

Whose Land is it Anyway?

A look at agricultural land laws in Maharashtra



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Introduction

In the past decade, land laws in Maharashtra have undergone rapid changes in response to the growing demands of urbanisation and industrialisation. Land is a state subject under the Seventh Schedule of the Constitution. The approach of most states, including Maharashtra, for land governance, has shifted from distributive justice to efficient reallocation (Banerjee 1999). Land is an important factor of production not only for agriculture and allied industries, but also for developing the secondary and tertiary economy (Sau 2007). In this regard, effective utilisation and capitalisation of land, both agricultural as well as non-agricultural, assumes importance for unlocking the potential of economic development by efficient allocation of land resources.

This policy briefly deals with agricultural land markets in India. Restrictions on the sale or use of land flow from the fact that all land belongs to the state. Agricultural land markets in Maharashtra are highly regularised, to the extent of excluding the rural farmers from accessing agricultural land markets (Hanstad, Haque, and Nielsen 2008). Agricultural land is generally transacted for three purposes: mortgage, sale, and lease (Mani and Pandey 1995). However, the transferability of land is influenced and often determined by factors such as change of land use, tenancy, ceiling, and ownership patterns.

This brief looks at the existing situation and conditions of agricultural land market operations in Maharashtra and the legal and institutional framework of land governance for the same. It analyses the structural changes brought about by the state government in domains such as change of land use and transfer of agricultural land to non-agriculturists. It also briefly discusses the powers and functions of the state revenue officers. Other aspects of land governance such as maintenance of record of rights, restrictions on transfer of tribal lands, conclusive titling, and recent land leasing reforms are also discussed. Through this discussion, this note sheds light on the problems hindering the efficient reallocation of agricultural lands in Maharashtra and suggests a few solutions to resolve them.

I: Change in Land Use

The administrative state uses land use regulations to plan, control, and co-ordinate the contents of rural and urban land activities (Moroni 2010). However, land use regulations could also hinder efficient capitalisation and utilisation of lands. It is suggested that efficient change in land use regulations must enable quick disposal of land use conversion requests at the least financial and time costs (Bhatia 2021).

Section 42 of the Maharashtra Land Revenue Code ('MLRC') allows conversion of agricultural land for non-agricultural purposes with the requisite permission from the Collector. Under the MLRC, occupants can apply to the Collector for conversion of land for non-agricultural purposes. The Collector has to follow the procedure as laid down in the Maharashtra Land Revenue (Conversion of Use of Land and Non-Agricultural Assessment) Rules, 1969 ('1969 Rules'). Rule 4 of the 1969 Rules allows conversion of agricultural land for any non-agricultural purpose.¹

In India, the land laws presume that all land is agricultural land by default. Sebastian Morris and Ajay Pandey argue that the requirement of a prior permission from the Collector for change in land use is 'the biggest depressionary factor' on agricultural lands in India (Morris and Pandey 2007). Section 44 of the MLRC and the 1969 Rules stipulate that the land must only be used for the non-agricultural purpose for which permission is sought, and the same shall be commenced within one year from the date of grant permission. Consequently, the present legal regime does not allow a farmer to convert land use for prospective purposes of sale or transfer. As a result, a farmer cannot get the benefit of value accretion that arises out of the probability of the land's use in non-agriculture.²

Recent amendments to change in land use provisions

Strong land use regulations, a part of the planned socialist economy, have negatively affected urbanisation in India (Sridhar 2010). In recent years, increased urbanisation has forced the governments to recognise the growing demand for property rights of the nonlandowners by changing the land use regulations (Sood 2015). Similarly, in Maharashtra, the MLRC has been recently updated to recognise the growing demand for property rights as a result of increasing industrialisation and urbanisation.

In 2018, the Maharashtra government amended the MLRC to simplify land use conversion requests. In this regard, lands held by Class I occupants³ and included under the urban development plan or regional plan are deemed to be converted without seeking the permission of the Collector.⁴ The MLRC also permits the occupant to convert agricultural land for bona fide industrial use or for constructing an Integrated Township Project without prior permission of the Collector.⁵ The recent amendments to the MLRC are undoubtedly intended to spur the development of agricultural land for non-agricultural purposes with less restrictions.

II: Maharashtra Tenancy Laws

The Maharashtra Tenancy and Agricultural Lands Act, 1948 ('MTAL Act') requires prior permission of the Collector to transfer agricultural land to non-agriculturists.⁶ It has been argued that this restriction increases the transaction costs as the law does not specify any time limit for the grant of permission (Uday 2018). In 2016, the state government passed an amendment to the MTAL Act by exempting lands situated within the limits of urban local bodies or allocated as per the development and regional plans.⁷ Similarly, the government has eased transfer of agricultural land for non-agricultural purposes, particularly bona fide industrial use and integrated township planning, without Collector permission.⁸ Further, to deter frivolous holding and ensure maximum utilisation, the MTAL

1. MLRC, s 44.

2. Ibid.

3. MLRC, s 29. (The MLRC classifies lands into following three categories: (i) Occupant Class I lands that are unalienated and freely transferable ; (ii) Occupant Class II lands which are not freely transferable and require prior permission; and (iii) government leased lands.)

4. See MLRC, ss 42A-42D.

5. MLRC, s 44A.

6. MTAL Act, s 63.

7. MTAL Act, ss 63 and 63

8. MTAL, s 63-1A.

Act mandates the non-agricultural transferee to put the land to the intended use within a period of 10 years. In 2016, the MTAL Act was amended allowing the non-agricultural buyer to sell the land in case of its non-utilisation without any hassles.

In recent decades, there has been a greater demand for rural agricultural lands as indicated by burgeoning land prices in several states (Rajshekhkar 2013). Agricultural lands in Maharashtra, especially in urban areas in and around Mumbai, Thane, Pune, Nashik, and Raigad, have seen greater interest from builders, developers, and politicians because of their potential real estate value (Gengaje 1992).

A 2003 World Bank study analysing land sale market in Vietnam suggests that unfettered land market policies allows the less productive producers to exit their land and seek off-farm employment, leading to the development of non-agricultural sectors (Deininger and Jin 2008). Free market conditions in the agricultural land market is thus not only essential to increase land productivity, but also as a means to facilitate optimal resource allocation and open greater opportunity for rural investment (Deininger, Jin, and Nagarajan 2009). The study also suggests that farm distress sales among small and marginal farmers can be significantly curbed by providing greater access to credit.⁹

A recent study, however, found that the liberalisation of agricultural markets has led to greater dispossession of small and marginal farmers as they are unable to derive productivity from their marginal holdings (Vijayabaskar and Menon 2018). In situations where agriculture is becoming unviable, sale of agricultural land is a source of significant material gains. Nevertheless, the reality suggests that the price offered to the small and marginal farmers by developers and realtors is a fraction of the market price or potential future value (Reddy and Reddy 2007).

During the last two decades, largely due to state government policies, agricultural land has been increasingly bought in Maharashtra for non-agricultural reasons such as speculative trading, for storing surplus value, and as tax havens (Rao et al. 2020). However, such practices are opposed to the core objective of change in land use permissions, that is, development of rural economy. Thus, it becomes clear that the existing provisions do not serve the purpose for which they were enacted. The solution to this problem does not involve completely doing away with the present regulatory regime, but providing enough credit and institutional support to the small and marginal farmers to deter them from selling their farm lands at meagre prices (Department of Land Resources, Ministry of Rural Development 2013).

III: Reforming the Fragmentation Act

Many economists, including Dr. B R Ambedkar, considered land fragmentation as uneconomic and unproductive (Nancharaiiah 2021). Recognising the same, many states enacted laws against the fragmentation of lands. Maharashtra also enacted the Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ('Fragmentation Act'). Under this law, the government can declare a village, taluka, or tehsil as a local area for the purposes of determining minimum area that can be cultivated profitably as a separate plot.¹⁰ Such a minimum area is called the standard area and any plot of land lesser than the standard area is called a fragment. The standard area in most districts is generally determined as one or two acres. The law requires that a fragment should be recorded as such on the record of rights and restricts the transfer of such notified fragments except to the owners of contiguous plots.¹¹

Section 8 of the Fragmentation Act prohibits sale or transfer of fragments. It was only in 2016 that the state government introduced an amendment exempting the application of section 8 to lands situated within urban areas or allocated to residential, commercial, or agricultural use.¹² The said amendment, however, was subject to a proviso which says that for fragments notified prior to the coming into force of the Maharashtra Prevention of Fragments and Consolidation of Holdings (Amendment) Act, 2015 cannot be sold without prior permission of the Collector. In 2021, the Maharashtra government issued a circular acknowledging the fact that transactions in fragments prior to 2015 still continue to take place without the prior permissions of the competent authority (Sawant and D'Lima 2021).

9. *ibid*, at 17.

10. Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, ss 3 and 4.

11. Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, ss 6 and 7.

12. Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947, s 8B.

Maharashtra has witnessed large scale fragmentation of agricultural land in recent years (Shaikh 2017). It is also interesting to note that as per the Agricultural Census of 2015-16, nearly 8 out of every 10 farmers in Maharashtra own less than 2 hectare of farm lands (Express News Service 2017). Thus, the Fragmentation Act has not only failed to prevent fragmentation of land, but also prohibits the small and marginal farmers from accessing the land markets and transferring their lands freely (Mearns 1999). It is therefore suggested that the government should reassess the Fragmentation Act in light of the present socio-economic situation of the farmers in Maharashtra.

IV: Thrust on Digitisation

Like other state governments, Maharashtra has also taken active steps to digitise land record administration (Narayanan et al. 2017a). The Registration Act, 1908 mandates compulsory registration of all property transactions.¹³ The registration process requires the physical presence of both the contracting parties before the registration officer.¹⁴ In 2012, the Maharashtra government amended the Registration Act, 1908, by allowing e-registration of land deeds and simplifying the registration process, including doing away with the physical presence of the parties before the registration officer.¹⁵ In furtherance of the same, the Maharashtra government has also enacted the Maharashtra e-Registration and e-Filing Rules, 2013.¹⁶

The state government has also enacted the Maharashtra Right to Public Services Act, 2015 which allows citizens easy and efficient access to various government services. As per the provisions of this Act, many services related to land records including issuance of property cards and mutation entries can be accessed online through the government website.¹⁷

Presently, land record registration in Maharashtra involves three departments: (i) Land records Department which is responsible for maintaining and updating the survey, demarcation, and settlement records; (ii) Revenue Department which maintains and updates the record of rights and correction of revenue entries; and (iii) Department of Registration and Stamps which is responsible for registration of documents pertaining to land transactions.

A recent study found that the aforesaid departments are not optimally interconnected with each other as well as with the courts and tribunals across the state (Narayanan et al. 2017b). The study also recommends creation of a comprehensive land records depository for retrieval of certified copies of land records at a single location.¹⁸ The government needs to increasingly prioritise digitisation of land records as it ensures transparency in the agricultural land market with lower transaction costs.

V: Redefining the Administrative Powers of Revenue Officers

Chapter X of the MLRC deals with land records. Such record of rights carries presumption of truth as per section 35 of the Indian Evidence Act, 1872.¹⁹ The Supreme Court has also reiterated this position of law, but also cautioned that such presumption will only apply “to genuine, not forged or fraudulent, entries.”²⁰ However, the presumption of truth of the land records can only be rebutted by documentary evidence of impeccable integrity and reliability.²¹ Thus, proper maintenance of land records is important because of their significant legal and evidentiary value.

As per section 148 of the MLRC, the record of rights in Maharashtra prominently contains the following particulars: (i) names of all holders, occupants, owners, or mortgagees of land or assignees of the rent or revenue; (ii) names of all persons holding a particular land as government lessees or tenants; (iii) nature and extent of the respective interests of such person as well as liabilities; and (iv) rent or revenue payable by the named persons.²² The preparation and maintenance of land records is governed

13. Registration Act, 1908, s 17.

14. Registration Act, 1908, s 32.

15. See Registration (Maharashtra Amendment) Act, 2010, s 5.

16. Maharashtra e-Registration and e-Filing Rules, 2013.

17. See: <https://aaplesarkar.mahaonline.gov.in/en/CommonForm/CitizenServices>

18. *ibid.*

19. Indian Evidence Act, 1872, s 35.

20. *Vishwa Vijai Bharti v. Fakhrul Hasan*, AIR 1976 SC 1485.

21. *Shri Pratap Singh v. Shiv Ram*, Civil Appeal No. 1511 of 2020.

22. MLRC, s 148.

in accordance with the Maharashtra Land Revenue Record of Rights and Registers (Preparation and Maintenance) Rules, 1971 ('1971 Rules').

The MLRC under section 149 allows any person to claim before a Talathi²³ any rights in any land either orally or in writing.²⁴ After receiving the claim, the 1971 Rules state that the Talathi has to make a mutation entry to that respect and also make a corresponding 'pencil entry' in the record of rights.²⁵ Thereafter, the MLRC requires the Talathi to give intimation to all persons interested in the land and enter any objections received to the mutation in a register of disputes. The certifying officer, who is either a Revenue Officer or Survey Officer, is entrusted with resolving the disputes entered in the register by conducting a summary enquiry.²⁶ The 1971 Rules further require the certifying officer to decide the dispute on the basis of possession of the land and accordingly certify the mutation entry.

It has been often observed that the Talathis or the Revenue/Survey Officers enter names improperly and dishonestly (Vinchu 2021). In fact, the Bombay High Court in various cases has affirmed the prosecution and conviction of Talathis under the Prevention of Corruption Act, 1988 for demanding bribes to undertake mutation entries.²⁷

Further, the discretion given to the Talathis is unbridled, and therefore oftentimes the Talathis go beyond the scope of their duties under the MLRC. The Talathis have to record the details on the 7/12 extract as per section 148 of the MLRC and the 1971 Rules framed thereunder. The said provisions do not mandate the Talathis to include *lis pendens*²⁸ in the 7/12 extract. However, many Talathis across Maharashtra used to record the same. This led to the dilution of clear title of the land holders and consequently decreased the value of the land. It is a known fact that land ownership is among the most litigated subject matters in the state and is often filed to obstruct the sale or transfer of land ownership (Sakal 2017). Resultantly, in 2017 the government of Maharashtra proscribed the Talathis from recording *lis pendens* under the 7/12 extract.²⁹

VI: Fiscal Nature of Revenue Records

The courts have time and again held that the mutation entries in revenue records are only 'fiscal' in nature, neither creating nor extinguishing title favouring any person in the immovable property.³⁰ Yet, on the other hand the courts have also held that mutation entries can be used as "corroborative piece of evidence to establish certain rights of the parties in relation to the property."³¹ Thus, mutation entries do have a certain determinative value in the eyes of law regardless of their fiscal nature.

Under the MLRC, the Talathi may require the claiming party to produce documentary evidence to substantiate their right.³² However, there is no outright burden on the Talathis³³ to base their decisions on documents. Further, there is no requirement on the Talathis to enquire into the veracity of the documents produced by the claiming party. Under the 1971 Rules, it is the duty of the Circle Inspector to supervise the mutation entries prepared and maintained by the Talathis. However, the Circle Inspectors often do not vigorously monitor the activities of Talathis, and often the two officers act in cahoots for dishonest purposes (Thaver 2021). Therefore, it is suggested that the government should devise stricter vigilance measures to monitor and supervise the functioning of the Talathis and other revenue officers. This will reduce the discretionary powers that the Talathi currently holds.

23. See MLRC, s 14(3). (A Talathi is a revenue officer under the MLRC and responsible for collection of land revenue and maintenance of records of rights.)

24. MLRC, s 149.

25. See MLRC, s 150 and 1971 Rules, r 13.

26. 1971 Rules, r 17. (It reads: "The certifying officer shall then hold a summary enquiry and decide each dispute entered in the register of disputed cases on the basis of possession, that is to say if a person actually holds possession under a claim of title, he shall be recorded as occupant class I, occupant class II or, as the case may be, Government less ee in the register of disputed cases. If there is a doubt as to the actual possession, the person with the strongest title shall be so recorded.")

27. See Dattatraya Laxman Bagdi v. State of Maharashtra, 2017 SCC OnLine Bom 7979; Vikas Baburao Marathe v. State of Maharashtra, (2015) 2 Bom C. R. (Cri) 439.

28. 'Lis pendens' is legal doctrine which essentially means pending litigation. The concept has been statutorily enshrined under section 52 of the Transfer of Property, 1882 which bars transfer of property during the pendency of any suit in which rights to an immovable property are directly in question.

29. <https://www.maharashtra.gov.in/Site/Upload/Government%20Resolutions/Marathi/201709211211187719.pdf>

30. Ajit Kaur v. Darshan Singh, (2019) 13 SCC 70; Suraj Bhan v. Financial Commissioner, (2007) 6 SCC 186.

31. Shrikant R. Sankanwar v. Krishna Balu Naukudkar, 2003 SCC OnLine Bom 46.

32. MLRC s 151.

33. Rule 28.

VII: Restrictions on Transferability of Tribal Land

As a matter of legislative policy, the land laws in the state of Maharashtra have put restrictions on the sale of tribal lands to non-tribals. In 1975 the state government deemed that the MLRC and the tenancy laws were ineffective in protecting the land rights of tribals and therefore enacted another supplemental legislation to that effect, namely, the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974 ('1974 Act'). This Act provides for restoration of lands (which were transferred to non-tribals) to tribals on or before 6 July, 1974.

Section 36 of the MLRC prohibits transfer of tribal land except with the previous sanction of the Collector. It also reiterates the right of a tribal to seek restoration of land transferred prior to commencement of the 1974 Act. Further, section 36A has been enacted to regulate transfer of tribal land to non-tribals after the commencement of the 1974 Act. This provision restricts transfer of occupancy of tribal land to a non-tribal without prior sanction of the Collector and approval of the state government. The Supreme Court in *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde* has upheld the constitutional validity of section 36A.³⁴

The procedure to be followed by the Collector under section 36A has been laid down in the Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non-Tribals) Rules, 1975 ('1975 Rules'). Rule 3 of the 1975 Rules requires the Collector to issue public notice of the impending transfer. The said Rule also requires the Collector to give opportunity to willing tribals living in the village where the land is situated or within a 5 kilometre radius thereof to have the occupancy rights transferred in their name by paying the same consideration as offered by the non-tribal. Rule 4 of the 1975 Rules prohibits the Collector from granting sanction for any sale of tribal land if such sale renders the tribal landless.³⁵ In 2012, the state government issued a resolution instructing the Talathis to update the 7/12 extracts to specifically indicate the land belonging to tribals. In 2013, the Bombay High Court directed the government to strictly implement the said GR.³⁶

In recent years, it has been observed that non-tribals have sought occupancy rights over tribal lands by way of development agreements and power of attorneys from tribals to circumvent the apparent restrictions under section 36A.³⁷ Recently, the Bombay High Court in *Gautamsheth Kisan Wadve v. Kisan Gangaram Kale* held that execution of development agreements between a tribal and non-tribal for development of tribal land without previous sanction of the Collector is in contravention of section 36A. The Court further observed that such restrictions on the transfer of occupancy of tribal lands is necessary to protect "the economic interest of the tribals and immuniz[e] them from social injustice and exploitation."³⁸

The Supreme Court in *Lingappa Pochanna Appelwar v. State of Maharashtra* observed that transfer of land between a tribal and a non-tribal will be an unequal bargain benefitting the latter.³⁹ This is certainly a valid justification to restrict transfer of tribal land to non-tribal transferees. However, it is also true that the legal restrictions deprive the tribals of the agency to alienate their lands without any government interference. Efficient capitalisation and utilisation of tribal lands is necessary for the efficient functioning of agricultural land markets in Maharashtra. Therefore, it is suggested that the government should allow transfer of tribal lands to non-tribal transferees by mutual consent. Further, it is suggested that the government should do away with the requirement of prior sanctions of the Collector under section 36A for such transfers. Instead, it could enjoin the transferor and transferee to give a notice to the Collector about the impending transfer via mutual agreement, and the Collector would only be required to verify the legality and validity of the transfer.

VIII: Conclusive Land Title

In India, land titles are presumptive in the sense that the person whose name appears on the record-of-rights is presumed to be the occupant of that particular land until proved otherwise. Corollary, the entries in the record-of-rights are merely fiscal in nature and not conclusive. This is reflected in the

34. *Murlidhar Dayandeo Kesekar v. Vishwanath Pandu Barde*, 1995 Supp (2) SCC 549.

35. Maharashtra Land Revenue (Transfer of Occupancy by Tribals to Non-Tribals) Rules, 1975, r 4.

36. *Adivasee Sarvangin Vikas Samitee v. State of Maharashtra*, 2013 SCC Online Bom 807.

37. *Gautamsheth Kisan Wadve v. Kisan Gangaram Kale*, 2020 SCC OnLine Bom 828.

38. *Gautam Kisan Wadve v. Kisan Gangaram Kale*, para 46.

39. *Lingappa Pochanna Appelwar v. State of Maharashtra*, (1985) 1 SCC 479.

fact that the Registration Act only provides for registration of documents without concerning itself with the validity of the document or the conclusivity of the title. (Wadhwa 2002) Economists from developing countries have recognised the value of formal land titles in transforming ‘dead assets’ into ‘live capital’ (De Soto 2000). Studies have shown that lands with conclusive titles have greater investor demand and foster access to the formal credit market (Venkataraman 2014).

The governments at both the central and the state level have taken various measures in recognition of the importance of conclusive titling for the agricultural land market in India. In 2011, the Ministry of Rural Development proposed a Draft Land Titling Bill, 2011 to establish a system of conclusive, electronically recorded titles (Vivake 2011). In 2016, Rajasthan became the first state in India to enact a law guaranteeing conclusive titles for lands in urban areas (Sasi 2016). The Rajasthan Act envisages setting up of a certification authority which will issue title certificates after proper scrutiny and verification of documents.⁴⁰

In 2019, the government of Maharashtra also proposed a Draft Land Titling Bill (‘Draft Bill’) seeking to establish a procedure to grant conclusive titles (Bhayani 2019). The Draft Bill envisages creation of a Land Titling Authority and empowered it with the responsibility of preparation, maintenance, and updation of land records.⁴¹ The Authority is tasked with providing access to all information about an immovable property at one location by bringing together the relevant information available with different agencies such as the Land Records department, Revenue Department, and Department of Registration and Stamps.⁴²

Under the Draft Bill, when a property is included under the preliminary records, a special notification will be issued inviting objections from any person having valid interest in the title. The registration officer, appointed by the Authority, after scrutiny of the claims and document grants presumptive title, which will become conclusive after a period of three years.⁴³ In 2019, the NITI Aayog recommended all states to award conclusive land titles and also proposed a draft Model Land Title Act, 2019 along the lines of the Maharashtra Draft Bill (NITI Aayog, 2019). Immediately thereafter Andhra Pradesh has also enacted a similar land titling legislation.⁴⁴

Although conclusive land titles seems to be the panacea to declutter the agricultural land markets, questions have often been raised as to their adequacy and efficiency. The eagerness to adopt titling may lead to creation of a more bureaucratic system by increasing unnecessary paperwork (Goswami and Jha 2016). It is also argued that the centralisation of land records will largely benefit the corporates and the wealthy farmers to the exclusion of tribal farmers, whose land rights are largely unrecorded even after the enactment of the Forest Rights Act, 2006 (Bhattacharya 2010). A World Bank study conducted in 2010 recommended states to expend their resources on digitisation of land records and reduction of stamp duties to improve credit access before embarking upon a full-fledged titling system, which is both costly and time consuming (Deininger and Goyal 2012). In the immediate, it is suggested that the state government should adopt the titling system in a phase wise manner. Initially, the government should contribute its resources towards consolidation and digitisation of land records. Efficient record keeping systems will provide greater security of title with low government and user costs (McCormack 1992). Thereafter, the government should try to achieve seamless interconnectivity between all the different departments, something which it has already proposed under the Draft Bill. Developing land records infrastructure will significantly reduce the imperfections in the land markets by making it more transparent and efficient (Zaveri 2016).

IX: Land Ceiling Laws

In Maharashtra, the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961 (the Act) governs the transfer and alienation rights over agricultural lands, and acquisition of surplus land by the state. Similar to other land ceiling laws, the Act limits agricultural land ownership and provides for the distribution of excess land in public interest.⁴⁵ It mandates a landholder to declare their agricultural landholdings and allows the state to acquire any excess land.

40. Rajasthan Urban Land (Certification of Titles) Act, 2016, chapter III.

41. Section 6 of Draft Bill.

42. Section 6;

43. Chapter IV and V

44. Andhra Pradesh Land Titling Act, 2020.

45. Preamble, Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

The Act seeks to achieve social justice through redistribution. This led to the inclusion of provisions on redistribution of the ownership of agricultural land from the hands of large farmers to landless farmers from socially weaker sections. While the law intended to secure social parity, its restrictive nature has put farmers in greater distress. Agricultural land in Maharashtra is fragmented and limited in size. According to the last agricultural census in 2015-16, the number of operational holdings in Maharashtra increased by 11.58% as compared to 2010-11. This indicates that many more people now own smaller portions of farm lands across the state.

To compete with the likes of other profit making industries, there is a need for direct investment in the agricultural sector. However, due to increasing fragmentation, investment in agriculture remains poor (Sinha 2020). The law on land ceilings adds to the issue by acting as a restrictive tool used for imposing penalties on farmers for trying to grow and benefit from economies of scale. The provisions of the Act limit both individual and family agricultural land holdings and hamper the efficient economic growth of farmers.

Determination of ceiling limit

Chapter III of the Act prohibits surplus land, i.e., agricultural land holdings in excess of the ceiling area.⁴⁶ For calculating the surplus agricultural land held by a land owner/family unit in Maharashtra, their land holdings outside Maharashtra are also to be added.⁴⁷ Since the jurisdiction of the Maharashtra government is limited to the land in Maharashtra, only the land held beyond the ceiling limit in Maharashtra is taken over by the government. For instance, if 25 acres was the ceiling limit in Maharashtra, and the total land held by a farmer in Maharashtra and Karnataka is 27 acres (3 acres in Maharashtra and 24 acres in Karnataka), then the 2 acres held in Maharashtra becomes surplus land. The fact that the holding in Maharashtra is lower than the ceiling in the state is not relevant for the purposes of the Act. This method of calculation of ceiling area by taking into account India wide land holdings deters a farmer from holding land outside Maharashtra if they want to hold land within Maharashtra.

Classification of land and calculation of ceiling area

Agricultural land holding in Maharashtra is subject to the classification of land provided in the law. The Act categorises land as follows:

- Irrigated land with guaranteed supply of water capable of growing two crops a year. Land without guaranteed water for irrigation yielding only one crop in a year
- Land irrigated seasonally by flow irrigation where supply is given under temporary water sanctions.
- Dry crop land⁴⁸

The ceiling area for holding of each class of above-mentioned land further differs from district to district.⁴⁹ Land holdings are decided by applying a combination of class of land with the area in which the land is located. For example, a reading of the First Schedule indicates that dry crop land holdings in the districts of Raigad, Amravati, Nasik all vary in size. This combination of classification used in the Act is complex and restrictive.

A farmer may own upto 18 acres of irrigated land in Bhir district but might be subjected to a different ceiling limit in Akola due to the district wise limits provided for in the First Schedule. By introducing a complex classification of land and varying ceiling limits for each district within Maharashtra, the Act limits the farmers from expanding their production by making it impossible to acquire more land. Any classification introduced in the Act should be made on the grounds of the general utility of such classification instead of on arbitrary grounds.

46. Section 3(1)

47. Explanation to Section 3(2)

48. In case of the "irrigated" classifications, it includes land irrigated before 1962 and land irrigated by the government after 1962. If you privately irrigate your dry land, it does not count as irrigated land for the purposes of this Act.

49. Section 5

State irrigation projects cut down farmers' land holdings

Under the law, the ceiling area for dry crop lands is higher than that of any class of irrigated land. When a dry crop land is converted into any other class, the holding revises and the land held in excess is declared as surplus.⁵⁰ By the definition under the Act, dry crop lands include lands irrigated by a private irrigation system set up after 1972.⁵¹ This means that any irrigation project set up by farmers over their dry crop land does not lead to its conversion into irrigated land and consequently does not subject the farmers to a revised ceiling limit.⁵² However, when the state government constructs an irrigation project over dry crop land, the new ceiling limits apply as per the Act. Therefore, a farmer who originally owned 54 acres of dry crop land in Bhir district, could be subject to a revised lower ceiling limit of 18 acres if the government decides to set up an irrigation project on that land. The farmer will then lose the surplus land and will have to give up over 65% of their holdings, a significant loss of land. Due to such legal limitations, farmers lose a major share of their primary source of income and struggle to generate revenue.

The Act thus reduces the utility of agricultural lands and limits the economic opportunities for a farmer. In 2019, the definition of exempted lands under Section 47 was amended to include bona fide industrial and other non-agricultural use such as setting up integrated township projects.⁵³ The amendment removed the ceiling limits for industrialists and real estate developers, allowing them to hold unlimited agricultural land. This goes against the interest of farmers as they are not covered under any exemption. Instead of favouring large industrialists, the Act must be amended to favour the farmers. For instance, exempting Farmer Producer Organisations from ceiling limits is one such step in the right direction.

X: Land Lease Markets in Maharashtra

Land leasing or sharecropping has been practised in India ever since independence. Sharecropping is a land tenure contract where the tenant cultivates the land on behalf of the landlord for a share of the produce (Chaudhuri and Maitra 2000). However, the contractual relationship between the landlord and tenant is much more complex and often interdependent (Bardhan and Rudra 1980). Under the MTAL Act, tenancy is technically barred as all tenants were deemed to have purchased the lands on tillers day, that is 1st April 1957.⁵⁴ In case the tenancy was created after the tillers day, the tenant was given the right to purchase the land from the landlord within one year.⁵⁵ Thus, although there is no explicit ban on tenancy, the landowner is always at a risk of losing the land to the tenant.

As per the NITI Aayog, various restrictions imposed on land leasing have forced tenancy to be informal and insecure, detrimental to both the landlord as well as the tenants (NITI Aayog 2016). The NITI Aayog argues that regularisation of land leasing will not only provide land security to the landlords, but also allow the tenants, particularly small and marginal farmers, to access credit markets and thereby improve agricultural efficiency⁵⁶. In such pursuance, the NITI Aayog also proposed a model land leasing law.

In 2017, the government of Maharashtra passed the Maharashtra Agricultural Land Leasing Act, 2017 modelled after the NITI Aayog's proposal.⁵⁷ The Act is currently pending the approval of the President of India. The only difference being that section 3 of the Maharashtra law requires a duly registered written agreement between the land owner and tenant.⁵⁸ Interestingly, the law also explicitly states that the lease agreement will not be recorded in the record of rights. Thus, the tenants will not be entitled to any occupancy rights or protection against eviction as the relationship will be exclusively governed by the agreement (Kulkarni and Harshe 2020). It is suggested that the Act should prescribe a draft lease agreement laying down the standard contractual terms and conditions, and create a basic framework for the equitable lease relations between the landowner and the tenant.

50. Section 11A - Ceiling area where land is converted into another class

51. Section 2(5)(e)

52. Explanation to Section 2(5)(e)

53. <https://bombayhighcourt.nic.in/libweb/acts/Stateact/2019acts/2019.19.pdf>

54. MTAL s 32.

55. MTAL, s 32O.

56. *ibid.*

57. See Maharashtra Agricultural Land Leasing Act, 2017.

58. Maharashtra Agricultural Land Leasing Act, s 3.

Conclusion

This policy brief looks at the existing legal and institutional framework of agricultural land market operations in Maharashtra. The change of land use regulations has been liberalised in recent years in recognition of growing urbanisation and industrialisation; yet the resultant regulations have left the farmers deprived of drawing value accretion benefit from their lands. Similarly, the liberalisation of the tenancy laws has enabled buying and selling of agricultural land for speculative trading, storing surplus value, and as tax havens. Therefore, it is incumbent for the government to recognise the present fault lines in the liberalised agricultural land market and work to correct them.

Post-independence the government of Maharashtra enacted various legislations with a view to enhance the socio-economic rights of the farmers. However, in the present socio-economic environment, laws such as the Fragmentation Act and Ceiling Act serve as a constraint on the farmers to effectively participate in the agricultural land market. Similarly, the government needs to reconsider the provisions under the MLRC which restricts transfer of tribal land to a non-tribal person.

In recent years, the Maharashtra government has significantly sought to liberalise the agricultural land market by proposing the Land Leasing Bill and the Conclusive Land Titling Bill. It is true that these initiatives will go a long way in transforming 'dead assets' into 'live capital' and bring much needed clarity and efficiency in the functioning of the agricultural land market in the state. It is, however, suggested that the government should also focus on other related aspects such as digitisation of record-of-rights and improving the functioning of revenue officers such as Talathis, as these changes will usher in much needed transparency and accountability in the agricultural land market in Maharashtra.

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