



Encountering the state through legal tenure security: Perspectives from a low income resettlement scheme in urban India



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ARTICLE INFO

Article history:

Received 27 January 2016

Received in revised form 14 July 2016

Accepted 17 July 2016

Available online 25 July 2016

Keywords:

Tenure security
Resettlement
Governance
The state
Control
India

ABSTRACT

Tenure security systems—which determine who lives where and under what terms and conditions—are processes of governance that make and effect the relationship between those who confer tenure security and those on who tenure security is conferred. Yet, in dominant analyses of land and housing tenure security, and in policy recommendations for property rights and legal tenure security in developing countries, governance implications are overlooked in favour of analyses of the relative merits of different tenure systems mainly in terms of security, livelihood and economic impact. Using interview data and observations from a resettlement scheme in Ahmedabad, India, this paper empirically examines citizen-state relations in the context of a major shift from *de facto* (in practice) to legal tenure security and asks how do citizens who have recently come to live under legal tenure security encounter the state and make sense of it. I find a bureaucracy of tenure security that exerts control over low income citizens largely through fear. However, such control is incomplete and acts of resistance suggest an emerging ‘paralegal’ space to renegotiate tenure rules. I conclude by examining the findings through a conceptual framework that explains the relationship between state power and legal tenure security. I also discuss the need for greater scrutiny of the political effects of urban land and housing tenure systems on poor people.

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1. Introduction

Legal, sometimes called ‘formal’, tenure security is a component of legal property rights (rights that are enforced and protected by the state) and has been upheld as an ideal condition for governments of developing countries to aspire towards in their land and housing policy since the 1970s, when housing scholarship first started to examine conditions of ‘informality’ in low-income settlements in South America (e.g. Turner, 1976; in Peru; Karst, 1971; in Venezuela). The conclusions reached by that scholarship resulted in World Bank-led interventions such as site and service schemes and later informal settlement upgrading across the global south. Such schemes awarded legal tenure security via property titles on the understanding legal tenure inspires confidence in structure-owners to then make improvements to and investments in physical housing, subsequently enabling household wellbeing and prosperity (Gulyani and Bassett, 2007; Stren, 1990; Tipple, 1994). Under a human rights based agenda in international development, and convinced by the economic (de Soto, 2000) and social benefits (Allendorf, 2007) of property rights, advocacy for legal

tenure security continues to be the official position of international development actors including the World Bank, the UK Department for International Development, the International Fund for Agricultural Development and UN-HABITAT, who, through aid budgets and loans that finance development interventions, carry influence over national governments in developing countries (see International Fund for Agricultural Development, 2015; The World Bank, 2011; UN-HABITAT, 2010; UKAid, 2015).

The universal adoption of the Sustainable Development Goals in 2015, underlines the point. Goal 1 to end poverty in all its forms everywhere, includes the target to “ensure that all men and women, in particular the poor and the vulnerable, have equal rights to economic resources, as well as access to, ownership and control over land and other forms of property, inheritance, [and] natural resources.” (UKAid, 2015:6). The proposed indicator for the target includes the “percentage with legally documented or recognised evidence of tenure” (UKAid, 2015:6). While this can allow for the recognition of non-legal tenure as adequate evidence of access to, ownership and control of property, it is worth noting that recognition of other tenure types has not displaced development programmes supported by international development actors that focus mainly on legal tenure security. The links between legal tenure security and a plethora of developmental goods such as sustainable development, wellbeing and poverty reduction, appear

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entrenched in development discourse and practice. This is despite the ambiguity in on-going empirical scholarship on definitions of what actually constitutes tenure security and the role of legal property rights therein (Van Gelder and Luciano, 2015; Van Gelder, 2010).

Van Gelder (2010) typology of tenure as legal, de facto and perceived, while adding clarity of definition, simultaneously underscores the fact that there is no conclusive evidence on which type of tenure security is best. Rather, his findings chime with a nuanced scholarship that acknowledges de facto tenure systems (those found on the ground in practice), customary or neo-customary systems can provide the same or improved outcomes as claimed by legal tenure security. For example, protection from eviction (Payne, 2001; Durand-Lasserve and Royston, 2002), confidence that results in investments to property (Payne et al., 2009), access to finance (Gilbert, 2002), and associated benefits in improvements to gender equality within a household and community (Lastarria-Cornhiel, 1997; Varley, 2007), access to infrastructure (Varley, 2002) and health care (Porio and Crisol, 2004). And, in the case of customary and neo-customary tenure, postcolonial scholarship argues these systems carry a greater legitimacy with local populations than a legal regime rooted in colonial land and property law (Home, 2004).

Against the powerful tide of preferences for legal tenure security and property titles, scholarship examining the relative merits of different systems against their theorised outcomes is necessary. However, the concern of this paper is not the relative merits of legal tenure security vis-à-vis other systems. Instead, it examines the relationship between citizen and state in the context of the award of legal tenure security in a low-income settlement on the basis that the governance implications of a shift from systems based on claims to residential space (de facto tenure) to systems based on legal rights to residential space has received insufficient empirical study. Governance is defined as both a technique of rule exercised by governments over citizens, and a process or practice that makes the state real to people (Hansen and Stepputat, 2001:5). In the context of this study, a legal tenure system is both a governing technique of rule that makes explicit the legal rights and responsibilities between citizen and state in the exercise of property rights, and a process through which citizens come to learn of, engage with and understand aspects of the state.

Current literature on governance and tenure tends to focus on governance as a technique of rule. For example, Van Leeuwen (2014) discusses the effect of tenure reform on local governance systems in Uganda, specifically the position and power of local elites and state actors, but not the affected residents' subsequent engagement with 'the state'. Earle (2014) discussion of the proposed tenure regularisation of informal settlements in Mozambique unpicks the complex layers of governance in informal spaces that determine tenure security and questions the appropriateness of the state's award of legal tenure, but does not examine the relationships between citizen and the state *ex-post* nor ideas of 'the state' inherent in legal tenure. In the Indian context, Weinstein (2009) detailed analysis of local state and civil society relations in the development of Mumbai's infamous informal settlement, Dharavi, illustrates the mechanics of governance as local state officials attempt to engage with Dharavi's residents on redevelopment plans including clearer tenure rights. Nakamura (2016) study of Pune similarly shows the importance of local state officials both within the municipality and local politicians in making improvements to informal urban settlements and their role in supporting improved tenure security. Where tenure is discussed in these studies it is typically as an outcome of negotiations or interactions between local state actors and residents. The altered relationship between citizen and the state following changes to tenure and urban (re)development is rarely featured and governance is not

fully discussed as a practice through which citizens come to know the state.

This paper empirically examines legal tenure as a technique through which people are governed by the state following their resettlement to a low income housing development, and how this process affects new interactions with aspects of the state and builds an understanding of what the state is. The question guiding this study is: how do citizens who have recently come to live under a legal tenure security encounter the state?¹ The answer carries implications for the advocacy for legal tenure security and sheds light on exercises of state power over the urban poor via the medium of land and housing tenure systems. The remainder of the paper is structured thus: after this introduction, I present a conceptual framework to explain the motivations of the state to award legal tenure to poor urban dwellers. Following a brief discussion of the research methodology and methods, the research site—Vatva, in Ahmedabad, north-west India—is presented alongside empirical evidence of legal tenure security in action. Findings show that the bureaucracy of legal tenure security employed by the state exerts control over low income citizens largely through fear. However, control is incomplete and acts of resistance suggest an emerging 'paralegal' space (as understood by Chatterjee, 2004) to renegotiate tenure rules. In the conclusion, I refer back to the conceptual framework to explain the rationale underlying residents' encounters with the state and make a case for greater scrutiny of the political effects of urban land and housing tenure systems on poor people.

2. State motivations for the award of legal tenure security: a conceptual framework

This section examines the state's motivations for advocating and implementing programmes that award legal tenure security to the urban poor by drawing upon relevant literature on tenure security and literature in political science and anthropology on 'the state'. The conceptual framework that subsequently develops is applied in **part 6** to Vatva to help explain the rationale underlying the empirical reality of how residents living under legal tenure security encounter the state.

It is relevant to note the role of the state is not formally established in any one tenure system. For example, in both formal and informal settlements, municipalities have been known to provide drinking water, enumerate property and collect local property tax (Benjamin, 2008; Varley, 2002), thus providing marks of tenure security. However, within a legal system, the role of state actors tends to be more clearly defined for example, legal systems necessarily involve the judiciary in legislating and upholding property rights, central ministries and decentralised departments document property ownership via cadastral surveys and property registers, and municipalities collect and spend property tax from legally recognised owners. Overall, the distinguishing feature of a legal tenure system over other systems is the assumed legitimacy of the actions of the state. Here the paper draws upon the argument made by Roy (2005) that the state produces informality and formality (and illegality and legality) through an exercise of its own power. Thus, in the context of the production of legal tenure security the state exercises legitimate power over where people live, for how long, and under what terms they live there, and so "it becomes apparent that the legalization of informal property systems is not simply a bureaucratic or technical problem but rather a complex political struggle" (Roy, 2005:150). From a review of literature, three dominant explanations for why the state might craft a

¹ By focusing on those eligible to a state-led resettlement scheme, a citizen is defined as an Indian national.

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