PRECAUTIIONS TO BE TAKEN WHILE PURCHASING PROPERTY/LAND

Purchasing a property/land requires utmost care. One has to examine and find out the title of the seller or nature of his right. A seller can sell only what he possesses. Therefore if a seller has proper and valid title, on purchase you will get valid title. If the seller's title is defective, you will get only defective title. The simple reasoning is that he can sell what he has, and nothing more.

Some of the important aspects to be borne in mind while purchasing a land may be classified under different heads as follows:

1. First and foremost ask ***who is the seller***. Get the full name and address of the seller.

2. Find out what is the *nature of his right.* The seller may be having absolute ownership right, or a conditional or limited right.

3. So far as the *types of rights in the land*, it can be classified mainly as follows:
   - Free hold or absolute ownership land known as Warg right
   - Mulgeni right (right of permanent lease),
   - Tenancy right,
   - Lands granted by government, under Land Grant Rules, Land Revenue Act, Grant of Flouse sites.
   - Lands granted under Land Reforms Act, etc

4. It is always advisable to deal with a Freehold right or absolute ownership right, which is also called as Warg right.

5. After getting the particulars as to who is the seller, what is his right, then find out the *source of his right or title.*

   a) The title of the seller may be by purchase, by inheritance, by partition, by gift, by settlement or by grant.

   b) To find out the source of title there must be some document like.

   Right of purchase ---------- Sale Deed
   Inheritance ----------------- Entries in Revenue records, and predecessor's title
   Partition --------------- Deed of partition
   Gift ---------------------- Gift Deed
   Settlement------------------- Deed of settlement
   Grant ------------------------ Grant order
   Mulgeni --------------------- Deed of Mulgeni or permanent lease

   c) If the right is by purchase ask for the original sale deed. See when the seller had purchased the land and from whom he had purchased. Verify the previous records. Verify, the title for thirty years.

d) If it is by inheritance, ask the particulars as to from whom he has inherited. What was the right of his predecessor? Again it may be a sale deed or gift, or inheritence. Verify the previous title Get the details as to how his predecessor acquired the title, and whether he is the only person who has inherited. If there are other persons who have jointly inherited, then you have to find out, whether there was any partition. Whether there are any minors who have inherited the property. If there is a minor, the minor's property can not be purchased without obtaining permission of the Court.

e) If it is by partition there must be a deed of partition.

f) See whether there are any conditions or restrictions in the deed of partition. Find out whether there are any conditions, like pre-emption, water rights, rights of way, payment of maintenance etc.

g) Likewise if it is gift deed, or settlement deed, or grant, get the original Gift deed, settlement deed, or grant order as the case may be. Read the document and see whether there are any conditions, like reservation of life interest, restrictions for alienation, payment of maintenance, pre emption etc. Some times there may be reservation of life interest, or what was gifted may be only right of enjoyment

h) Rights acquired under various types of Grant orders again are subject to several conditions regarding alienation and enjoyment. This has to be verified. If the grant is in favour of a person belonging to Scheduled Caste or Scheduled Tribe community, generally there will be a condition prohibiting alienation. Such lands cannot be purchased

i) If it is a Mulgeni ask for the deed of mulgeni, again see whether there are any conditions. Mulgeni or right of permanent lease is again a conditional right. In such cases there are two parties or persons having the right in the Jand. One is the owner and another is the permanent lessee. In other words, one is the Mulgar/owner and the other one is Mulgenidar/ tenant. The possessory right or right of enjoyment will be, with the Mulgenidar/tenant.,The owner/Mulgar will have the right of ownership with right to collect the stipulated rent. The deed of Mulgeni or deed of permanent lease will contain the restrictions regarding alienation, payment of rent, and the other rights of the lessee etc. All these have to be verified. Because the owner/mulgar will generally have a right to challenge or question the alienation/transfer and the very right of mulgeni can be cancelled or terminated. It is always advisaWe to find out as *to* that *is* the Mulgar, or owner, and purchase his rights also.

j) If there are any conditions in the documents, examine the conditions, and if the conditions restrict or prohibit the transfer or alienation, do not proceed.

6. Find out the extent of the property and see whether it tallies with the one mentioned in the documents. Verify the survey number, location and boundaries and get the land measured through a competent surveyor.

7. Find out whether there is an approach road.

8. Examine the sketch or plan of the property.

9. Get the record of rights (RTC) of the land and confirm that the name of the seller is shown as owner in possession of the property. You can get the latest computerized RTC from the Taluk Office. The record of rights will disclose the name of the owner, name of the person in possession, nature of right, nature of land, and also encumbrances if any.

10. Identification of the lands will be always by Survey Numbers. Record of rights/ khata will give an indication as what is the right of the holder. Confirm the entries in the record of rights/khata with some other registered documents / or previous documents. This is because the Record of rights or khata by itself is not a document of title

11. For converted lands there will be what is called as Khata. Apply and get Khata extract from the Mangalore City Corporation.

    a. The *zone where the property is situated.* Apply to the Mangalore Urban Development Authority with survey number and sketch for a zonal certificate. If the property is in residential zone, construction of house will be permitted. If the property in commercial zone, industrial zone, park zone, etc, construction of house will not be permitted.
    b. In City/ urban areas the user of the lands are regulated by zonal classifications. The Urban Development Authority is the Department, which deals in the matters relating to zonal classifications. We have to see in which zone the land is located. For construction of house the property must be in residential zone.

12. Whether the property is *converted?* For using the land for building houses or other buildings, the land has to be converted from agricultural use to non-agricultural use. By filing an application to the Tahsildar, with sketch and other particulars as prescribed, and by-paying the prescribed fee you will get an endorsement/order that the land is converted. This is necessary because all lands assessed for land revenue are considered as agricultural lands. The conversion is done under the provisions of Kar.Land Revenue Act. The Tahsildar, and in some cases the Deputy commissioner are the authorities prescribed under the Land Revenue Act for getting the land converted.

13. National High way and State High way: As per the National High Way and State High way Rules construction of buildings will not be permitted within a

range of 60 meters from the center of the National High Way. If the land is by the side of National High Way, this aspect has to be verified.

14. Coastal Regulation Zone: Construction of buildings are not permitted within a range of 200 meters from the high-tide zone in case the property is situated by the side of river and 500 meters in case the property situated by the side of sea.

15. We have to find and out and see whether there are any encumbrances, charges, or mortgages on the property. Verify *Encumbrance certificate* for at least 13 or 15 years up-to-date. If there are any charges/mortages/ or other encumbrances noted in the Encumbrance certificate do not proceed till the same are cleared or clarified. How to find out this?

    a. Apply and get an encumbrance certificate at least for 13 or 15 years, from the office of the Sub-Registrar where the immovable property is situated. Give the particulars of the property like Survey Number, extent of land, name of the village, name *of* ward, boundaries, etc. and specify the period for which you require the encumbrance certificate.

    b. The encumbrance certificate will show the details of registered documents relating to the property, Like sale deeds, mortgage deeds, etc.

    c. If there are no such registered records relating to the property the encumbrance certificate will be a Nil Encumbrance certificate.

    d. Mortgages or charges can be created by registered documents, or by depositing the original title deeds. If it is by registered documents, like deed of mortgage, it will be reflected in the encumbrance certificate. If it is by deposit of title deeds, the Encumbrance certificate will not disclose it. Therefore you have to ask for the originals title deeds for verification. If the original title deeds are with the owner it means that he has not deposited it with any body. Sometimes, the originals might have been lost by misplacement, fire, or by some other means. If that is the situation then one has to proceed only on the basis of trust. We can ask for an affidavit, a sworn statement of the owner to the effect that the original title deeds are really lost and that he has not created any charge, or deposited it with anybody. A paper publication can also be given.

16. If the properly which you are going to purchase is a land with building, you have to verify the building licence, completion certificate and latest tax paid receipt

17. Khata of the building and land has to be verified and it must show the name of the owner.

18. *Apartments:* If the property which you are going to purchase is an apartment you have examine and verify:

a. The title to the land on which the apartment building *is* constructed. For tracing and confirming the title of the land on which the Apartment building is built, the same points narrated above have to be followed.

b. The land and the building must have been submitted to the provisions of Kar. Apartment Ownership Act 1972, by a registered document called the Deed of Declaration. Read the Deed *of* declaration and it will give you a clear picture as *to* what are the common rights, facilities, how it has to be enjoyed, how it has to be maintained. As a whole the deed of declaration will contain the various provisions regarding the mode of enjoyment of the apartments, common areas, and facilities.

c. The percentage of right in the land which you are going to get has to be verified

d. Whether the Association of the Owners has been formed?

e. Get a no due certificate from the Association of Owners regarding maintenance or other charges so far as it relates to the apartment, which you are purchasing.

f. The building license, plans, completion certificate latest tax paid receipt have to be verified.

g. All documents relating to land as explained above have to be verified.

h. The original of the sale deed relating to the apartment, which you are purchasing, has to be obtained.

19. Some points regarding Minors right, and rights of inheritance:

a. If right of minor is involved in any property, it is not advisable to purchase such land. The minor can always question the sale by the father or mother as guardian within three years of his/her attaining majority. Getting Court permission for sale of minor's property, or right in the property will protect your rights to some extent.

ii) Regarding rights of inheritance, among Hindus all children irrespective of sex, they get right by birth in ancestral property as per the latest central amendment *to* the Hindu Succession Act. The rights of children are equal. So far as Indian Succession Act is concerned, which is applicable to Christians, when a male dies intestate, (i.e. without a Will or other documents) his wife will get one-third right and the remaining two-third will gojll the children equally. For Mohammedans, when a male dies the wife and children will get the rights. However if there are no male issues and only daughters, as per Mohammedan Law, some of the near relatives of the deceased father will also get a share.

iii) If the property is self-acquired property, the question of children inheriting any right by birth does not arise. However when a male Hindu dies leaving behind his self-acquired property, without leaving behind any Will or other documents, the succession to the property will be as per the Hindu Succession Act. If the property is ancestral property, or a property inherited by his father, the succession for such property shall be as per the Hindu Succession Act and the same can not be regulated by Will. However this concept of ancestral or family property etc are not there under Indian Succession Act. Thus the property inherited by a Christian will be as good as his/her self-acquired property.

20. Sale by General Power of attorney holder. In many cases the actual owner does not come forward for executing the sale deed and the GPA holder represents the owner. In such cases first of all we have to verify the genuineness of the GPA. The original GPA must be verified and the GPA holder must have the custody of the original GPA. The following points may be borne in mind while examining the GPA:

a) The GPA is still in force. If it is an old GPA ask for a confirmation.

b) The GPA must contain the following powers and particulars:--Power of sale, power to sign and execute the sale deed, receive the consideration, appear before the Sub-Registrar, present the document for registration, admit execution and receipt of consideration, deliver possession of the property and description of the property, full name and address of the person giving the power and the person to whom it is given. If all these powers are there the GPA holder can execute the sale deed.

c) The GPA must be drawn on stamp paper of the required value. It must be attested by a Notary, Magistrate, Sub-Registrar or embassy.

21. As the sale transactions cannot be done then and there, and since it requires some reasonable time for both the seller and purchaser, many a times, the parties enter into *agreement for sale* pending registration of the actual sale deed. Before entering into agreement for purchase or sale, all the points narrated above have to be verified. The purchaser must retain the original agreement. Copies of the title deeds have to be obtained. The agreement has to be drawn and executed on stamp paper of required value. The agreement for sale must contain at least the following particulars:

a) Full name and address of the Seller and Purchaser.
b) A brief history of the title of the seller, with reference to his title deed.
c) An undertaking by the seller to sell |he land to the

d) The total price of the property agreed between the parties.
e) The amount of advance paid, mode of payment, acknowledgement of receipt of the advance by the seller, the amount of balance price to be paid, the time for payment of the balance price.
f) Time for execution and registration of the sale deed.
g) An undertaking to deliver vacant possession of the property
h) An undertaking to hand over all title deeds
i) A clear description of the property
j) Date and time of the agreement.
k) A default clause stipulating penalty or damages for breach *of* agreement.

Availing loans from Banks:

Generally banks insist scrutiny of title for 30 years. The original title deeds must be produced. The chain of title from the latest to thirty years back has to be established by clear documents. In most of the cases, originals of all the previous documents is not possible. There may be cases where one big property was divided into several sites, in which case all the purchasers will not get the original of the parent document. However original of the latest document must be produced. In some cases even the original of the last document may not be available, on account of loss of document by fire, misplacing, or for other reasons. In such cases, you will have to swear to an affidavit stating that the original is lost, and not available, and that you have not deposited the document with anybody, nor created any charge. A paper -publication can also be given. However the creditor /purchaser may or may not accept and agree. In such cases the property can be mortgaged only by registered mortgage.

In addition to the above, Latest Khata, or RTC, Conversion order, Encumbrance Certificate for 15 years, latest House tax paid receipt if there is a building, are the further requirements. If all these documents are available, by depositing originals of these documents with the bank, as security for the loan, you can create valid mortgage/charge in favour of the Bank. This type of mortgage is called mortgage by deposit of title deeds. This type of mortgage will not be reflected in the Encumbrance certificate. But such charges can be noted in the Record of rights, or khata if the bank gets the entry made by applying to the concerned authority.