ‘land as a resource’ is the central theme of the new policies, whether in the form of monetising public land to raise funds for infrastructure development, or capitalising on high value slum lands to create incentives for the private sector to deliver permanent housing for slum dwellers (Government of India 2007; Banerjee 2012). At the same time, the Indian state adheres to its direct role in addressing the needs of the poor as an instrument of social policy.
Demarcation and notification of slums and provision of subsidised basic services in them has long been a part of social policy. In addition, several states have implemented and continue to implement programmes for granting legal tenure to informal settlers on public land. There is no doubt that these policies and programmes have brought about significant improvement in living conditions of the poor. However, they do not necessarily fall in line with the current approach adopted by the government of India for market-based construction and delivery of affordable housing.1

What then is the veracity of legal tenure granted to informal settlers on public land under these circumstances of top-down neo-liberal policies superimposed on an already existing regime of urban regulations and welfare programmes? Although there are common threads and trends across cities and states, this question can perhaps best be pieced together from context-specific narratives, given the differences between regions and cities in India. This essay uses insights from Madhya Pradesh (MP) state to examine the question and its implications in a wider context. MP has granted leasehold rights to settlers on public land from time to time for almost four decades and has also been in the forefront of implementing government schemes for housing the poor.

Security of tenure and legal land rights

When Madhya Pradesh (MP) enacted a law in 1984 to grant legal land tenure in the form of 30-year ‘patta’2 and basic services to all eligible urban dwellers living on government land, it was hailed as a landmark legislation for its objectives of state protection and promotion of peoples’ rights (Government of Madhya Pradesh 1984). However, field research in settlements with regularised plot tenures two years after implementation showed that the significance of the measure was lost on the ‘beneficiaries’. They had not been threatened with evictions and had access to basic services anyway as part of a government programme or through their elected representatives in local government, so the piece of paper granting legal tenure did not measure up to much (Mitra 1988). But then, over the years, pattas have gained strength and meaning for establishing claims for the poor in the prospering cities of the state and have led to varying levels of building consolidation in informal settlements, largely done incrementally (Banerjee 2006).

That is all according to the theory and concept playbook: people invest in building when they have secure tenure.

Legal land rights but informal building

There is sufficient empirical evidence to show that tenure security has stimulated low-income families to invest hard-earned money in additional space, permanent construction and retrofitting for living, renting, shops and workshops. But all this happens informally because pattas are granted for residential use only and plot sizes and settlement conditions do not meet the prescribed standards for obtaining building permission (Banerjee 2010). Patta land can be used as collateral for house-building loans from financing institutions but not without building permission, which means that even with legal land tenure, investments continue to come from household savings and informal sources (Banerjee 2006). But this way of operating at the cusp of formality and informality does not necessarily mean that investment is insecure. It is also not a deterrent for house-building grants and loans dispensed through government programmes to the poor on the strength of legal land tenure (Mitra 2021). In fact MP Government has issued pattas in several episodes over the years specifically to make the urban poor eligible for government housing and infrastructure programmes.

Development against development

Until 2005, the threat to investments came from natural disasters like floods and landslides or resettlement to make way for public services like road widening. But then came the Government of India’s flagship Jawaharlal Nehru Urban Renewal Mission (JNNURM) intended to transform cities into engines of growth through reforms and injection of funds into infrastructure development (Government of India 2005). This led to relocation to peripheral areas on a much larger scale, even of those with patta, in the four cities of MP included in JNNURM, and now in the Smart Cities Mission. The provision for relocation is built into the patta document, which guarantees the allottee tenure on the occupied plot or on another site in the urban area if the plot is required for any public purpose. There is no mention of compensating for
loss of investment on the original plot even when the relocation takes place many years after the grant of tenure.

The Basic Services for the Urban Poor (BSUP) component of JNNURM was intended to improve living conditions of the poor. Implementing organisations preferred the option of building formal housing, rather than slum upgrading. The slum redevelopment model of BSUP consisted of constructing four-storied blocks after demolishing the existing structures. In MP this was on plots with patta, which means that residents already enjoyed very high tenure security and had invested substantially in their houses over time. Most of these families on project sites owned good quality houses, with areas larger than BSUP norms. Ironically, patta was used as one of the eligibility criteria for redevelopment housing but there was no compensation for loss of investment in buildings (Mahadevia et al. 2013). The ‘beneficiaries’ had to bear a part of the cost of new houses which they could ill afford, but which they could mortgage to avail bank loans, in effect converting land and house owners to households burdened with debt (Mahadevia et al. 2013). The projects were purely for residential use, completely disregarding the street-level economy of the demolished settlements. This practice continued into Rajiv Awas Yojana (RAY), the next scheme of the national government. Resistance from residents was met with persuasion and force, and except for a handful of projects, all were carried through, albeit with considerable delays and cost escalation. The only redeeming feature of this slum redevelopment were that the original patta holder continued to live in the same or nearby location, and the limitation of funds did not allow too many projects to be taken up. Even so, about 28,000 households were rehoused in BSUP redevelopment projects in the four cities of MP.

**Land as a resource**

The launching of the Housing for All mission or Pradhan Mantri Awas Yojana (PMAY) in 2015 was a major game changer for its country-wide coverage and its large financial outlay mainly to leverage private sector participation in affordable housing. In-Situ Slum Redevelopment (ISSR) is one of the four programme verticals of PMAY and adopts the strategy of identifying slums on high value land with a market potential with the intention of redeveloping them in partnership with private developers. Each project has two components: ‘slum rehabilitation component’ for free of cost housing and basic infrastructure for eligible slum dwellers and a ‘free sale component’ which is available to developers for selling in the market for profit and cross-subsidising the project. Along with a portion of the land the developer gets a government subsidy to cover part of the costs of building rehabilitation housing. In addition, incentives and concessions can be provided to the developer, including additional development rights, transferrable development rights, exemptions from certain development control regulations and tax benefits (Government of India 2015).

In the case of MP, only three cities had some slums with land values high enough for viable ISSR projects. Patta documents had been distributed in them in several tranches under the Patta Act of 1984 and people had invested in housing but this was disregarded, and as in the BSUP and RAY projects, houses were demolished to make way for high rise redevelopment housing on part of the land, while part of the public land went to the private developer for profitable uses (Yuvaonline 2018; Mitra 2021). The new redevelopment dwellings, although more secure and of higher quality construction, are too small for renting and not conducive to street-based informal economic activities, which the poor thrive on especially in central city locations (Banerjee 2010; Benjamin and Raman 2011). Clearly the new space is a poor substitute for the plot of land with its multiple possibilities.

**Land tenure regularisation: security and precarity**

Approaches like ISSR have got country-wide legitimacy through the large centralised high profile PMAY, and cities in MP and other states which have chosen to implement them, had seen huge successes with city-wide tenure programmes leading to shelter consolidation and thriving businesses. The concern of implementing institutions is that despite the weight of the neo-liberalising state in the form of central government policy and funding support, the lack of robust land markets in secondary cities (Mitra 2021) and the uncertainty of profit margins from slum redevelopment have limited the scale of projects. This situation might easily change in the future with rising urban land values and land market reforms.
On the other hand, the same state celebrates the success of PMAY for the 12.23 million affordable houses it has enabled in the country.² It is worth noting that more than 60% of these are through its Beneficiary Led Construction (BLC) component, which makes small grants available to land-owning poor families for construction or improvement of their own houses. Legal tenure granted to informal settlers on public land is considered as land ownership. As can be expected, MP with its four-decade history of tenure regularisation, is among the high performers in BLC. The state government topped up the previous numbers with 280 thousand tenure documents in 2016–17 with the intention of making poor families eligible for BLC funding (Government of India 2018).

So, the patta document is considered robust enough to channel government funding into housing, and the land is secure as long as it is not earmarked for redevelopment through real estate investment or required for high profile infrastructure projects. This could happen in the near or distant future or never, creating a mixed bag of security and precarity in a temporal framework of land markets, law, city reordering and dualistic policies catering to the market and to welfare. The question here is of the uncertainty and unfairness of practices that are embedded in changing development models that are considered desirable and worth pursuing to promote the current agenda of the inclusive neo-liberal city – a city that reaccommodates the poor on its own terms, even if it is by first uprooting them from the land they have legitimately settled and invested on.

Disclosure statement
No potential conflict of interest was reported by the author(s).

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Notes
1. Under the federal system of governance in India, states have the prerogative to adopt their own policies and legislation for urban development, housing and land. But the central government can and does provide directives, guidance and funding support for priority programmes, for example, market-based delivery of affordable housing using public land as a resource.
2. Patta refers to a non-transferable right to occupy public land for a stated period and with specific conditions. It is in effect a form of ‘intermediate tenure’ as first put forward by Payne (Payne 1997) and now recognised internationally.
3. https://pmay-urban.gov.in/uploads/progess-pdfs/62df7a9f7c89d-PMAY-U_Achievement_FOR-WEB-25-7-22.pdf.
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