

Institutional and Legal Aspects in Land Disputes: the Context of Nepalese Cadastral Surveying

Ganesh Prasad Bhatta
Chief Survey Officer, Head
No. 2 Survey Goshwara
Survey Department, Government of Nepal
e-mail: gpbhatta73@hotmail.com; bhatta07954@alumni.itc.ni

Key Words: Cadastral Surveying, Land Administration and Management, Institutional Aspect, Legal Aspect, Land dispute

Abstract

Cadastral Surveying is the foundation of land administration and management activities in Nepal. The country has nationwide coverage of cadastral surveying achieved by conducting systematic cadastral surveying from 1964 to 1997. Cadastral re-surveying has been initiated since 1994. Some of the cases of land disputes that exist in Nepalese society are due to inadequacy of cadastral surveying activities in various aspects, institutional and legal aspects are two of them. Some weaknesses of existing institutional set up and legal framework that are influencing the attempts to resolve the disputes such as limited authorities to the organisation involving in systematic cadastral surveying, lacking proper coordination among the district level stakeholder organisations, lacking proper mechanism for bridging the incompleteness of cadastral surveys conducted by commissions/committees, lacking comprehensive legal documents, ambiguous legal provisions, etc have been pointed out in the paper.

1. Background

As the agriculture sector deserves a major contributor of the national economy, land is the most important asset for Nepalese people. The value of land is increasing day by day. With the increase in land value, landowners are seriously concerned over the boundaries of land they own and various kinds of land disputes are seen in the society. Most of the cases of land disputes come across while dealing with land business. The disputes have affected the efficacy of the land administration and management activities of the country. If the reasons of disputes are not identified in time, future will be more problematic.

Most of the cases of land disputes that exist in Nepalese society are resolved on the basis of cadastral maps and documents prepared by cadastral surveying. It

has been experienced that some of the cases are due to inferiorities of cadastral surveying activities in various aspects. Institutional and legal aspects are the main concerns of the paper. The main objective of the paper is to present some weaknesses of institutional and legal aspects of Cadastral Surveying in Nepal, which are behind the cases of land disputes in the society.

2. Institutional Aspect of Nepalese Cadastral Surveying

2.1 Institutional Arrangement

Ministry of Land Reform and Management (MoLRM) is the responsible ministry for cadastral surveying and land administration & management activities in the country. Survey Department (DoS) and Department of Land Reform and Management (DoLRM) are the major departments having an involvement with cadastral surveying activities.

DoS, the National Mapping Organization (NMO) of Nepal, is responsible for carrying out cadastral surveying in the country since its establishment in 1957. There are two kinds of organisations working for cadastral surveying at district / local level: Survey Goshwara (Survey Party) (SG) and Survey Office (SO) under DoS. SG is responsible for carrying out systematic cadastral surveying whereas SO is responsible for updating cadastral maps and supporting land administration and management activities in the corresponding district. There are 9 SGs and 83 SOs throughout the country. SGs are mobile in nature, i.e. after completion of cadastral surveying in a district shift to another district, whereas SOs are permanent offices.

DoLRM is the department responsible for executing land administration and management activities in the country through Land Revenue Offices (LROs)

and Land Reform Offices at district level. There are 83 LROs throughout the country that are supported by SOs at corresponding district.

In the mean time, several commission/committees constituted at different times for land distribution, establishing new settlements, and for other many reasons conducted cadastral surveys, sporadic in nature, on their own but with the involvement of technical manpower from DoS. Following section explains cadastral surveying conducted by SGs, SOs and Commissions:

2.2 Cadastral Surveying Activities

Cadastral Surveying by SGs

SGs prepare cadastral maps and related documents such as field books, land ownership registration books, and land ownership registration certificates, by conducting systematic cadastral surveying. Ownership on every parcel of the land is registered during the surveying. After the registration, a landowner is provided a land ownership registration certificate.

After the completion of cadastral surveying in a specified area, Land Ownership Register Certificates are handed over to respective landowner(s). Cadastral Maps and Field Books are handed over to Survey Office (SO) in the district. Similarly, the Land Ownership Register Books, Mishils, decision books and documents related to unresolved cases (if any) are handed over to Land Revenue Office (LRO).

Cadastral Surveying by SOs

SOs provide technical assistance to LROs for land administration and management activities within a district. The main responsibility of SOs is to update the Cadastral Maps prepared by SGs and other authorities (if available). Updating of fragmentation of a parcel, updating utility services mainly road network on cadastral maps, preparation of parcel maps etc are the technical works under the responsibility of SOs. Similarly, laying out of parcel boundaries on the ground based on cadastral maps, minor corrections to cadastral maps during land transaction are other responsibilities of SOs.

Cadastral Surveying by Commissions/Committees

Government constituted various political level commissions/committees in the past to deal with land issues such as distributing lands to land less people, establishing new settlements / resettlements, developing land etc. Sukumbasi Samasya Samadhan Aayog (Commission for Resolving Problems with Landless People), Basti Vikash

Aayog (Commission for Town Development), Jhora Aayog (Commission for Jhora Land), Ban Sudhridhikaran Aayog (Commission of Strengthening Forests), Rara Rastriya Nikunj Basobas Byabastha Samiti (Committee for Managing Resettlement for the displaced families of Rara National Park)etc. are some of the examples of such commissions. These commissions/committees performed cadastral surveys around the area specified by the government, in the other words sporadic cadastral surveys, and prepared all the documents same as those by SGs. The process of handing over of the maps and documents is also similar to that of SGs.

LROs in Cadastral Surveying

The major responsibility of LROs is to facilitate land administration and management activities in the district. It has to deal with the unresolved matters handed over by SGs. LROs can make corrections to minor technical errors (if any) on the cadastral maps and conduct cadastral surveys of unmapped areas, if required, with the agreement from DoS.

2.3 Weaknesses of Institutional Aspect

Various cases of land disputes are seen during cadastral surveying or resurveying and land transaction. As discussed above, SGs, LROs and SOs are the main organisations at district level to look after the cadastral surveying and land administration & management activities. The cases of land disputes are dealt from these offices. Following are some major weaknesses of existing institutional setup:

- 1 Limited authorities to district level organisations involving in cadastral surveying activities, especially SGs, influence the effort for resolving some of the disputes. For example, SGs are not given following authorities:
 - I. Corrections of errors on existing maps even though there exist evidences of errors
 - II. Dealing with the cases left from commissions/committees as mentioned in the above sections
 - III. Establishing the actual location of public lands on newer map no matter where the location has been mentioned on the existing maps, in case of errors

- IV. Full autonomy to register the unregistered land having sufficient proof of ownership
2. Lack of proper coordination among district level organisations involving in cadastral surveying, land administration and management, especially between SGs and LROs, is influencing effectiveness of cadastral resurveying activities.
 - I. Customers say LRO officials are not in the favor of cadastral resurveying
 - II. The publications issued from DoLRM are contradictory with that issued by DoS. There is a statement published on the website of DoLRM “The major issue in the Act (Land Survey & Measurement Act, 1961) is the provision of re-survey. This provision does not clearly state that the LRO should compulsorily accept the new records generated through re survey (<http://www.landdepartment.gov.np/LAWS&ACTS.htm>)”. This statement has strong contradiction with provision of the act that after the submission of documents to LRO by SGs from cadastral resurveying, existing documents will automatically be cancelled.
 - IV. By the provision of the act, LRO must provide all the documents related to landownership and transaction taken place of the concerned area to SGs during cadastral resurveying. This provision is further elaborated in the working manual issued by DoLRM as the record of transactions taken place should be sent to SG daily or weekly. In practice, it is never seen implemented in district level.
3. Sporadic cadastral surveying carried out by different commissions/committees to distribute land in the past has some incompleteness in documentation and processes. For example some people are provided land ownership certificate but no land to occupy, some have been allocated lands but the registration is incomplete, in some cases allocated land and occupation is quite different. Due to this reason, many people are suffering from various kinds of disputes. There is a lack of proper mechanism for bridging the incompleteness of sporadic cadastral surveys conducted by various commissions/committees in the past.

3. Legal Aspect of Nepalese Cadastral Surveying

3.1 Legal Framework

Land administration and management activities are governed by various laws and regulations in Nepal. About sixty acts and regulations have addressed land administration and management matters. Since land administration and management activities are followed by cadastral surveying activities, the surveying has affiliation with these acts and regulations in one way or another. Following acts, regulations, technical circulars and directives have major influence in cadastral surveying activities in Nepal.

Land (Survey & Measurement) Act, 1963 and Regulations, 2001

Most of the Cadastral Surveying activities are governed by Land (Survey and Measurement) Act, enacted in 1963, and corresponding regulations, enacted in 2001, in Nepal. Survey Department is given the major responsibility of carrying out cadastral surveys in the country. The Act states that the land records prepared by the survey are authentic. Once the records are handed over to the LROs and SOs, the existing records should be automatically replaced by the new ones and subsequent land administration should be based on the new records. So, the act has made provision for re-survey for updating the records and make corrections of errors of previous survey, if any exist (Paudyal, 2005). Corresponding regulations prescribe the procedures of implementation of the Act. (Adopted from Bhatta, 2005)

Land Revenue Act, 1977 and Regulations, 1979

Land Revenue Act, enacted in 1977, is the main act to carry out land administration including maintenance and updating records, collection of land revenue and settlement of the disputes after completion of survey and handing over of the records to LRO by the SGs. The act covers corrections of survey records, updating the records when transfer of ownership is held. It also authorizes LRO to correct the mistakes of Survey and register the land as a Chhut Darta. Corresponding regulations, enacted in 1979, prescribe the procedures of implementation of the act.

Working Manual of SOs and SGs, 2003

DoS has issued several technical circulars, directives and working manuals for SOs and SGs to carryout cadastral surveying in the country. These documents further elaborate the acts and regulations making the provisions easier to

materialize. Important guidelines have been given to the officials involving in the activities of cadastral surveying. These are compiled in a book as Working Manual of SOs and SGS in 2003.

Land Administration Directives, 2001 and Land Administration Manuals

Land Administration Directives issued by DoLRM in 2001 includes directives for land administration activities carried out from LROs. This directive mentions the methods and processes to deal with cadastral surveys conducted by SGs and SOs. DoLRM has also issued Land Administration Manuals in three parts. These manuals provide step by step approach to deal with land administration activities.

3.3 Weaknesses of Legal Aspect

It has been experienced that available legal provisions, as mentioned above, are not in the state to address all the issues of the disputes. Even same is the case for the departmental circulars, working manuals and other publications. Some major examples of the weaknesses can be listed as follows:

3. Ambiguities and complexities in legal provisions influence the effective implementation of legal measures in reality. Some of them having major influences are as follows:
 10. Article 7 (1) of Land (Survey and Measurement) Act states that newer value of area of parcel should be registered during resurveying. It means the law has realized that existing maps might have errors or differences in occupation but it is not mentioned anywhere explicitly.
 11. Article 7(2) of the act prohibits the same case if the land adjoins any public or government land. This provision contradicts the realization of errors in previous maps
 12. The provision of Haal Sawik Bhidaune (matching the present situation with the existing maps and documents) in Land (Survey and Measurement) Act, on the other hand, contradicts the realization of the errors in existing maps
 13. There is a provision of registering unregistered land during cadastral resurveying, but it requires representation from many other different offices. Representatives from other offices are nonprofessionals and cannot contribute

professionally in decision making. The provision only delays the process.

14. In practice, the incompleteness of SGs (since SGs are mobile offices and sometimes incomplete cases could be submitted to LROs before shifting another district) are dealt by corresponding LROs in the district with the technical assistance of SOs but the provision is not addressed in any of the related acts
15. There are some durations for notification to call for registration and for other reasons, but the duration are not practically feasible due to the nature of cadastral resurveying
 1. There is a lack of comprehensive land law addressing all the issues of land disputes
 2. There is no any legal provision to deal with the technical errors such as overlaps and gaps in existing cadastral maps, wrong mapping of public lands etc

4. Conclusions and Recommendations

4.1 Conclusions

Survey Goshwaras, Land Revenue Offices and Survey Offices are the organisations at district level to deal with cadastral surveying and land administration & management activities. Sometimes the district or regional level wings of the commissions/committees constituted by the government also deal with land related activities under their scope. About sixty acts or regulations govern these land related activities in the country. Land (Survey and Measurement) Act and corresponding regulations, and Land Revenue Act and corresponding regulations are widely used acts and regulations to deal with these activities along with some departmental circulars, working manuals and directives.

Since, land is the most important asset for Nepalese people its value is increasing day by day. With the increase in land value various cases of disputes with land boundaries and ownership over a land parcel are seen in the society. Cadastral resurveying has experienced many errors in existing cadastral surveys and incompleteness with the surveys conducted by commissions and committees time to time. Mismatching of cadastral maps with actual occupancy is one of the major factors causing land disputes. Although the piece of land surveyed during the original surveying

is still there, the disputes come due to mismatching of the records and maps prepared by cadastral surveys. There are so many other examples of such cases of land disputes.

Thus, weaknesses in various aspects of cadastral surveying deserve some reason of land disputes that exist in the society. The two major aspects; institutional and legal aspects have been dealt in this paper. Weaknesses of existing institutional set up and legal framework are greatly influencing the attempts to resolve land disputes. Limited authorities to the organisation involving in systematic cadastral surveying, lacking proper coordination among the district level stakeholder organisations such as SGs, SOs and LROs, lacking proper mechanism for bridging the incompleteness of cadastral surveys conducted by commissions/committees, etc are some of the major weaknesses of institutional aspect of cadastral surveying in Nepal. Similarly, lacking comprehensive legal documents, ambiguous legal provisions, incomplete working manuals, lacking circulars on technically sensitive issues etc are some of the major weaknesses of its legal aspect.

4.2 Recommendations

A few recommendations have been listed as follows:

- a) It is experienced that existing organisational structure formulated decades back cannot meet the customers' satisfaction with service delivery. Thus, timely organisational reengineering is a must.
- b) District level organisations involving in cadastral surveying and land administration/management activities are lacking proper coordination as it ought to be, especially between SGs and LROs. Thus, a mechanism for establishing proper coordination among stakeholder organisations must be developed and enforced from the ministry level.
- c) Sporadic cadastral surveying carried out by different commissions/committees has incompleteness in documentation and processes in some cases remained after the termination of its tenure. Thus, either SGs or if SG is not established in the district LRO and SO must be given the responsibility with full authority to deal with the situation.
- d) Most of the cases of land disputes during cadastral resurveying are due to the provision verifying new maps and documents with respect to existing maps and documents, so called Haal Sawik Bhidaune (matching present real situation on the ground with existing maps and documents), as per the Land (Survey &

Measurement) Act, 1961. Such ambiguities in legal provisions must be amended and explicitly defined provisions should be provided to the professionals involving in the cadastral surveying and land administration activities.

- e) Various laws and acts govern land related issues. It has been experienced that in some cases the laws and acts contradict with each other. Organisations having similar status have dissimilarity in authority to deal with similar issues. Thus, a comprehensive integrated land law must be enacted and district level organisations should be given full authority to deal with land matters.
- f) Cadastral resurveying is a must to overcome the weaknesses of existing cadastral surveying but the present approach of cadastral resurveying cannot meet the expectations. Thus, it must be conducted with modern technology and practical legal provisions.

Acknowledgement

The FIG Foundation awarded FIG Foundation Grant 2006 to the author to undertake a research entitled "Institutional and Legal Aspects in Land Disputes: the Context of Nepalese Cadastral Surveying" in 2006. Survey Department, Government of Nepal, supported to make the environment for the research. Without the support from both the organisations, the author would not be able to conduct the research and ultimately there would not be the paper. Financial support from FIG Foundation and encouragement from Survey Department not only supported to complete the research but also inspired the author to continue his research studies in Nepalese cadastral surveying domain. For their invaluable support, the author would like to heartily acknowledge the FIG Foundation and Survey Department, Nepal. .

References

- Bhatta, G.P.; Identification of Technical Deficiencies and Human Factors in land disputes: In the context of Nepalese Cadastral Surveying, A Research Report, 2005*
- Bhatta, G.P.; Khanal, G.R. and Sharma, R.K: Registration of 3rd dimension: The Context of Nepalese Cadastre, Nepal, 2005*
- Khanal, G., Redesigning and Optimization with Work Flow*

management System for Land Administration process in Nepal, 2006, IFA Report, ITC, The Netherlands

Shrestha, B.L. Land Records, Registration and Cadastral Surveying, Nepal, 1986

Shrestha, B.N: Cadastral Survey For Public usefulness, 1981, Nepal

Land (survey & Measurement) Act , 1961

Land (Survey & Measurement) Regulations, 2001

Land Revenue Act, 1977

Land Revenue Regulations, 1979

Land Administration Directives, 2001; Department of Land Reform and Management

Land Administration Working Manual (Part I, II, III), Department of Land Reform and Management, Nepal

Working Manual for Survey Goshwara and Survey Office, 2003 Survey Department, Nepal

Call for papers

The Editorial Board requests for Papers / articles related with Geoinformatics for the publication in the eighth issue of the Nepalese Journal on Geoinformatics. Last date for the submission of the article is March 31, 2009.

For more information, please contact

Jagat Raj Paudel, Editor-in-chief

or

Deepak Sharma Dahal, Member, Editorial Board

Topographical Survey Branch

Survey Department

P.O.Box 9435, Kathmandu, Nepal

Tel: +977-1-44 78 723, +977-1-44 66 463

Fax: +977-1-44 82 957, +977-1-44 96 216

Email: topo@ngiip.gov.np

Website: www.dos.gov.np