23 Reforming Urban Land Management in Gujarat†

Bimal Patel, Shirley Ballaney, C.K. Koshy, and Matthias Nohn

Introduction

Of the total population of the state of Gujarat, about 37 per cent lives in urban areas today. Gujarat is undergoing rapid urbanization and it is expected that by 2025, half of the state's population will be living in urban areas. Its cities will have to grow to accommodate this new population. In sheer numbers, this means that approximately 12.5 million more people will need 'serviced' urban land. At 150 persons per ha, approximately 800 sq. km of urbanized land will be required just to accommodate this new growth. Serviced land will also be required for housing the vast numbers of people presently living in urban slums and the more crowded areas of towns and cities; people whose incomes are rising rapidly compared to the past scenario. In addition to this, land with adequate infrastructure will also be required for vast new industrial and trade facilities.

The rapidly rising demand for urban land poses a significant threat to Gujarat's development. The growth and development of cities hold up the promise of taking societies to a new stage of development. As Edward Glaeser of Harvard University said in a recent interview, 'Humans are a social species, and our greatest achievements are all collaborative. Cities are machines for making collaboration easier. Thus, I am delighted that our planet is becoming increasingly urban.'[1] However, if the rising demand for urban land is not effectively met, because of overcrowding and undermining of economic growth, Gujarat's cities are likely to become less livable. Instead of being a boon, urbanization can become a scourge. Thus, either Gujarat enables a mutually beneficial relationship between economic and urban growth that is virtuously reinforcing or as Anwar Fazal, winner of the Alternative Nobel Prize, has put it, 'If cities do not deal more constructively with poverty, poverty might begin to deal more destructively with cities.'[2]

The Government of Gujarat has understood that the state is at a very significant turning point and is determined that growth and transformation of the state's cities be rapid, well planned, sustainable, and equitable. It is also committed to managing this growth and transformation by positively using market mechanisms and the energies of the private sector. Towards this end, the state government is committed to assessing and fundamentally improving its urban land management systems; to modernizing urban land and property markets to make them more efficient; to dismantling and reforming the distorting regulatory

†This chapter is based on 'Streamlining Urban Planning and Land Management (SUPLM) Practices' in Gujarat, a comprehensive study undertaken by Environmental Planning Collaborative (EPC) for the Gujarat Urban Development Company (GUDC) and supported by World Bank as a part of the Gujarat Urban Development Project (GUDP). In some instances, however, there are a few departures from the original study and these are clearly mentioned. Bimal Patel, Shirley Ballaney, and C.K. Koshy were part of the original project team and are the lead authors. Mr Matthias Nohn helped put together the first draft of this chapter.

[1] Edward Glaeser, in 'How Should We Be Thinking About Urbanization?: A Freakonomics Quorum', *The New York Times* online edition, *http://freakonomics.blogs.nytimes.com/2007/12/11/how-should-we-be-thinking-about-urbanization-afreakonomics-quorum*, accessed on 11 December 2007.

[2] Citation available online, *http://www.anwarfazal.net/paper-Battle.php,* accessed on 30 November 2008.

systems and interventions; and strengthening institutions for enabling and monitoring the proper functioning of land and property markets.

By reforming its land management system, it hopes to[3]:

- guarantee ownership and security of land tenure;
- support land and property taxation;
- provide security for credit by enabling collateralized mortgage lending;
- develop and monitor land markets;
- protect and manage state lands;
- reduce land disputes;
- facilitate land reforms;
- improve urban planning and infrastructure development;
- support environmental and heritage management;
- produce statistical data; and
- produce maps for various uses.

The Government of Gujarat commissioned a policy study, 'Streamlining Urban Planning and Land Management Practices in Gujarat.' This policy analysis investigated urban land management laws and practices in the state. Based on this study, the chapter identifies constraints that affect efficiency and makes recommendations to overcome them. Where relevant, it also investigates how urban land management and urban planning regimes interact with one another and makes recommendations for better coordination. In all, 15 key recommendations have been made and are structured in seven sections here: (1) Introduction; (2) Delineating Urban Areas; (3) Building and Maintaining a Land Cadastre; (4) Managing Land Tenure; (5) Registering Land and Property Transactions; (6) Valuing Land; and (7) Conclusions.

Delineating Urban Areas

Presently, considerable confusion, inefficiencies, and legal ambiguities emerge from the fact that urban areas are differently delineated by the revenue and the urban planning administrations.[4] To decide upon how they should be delineated in the future, it is crucial to understand the origins and characteristics of the two very different regimes.

THE REVENUE REGIME

The Bombay Land Revenue Code, 1879 (BLRC), introduced land management in Gujarat a century and a half ago, and the revenue administration was responsible for enforcing it. The BLRC was, and remains, primarily focused on rural land management and on collection of agricultural revenue within 'revenue areas' as assessed through 'Revenue Surveys' by the District Inspector of Land Records (DILR).[5]

Despite its rural focus, the BLRC also mandates the revenue administration to delineate urban boundaries. *Gamtals*[6], with a population of above 2,000 persons and the surrounding contiguous areas under non-agricultural use, are required to be delineated as 'City Survey' areas. In City Survey areas, a distinct, more accurate, and differently focused cadastral survey is undertaken by the City Survey Superintendent (CSS)[7]. Though the City Survey mechanism served adequately for delineating urban areas for over a century, over the last few decades it has been unable to cope with the explosive growth of towns and cities. Urban settlements have grown well beyond City Survey boundaries. The reasons for the unsatisfactory performance of this survey mechanism are not difficult to see.

The City Survey mechanism is a reactive mechanism. Parcel-by-parcel, individual survey numbers are given permission to convert from agricultural to non-agricultural use; as and when the demand to convert use is made by the owner of a parcel. Demands for permission to convert agricultural use of land to non-agricultural use are treated conservatively—to ensure that revenue collection does not drop. Only when a large proportion of parcels in the periphery of a City Survey have become non-agricultural, is the City Survey boundary extended. There is no system of extending boundaries in anticipation of the growth of towns and villages and/or the growth of non-agricultural activities. On account of this reactive, parcel-by-parcel and conservative approach, City Surveys have not been able to keep pace with the accelerated transformation of towns and cities.

THE URBAN PLANNING REGIME

Urban areas are also defined by 'Urban/Area Development Authority' boundaries. These boundaries are established

[3] As listed by 'Land Administration Guidelines', United Nations, New York and Geneva, 1996 available at *http://www.ica.coop/house/part-2-chapter4-ece-landadmin.pdf*

[4] Additional complications and confusions emerge from the fact that municipal boundaries powerfully define urban areas in yet another way. Since the focus here is on urban land and land markets, only revenue and planning boundaries have been dealt with.

[5] For further reference, see BLRC, Sections 95 and 106.

[6] Land directly under village, town, or city settlements.

[7] For further reference, see BLRC, Sections 95, 106, and 131–3.

under the provisions of the Gujarat Town Planning and Urban Development Act (GTPUDA), 1976. The Act was a response to the rapid growth of urban areas and the need to effectively manage urban land use and provide urban infrastructure and services. The GTPUDA uses its own approach and protocols for delineating urban areas: indicate the extent to which cities are likely to grow; infrastructure provision is likely to be required in future, and then delineate the extent of the town or city.

Four aspects of the urban planning regime's delineation of urban areas are significant. First, the urban planning regime's approach is proactive; boundaries are drawn in anticipation of future growth. Second, by indicating these limits and expectations, they powerfully determine (or estimate) the extent of urban land markets; and for all practical purposes, most people consider towns and cities to at least extend up to these boundaries. Third, the urban planning regime takes an area-based approach as against a parcel-by-parcel or piecemeal approach. Finally, since urban development authority boundaries are based on anticipated growth typically, they extend well beyond those of City Survey areas.

PROBLEMS OF THE CONCURRING REGIMES

Lack of City-wide Land Cadastres

Defining the extent of urban development areas, and therefore urban land markets, is a development authority function, but building and maintaining of land cadastres is a revenue function. As a consequence, Gujarat's urban land markets operate without unified land cadastres. This problem is taken up in more detail below

Urban Planning and Revenue Administration Objectives are Undermined

The urban planning regime's objective is to promote and direct urban growth. It sees merit in urbanization. The revenue administration, in a bid to protect revenue, is conservative when it comes to converting agricultural land to non-agricultural use. In urban areas where City Survey boundaries have not been extended, the two administrations work at cross purposes and end up undermining each other's policies.

Problems of Data Collection/Sharing and Policy Formulation

The basic units of government administration are the village and the city survey areas. Data for land management is collected at these levels and aggregated at the *taluka* and district levels. Since boundaries of urban planning areas are not coterminous with *taluka* or district boundaries, it is impossible to use aggregated data for planning purposes. This is not a trivial problem since it undermines effective policy formulation and eventually undermines the socio-economic unity of urban areas.

RECOMMENDATIONS

Reforming urban land management in Gujarat has to begin by ensuring that, first, urban areas are clearly and adequately delineated and second, that this delineation is accepted across all government departments for policy purposes. The first recommendation will ensure that policies and reforms intended for urban land management and urban land markets remain restricted to urban areas. The second will improve coordination between urban policies of various government departments.

Recommendation 1: Boundaries of Urban/Area Development Authorities Defined Under the Provisions of the GTPUDA and Boundaries of Municipalities (where Development Authorities have not been formed) Should be Taken as Urban Boundaries for all Land Management Purposes

The GTPUD Act was designed to promote and direct urban growth. To ensure rapid, sustainable, planned, and equitable urban growth, it is imperative that boundaries of Urban /Area Development Authorities defined under the provisions of the GTPUD Act, and boundaries of Municipalities (where Development Authorities have not been formed) be taken as urban boundaries for all land management purposes. One way to enable this is to extend City Survey boundaries to be coterminous with these boundaries. Of course, the City Survey mechanism will have to be suitably modified and improved.

Recommendation 2: List of Urban Areas and a Map of the Same to be Notified

To ensure that the above defined delineation is accepted across government departments and to enable the new regime's fast incorporation into policy making (even beyond the public sector), maps, lists, and definitions of urban areas will have to be appropriately notified. Figure 23.1 shows the map of urban Gujarat based on the definition in recommendation 1.

Building and Maintaining a Land Cadastre

THE CONTEXT

A 'Cadastre' as referred to here is a basic land information system consisting of two parts: one, a series of maps showing the geometric and location attributes of land parcels and two, a set of text records that describe the ownership

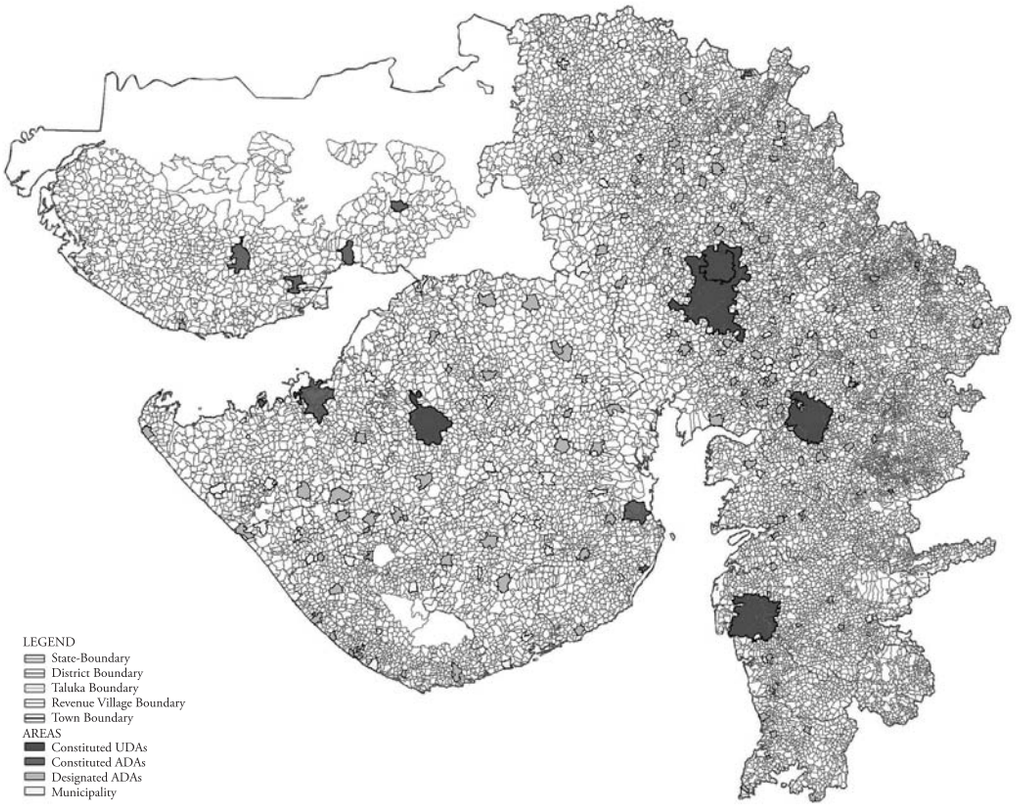

Figure 23.1 Map of Urban Gujarat

Source: SUPLM Reports.

attributes of land parcels. A cadastre is a skeletal framework on which an elaborate land and property information system can be built to enable, support and enhance innumerable governance, planning, civil, and commercial functions.

In Gujarat, the function of building and maintaining a cadastre is governed by provisions of the Bombay Land Revenue Code,1879. Details are prescribed in the Revenue Accounts Manual and the City Survey Manual. Generally speaking, the BLRC requires the following details to be recorded in the cadastre: geometric and location attributes of land parcels (coordinates and maps); property addresses; name of occupant[8]; name of other right holders; details of easements and encumbrances; the nature and duration of tenure; and details of transactions (or mutations in the record). The BLRC, the Revenue Accounts Manual and the City Survey Manual also require the building and maintaining of an extended information system atop the basic cadastre to support (revenue) taxation and some other governance functions. While one marvels at the simple efficacy, sturdiness, and comprehensiveness of the system as defined a century and a half ago and its continued relevance in rural areas today, in urban areas, due to the pace of growth and the transformation of the economic, social, and political scenario, it has become dysfunctional and urgently requires reform.

KEY PROBLEMS

Lack of a Unified Cadastre

As Table 23.1 and Figure 23.2 show, within urban areas one can find up to seven different 'cadastre situations' where a multiplicity of agencies use different protocols and formats for building and maintaining maps and records. Urban areas simply lack a unified cadastre—that is, not only is there no single database of land ownership but no single agency is responsible for making a city-wide cadastral map. The problem is compounded by the fact that: (i) the depth and nature of ownership information maintained by each of the agencies is different; (ii) the level

[8] Occupant is a person holding the right to use the land and/or holding primary responsibility to pay land taxes; 'occupant' is popularly referred to as the 'owner'.

Table 23.1 and Figure 23.2
The Multiplicity of Agencies, Protocols and Formats for Building, and Maintaining Maps Across a Typical Urban Area

Cadastre Situation	Responsible Agencies	Record Format	Map Format
1. Original City Survey	City Survey Superintendent (CSS)	Property Card (PC), *Sanad*	City Survey Sheet
2. City Survey extended over Town Planning Scheme	CSS, Urban Local Body, Development Authorities	PC, *Sanad*	City Survey Sheet
3. Agriculture plot within City Survey area	CSS, District Inspector of Land Records (DILR), *Mamlatdar*	PC 7×12, 6, 8A	*Tippan* and village map
4. Revenue Area with sanctioned TPS	DILR, *Mamlatdar,* Urban Local Body/Development Authorities	7×12, 6, 8AF-Form	*Tippan*, Plan No. 3 OP FP Plan, TPS Survey Sheets
5. Revenue Area zoned for development in DP	DILR, *Mamlatdar*, Urban Local Body/Development Authorities	7×12, 6, 8A	*Tippan*, village map, sanctioned layout plan
6. Revenue Area	DILR, *Mamlatdar*	7×12, 6, 8A	*Tippan*, village map
7. *Gamtal*	Panchayat	*Akarni* Register	n/a

Source: SUPLM Reports.

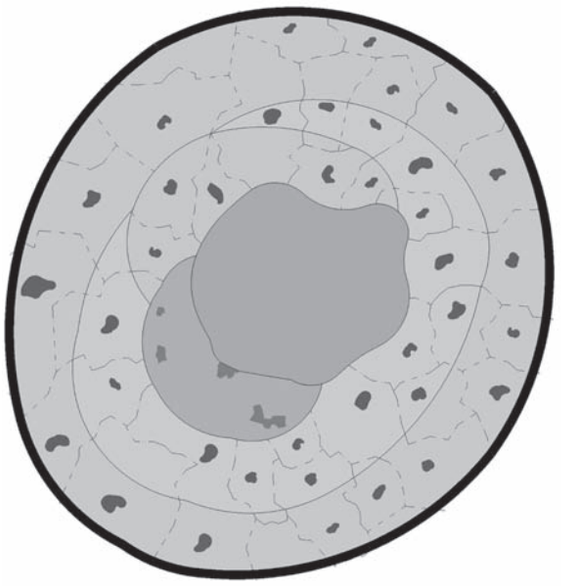

Figure 23.2
Source: SUPLM Reports.

of accuracy of maps maintained by the different agencies is varied; and (iii) that all maps do not enjoy the same statutory status. Collating all the different databases and maps is, therefore, not possible without first standardizing accuracy and information in all the different databases. It is widely acknowledged that the complexity of the system renders it opaque to most lay persons and vastly magnifies the importance of lawyers, brokers, and touts who can understand it. While reducing the security of tenure, complexity of the cadastral system increases the power of the lower bureaucracy, increases the possibility of corruption, and substantially the risk involved in land transactions. Broadly speaking, the situation in the land market is akin to that of a unified market operating across various contiguous fiefdoms, each having its own currency and system of weights and measures.

Physical Records and Maps are Poorly Maintained

While it is not possible to give a comprehensive and accurate account of the state of records, it is widely acknowledged that a significant portion of cadastral maps and records is poorly maintained. Though a number of records have been computerized, maps are still not computerized and physical records are still being relied upon for official work. The possibility of losing data is a significant risk that can be easily mitigated.

Lack of Consistency/Inconsistency in the Manner of Preparing City Survey records

The City Survey Manual prescribes the manner in which the property cards and *Sanad* are to be prepared. However, today, owing to a fundamental lack of clarity regarding the objectives of the City Survey (refer below), there is considerable variation in the manner in which they are prepared. Variation can be found within a City Survey area as well as across various City Survey areas. Much seems to depend on the interpretation of individual City Survey officers.

Fundamental Lack of Clarity regarding the Objectives of City Survey in the Present Context

Revenue regulations, taken as a whole, do not mandate the state to create and maintain a built property cadastre. Despite this, building and maintaining a detailed built property cadastre for towns and cities is being viewed as an urgent imperative. Five observations are misconstrued to conclude to this effect:

1. Historically, property cards are used to record rudimentary information regarding buildings on any given parcel of land. The depth of information maintained and the manner of recording it was not consistent across towns and cities. Despite this, today it is fallaciously believed that property cards

have always recorded detailed cadastral information regarding buildings.

2. The Stamp Duty Act and Registration Act apply to both land and built property. That both these Acts treat land and built property to be equivalent is misconstrued to conclude that they are identical.
3. For imposition of Stamp Duty, Revenue officials need to rely heavily on the official built property value cadastre (*Jantri*).[9] The need to maintain an updated *Jantri* is confused with the need to maintain a built property cadastre.
4. Revenue officials tend to consider the state's obligation to provide the public the service of an adequate built property cadastre to be obvious. They also feel that public demands for a built property cadastre (from which authenticated records of property ownership can be obtained) are strong and legitimate.
5. The relative permanence of buildings and their attachment to land are misconstrued to mean that building floor plates are equivalent and, therefore, identical to land. This observation is then used to conclude that, since the state is mandated to build and maintain a land cadastre, it is also mandated to do the same for built property.

On account of the above, various attempts have been recently made to collect detailed information about buildings and their ownership in a bid to fill out the rudimentary information in the City Survey records so as to build a full-fledged property cadastre for at least the large cities of Gujarat. These attempts seem misguided and are poorly conceived. The need to build robust, high integrity, and accurate land cadastres for Gujarat's towns and cities is far more urgent. Built property cadastres may be built atop it by other agencies.

Records and Maps are not Promptly Updated—Promulgation of Many Very Old TP Scheme Records is also Pending

While it is not possible to give a precise and comprehensive statement of how up-to-date urban land records are, it is widely acknowledged that there is a clear problem on two fronts. First, following the registration of transactions, records and maps are not promptly updated. In fact, on account of the vast backlog of updating work, following a transaction, rigorous follow-up by the new landowner is necessary for a mutation of the records. Second, mutation of revenue and city survey records necessary to take account of T.P. Schemes—the promulgation of T.P. Scheme records—is also pending since long. The main reasons for this backlog are: inadequate personnel; inadequate technical capacity within the Settlement Commissioner's Office; and complexity of mutation protocols.

The Continued Use of Inaccurate Reference Maps

With revenue areas being rural, protocols prescribed for mapping are rudimentary. Though the DILR (the agency responsible for building and maintaining the revenue area cadastre)is required to maintain detailed geometric attributes of each individual land parcel ('*tippans*'), it is required to collate this information only in the form of 'diagrammatic' or 'reference' village maps. Though these maps are drawn to a prescribed scale, they are highly inaccurate and cannot be collated further (Figures 23.3 and 23.4). Since urban areas extend over revenue areas, in large portions of many towns and cities the only cadastral maps available are un-collated and inaccurate village maps.

Lack of a Link between Text Records and Maps; No Use of Geographic Information Systems

At the time that protocols for building and maintaining cadastre were defined, computerized geographic information systems (GIS) were unavailable. Unfortunately, despite its widespread application the world over, the concept of GIS technology has yet to be introduced in the cadastral system in Gujarat. It is not that the revenue administration is averse to incorporating computers in its functioning; computerization of text records is fairly advanced. The problem is the unavailability of accurate statutory maps on which a computerized GIS can be built. It is very important to understand that the problem is not technological. Preparing accurate maps using ground surveys or Global Positioning Systems (GPS) and remote-sensing technology is hardly a problem. The real problem is the lack of an effective adjudication mechanism for reconciling new accurate maps with old records and old maps and for promulgating new maps. Without such a mechanism in place, accurate maps of urban areas cannot be prepared and without maps, it is not possible to build GIS systems that can be used for official or statutory work. The lack of GIS systems makes the spatial analysis of data very

[9] Stamp duty payable when a built property is transacted is calculated as a percentage of the market value of the property. Since use of cash money in property transactions is widespread and the proportion of cash payments in property transactions is high, and since on account of this, only the non-cash (or cheque-portion) of a property's value is stated in official transaction documents registered with the deeds registry, revenue officials rely on assessment of market value of a property in the official built property value cadastre to calculate the minimum stamp duty imposable on a transaction.

Figure 23.3 Two Adjacent Village Maps prepared by Joining *Tippans*

Figure 23.4 Joining Two Village Maps (of Figure 23.3) Accurately is Impossible; City-wide Accurate Maps of Gujarat's Urban Areas Non-existent

difficult and this in turn considerably diminishes the efficacy of both land management and urban planning.

RECOMMENDATIONS

Recommendation 3: Build a Unified, Conceptually Clear, Robust and Technologically Advanced Land Cadastre for Urban Areas

For the urban land market to function efficiently and to enable effective urban planning, it is imperative that the present confusion of urban cadastres be replaced by a unified, conceptually clear, robust, and technologically advanced land cadastre for urban areas. This will require comprehensive verification and updating of existing records; creating new formats for records and maps; and uniform protocols for mutating the new records and maps. Such a cadastre should use the best available GIS technology. The land cadastre should provide a highly accessible and robust platform of high integrity on which further sophisticated and layered information systems can be built. The built property cadastre can be one of the layers added atop it.

Recommendation 4: A Single Unified Agency should be Responsible for Building and Maintaining the Land Cadastre for Urban Areas

A single unified cadastral agency should be made responsible for and empowered appropriately for building and maintaining the land cadastre for urban areas. Such an agency could be administered by either the Revenue Department (RD) or the Urban Development and Urban Housing Department (UD&UHD). It may be beneficial to nest this agency within the RD because: (i) traditionally RD is the custodian of land records; (ii) urban boundaries will continue to expand and it will be relatively easier to convert rural records into urban records if both records are under the command of one department. During the transition to a new cadastre, the Unified Agency should (i) act as a custodian of the different types of records; (ii) perform routine functions; and (iii) build and promulgate an interim cadastre.

The unified cadastral agency will require a clear legislative mandate and adequate enabling legislation to be effective. Additionally, the institutional structure of the agency will have to be carefully determined. It can be a government department, an authority, a government-owned company, or a joint sector company. It will also need to be equipped with adequate powers to raise funds to at least meet its expenses.

Managing Land Tenure

THE CONTEXT

The premise of the Bombay Land Revenue Code, 1879 is that the absolute owner of all land is the state. A person enjoying rights to use a parcel of land is referred to as the 'occupant' or '*Khatedar*'.[10] The rights of the owners/occupants, however, are not unlimited and restricted under provisions of revenue regulations. From this perspective, the manner in which rights in land are held is called 'tenure'. Rights are also restricted by plans prepared on the basis of urban planning regulations. Taken in totality, there are usually three forms of restrictions: (i) restrictions on disposal, that is, sale and transfer of land; (ii) restrictions on sub-division or amalgamation of a parcel of land; and (iii) restrictions on use of a parcel of land.

REVENUE REGULATIONS

The revenue regulations define two types of tenures:

(i) Freehold (also called Old Tenure or OT)

Parcels of land enjoying freehold rights are referred to as 'alienated' ,'old tenure' or 'unrestricted tenure'. Such land parcels may be: (a) transferred without prior approval of government; (b) sub-divided or amalgamated without prior approval of government; and (c) used for agriculture or non-agriculture (NA) purposes if 'NA use permission' is obtained from the government;

(ii) Restricted rights (also New Tenure or NT, and Restricted Tenure or RT)

Parcels of land with restricted rights are known as 'unalienated'. Such parcels cannot: (a) be transferred/sold without prior approval of the government;(b) be sub-divided or amalgamated without its prior approval; (c) be used for purposes other than what is permitted. Within this group there are two types of tenures. The first type is referred to as 'new and indivisible tenure' (or NT). Lands were attributed this type of tenure when they came under various land grant abolition acts or when they fell under the Gujarat Agricultural Land Ceiling Act. Lands allotted by the government for various public uses (or to landless persons) are also attributed this tenure. The second type is 'restricted tenure' or RT which was attributed to all lands granted to tenants as part of the land reforms programme under the Bombay Tenancy and Agricultural Lands (BT&AL) Act 1948.

CONVERTING TENURE

Revenue regulations allow for the conversion from restricted tenure to freehold tenure. While the conversion from RT to OT against payment of defined charges appears to be relatively straightforward, conversion from NT to OT is difficult. The reason for the difference appears to be that most new tenure land parcels were originally granted for special purposes (for example, for charitable purposes). It is widely (and understandably) thought that such restrictions must only be removed under compelling reasons—without allowing owners of such lands to make an undue profit. The foregoing combined with the fact that official land valuation practices understate the market value of the land, make it very difficult to take a pragmatic view when it comes to converting new tenure to old tenure.

Revenue regulations also allow for the conversion of agricultural land to land where non-agricultural use is permitted. The first step in such conversion (in the case of NT or RT land) is conversion to a freehold tenure. The second step is the granting of permission for non-agricultural use.

[10] Popularly however, the occupant is known as the 'owner' of the parcel of land.

Historically, the revenue regime was conservative in granting these permissions. Primarily to improve food security and to uphold revenue generation, a rigorous regime was put into place to ensure that: (i) there is a good reason for permitting NA use on the land; (ii) past dues have been paid, and; (iii) a new non-agricultural use-related assessment has been levied. Today, since food security is not as significant a concern and since land revenue is not a significant source of revenue, a conservative approach to conversion of land to non-agricultural use seems anachronistic and counterproductive. Nonetheless, from the government's point of view, this last checkpoint before the land 'moves out of the public domain' remains important: therefore, no less than fourteen No Objection Certificates (NOCs) from varying government departments[11] are required before this permission is granted.

URBAN PLANNING REGULATIONS

Urban planning regulations impose a wide range of restrictions on land—minimum/maximum land parcel sizes, uses permitted, sub-division and amalgamation, and building parameters.[12] Although they are not perceived to be as severe as tenure restrictions, they are similar. The only difference is that they do not appear on the title certificate and one has to refer to the development plan to know about them.

SCOPE AND APPROACH OF THE REVENUE AND URBAN PLANNING REGULATIONS

Both, revenue and planning regulations, taken together, impose a formidable matrix of restrictions on land in urban areas. Table 23.2 summarizes the scope and approach of the regulations:

Table 23.2
Scope and Approach of the Revenue and Urban Planning Regulations

Regulations	Revenue	Planning
Approach	Reactive	Proactive
Procedure	Parcel-wise	Area-wise
Restrictions		
1. On Transferability	√	
2. On Sub-division and Amalgamation	√	√
3. On Use	√	√

Source: SUPLM Reports.

MANAGING LAND TENURE IN MODERN URBAN GUJARAT

Urban and rural land management pose different challenges—in urban areas, the land is put to an array of non-agricultural uses, whereas in rural areas predominant use of land is agriculture; in urban areas the income or rent from land is transacted in money form, whereas in rural areas it could be the produce; the boundaries between the land parcels tend to be very sharp, land is costly, land changes ownership faster, and the land parcels are much smaller in urban areas, whereas in rural areas the boundaries between the land parcels are not so sharp, land is not so costly, it could remain in a family for generations, and the land parcels are much larger.

In urban areas, with the emergence and strengthening of the land markets and rise of property development, land is increasingly being viewed as a commodity. The land markets serve to allocate the land to various uses. The strategy of planned allocation of land for various uses without relying on market mechanisms is now widely acknowledged to have failed. More subtle and sophisticated urban planning restricts itself to addressing market failures. It has now been widely acknowledged that in urban areas well-functioning land markets are essential for allocating land for various uses, driving development and transformation of cities, and guiding urban planning. If land markets function efficiently, not only is land put to 'best and highest use', its price also remains in check and that the most significant benefits of this can be to the poor.

The urban land markets or prices of land are powerfully influenced by both the revenue and urban planning regulations. In case of planning regulations, once an area is notified as 'urban' or when it becomes a part of the development authority area, it sends a strong signal that now this area can be put to non-agricultural uses, which will yield higher rents. This fuels speculation and land prices rise. Further, the various land use zones, density regulations, and transport and infrastructure networks, which are indicated in the development plan, determine what use a parcel of land can be put to and, therefore, powerfully determine the potential of a land parcel to yield rent. Revenue regulations, on the other hand, because they impose restrictions on transferability, sub-division/amalgamation, and the use of land also powerfully affect the price of land. They represent restrictions that have to

[11] The NOCs are from: Land acquisition, Special Agencies—Narmada Project, Roads and Building, Gujarat Electricity Board, District Industries Commissioner, Gujarat Pollution Control Board, Airport Authority, District Health Officer, Revenue Department, Collector, UDAs/ADAs, Public Works Department, and Income Tax Department.

[12] Restrictions are imposed under the provisions of the GTPUD Act, 1976 and are known as the General Development Control Regulations.

be lifted before the land can be put to the highest allowable use, and hence are a 'cost' that has to be discounted from the potential price of the land.

KEY PROBLEMS

Revenue and Urban Planning Regulations Impose a Formidable Matrix of Restrictions in Urban Areas

As described earlier, while urban planning regulations proactively encourage area- wise urban development, the revenue regulations historically discourage urban development in a reactive and piecemeal manner. The overlap of the two sets of regulations unduly restricts tradability of urban land, prohibits the non-agricultural use of land, and constrains the assembly and reorganization of land.

Restrictive Tenures and Restrictions on NA Use Constrain Supply of Land for Urban Growth

Restrictive tenures, by affecting the tradability of land, constrain legal supply in the urban land market. Although difficult to estimate, sample studies show that in some areas, the proportion of such lands is as high a 20 per cent[13]. The problem is somewhat compounded by the fact that parcels of land with restrictive tenures are scattered, and this severely constrains the assembly of large parcels of land. Ease of assembling large parcels of land directly affects viability of large scale development.

The Protocol of Converting Restricted to Freehold Tenure and Agricultural to NA Freehold is too Complex and Lengthy

The government has not systematically reviewed the relevance of the wide variety of tenures in the present urban context. The present policy of tenure conversion is prescribed in a government resolution, dated 20 December, 2006. It takes into account a number of factorsuse (agriculture/non agriculture), location (urban/rural), length of tenure, value of premium, and approvals. A combination of these determines how the 'file moves' for clearance, which department calculates the conversion premium, and the definition of 'urban' keeps changing for approval and calculation of premium. The protocol itself is lengthy and takes too long.

Insistence on the Payment of Premium for Conversion by Original Owner is Impractical

Conversion of tenure requires the payment of a 'premium' to the government and is calculated as a percentage of the market value of land. Technically speaking, this has to be paid by the owner to convert the restricted tenure to freehold before he/she can sell the land. Sale prior to conversion of tenure is illegal. The premium is a substantial portion of the market value and the only way the owner can raise this amount is by the way of a pre-sale contract. The impracticality of restricting sale before tenure conversion and insistence on the original owner paying for conversion requires addressing.

Premium for Converting Restricted Tenures to Freehold Tenures is Very High

Currently, the premium to convert restricted tenure agricultural lands to freehold tenure lands for NA use is pegged at 80 per cent of the *Jantri* value.This is seen as a way of compensating for low assessments in the *Jantri* as compared to the market value. Together with high rates for stamp duty (also justified for the same reason), these high premiums result in under-reporting of prices and promote use of cash money in land transactions.

The Objectives of Stringent and Elaborate Procedures for Converting Agricultural Land for NA Uses are Irrelevant in Urban Areas

The rationale for the complex and elaborate procedure is: (i) to ensure that there is no indiscriminate conversion of agricultural land to NA uses, the concern being food security; (ii) to ensure buoyancy in land revenue; and (iii) to verify the existence of government interest in the land. If one examines these objectives in the context of a fast developing urban area, they are irrelevant: agricultural productivity is not just dependent on actual land under cultivation, agricultural assessment as a revenue source is inconsequential, and the government interest in land can be easily verified with computerization of records.

Protocols for Converting Agricultural to NA Land are Costly and Time-consuming

A typical NA permission involves 13 steps and takes up to one year or more. Reasons for this are that the records are not updated, the verification process is manual, and the staff is inadequate.

Monopoly of 'Urban Farmers' Distorts Land Markets and is Inequitable

According to revenue regulations, the possession of agricultural land is limited to farmers, defined as those who (already) own agricultural land in the area. This excludes a large part of population from urban land markets and fuels speculation.

[13] This estimate is based on a study of about 40 town planning schemes prepared by Environmental Planning Collaborative (EPC) and Environmental Planning Collaborative Development Planning and Management (EPCDPM). While preparing a town planning scheme, information on the tenure of all the parcels of land is recorded.

Indiscriminate and Widespread Na Use Permissions Outside Urban Areas Dampens the Demand for Land in Urban Areas and Promotes Growth that is Harmful, Unplanned, and Unregulated

Development in urban areas is planned and regulated as per the provisions of the GTPUDA. Planning, development control regulations, and provision of services imposes a cost on land, which is reflected in the higher prices of land within urban areas and the lower prices of land just outside urban boundaries. This differential in land prices makes it attractive for urban uses to locate just outside the boundaries of urban areas. Indiscriminate and widespread grant of permission for non-agricultural use for urban uses outside urban areas dampens demand for urban land in urban, promotes harmful, unplanned and unregulated growth, and undermines the planning and the system for ensuring planned urban growth. This problem is most widespread in the periphery of cities where non-agricultural use permissions are granted ostensibly for the natural growth of surrounding villages.

RECOMMENDATIONS

Recommendation 5: In Urban Areas, Role and Scope of Revenue and Planning Administrations should be Mutually Exclusive

Presently there is an unintended and confused overlap in the roles and scopes of the revenue and urban development administrations. In the long run, the distribution of the functions could be as follows—the revenue administration should (i) maintain land cadastre, (ii) manage residual tenure restrictions; and (iii) manage collection of transaction taxes/fees. The planning administration should manage: (i) land use; (ii) amalgamation and subdivision; and (iii) property and land tax.

Recommendation 6: In Urban Areas, the Revenue Administration's Approach to Dismantling the Historic Tenure should be Comprehensive and Proactive

New policies and protocols should be developed for comprehensively and proactively dealing with conversion of tenures in a manner that is synchronized with the areas zoned for development in the development plans of the urban area. In the interim, the present 'parcel- by- parcel and reactive' process should be expedited by making an inventory of all tenures and adopting clear policy and guidelines to lift them in phases or groups. In such cases, the protocols should be simplified and shortened.

Recommendation 7: In Urban Areas the rate of Tenure Conversion Premiums should be Lowered and Wherever Possible this should be Taken in the Form of Land

It is widely believed that the rate of conversion premium is high; that this discourages land- owners from applying for tenure conversion; encourages illegal non-agricultural use of agricultural land; and promotes the use of cash in land transactions. The present high rate of premium should be reviewed and lowered if seen fit. This belief is strengthened by experience in other sectors of taxation where lowering of tax rates has raised compliance and revenue generation. A more radical and effective reform would be to substitute proportional fees by a flat administrative charge. In areas where fresh tenure premium schemes are being undertaken, a simple way of bypassing the entire process of assessing the market value of land (a time-consuming and contentious process) can be taking premium in the form of land. A higher portion of land with restricted tenure can be appropriated.

Recommendation 8: In Urban Areas, Revenue Administration should Grant NA Permission Comprehensively

All lands zoned for urban uses in a development plan should be unilaterally and comprehensively converted to non-agricultural use. The one-time conversion fee could be collected along with development permission and the NA assessment can be linked with the property tax levied by the urban local body. The title verification and the various NOCs required could be easily managed with the help of modern technology and building up an accurate urban land cadastre and appropriate databases.

Registering Land and Property Transactions

THE CONTEXT

There are three aspects to a property transaction:

1. *Conveyancing*: Documents (sale deeds) agreeing to the transfer of freehold ownership are passed between the seller and purchaser, usually with the guidance of a lawyer. However, adequate functioning of the state's legal and judicial system is crucial to ensure that (i) such transfers take place efficiently; (ii) the contracts are enforceable, and (iii) there is no risk involved in transactions. These in turn are key to well functioning land markets;
2. *Registration of deeds*: The conveyance documents are registered with the Inspector General of Registration

and Superintendent of Stamps (IGR and SS) and the stamp duty and registration fee is paid. Maintaining a deeds registry enables the functioning of land markets past transactions can be inspected to ensure confidence in the title and compulsory registration enables the imposition of a transaction tax; and

3. *Updating/mutating the Cadastre*: The IGR and SS notify the DILR and CSS about the transactions and the DILR and CSS are then required to mutate the cadastre. However, in practice, the mutation requires 'follow up' by the buyers as the DILR and CSS are burdened by backlogs.

The state's objective of maintaining a deeds registry and requiring registration of transactions is to enable the functioning of land/property markets, impose a tax on the transaction, and update the cadastre.

KEY PROBLEMS

Though Compliance with Compulsory Registration Requirement has Improved, the Cadastre Remains Out of Date

Although it is not possible to measure, it is widely acknowledged that compliance to compulsory registration has improved largely due to plugging of loopholes in the registration process and its technological upgradation, both of which have reduced the buyer's risks. However, the mutation of the cadastre does not happen in time as there are huge backlogs and usually the onus is on the buyer to follow up with the DILR or the CSS to mutate the cadastre.

Rate of Stamp Duty is Perceived to be 'Too High'

It is widely believed that the present level at which the stamp duty is pegged encourages widespread tax evasion and is an important factor in promoting the use of cash money in land transactions. As the non-cash portion stated in the official transaction documents is much lower than the market value, the revenue officials are forced to calculate the minimum stamp duty on the basis of the official land value cadastre (*Jantri*). However, the *Jantri* itself is based on official transaction values which obviously are lower (the cash component is not reflected) and this argument is used to justify the 'high' stamp duty rate. It is in a sense a vicious circle of justifications that sustains a system that encourages non-compliance, necessitates falsehoods, and distorts policy.

The Drive to Increase Stamp Duty by Insisting that Each Unit of Built Property being Transacted be Tied Directly to a Share in the Ownership of Land is having the Perverse and Unintended Outcome of Fragmenting Urban Land Ownership and Evasion of Stamp Duty

It is now insisted upon that portions of built property being sold/purchased, be sold/purchased along with their share in land ownership regardless of whether the owner of the built property directly owns the parcel of land on which the built property stands or owns a share in the parcel of land.[14] This is seen as a mechanism to correct the low values of built property in the *Jantri* and improving stamp duty collections. This, however, has three perverse unintended outcomes: (i) prevailing legal arrangements whereby the two ownership rights can be distinct and held by different persons/entities[15] are undermined; (ii) fragmentation of land which affects the transferability of the land parcel and that can impede the functioning of the land market and lock the land under inefficient uses,[16] and (iii) people tend to develop convoluted arrangements to evade stamp duty.[17]

RECOMMENDATIONS

Recommendation 9: Registration of Transaction should Effectively Trigger a Mutation in the Land Cadastre

This is dependent on the improvements in the cadastral system—a land transaction should automatically trigger a mutation in the land cadastre—along with systematically dealing with the backlog. This can be an effective way of increasing the value and attractiveness of the registration process.

[14] If, for example, an apartment in a building on a parcel of land is being sold, documents are required to show this transaction both as a sale of the apartment and simultaneously, a sale of the apartment owner's share in the land on which the apartment building stands.

[15] For example, in case of registered cooperative housing societies, the land is held by the society and the built property by individual members. By insisting on land ownership by shares in proportion, the built property in such a situation, the legality of the cooperative housing society is in question (it is no longer the owner of the land), and collective authority of the association of owners gets undermined which then can severely undermine the collective functions of service provision and building maintenance.

[16] For example, in case of a cooperative housing society of say 1200 apartments, now there will be 1200 owners instead of a single owner for that land parcel. Now if the plot requires to be redeveloped, then all the 1200 owners will be involved in the transaction/decision making.

[17] Refer SUPLM policy paper, pages 68–70, Cast Study of Saubhagya Apartments.

Recommendation 10: Stamp Duty and Registration Fees should be Replaced by a Flat Fee Covering Administrative Expenses[18]

Revenue loss could be compensated through allocation of an adequate share of property and/or land taxes. This measure would (i) increase compliance with compulsory registration; (ii) reduce the informal economy; (iii) serve social objectives; (iv) be simple and cheap to collect; (v) encourage trade of urban land to promote allocation efficiency in resources; and (vi) be efficient and equitable.

Recommendation 11: Transactions of Land and Built Property be Separated.

The practice of transacting the share of land in a built property while transacting the built property must be discontinued as this would strengthen the prevailing legal arrangements of built property and prevent land fragmentation. Land and built property cadastres are different concepts and should be separated; a property cadastre or register could be built atop a land cadastre.

Valuing Land

CONTEXT

The state government maintains a fiscal cadastre for land and property called the *Jantri* in Gujarati. The responsibility of maintaining the *Jantri* lies with the IGR and SS. Several improvements to the *Jantri* have already been made on many fronts: (i) computerization; (ii) transition from parcel-based to geographic cluster-based valuation; (iii) improvement of publications that are now easy to read; (iv) increase in transparency through explicitly documented calculations; (v) fresh updates for many areas; and (vi) use of private sector expertise.

In theory, the *Jantri* can be relied upon for calculating: (i) stamp duty/registration fees; (ii) tenure conversion charges; (iii) compensation under the Acquisition or GTPUD Acts; and (iv) rent and sale prices of government properties. However, for the reasons discussed below, it is usually used only for computation of stamp duty and registration fees. Every department primarily relies on the sales data but adopts its own valuation methods.[19]

KEY PROBLEMS

Recent Sales Data, the Base Data Used for Valuation, is Highly Unreliable

As discussed earlier, the use of cash money in land and property transactions is widespread and since the sale price stated in the documents is well below the actual (market) price, all valuation starts with the (correct) assumption that stated values need to be inflated. However, it is difficult to determine by what factor should these values be inflated or to what extent is the cash money used? The belief that stated values can be inflated by some factors presumes that the proportion of cash across transactions is consistent and this is fallacious.

No Systematic Research on the Land Market is Undertaken on an Ongoing Basis

Estimation of the value of the property depends on a variety of external and subjective factors. To be able to undertake the task of valuation, practitioners need to rely on findings of systematic research that provide a comprehensive, reliable, and non-anecdotal understanding of the land markets. There is a complete lack of such research.

Different Departments Use Different and Non-Transparent Methods of Valuation

A variety of methods are used to inflate sales data by various departments. However, there is no consistency amongst them. This has two consequences: (i) duplication of valuation work and (ii) as the different methods are not published, this makes the process non-transparent, which then undermines and discredits the notion of systematic and reliable land valuation in the government.

Despite Best Attempts to Improve them, the Jantri and Other Valuation Procedures are Highly Unreliable Indicators of the Market Value of Land and Property

Despite improvements and attempts at being consistent, the *Jantri* is not considered to be a reliable indicator of the market value of land and built property largely because of the gap between the data and real prices and lack of systematic and empirical research. The problem is compounded by the fact that levy of high transfer/conversion charges (stamp duty/conversion premiums) to compensate for low valuation in *Jantri* tends to distort the process of valuation to build this procedure. The valuation team responsible for preparing the *Jantri* is concerned that accurate valuations will be undeservedly punitive (given the high tax rates, the buyer or the seller will have to pay a higher amount) and hence is torn between the task of inflating sales data to better reflect market value and keeping it low enough to be non-punitive, in a manner that is publicly acceptable and ethically unimpeachable. This leads to an unreliable and undervalued *Jantri,* which

[18] This recommendation was not made in the original study.
[19] Refer Section 7.1, Assessment Report, SUPLM.

in turn motivates the strategy of levying higher taxes. It is a vicious cycle that makes the land valuation process far more a political exercise than necessary instead of being a transparent and rational exercise based on sound research and data.

RECOMMENDATIONS

Recommendation 12: Dependence on Land Valuation Procedures should be Reduced

Unreliability of land valuation procedures makes a strong case for reducing dependence on them. In the TPS mechanism, the dependence on land valuation procedures has been reduced by collecting betterment charges in the form of land quite successfully. Thus, wherever possible, dependence of land management functions on land valuation procedures should be reduced. The merit of collecting premiums for converting tenures in the form of land has already been discussed.

Recommendation 13: Jantri should be Made More Authoritative and Reliablereflective of True Market Value of Land

The government will continue to need a *Jantri* and it is imperative that its quality be improvedits assessments of land/property values be more in line with the market values. However, this will require: (i) improving valuation process (next recommendation) and (ii) that the declared sales prices be as near as the market prices. The latter is possible only if the use of cash money in the transactions reduces. Reduction of cash money will require a wide variety of measures in a range of sectors and at different levels of government, for example, reviewing taxation policies.

Recommendation 14: Valuation should be Transparent, Professionalized, and Based on Sound Valuation Procedures and Sound Empirical Research

A sound valuation process must be applied to estimate land value with specific, streamlined procedures using at least two of the three methods available: cost analysis, sales data comparison, and income capitalization. Different values derived may serve as useful checks and balances.[20]

Recommendation 15: A Single Agency should be Made Responsible for Standardized and Systematic Valuation and Data Promulgation

In view of the dependence on valuation by several government departments. a single agency should be made responsible for undertaking the building of a systematic land and property values cadastre.[21] This would be based on systematic valuation procedures, updated regularly and be an additional layer atop the land cadastre.

Conclusions

Three issues are clearly evident:

1. The present overlap of revenue and planning regimes is at the root of many inefficiencies and distortions in urban land markets. Tasks need to be redefined and reassigned to specific agencies so that they can be accomplished in a transparent and efficient manner,
2. Gujarat's urban land management suffers from insufficiently considered taxation policies. Present policies have a number of perverse unintended outcomes. Viciously, they promote a culture of non-compliance and strengthen the informal economy;
3. Gujarat's urban land management systems require fundamental reforms; its land markets require modernization to make them more efficient; distorting regulatory systems and interventions need reform or dismantling; and institutions for enabling and monitoring the proper functioning of land and property markets need strengthening.

Reference

Environmental Planning Collaborative (2007), 'Streamlining Urban Planning and Land Management Practices', Assessment Report and Policy Reform Agenda, Legislative Intentions and Proposals, 2007, Gujarat Urban Development Company, Government of Gujarat.

[20] This recommendation is based on 'Land Administration Guidelines', United Nations, New York, and Geneva, 1996, available at *http://www.ica.coop/house/part-2-chapter4-ece-landadmin.pdf*

[21] This recommendation was not made in the original study.