



A GUIDE TO LAND ACQUISITION IN MAHARASHTRA

Authors: Avikshit Moral | Preeti Dhar

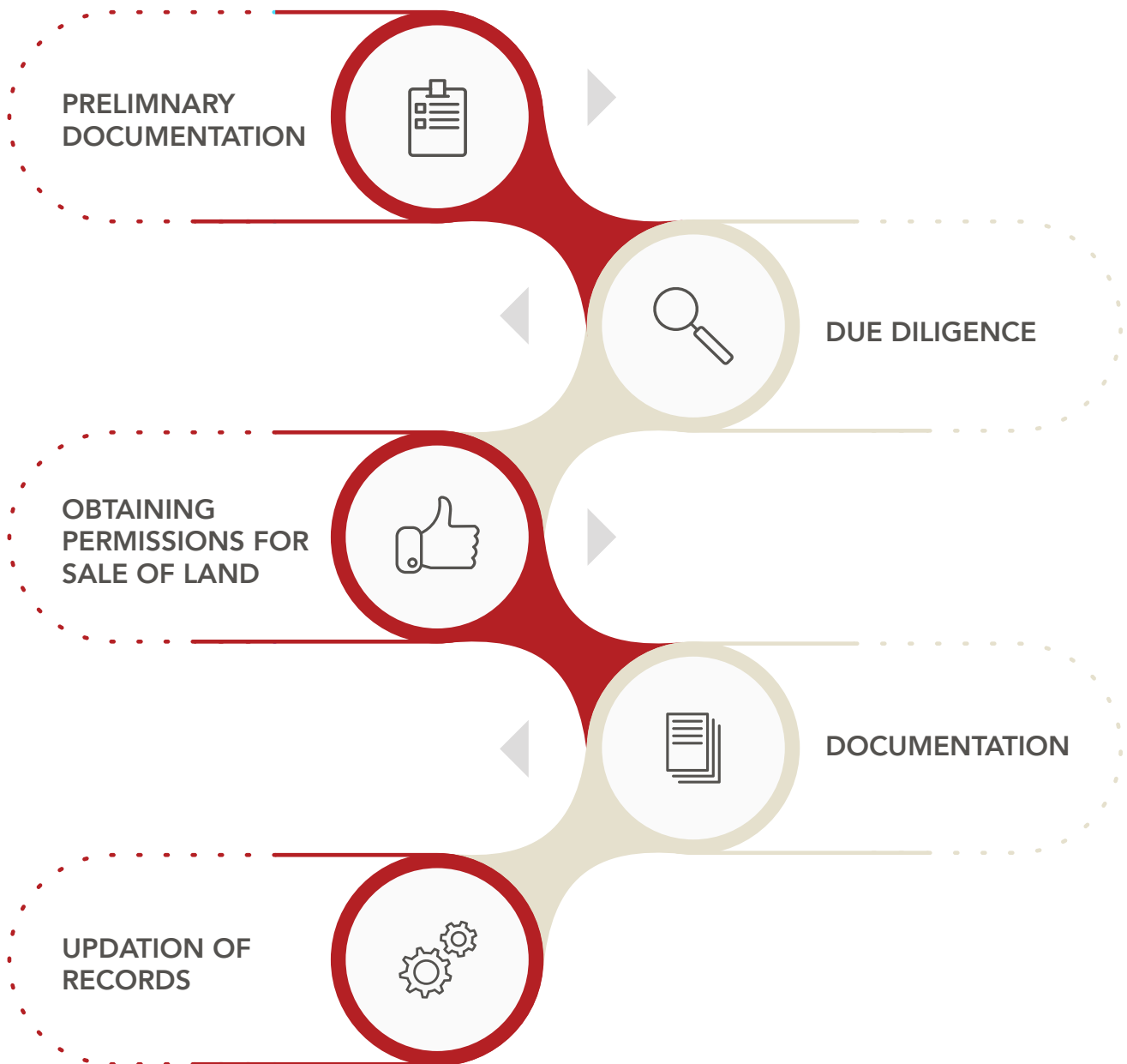
NOVEMBER 2023

INTRODUCTION

The process governing sale of land in India are manifold and vary across states. One of the biggest concerns for a prospective buyer is to gather information/literature on local laws and regulations prior to purchasing land. At the end of the day, whilst purchasing land, the concept of "let the buyer beware" prevails. This process note endeavors to give a bird eyes view to any interested person who intends to acquire land in Maharashtra. In this note, we have tried to cover (i) various steps/laws involved in purchase of land parcels in the State of Maharashtra and (ii) the points to be considered prior to acquiring land in the State of Maharashtra.



STEPS INVOLVED IN THE PROCESS OF SALE



STEP I : PRELIMINARY DOCUMENTATION

- Interested parties enter into a preliminary agreement recording the terms of sale between a seller and a buyer.
- Terms include consideration, manner of payment & certain conditions to be complied prior to the sale.

STEP II: DUE DILIGENCE

- **Search in revenue records & review of title deeds:** The prospective buyer should through their lawyer conduct investigation of title in respect of the subject land. Such investigation of title will include (i) conducting online and physical searches in the revenue records in respect of the land; (ii) review and inspection of title deeds to establish chain of title and if there are any defects in title; (iii) ascertain if land is agricultural in order to determine its implication on the transaction and (iv) mitigation of risks (if any). In the state of Maharashtra, the revenue records (7/12 extracts/Property Card, mutation entries) are accessible on the Mahabhumi portal (<https://mahabhumi.gov.in/mahabhumilink>) which is an online portal introduced by Government of Maharashtra to access land records and other property related details.
- **Litigation Search:** As a prospective buyer, it is not possible to conduct physical search in all of the courts within whose jurisdiction the subject land is located. A purchaser can conduct such litigation searches on the official websites of various courts or through external agencies. The Government of Maharashtra has also started providing access to details of pending civil court cases in respect of a particular 7/12 extract/Property card on the Mahabhumi portal.
- **Encumbrances search:** It is important to ascertain if there are any existing encumbrances in respect of the subject land such as mortgage, pending taxes etc.
- **Issuance of public notice:** A public notice should be issued through the lawyer conducting diligence to ascertain if there are any third party claims in respect of the subject land. Such public notice also establishes that buyer is a bonafide purchaser.

- **Analyzing permissions required for sale of land (if any):** In the State of Maharashtra, it is to be ascertained whether any prior permission is required from the Collector or any statutory authority for sale of land under (i) Maharashtra Tenancy and Agricultural Lands Act, 1948 ("**MTAL Act**") (in case of agricultural land); or (ii) Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act, 1947 ("**Fragmentation Act**") (in case of fragmented land), or (iii) Section 36A of Maharashtra Land Revenue Code (in case of land belonging to tribals) etc.
- **Use of land as per zone certificate:** Prior to purchase of land, it is essential to determine the zone/usage of land (residential/commercial/industrial etc.) to ascertain whether the proposed activity which the buyer intends to conduct on the land is permissible as per the zone allocated by the concerned authorities.

STEP III: OBTAINING PERMISSIONS FOR SALE OF LAND

It is essential that any permissions required to be obtained for sale of land as mentioned above are taken prior to entering into the sale deed and the same should be made a condition precedent to the execution and registration of sale deed.

STEP IV: DOCUMENTATION

- **Adjudication of stamp duty payable on the sale deed:** The buyer can submit the draft of sale deed for adjudication before the Collector of Stamps under Section 31 of the Maharashtra Stamp Act in order to determine the correct stamp duty payable on the sale deed.
- **Payment of stamp duty & registration fees:** Stamp duty and registration fees payable in respect of the sale deed can be made online and in this behalf the Government of Maharashtra has provided 2 modes of online payment. First mode is paying the stamp duty and registration fees through GRAS (Government Receipts Accounting System) (<https://gras.mahakosh.gov.in/echallan/>). The other mode of online payment is vide e-SBTR (Electronic Secure Bank & Treasury

Receipt) system where stamp duty can be paid online and there are certain specific banks which are authorised to issues E-SBTR.

- **Execution & Registration of transaction documents:** The Parties will execute and register the sale deed, power of attorney to be given by seller to buyer (for updation of records, admitting execution of sale deed etc.). Necessary information in relation to registration of documents is available on the official website of the Department of Registration and Stamps in Maharashtra (<https://igrmaharashtra.gov.in/>). Further,

basis the outcome of title diligence, the Purchaser can obtain any undertaking/declarations from the seller.

STEP V: UPDATION OF RECORDS

- Pursuant to the execution and registration of sale deed, application is to be made for updating 7/12 extracts/PR Card/municipal records and name of buyer is added as owner in revenue records/municipal records.



ISSUES TO BE CONSIDERED PRIOR TO PURCHASE OF LAND PARCELS

Basis the various transactions that we have worked on, we have come across the following pain points which are germane to sale of land parcels in Maharashtra:

- **Section 63 of MTAL Act:**

As per Section 63 of the MTAL Act, an agricultural land cannot be transferred to a person who is not an agriculturist without the permission of the Collector or an officer authorised by the State Government. In the given scenario, it becomes crucial for a prospective buyer to ascertain whether land is agricultural or non-agricultural. However, the aforesaid permission is not required in two scenarios as mentioned below:

- **Purchase of land situated in specific jurisdictions and land allocated for non-agricultural use as per Section 63(1C) of the MTAL Act:** As per Section 63(1C) of the MTAL Act, for the purpose of transfer of an agricultural land to non-agriculturist, the permission for transfer of the Collector is not required if the land is situated within the limits of a Municipal Council or Municipal Corporation or within the jurisdiction of a Special Planning Authority or a New Town Development authority appointed or constituted under the provisions of the Maharashtra Regional and Town Planning Act, 1966 ("**MRTP Act**") or any other law for the time being in force, and also to any land allocated to residential, commercial, industrial or any other non-agricultural use in the draft or final Regional plan or Town Planning Scheme, as the case may be, prepared under the MRTP Act or any other law for the time being in force.

In order to ascertain whether the land falls under any of the exempted areas as mentioned in Section 63(1C) of the MTAL Act, one needs to analyse the zone certificate issued by the competent authority. In case where the exemption under Section 63(1C) of the MTAL Act is available, the buyer pursuant to the sale deed can pay the conversion charges whilst obtaining development permission in respect of the land parcel.

- **Purchase of land for bonafide industrial use under Section 63(IA) of the MTAL Act:** As per Section 63-IA of MTAL Act, a person can sell land without permission of the Collector, to any person who is or is not an agriculturist and who intends to convert the same to a bonafide industrial use or for Integrated Township Projects where such land is located within the areas as mentioned therein.

The definition of "**bonafide industrial use**" goes on to list down the activities which constitute bonafide industrial use, however the definition is not exclusive and hence open to interpretation. We have come across cases wherein a given activity may not get covered under the definition of "**bonafide industrial use**" but the activity may still deem to be bonafide industrial use considering the nature of the activity. In such a scenario, it is advisable to seek clarity from the concerned authority prior to taking benefit of exemption under Section 63(IA) of the MTAL Act.

Further, in cases where the seller itself had acquired the land parcel under Section 63-IA of MTAL Act, it is to be ascertained if subsequently the seller has put the land to bonafide industrial use within the time period prescribed under the Section 63-IA of MTAL Act and there is no violation of the provisions of 63-IA of MTAL Act. For a buyer acquiring agricultural land for bonafide industrial use under Section 63(IA) of the Act, the land is required to be put to bonafide industrial use within a period of five years from the date of purchase with a further extension of five years subject to payment of non-utilisation charges as prescribed under the MTAL Act by the buyer.

One other aspect to be considered is that if the land parcel does not fall under the exemption provided under Section 63(1C) or Section 63(IA) of MTAL Act and buyer intends to convert the land to non-agricultural land, it is advisable that such conversion and necessary payments towards conversion of land should be done prior to entering into the sale deed. This also becomes crucial considering that (i) the application for conversion is to be made by the owner/occupier of land as per Section 44 of Maharashtra Land Revenue Code, 1996 and (ii) taxation laws for agricultural land are different as compared to non-agricultural land.

- **Purchase of land acquired under Section 32G of the MTAL Act:**

Section 43 of MTAL Act provides that no land purchased by a tenant under Section 32 of MTAL Act, shall *inter alia* be transferred by sale without the previous sanction of the Collector, which may be subject to such conditions as prescribed by the State Government. In case where a buyer is purchasing a

land from a tenant who acquired land under Section 32G of the Act, one has to ascertain that necessary orders are in place regarding transfer of title in favour of the tenant.

- **Access to land parcels:**

It is important to ascertain whether road connecting to the land parcel is a DP Road. In the event the road connecting to land parcel is a private road, it is to be checked if the road belongs to the seller. If not, the buyer should insist that simultaneously with the sale deed, the seller should obtain a right of way in respect of the road connecting to the land parcel.

- **Conducting physical survey of land:**

There are several instances where the area of the land parcels mentioned in the title deeds differs from the area mentioned in the revenue records. In such a case and as a matter of abundant caution, a physical survey of the land parcel should be conducted in order to ascertain the actual area of the land parcel as this may impact the consideration payable by a buyer for purchase of the land parcel.

- **Discrepancy in description of land parcels:**

There are several instances where land parcels have undergone sub-divisions multiple times. The survey no. or gat no. or CTS no. and the respective areas that are mentioned in title document may have been split on account of various sub-divisions and the description in the title document and the revenue record varies. In such a scenario, it is essential to map the old survey nos. or gat nos. or CTS nos. with the new survey nos. or gat nos. or CTS nos.

Also, the boundaries of the land parcel should be clearly established vis a vis the survey plan/CTS plan of the land parcel.

- **Other Laws:**

Whilst purchasing a land parcel in Maharashtra, a prospective buyer also needs to be aware of various local laws such as Maharashtra (Urban Areas) Preservation of Trees Act, 1975 which provides for obtaining permission of tree officer for felling of existing trees on the land. Further, in case of a land which is declared as fragment, the provisions of Fragmentation Act will apply. As a buyer, one should be aware of the local laws that may affect or impose restriction on transfer of land.

The issues highlighted above are not exhaustive and there may be other issues that may impact a transaction in relation to purchase of land parcels in Maharashtra. Keeping in consideration that in the State of Maharashtra, there may be instances that on account of nature of the land, manner of acquisition will be different. In certain cases, the land may be part of collectors land or comes under the purview of special planning authority and as such the acquisition of such land will be governed by laws prescribed by these authorities. Additionally, it may be the case that land parcel may be devasthal or wakf land or Adivasi land or inam land or an evacuee property on account of which there will be restriction on transfer of land or the rights which can be created on such land parcels. In addition to the above, there are cases where the land is owned by a government authority such as Maharashtra Housing and Area Development Authority, City and Industrial Development Corporation, Maharashtra Industrial Development Corporation etc. then the underlying transaction will not be a sale and will be a lease for a specific time period. In such a scenario, as a prospective lessee/sub-lessee, one will have to ascertain restriction on transfer of leasehold land as the same may attract payment of transfer charges/premium etc.



CONTACT US

Avikshit Moral

Partner, Mumbai
Email: avikshit.moral@induslaw.com

Preeti Dhar

Principal Associate, Mumbai
Email: preeti.dhar@induslaw.com

OUR OFFICES

BENGALURU

101, 1st Floor, "Embassy Classic" # 11
Vittal Mallya Road
Bengaluru 560 001
T: +91 80 4072 6600
F: +91 80 4072 6666
E: bangalore@induslaw.com

DELHI & NCR

2nd Floor, Block D
The MIRA, Mathura Road, Ishwar Nagar
New Delhi 110 065
T: +91 11 4782 1000
F: +91 11 4782 1097
E: delhi@induslaw.com

HYDERABAD

204, Ashoka Capitol, Road No. 2
Banjarahills
Hyderabad 500 034
T: +91 40 4026 4624
F: +91 40 4004 0979
E: hyderabad@induslaw.com

9th Floor, Block-B

DLF Cyber Park
Udyog Vihar Phase - 3
Sector - 20
Gurugram 122 008
T: +91 12 4673 1000
E: gurugram@induslaw.com

CHENNAI

#11, Venkatraman Street, T Nagar,
Chennai - 600017 India
T: +91 44 4354 6600
F: +91 44 4354 6600
E: chennai@induslaw.com

MUMBAI

1502B, 15th Floor
Tower – 1C, One Indiabulls Centre
Senapati Bapat Marg, Lower Parel
Mumbai – 400013
T: +91 22 4920 7200
F: +91 22 4920 7299
E: mumbai@induslaw.com

#81-83, 8th Floor

A Wing, Mittal Court
Jamnalal Bajaj Marg
Nariman Point
Mumbai – 400021
T: +91 22 4007 4400
E: mumbai@induslaw.com

DISCLAIMER

This note is for information purposes only. Nothing contained herein is, purports to be, or is intended as legal advice, and you should seek legal advice before you act on any information or view expressed herein. Although we have endeavored to accurately reflect the subject matter of this note, we make no representation or warranty, express or implied, in any manner whatsoever in connection with the contents of this note. No recipient of this note should construe this note as an attempt to solicit business in any manner whatsoever.