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IIHS WORKING PAPERS IN HOUSING POLICY AND PRACTICE

# Jahan Jhuggi, Wahan Makaan

**Assessing the viability and parameters of a Delhi  
Government JJ cluster improvement scheme**

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Government JJ cluster improvement scheme



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## FOREWORD

This study has been a collaboration between Indian Institute for Human Settlements (IIHS) and Indo-Global Social Service Society (IGSSS), and is also part of research conducted under the Tacit Urban Research Network (TURN).

The current response to slum dwellers with insecure tenure in Delhi is mostly compensatory, concentrating for rehabilitation and relocation. Neither does it explore security of tenure for JJCs, nor does it include approaches to reduce the vulnerability of slum dwellers. Not only is insecure tenure a roadblock to accessing infrastructure and basic civic amenities, it also presents itself as an obstacle in making the various aspects of one's life because tenure is used as a proxy to decide legitimacy of citizens. IGSSS initiated this study to locate the opportunities of tenure security for the slums dwellers in Delhi with IIHS as their knowledge partner. The study looks at the legal and spatial make up of Delhi, along with an analysis of various forms of tenure and best practices across the globe. This analysis aims to pave way for designing a model policy ensuring tenure security of slums in Delhi.



## INTRODUCTION

Several manifestos leading up to the February 2020 elections in the National Capital Territory of Delhi (hereafter, NCT or Delhi) promised a provision for low income housing: jahan jhuggi, wahan makaan, or “*where the dwelling, there itself the house.*”<sup>1</sup> The promise is one of *in-situ* improvement of existing, inadequate housing (*jhuggis*, JJ Clusters<sup>2</sup>) for income-poor residents of the city. Implicit in the promise is not just a material improvement but a legal one: improved houses would come with secure tenure giving residents both protections against forced evictions as well as possible rights to use housing as an economic and developmental asset. This is a significant opportunity to impact and improve the lives of many Delhi residents, one that extends the promise of “regularisation” beyond just unauthorised colonies to JJ Clusters in the city.<sup>3</sup> This is fitting since JJ Clusters are affordable housing that residents have themselves built, often brick by brick, against great odds, over years

of labour and personal investment. That they have had to do so in tension with law and formal property rights is a testament to the failure of urban planning and governance to make access to legal, adequate and affordable housing a genuine possibility for many. Regularising and improving self-built homes is a long overdue attempt to acknowledge the labour of Delhi’s residents and translate it into a rightful entitlement.

Yet fulfilling this promise has several challenges. This study focuses on two: the legal and tenurial constraints and opportunities that such a scheme must navigate within the unique governance structure of the NCT that is simultaneously administered by local, centre and state governments. **Specifically, it looks at what the Delhi Government and its attendant institutions can do both when acting independently as well as when it is working in concert with the Government of India.** The ‘Delhi Government’ here includes the Chief Minister of Delhi, the

<sup>1</sup> See Aam Aadmi Party Manifesto here: [https://drive.google.com/file/d/1AYZGAWIxy-RGZdREfqVGii43\\_z2XKCN4/view](https://drive.google.com/file/d/1AYZGAWIxy-RGZdREfqVGii43_z2XKCN4/view) and Bharatiya Janta Party manifesto here: <https://drive.google.com/file/d/1rtmbmxO6qiruOXvLxH9H2JgpbhrAjrAe/view>

<sup>2</sup> A multiplicity of terms are used to describe informal settlements in Delhi. JJ Clusters, or jhuggi jhopri clusters, is the governmental category used by the Delhi Urban Shelter Improvement Board (DUSIB) and in the Delhi Master Plan. We use this term since this study is an assessment of the scope of law and policy. Residents of informal settlements often use other categories like jhuggis, bastis, or colonies that would otherwise be more appropriate. We do not use “slum” unless it refers to the legal category of settlement declared slums under the the Slum Areas (Improvement and Clearance) Act. JJ Clusters refer to settlements that have uncertain tenure, are settled on land that

residents do not own, and are often characterised by inadequate built environments and services, though just as many represent incremental improvement and consolidation of both housing units and services over time.

<sup>3</sup> Regularisation is a term used to describe the post-facto legal consolidation of Unauthorised Colonies in Delhi. A recent policy of the Government of India, supported by the Government of Delhi, regularised nearly 1700 unauthorised colonies in Delhi, i.e. allowed a full registration of their property that will give them control and transfer rights over that property. Unauthorised colonies, like JJ Clusters, begin in tension with formal logics of planning and property and therefore require legal intervention to “regularise” them post-facto. It is important that the recent policy of regularisation did not include JJ Clusters.

members of the state legislative assembly, departments under these ministers as well as the public institutions including para-statal organisations and utilities under their control. The Government of India includes all institutions that come under direct central administration such as the Delhi Development Authority, the Central Public Works Department, or any of the central ministries of Housing and Urban Affairs, Railways, Defence, Environment and Forests etc.

The study explores three key questions:

1. What is the legal viability of fulfilling this promise under the current legal and governance structures of the NCT? What can the Delhi Government do by itself?
2. What is the current spatial and demographic structure of inadequate housing that would be eligible for such improvement under a Delhi Government scheme?
3. What forms of tenure security can be considered to accompany physical improvements in housing units? Which of these can be legally granted by the Government of Delhi?

What the study does not delve into are two important aspects that require independent analysis. The first is the form of “improvement” itself. This could range from rebuilding existing JJ Clusters into new built units (redevelopment) to incrementally

improving the entire settlement by adding services and only repairing existing units (reconfiguration and upgradation). Our analysis focuses on the viability, jurisdiction and scope of what a Delhi Government scheme on improvement can take. Decisions on what type of improvement is to be undertaken in specific clusters must follow such analysis. We do, however, mark where our analysis suggests complementarity with a specific model of improvement.

The second is the design of the policy in terms of processes, governance mechanisms, and implementation modalities. These are critical to the policy’s success as well as its spirit. We argue later in Part III, for example, that the choice between forms of tenure must be determined by community consent. The procedures for putting community consent at the heart of a JJ Cluster improvement scheme, therefore, must be the next step in our analyses as well as in scheme design. We have written about a model process separately, and readers are referred to that document to read alongside this report.<sup>4</sup>

The study proceeds as follows. Each of the questions above forms a key part of the report. Part 1 looks at legal viability and questions of jurisdiction, Part II looks at the spatial and demographic structure of existing JJ clusters, Part III focuses on frameworks to consider tenure security, drawing on Indian and global examples of each. We then conclude.

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<sup>4</sup> Sohane, N; Mehra, R; Shakeel, A; and Kumar, N (forthcoming) Models of Community Participation

in Upgrading Schemes. Indian Institute for Human Settlements: Bangalore.

## PART 1: LEGAL VIABILITY AND QUESTIONS OF JURISDICTION

This section is a brief enumeration of the options available to the Government of the National Capital Territory of Delhi (GNCTD) for undertaking improvement and providing secure tenure to JJ Clusters within the NCT. It is an exploratory analysis, and the actual application of the law discussed will vary depending on different factual situations which may arise.

### 1.1 What is the jurisdiction of the GNCTD in relation to land in NCT?

Any intervention to improve the living conditions in JJ Clusters will affect the land on which the settlement sits. Under the Indian Constitution, subjects of land, land records, land revenue and related subjects are in the State List in Schedule-VII of the Constitution. On the other hand, Delhi, as a Union Territory, has a special status under Article 239AA of the Constitution. In *Gov. of NCT of Delhi v. Union of India & Anr.*<sup>5</sup> the Supreme Court clarified the administrative setup in Delhi. The Supreme Court held that the Parliament has power to make laws for the NCT in respect of any of the matters enumerated in the State List and Concurrent List. This means that, in the ordinary scheme of things, Parliament has full competence to pass laws relating to land in Delhi, while the **GNCTD Legislative Assembly would be barred from legislating on matters concerning land.** This is a strong constraint for a Delhi Government in creating a city wide JJ Cluster improvement scheme.

<sup>5</sup> See 2018 SCC OnLine SC 661.

<sup>6</sup> Section 41 of the DDA Act.

<sup>7</sup> Section 9 of the DDA Act.

<sup>8</sup> Section 12 (3) The redevelopment scheme referred to in sub-section (1) may provide for

Importantly, the Delhi Development Authority, one of the largest landowners in the NCT, on whose land many JJ Clusters lie, comes under the direct jurisdiction of the Government of India.<sup>6</sup> Development plans made by the DDA, and any scheme for improvement they might entail, need to be submitted to the Central Government for approval.<sup>7</sup>

### 1.2 What options does the GNCTD then have in relation to provision of land tenure?

A possible opening for the GNCTD then is the Delhi Urban Shelter Improvement Board (DUSIB) Act. The Act provides a possible alternative legal basis for the GNCTD to provide both improvement and land tenure for JJ Clusters. For physical improvement, Section 9 of the DUSIB Act gives the DUSIB Board powers to make surveys of JJ Clusters, while Section 12(1) provides for schemes of redevelopment. Section 12 (1) allows DUSIB to, “with the consent of the owner of the land on which the *jhuggi jhopri basti* is situated, work out schemes for collective community rehabilitation, relocation or in-situ upgradation and involve private sector/slum cooperatives for redevelopment of the basti....”

The ability to do material improvement must be read along with Section 12(3)<sup>8</sup> that allows the provision of secure tenure. The section provides that the scheme imagined in Section 12 (1) above may provide for construction and

construction and disposal by sale or lease of land for commercial, residential, institutional and light industrial use or any one or more of them as per the provisions of the Delhi Development Act, 1957 (61 of 1957) and those of the Master Plan for Delhi and Zonal Development Plans, etc. prepared thereunder.



disposal by sale or lease of land for commercial, residential, institutional and light industrial use or for any one of them as per the provisions of the DDA Act and those of the Master Plan for Delhi and Zonal Development Plans, etc. prepared thereunder.<sup>9</sup>

Such terms thus allow DUSIB to provide freehold or leasehold forms of tenure to residents, subject to the consent of the owner of the land. Where DUSIB itself is the owner of the land, it thus has the authority to use such land for an improvement scheme. Where the Central Government is the owner, prior approval would have to be sought, as reinforced in the proviso to Section 12(4).

**DUSIB thus may be read to have the immediate ability to act on JJ Clusters on its own land, and then restricted ability to act on JJ Clusters owned by other state agencies.**

This would vary across different agencies. For the DDA, permission would be with the Central Government but, for instance, in case of land owned by the Municipal Corporation of Delhi, the Commissioner of the Corporation is vested with the entire executive power for the purpose of carrying out the provisions of the Delhi Municipal Corporation Act, 1957 (DMC Act). He also has the power to perform all the duties specifically conferred or imposed upon him by the DMC Act or by any other law for the time being in force,<sup>10</sup> and could, by processes defined under the Act,<sup>11</sup> provide consent for improvement schemes for JJ Clusters on municipal land.

<sup>9</sup> Section 21 gives further rights to DUSIB to choose between different models of allocation and tenure grants but those are in the context of resettlement. We are focusing here on sections in the DUSIB Act that refer to in-situ redevelopment as it is the mandate of the jahan jhuggi, jahan makaan schematic.

<sup>10</sup> Section 59 of the DMC Act.

### 1.3 Can the Delhi CM pass a scheme through DUSIB?

Section 3(4) of the DUSIB Act provides for the composition of the DUSIB Board. The Chairperson of the Board is the Chief Minister of Delhi and a large number of the Board members are from the GNCTD. The Board, as we have argued above, has the mandate under the Act to initiate schemes of improvement. The Government of Delhi, can, therefore, acting through the Board, create a scheme of JJ Cluster improvement to be implemented through DUSIB. Such a scheme would be able to proceed immediately on land owned by DUSIB or the Government of Delhi. It would, if approval was given, also be able to extend to public land owned by other agencies or on private land. That the DUSIB Act envisages this relationship to the Delhi Government is further emphasized in Section 54 which mandates that all rules and regulations made under the Act be laid down before the Legislative Assembly of the Government of Delhi, and Section 25 that requires the Board to table and seek approval of its annual report in the Legislative Assembly.

Such a scheme would, however, have to engage with the Government of India specifically through the office of the Lt. Governor of the NCT. "Government" in the DUSIB Act is defined to mean the Lt. Governor of the National Capital Territory of Delhi who is appointed and designated as such by the President under Articles 239 and 239AA of the Constitution.<sup>12</sup>

<sup>11</sup> The DMC Act provides for the method of deciding questions and provides that all matters required to be decided by the Corporation shall be decided by the majority of the votes of the members and functionaries referred to in "sub-clauses (ii), (iii) and (iv) of clause (b) of sub-section (3) of section 3 of the DMC Act present and voting."

<sup>12</sup> Section 2(d) of the DUSIB Act.

The question of whether the DUSIB Board, under the Chairmanship of the Chief Minister of Delhi, would require approval or concurrence from the Lt Governor is a pressing and contemporary question of law. Article 239AA(4) of the Indian Constitution provides that there shall be a council of ministers of not more than ten percent of the total number of members in the Legislative Assembly, with the Chief Minister at the head, to aid and advise the Lieutenant Governor in the exercise of his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, required to act in his discretion.

Provided that in the case of difference of opinion between the Lieutenant Governor and the Ministers on any matter, the Lieutenant Governor shall refer it to the President for decision and act according to the decision given thereon by the President and pending such decision it shall be competent for the LG in any case where the matter, in his opinion, is so urgent that it is necessary for him to take immediate action, to take such action or to give such direction in the matter as he deems necessary.

In the case of **Gov. of NCT of Delhi v. Union of India & Anr.**,<sup>13</sup> the Supreme Court held that the position of Delhi is different from other

states and the elected Government is under an obligation to apprise the Lieutenant Governor about policy decisions. On the issue of concurrence, the Court said there was no need for fundamental concurrence of LG in every aspect and there should be an exceptional situation or reason in case of difference of opinion over the decision of government. Thus, the word “any matter” in Article 239AA (4) does not mean “all matters” or every matter. As per the Court, only in “exceptional” situations should the LG refer an issue to the President when he has serious difference of opinion with the decision taken by the council of ministers headed by the Delhi Chief Minister. The Lt Governor, therefore, may object in this manner to a JJ Cluster improvement scheme but should do so only in case of an “exceptional” disagreement with the scheme or its provisions.

Further, Sections 44<sup>14</sup> and 45<sup>15</sup> of the DUSIB Act give power to the LG to: (a) satisfy himself as to the legality or propriety of any decision or order made by the DUSIB board and the power to revise or modify, revise or annul such order; and (b) hear in appeal a grievance by any person aggrieved by any notice, order or direction issued or given by the Board under the DUSIB Act within 30 days.<sup>16</sup>

<sup>13</sup> Supra fn 4.

<sup>14</sup> 44. The Lieutenant Governor may either suo moto or on an application, call for and examine the record of any proceedings or decision or order passed by the Board for the purpose of satisfying himself as to the legality or propriety of any decision or order passed, and, if in his opinion any such decision or order should be modified, annulled or revised, may, after giving the persons affected thereby an opportunity of being heard, pass such order thereon as he may deem fit: Provided that every application to the LG for the exercise of powers under this section shall be

preferred within ninety days from the date on which the proceeding, decision or order to which the application relates was communicated to the applicant.

<sup>15</sup> 45 (1) Any person aggrieved by any notice, order or direction issued or given by the Board under this Act, may, within thirty days from the date of receipt of the notice, order or decision, appeal to the LG.

<sup>16</sup> As per the proviso to Section 45 (1), the LG may also entertain an appeal after the expiry of the thirty day period if he is satisfied that there was sufficient cause for the same.

Thus, the LG may deliberate on, satisfy himself to propriety of decisions and any decision made by the DUSIB Board and modify such decision or order. He may also refer it to the President for decision depending upon his discretion if he feels that there is an exceptional or *good enough* reason to do so.

### **In summary**

The Delhi Government is limited in several ways from acting on its manifesto promise due to the nature of governance in Delhi and restrictions from legislating on matters pertaining to land. However, it does have significant room for maneuver to act on JJ clusters that are on DUSIB or Government of Delhi owned land, and has the legal right to be able to undertake improvement schemes through DUSIB on these clusters. The question then is: what part of Delhi's existing JJ clusters fit these conditions? How many households will be eligible for such improvement? We turn to this in Part II.

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## PART II: SPATIAL ANALYSIS OF ELIGIBLE JJ CLUSTERS

### 2.1 JJ Clusters eligible for a Delhi Government Scheme

DUSIB has prepared a list of 675 slum clusters and 82 additional JJ Clusters, based on land-owning agencies. This represents the most recent public data on JJ clusters in Delhi though studies have expanded on these assessments.<sup>17</sup> Table 1 summarises.

**Table 1: Details of JJ Clusters under Land-owning Agencies**

| Sl.No. | Land Owning Agency  | Land Area (in hectares.) | Number of JJ clusters | Number of Dwelling units | Density (in DU/hectares) |
|--------|---------------------|--------------------------|-----------------------|--------------------------|--------------------------|
| 1      | DDA                 | 343.91                   | 365                   | 157217                   | 457.14                   |
| 2      | Forest Department   | 114.73                   | 12                    | 4497                     | 39.20                    |
| 3      | DUSIB               | 98.53                    | 106                   | 47206                    | 479.12                   |
| 4      | Railway             | 96.60                    | 69                    | 46554                    | 481.94                   |
| 5      | MCD                 | 31.13                    | 47                    | 12279                    | 394.38                   |
| 6      | L&DO                | 24.19                    | 34                    | 10098                    | 417.46                   |
| 7      | CPWD                | 13.06                    | 21                    | 4743                     | 363.10                   |
| 8      | PWD                 | 10.52                    | 11                    | 2457                     | 233.57                   |
| 9      | Cantt. Board        | 6.03                     | 7                     | 2751                     | 456.53                   |
| 10     | NDMC                | 6.54                     | 8                     | 5578                     | 852.78                   |
| 11     | Other State Govt.   | 48.64                    | 37                    | 10331                    | 212.38                   |
| 12     | Other Central Govt. | 36.27                    | 27                    | 14334                    | 395.25                   |
| 13     | Miscellaneous       | 12.70                    | 13                    | 3973                     | 312.83                   |
|        | <b>Total</b>        | <b>842.85</b>            | <b>757</b>            | <b>3,22,018</b>          | <b>382.06</b>            |

Source: DUSIB. Available at: <http://delhishelterboard.in>

It is clear that the Delhi Development Authority (DDA) – under the jurisdiction of the Central Government – is the largest institutional stakeholder for JJ Clusters. It holds the highest quantum of area under JJ clusters (343.91 hectares), accounts for the highest number of dwelling units (157217) as well as the number of JJ clusters themselves (365). This is a clear obstacle towards universal coverage of a Delhi Government improvement scheme. Our analysis in Part 1 suggested, however, that JJ clusters on DUSIB land are available to the Delhi Government.

What does this imply for the full scope of a Delhi Government's mission?

DUSIB has 106 JJ clusters under its jurisdiction. These clusters make around 12% of the total land under JJ clusters in Delhi (98.53 hectares), 14% of their total number (106) and around 15% of the total dwelling units under JJ clusters (47,206). **This implies that even a limitation on focusing on JJ clusters under DUSIB will enable the Delhi Government to make a significant impact under an**

<sup>17</sup> See Bhan et al (2020) *Isn't there enough land?: Spatial assessments of land under "slums" in New Delhi*. Indian Institute for Human Settlements: Bangalore. DOI: <https://doi.org/10.24943/IWPHPP.2019>. Available at: <http://iihs.co.in/knowledge-gateway/isnt-there-enough-land-spatial-assessments-of-slums-in-new-delhi>.

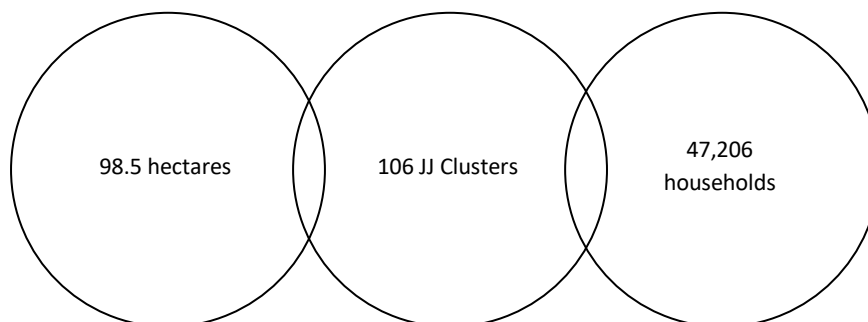
**improvement scheme, reaching over forty seven thousand households.**

What do we know about these 106 clusters? Map 1 shows the spatial distribution of JJ clusters under DUSIB. These overlap across Delhi's three municipal corporations who are key actors in service provision as part of JJ Cluster improvement. North Delhi Municipal Corporation holds the highest numbers of JJ clusters (44) under DUSIB land followed by East Delhi Municipal Corporation and South Delhi Municipal Corporation with 33 and 29 JJC's respectively.

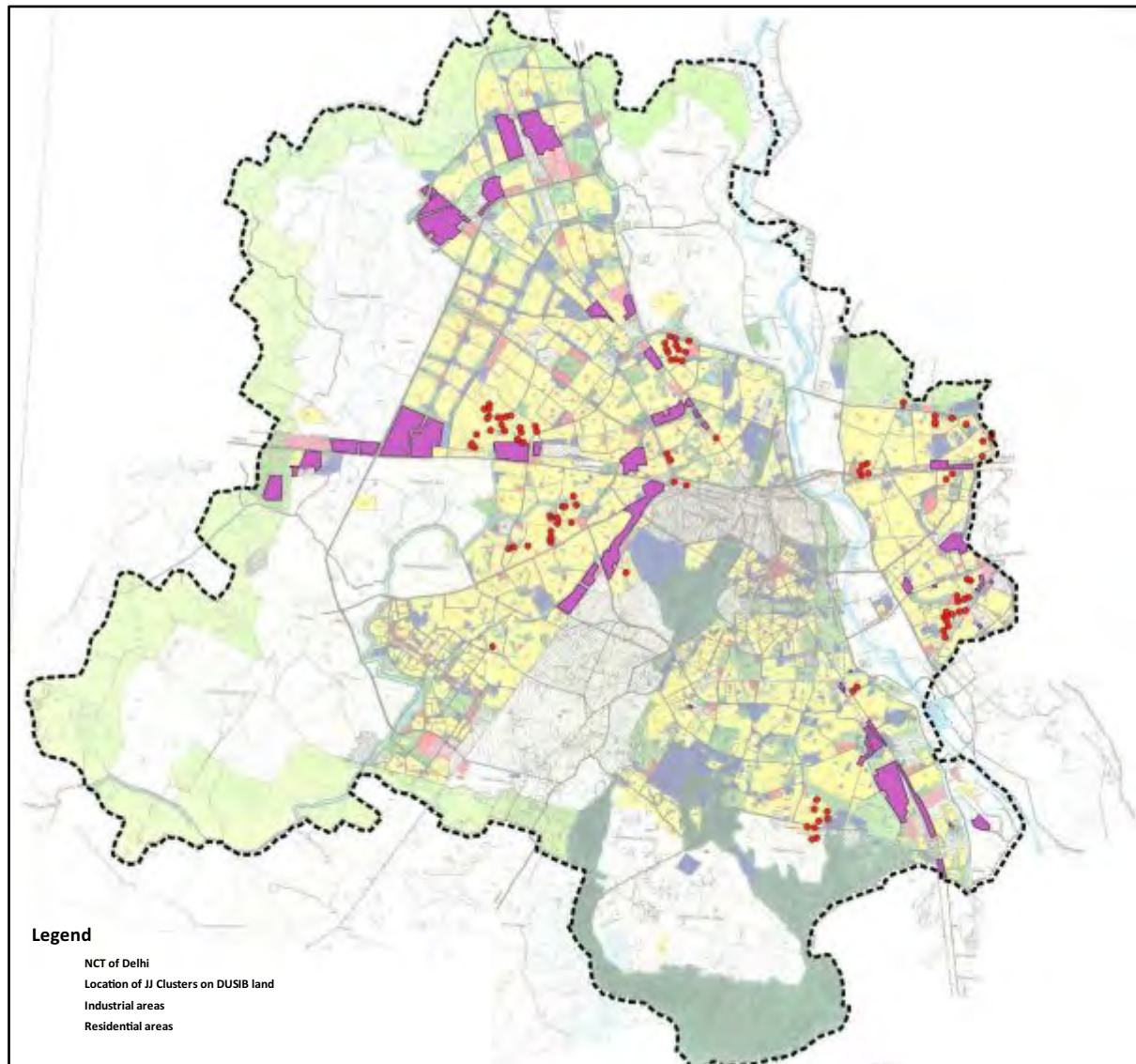
Besides this, spatial location of JJC's also depicts a direct and strong correlation

between location of JJC's and industrial development. For instance, on the western part, most of the JJC's are situated next to industrial areas like Mangolpuri, Udyog Nagar, Khayala, Peeragarhi, Mayapuri, Naraina, Kirti Nagar etc. In central Delhi, JJ clusters are situated near Anand Parbat industrial areas; on the eastern side JJC's are either situated near Patparganj, Pandav Nagar mother dairy, Jhilmil, New Mandoli or Shahdara industrial areas. On the northern axis, clusters are located near Wazirpur, Shalimar village and Badli industrial areas. The pattern reveals yet again the centrality of proximity to employment in choosing housing for workers, and reinforces the importance of an in-situ improvement scheme as promised in the manifestos.

**Figure 1 The Extent of a Delhi Government Scheme Implemented on DUSIB Land**



**Map 1: Map showing the location of JJ clusters in DUSIB land within the jurisdiction of civic bodies**



Source: *The Master Plan of Delhi 2021*, <http://delhishelterboard.in>. and author's analysis

## 2.2 Spatial Analysis

Improvements imply a need to understand the existing spatial and material fabric of JJ Clusters, and they also need to meet planning regulations under the Delhi Master Plan given the specification under Section 12 of the DUSIB Act. In this section, four parameters have been identified to conduct such spatial analysis: (a) Plot size, (b) Dwelling unit density, (c) Floor Area Ratio, and (d) locational proximities. We use these to assess the total 106 JJ Clusters further and measure them against planning regulations.

### Plot size

One important criteria to be eligible for improvement is planning regulations. According to the Master Plan of Delhi 2021 (Section 4.2.3.4), the minimum plot size for “collective community rehabilitation/ relocation/ in-situ up-gradation of JJ clusters” is 0.2 hectares, with a 10% relaxation allowed by the DDA’s technical committees. Our analysis shows that 74 percent of the 106 JJ Clusters are larger than 0.18 hectares, and only 28 JJs are under the category below 0.18 hectares. **The large majority, therefore, are eligible for improvement.**

Table 2 shows the distribution of the 106 clusters by size. The variation in size is an important consideration to ensure that schemes of improvement design are tailored to specific settlements and not reduced to a

one size-fits-all model of either vertical redevelopment or upgrading or reconfiguration. At the very least, different models will have to be created by a mix of plot size and density. **What this distribution of 106 does indicate is that the eligible clusters are small: it is likely that upgradation and improvement models will be more viable than vertical redevelopment on small plot sizes.**<sup>18</sup>

### Dwelling Unit Density

According to the Master Plan of Delhi 2021 (Section 4.2.3.4 (ii)), the maximum permissible dwelling unit density is 900 DU/ hectares. Our analysis shows that 85 percent of the 106 JJ Clusters have a dwelling unit density of less than 900 DU/ hectares, with approximately 15 percent of JJs at higher density.<sup>19</sup> Table 3 tabulates this.







Taken together, in reference to the minimum plot size and maximum dwelling unit density approximately, **75 percent of the 106 JJ Clusters already meet planning criteria.** In the remaining, the scheme will have to make adjustments in design for density, or seek exemptions. Map 2 illustrates. **Here again, we see that given small plot sizes that are medium to high density, it is likely that upgradation and improvement models will be more viable than vertical redevelopment.**

<sup>18</sup> See also Harish, S (2019) *Assessment of In-Situ Slum Redevelopment Models*. Indian Institute for Human Settlements: Bangalore.







<sup>19</sup> It is worth noting that section 4.4.3 (B) iv of the Master Plan states that “the Central Government

may relax density and other norms in consultation with DDA for public housing and projects of national importance”.

**Table 2: Area of JJ Clusters**

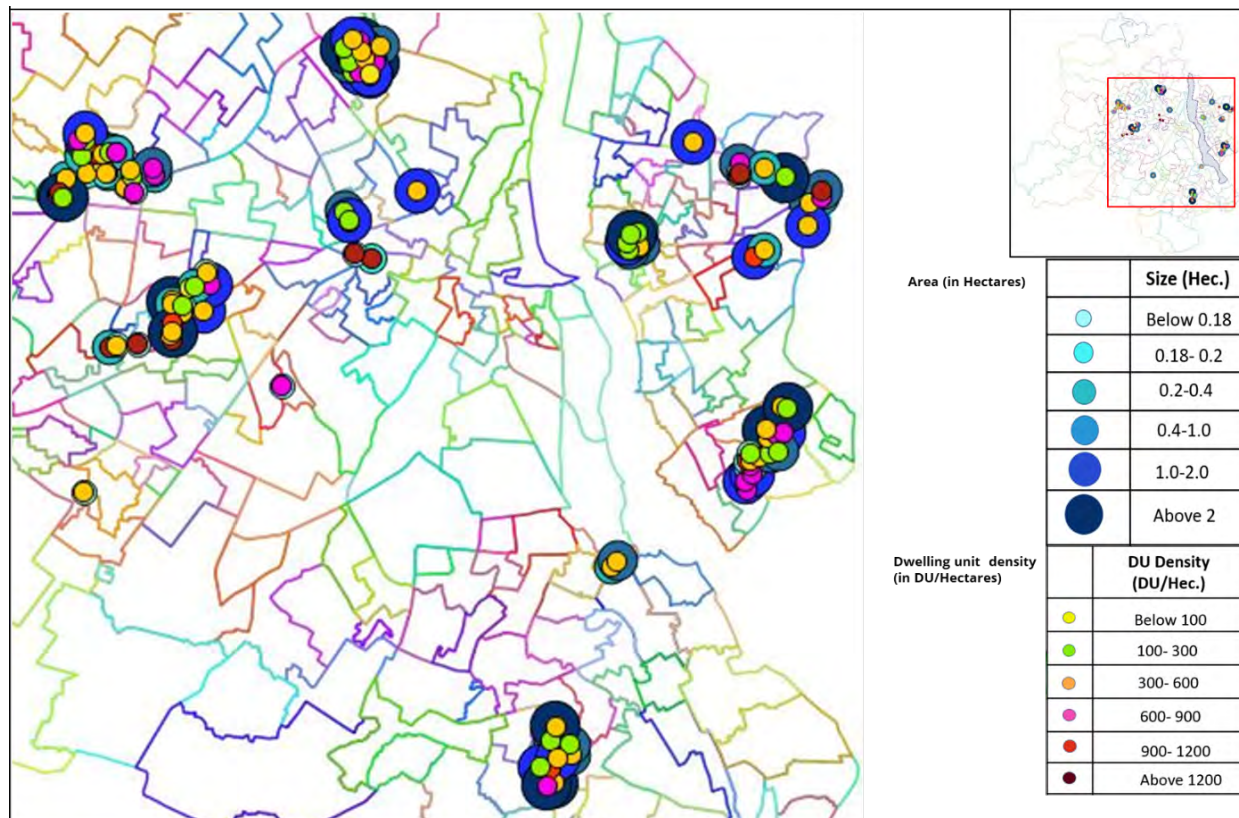
|   | Size (Hec.)  | Nos. of JJ clusters |
|---|--------------|---------------------|
|  | Below 0.18   | 28                  |
|  | 0.18- 0.2    | 03                  |
|  | 0.2-0.4      | 21                  |
|  | 0.4-1.0      | 21                  |
|  | 1.0-2.0      | 19                  |
|  | Above 2      | 14                  |
|   | <b>Total</b> | <b>106</b>          |

**Table 3: Density in HH/Hectare**

|   | DU Density (DU/Hec.) | Nos. of JJ clusters |
|---|----------------------|---------------------|
|  | Below 100            | 03                  |
|  | 100- 300             | 24                  |
|  | 300- 600             | 41                  |
|  | 600- 900             | 22                  |
|  | 900- 1200            | 07                  |
|  | Above 1200           | 09                  |
|   | <b>Total</b>         | <b>106</b>          |



**Map 2: Map showing the relationship between dwelling units and size of the JJC's under DUSIB land**



Source: <http://delhishelterboard.in> and author's analysis

### Floor Area Ratio

Floor Area Ratio (FAR)/ Floor Space Index (FSI) is the ratio of a building's total floor area (gross floor area) to the size of the piece of land upon which it is built. Based on initial surveys of the 106 JJ Clusters, most are on ground floor only and therefore the overall existing maximum FAR seems to be around 100. According to the Master Plan of Delhi 2021 Section 4.2.3.4 (iii), improvement schemes for JJ Clusters are allowed a maximum FAR of 400 on the residential component of the land. There is thus great scope to develop these JJC's in an optimum way utilising available FAR within guidelines

for collective community redevelopment of slum & JJ clusters, resettlement colonies.<sup>20</sup>

### Cluster based development

According to the Master Plan of Delhi 2021 (Section 4.2.3.4, (v)), "specific situations may require clubbing of scattered squatters with JJ sites in the neighbourhood to work out an overall comprehensive scheme." Our analysis, presented in Map 2 above, shows one more important finding: most of the 106 JJ Clusters are located close to each other, forming, as one possibility, about five clear clusters. Hence, these could be selected based on the

<sup>20</sup> The Master Plan of Delhi 2021, Chapter 4 Shelter, section 4.2.3.4 (iii)



formation of cluster under the guidelines for the collective community redevelopment of slum & JJ clusters, resettlement colonies<sup>21</sup>. Cluster based redevelopment has the possibility of using adjacent land effectively for density management, infrastructure and service provision as well as improved and new housing. The clusters also vary from medium to high plot sizes, as well as medium to high densities. As argued above, the clustering towards the higher end of the spectrum on both indicators argues, relatively, for a focus on improvement and consolidation approaches rather than large scale vertical redevelopment.

### **In summary**

A Delhi Government scheme for improvement will be able to impact a large number of JJ Clusters and reach over 47,000 households, even with jurisdictional limitations that arise from NCT's governance structure. The scheme will be applicable in 106 JJ Clusters, and our analysis suggests that a large majority are compliant under planning regulations for improvement. These JJ Clusters vary in plot size, density and layout and care will have to be taken to not use a one-size-fits-all improvement scheme. An initial analysis of plot size and built-up densities, however, indicate that upgrading approaches will be more suitable than vertical redevelopment. Finally, their locational characteristics suggest that grouped cluster based approach, already permitted and imagined in the Delhi Master Plan 2021, can be considered which could be leveraged for significant advantage in providing infrastructure, services and spatial amenities to residents.

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<sup>21</sup> The Master Plan of Delhi 2021, Chapter 4 Shelter, section 4.2.3.4 (v)

### PART III: FORMS OF TENURE SECURITY

Housing is not just physical housing units. Critically, and especially in the case of JJ Clusters that have often been built by people in tension with formal logics of law and master plans, security of tenure is as important as material and physical conditions. UN-Habitat has resolved that it is “the right of all individuals and groups to effective protection by the state against forced evictions. People have secure tenure when there is documentation that can be used as proof of secure tenure status, or there is either de facto or perceived protection from forced evictions.”<sup>22</sup> We visualise tenure security as a spectrum of forms and rights, along which a particular model may lie. In this section, we start by introducing the types of rights and the spectrum of forms of tenure security. Using these we illustrate the different types of models that may be possible for the Delhi Government to use, illustrated with an example or two of each, and present a comparison between the same.

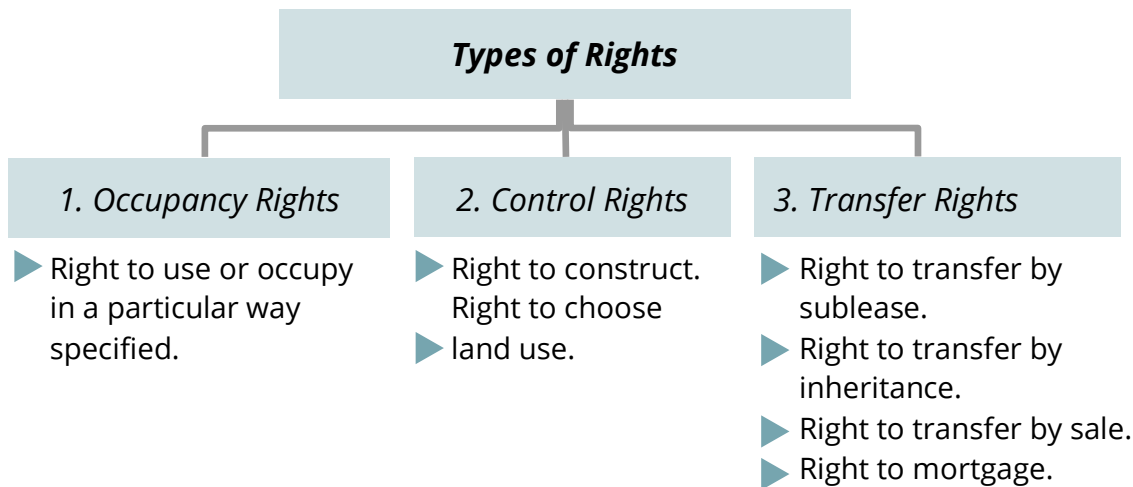
**As we established in Part 1, each of the forms of tenure below can be used by the Delhi Government on the 106 JJ Clusters we are analysing.** For these JJs, the government

has the jurisdiction to offer forms of tenure that allow residents to use, control and transfer housing thereby effectively giving them both tenure security and a wider range of the functions of property rights. The question then is which form of tenure to use. We approach this question in two ways. First, we ask what is the instrument or form of tenure (lease, title, patta, license etc)? Second, we further assess: what rights does this form allow residents to exercise? As Figure 2 illustrates, *de jure* rights on tenure are of three kinds which may be awarded to an individual or a collective, and be given on land or on built structures. We use the term ‘built structure’ to refer to any buildings, houses, tenements that may be built over the land in reference. These three kinds are:

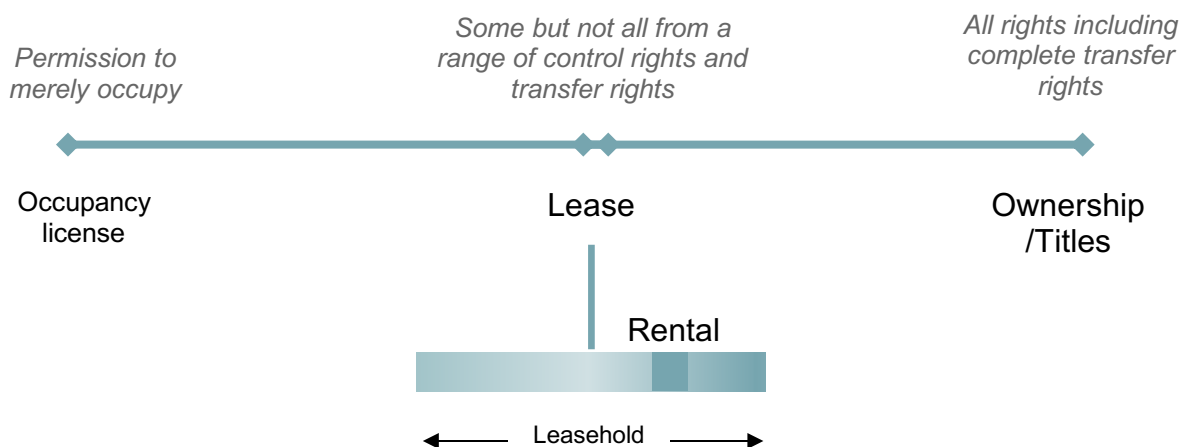
1. Use/Occupancy rights: Permission to use land (or built structures) in a specific way.
2. Control Rights: These include the right to construct; the freedom to carry out any kind of use without interference or need for prior permission.
3. Transfer Rights: The rights to transfer by sale; transfer by sublet; transfer by inheritance; or right to mortgage.

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<sup>22</sup> See UN-HABITAT (2006) *Analytical perspective of pro-poor slum upgrading frameworks*

**Figure 2: Types of rights associated with tenure security**

As illustrated in Figure 3, these combinations of rights may be reorganised under three broad forms of tenure security that are actually given to residents. These are: (a) occupancy licenses, (b) leases and (c) ownership forms such as titles. We wish to highlight rental housing as one of the subcategories of lease.

**Figure 3: Broad forms of tenure security**

Among these, while occupancy and ownership forms are relatively straightforward in their interpretation, leases are in themselves a larger umbrella category holding within itself many other forms enabling varied permissions of use for residents depending on specific terms. These then translate into varied degrees of security. Let's suppose in, say, case A, households in a settlement are awarded the rights on land to occupy and rights to construct, but no transfer rights. Not

having transfer rights would limit their ability to acquire financing from banks through mortgage for purposes like construction. In another case B, let's say that households are awarded all the rights as in A, in addition to one of the transfer rights, the right to sublease. Since complete rights are not offered, both A and B are examples of the same form of tenure security (leases). However, the addition of transfer by sublease results in notably different degrees and uses

of tenure security. Further, a few years into the future, settlements A and B could be very different in the demographics, average rate of construction and mix of residents (and tenants).

The broad forms listed above may be further sub-classified depending on whether they are awarded to individuals or collective, and if they are awarded on land or built structures. Figures 4 and 5 illustrate the diverse forms, and we enumerate the same below:

1. Occupancy license (individual)
2. Leasehold forms of tenure:
  - 2.1- Individual leasehold rights on land
  - 2.2- Individual leasehold rights on built structures
  - Rental Housing
  - 2.3- Collective leasehold rights on land
  - 2.4- Collective leasehold rights on built structures
3. Ownership forms of tenure:
  - 3.1- Individual ownership rights on land
  - 3.2- Individual ownership rights on built structures
  - 3.3- Collective ownership rights on land

### 3.4- Collective ownership rights on built structures

We explore each in turn.

#### 1. Occupancy license:

An occupancy license stops at just giving recognition that a certain person resides on given land, thus giving the person the permission to occupy that space for a certain period of time, subject to conditions as may be specified in the license. It may have further restrictions on the kind of uses allowed. It doesn't include any of the other control or transfer rights, which often means the awardee would not be able to construct anything even as they may have the right to reside. For these reasons, it might also prove to be limiting in terms of access to infrastructure. Occupancy certificates are the least secure form of land tenure but they do offer protection against forced eviction and represent an incremental improvement in the degree of tenure security of residents. **They may be used as a last resort in areas where no other form of tenure is possible.**

## EXAMPLES OF OCCUPANCY LICENCES

**Slum networking Programme (SNP), Ahmedabad:** SNP was envisaged as a way of separating tenure from provision of services in slums. It allowed slums to be upgraded without necessarily requiring ownership or leasehold forms of tenure security as a prerequisite to accessing infrastructure and services. Households would contribute to a chunk of the upgradation costs to be eligible.<sup>23</sup> While SNP was not designed with the intention of providing tenure, Ahmedabad Municipal Corporation (AMC) did award a 10 year no-eviction guarantee to households in select slums. AMC however also reserved the rights to relocate households in said areas if they came to be commercially desirable post this period.<sup>24</sup>

**Certificates of Comfort, Trinidad and Tobago:** A Certificate of Comfort is a document issued by the government to an individual giving the latter a personal right to protection from ejectment from state land. It doesn't create an interest in land, however it provides a guarantee that the individual may be provided a lot in the event of relocation.<sup>25</sup> The individual/household needs to fulfill criteria of eligibility including proof of residence before a cutoff date of 01 Jan 1998 and having applied for regularisation prior to 27 Oct, 2007.<sup>26</sup>

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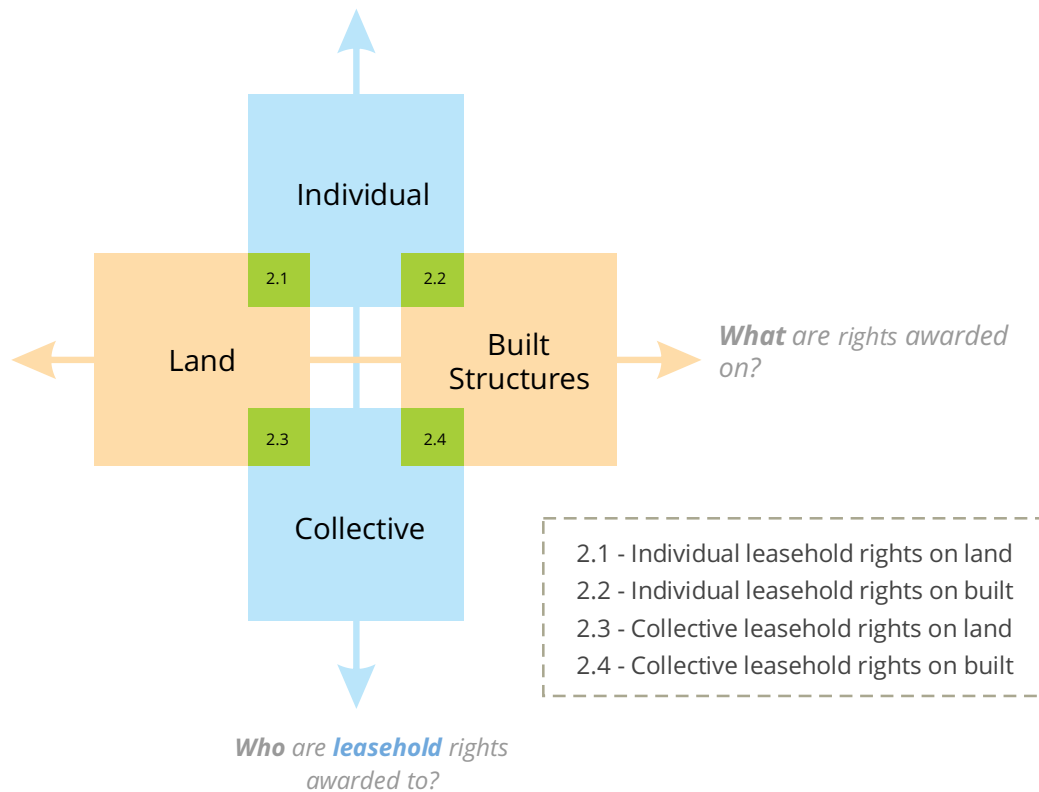
<sup>23</sup> See Annez, P.C. et al (2012) *More but Different Government for "Slum Free" and Liveable Cities*. World Bank Group: Washington, D.C

<sup>24</sup> See Sato, Y. (2017) *Coping with the Threat of Evictions: Commercialisation of Slum Development, Marginalisation of NGOs and Local Power Play in Ahmedabad*. CEPT University: Ahmedabad.

<sup>25</sup> See State Land (Regularisation of Tenure) Act (1998) : Chapter 57:05. Retrieved from [https://rgd.legalaffairs.gov.tt/laws2/Alphabetical\\_List/lawspdfs/57.05.pdf](https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/57.05.pdf)

<sup>26</sup> See Government of Trinidad and Tobago (2017) : Presentation of Certificates of Comfort.

Figure 4 Forms of leases



## 2. Leasehold rights

Anything that awards more than the permission to occupy land but does not award complete and uninterfered interest in land falls within the bracket of leasehold. The degree of security and freedom of use are subject to the terms of the lease and may be over a wide range. As discussed earlier, these may be awarded to the community or to individuals, and may be awarded on land or built structures. Below, we have made a distinction between these four variables (as shown in Figure 4) and have illustrated them with examples. **It is important to note in all these forms that ownership of the land remains with the government, while control rights accrue to residents for specific periods of time.**

### 2.1 Individual leasehold rights on land

Leasehold rights are awarded on land to individuals. Models with this form of tenure can have a varied range of rights and freedom, subject to the terms of the lease. In Delhi's case, it is notable that leasehold forms ranging from 30 year leases to 99 year leases have been common for elite and public housing, including DDA housing. This is a form of tenure well known in Delhi's urban systems that keeps ownership ultimately in public hands while allowing long term secure tenure to residents.



## EXAMPLES OF INDIVIDUAL LEASEHOLD RIGHTS ON LAND

**Nagariya Kshetro ke Bhomihin Vyakti, Madhya Pradesh:** The Madhya Pradesh Patta Act confers leasehold rights to the landless in a 5 km radius of urban areas. Provided that the household fulfills criteria of eligibility, there are different caps on area of land that may be awarded title based on jurisdiction. The act states that households on public areas as roads and parks may be relocated elsewhere in public interest and be given leasehold rights elsewhere. Households are given the right to construct and may use the land only for residential purposes. Transfer by sale or lease isn't allowed, but land may be transferred by inheritance and be mortgageable at nationalised banks, co-operative societies and government undertakings.<sup>27</sup> This measure, while limiting the beneficiaries from rental income and movement to other places, allows for access to finance using the land as collateral.

**Land Rights Certificate, Odisha:** Through LRCs, tenure security is awarded to landless households in slums of urban areas in Odisha with different caps on area of land awarded for tenure based on jurisdiction. Households are given the right to construct and may use the land only for residential purposes. Similar to the aforementioned example, transfer by sale or lease isn't allowed, but land may be transferred by inheritance and be mortgageable for a housing loan from any financial institution.<sup>28</sup> What is noteworthy is the JAGA mission that was launched by the state following this to ensure provision and delivery of social, economic and physical infrastructure in areas where LRCs have been given. An alternative approach that could prove more efficient could have been running the JAGA mission parallel to the titling process.

**Residential License and Certificate of Right of Occupancy, Tanzania:** In order to expand scope of ownership in unplanned urban areas, the Tanzanian Government offers two kinds of titles: Residential License (RL) and Certificate of Right of Occupancy (CRO). RL was designed as a short term renewable lease ranging from 2 years to 5 years that doesn't grant transfer rights either by sale or mortgage. Additionally, the user might have to pay an annual rent for the land, depending on the size and use of the plot.<sup>29</sup> However, it is cheaper and easier to implement than a CRO as unlike the latter, it doesn't require cadastral surveys.<sup>30</sup> While RL wasn't designed

<sup>27</sup> See Madhya Pradesh Act no. 15 of 1984.

<sup>28</sup> See Odisha Land Rights to Slum Dwellers Act (2017)

<sup>29</sup> Sheuya, S. & Burra, M. (2016). *Tenure Security, Land Titles and Access to Formal Finance in Upgraded Informal Settlements: The Case of Dar es Salaam, Tanzania*. Current Urban Studies. 04. 440-460. 10.4236/cus.2016.44029.

<sup>30</sup> See Collin, M. (2017) *Peer Effects in the Demand for Property Rights: Experimental Evidence from Urban Tanzania*. (working paper; no. WPS 81) World Bank Group : Washington, D.C.

to be used as collateral for loans, some microfinance institutions and small banks were reported to allow RL as a form of collateral.<sup>31</sup>

CRO is a long term lease ranging from 33-99 years. It allows the beneficiary to transfer land by sale as well as mortgage.<sup>32</sup> It doesn't give complete ownership to the beneficiary. The State retains powers over the land and may expropriate the land for 'any public purposes'. However the government is legally responsible for relocation and appropriate compensation to the residents. Further, the process of acquiring a CRO is more expensive for a beneficiary, adding to which the state requires payment of back-taxes as far back as 10 years, prior to obtaining the title.<sup>33</sup>

## 2.2. Individual leasehold rights on built structures

In this form of tenure, leasehold rights are awarded to individuals on built structures. A major typology under this form of tenure would be rental housing. An example of this is the newer form of resettlement that is being provided by the government in Delhi like flats (30 sq. m.) in Baprola and Dwarka. In the aforementioned model in Dwarka, the households from a settlement are given the flats on a lease of 10 years and have the right to use the space for residential use. They do not have any transfer rights (mortgage, sublease or sale). Here, no claims to land are possible for residents, and the length of the lease becomes paramount.

Recent experience in lease based forms for built apartments have been limited to ten years, which is a deeply insufficient time to qualify as secure tenure by any measure. Within an in-situ improvement scheme such as *Jahan Jhuggi Wahan Makaan*, if the form of improvement is to redevelop clusters into

new housing units, then the leases on built flats must be at least thirty years to allow inter-generational developmental benefits of housing to accrue to households, even if sale options are activated after fifteen years as is done in some cases. Parity with DDA leaseholds would, however, be best achieved with 99-year leases and rights to transfer incrementally built in.

## 2.3. Collective leasehold rights on land

This type of a model confers tenure rights to a collective of households that come together to form a cooperative or a trust. Depending on the terms of the lease, the community may vest powers to either transfer land by sublease to the households that are its members or it may confer occupancy rights to the households. On many occasions, while households have no interest in land, they may have the right to build and sell the built structures up back to the trust/collective. When working with leasehold rights on land, Group Housing and Plotted Society types become models under this form of tenure.

<sup>31</sup> See Collin, M.; Sandefur, J. and Zeitlin, A. (2015) *Falling Off the Map: The Impact of Formalizing (Some) Informal Settlements in Tanzania* (CSAE Working Paper Series 2015-09) Centre for the Study of African Economies, University of Oxford.

<sup>32</sup> See Ayalew, D.A. et al (2011) *Land Titling in Urban Slums: The Demand Curve for Property Rights & the Price of Female Empowerment*. Unpublished working paper.

<sup>33</sup> See Collin, M. (2014) *The elusive quest for formal property rights in Dar es Salaam*. Presented at Centre for Global Development, Retrieved from <https://www.theigc.org/wp-content/uploads/2014/09/Country-Tanzania-Matt-Collin-Presentation.pdf>

This form is often used when policy makers are concerned that individual forms of tenure could lead to rapid selling – whether authorised or unauthorised – leading to an escalation of land or house prices and thereby, in effect, pricing out low income residents just at the point when their housing becomes formal and legal. Collective forms of

titling can give communities some degree of control over the pace of change in land and housing prices. Legally and culturally, co-operative forms of tenure have long histories in India and in Delhi, albeit on built housing units rather than land, but collective forms of land based tenure may be a significant innovation worth trying.

#### EXAMPLES OF COLLECTIVE LEASEHOLD RIGHTS ON LAND

**Baan Mankong, Klong Bang Bua, Thailand:** Baan Mankong Program is a larger program in Thailand that focuses on various kinds of tenure for slum communities ranging from permission to own land and short term leases (upto 5 years' to more secure forms like long term leases and cooperative ownership with title. Under our current model, we wish to highlight the case of Klong Bang Bua, one such case where collective leaseholds were awarded to the community. Instead of working with a single settlement, a network was made with 3400 families living in twelve settlements along the bank of Bang Bua canal<sup>34</sup>. A 30 year long renewable lease was agreed upon with the cooperative with a rent of 1 Baht per square meter per month, adjustable for inflation every five years. Each family paid rent to the collective which paid the entire amount to the Treasury Department on a yearly basis<sup>35</sup>.

**Community Land Trust, Puerto Rico:** Land is held in perpetuity by the CLT and it provides secure tenure for 2,000 families through rights to occupy land in defined areas. The right to occupy is formalised at the Land Registry. Regularisation can also involve obtaining building permits, resolving inheritance issues<sup>36</sup>. Regulations provide that the CLT cannot resell land and can only sell or rent housing for the members' benefit. When a resident decides to sell, the CLT has an option to buy back the home, so that it then resells the home at an affordable price. When residents mortgage their homes, the CLT appears on the mortgage and has the option to buy back the home if the resident defaults on loan payments. Further, regulations require that the CLT reinvest profits into the communities through a revolving fund for infrastructure projects, buying property, and other priorities set in place by the Comprehensive Development Plan.<sup>37</sup>

<sup>34</sup> See Wungpatcharapon, S. et al (2012) Asian Baan Mankong at Klong Bang Bua Community Guidebook, Retrieved from [http://www.achr.net/upload/downloads/file\\_13122013125418.pdf](http://www.achr.net/upload/downloads/file_13122013125418.pdf)

<sup>35</sup> See Community Organizations Development Institute Bang Bua Canal Community Network in Bangkok : The redevelopment of 12 canal-side communities along Klong Bang Bua here. Retrieved from [http://www.codi.or.th/downloads/english/Baanmankong/Canal\\_side/Bang%20Bua%20Story%20March%202006.pdf](http://www.codi.or.th/downloads/english/Baanmankong/Canal_side/Bang%20Bua%20Story%20March%202006.pdf)

<sup>36</sup> See World Habitat Awards (2015) *Caño Martín Peña Community Land Trust*. Retrieved from <https://world-habitat.org/world-habitat-awards/winners-and-finalists/cano-martin-pena-community-land-trust/#award-content>

<sup>37</sup> See Bachmann, L. (2017, April 28) An Informal Settlement in Puerto Rico Has Become the World's First Favela Community Land Trust. *Rio On Watch*. Retrieved from <https://www.rioonwatch.org/?p=36081>

**Community Land Trust, Voi, Kenya:** CLT in Voi, Kenya entails a two-step process. The community has to first organise itself into a settlement society which in turn has to form a Trust to be able to hold legal title to land<sup>38</sup>. The Society is registered under the Societies Act and is responsible for day-to-day workings of the community based organization. The Trust is registered under the Trustees Act and holds the title while also dealing with matters of land like issuing leases to society members, determining fees for land rental, making decisions on land uses (in conjunction with the society), providing oversight of sale of improvements and controlling any proposed encumbrance, alienation or purchase of land<sup>39</sup>. The members of the community are hence sub-leased that land. This is a highlight of the Voi model of CLT, that it was not completely community centric and there was a retention of individual rights including right to sell the land, right to bequeath housing and land to children and make improvements. CLT, Voi is hence an example of leasehold rights on land awarded to individual comprising members facilitated through leasehold rights on land awarded to the community.

**Slum Rehabilitation Scheme, Mumbai:** This scheme gives provisions to develop land under slums by allowing incentive floor space index in the form of a free sale component of tenements, thereby cross-subsidizing the rehabilitation tenements provided to the residents of these former slums. Facilitated by the Slum Rehabilitation Authority, the development is carried out by private developers who have to achieve a 51% consent from residents of the original slums. In the event a developer fails to start the project 3 months from taking up the project, SRA takes over the work. The rehabilitation component is leased out to the cooperative housing society of slum dwellers for a period of 30 years, renewable further for 30 years. Land under the free sale component is leased out to the society of purchasers of tenements on said land.<sup>40</sup> Further, the tenements under rehabilitation component are not transferable for a period of 10 years, the terms of transfer thereafter as decided by the government.<sup>41</sup>

<sup>38</sup> See Bassett, E. (2005) Tinkering with tenure: The community land trust experiment in Voi, Kenya. *Habitat International*. 29. 375-398. 10.1016/j.habitatint.2003.12.001.

<sup>39</sup> See Bassett, E. M., & Jacobs, H. M. (1997). Community-based tenure reform in urban Africa: The community land trust experiment in Voi, Kenya. *Land Use Policy*, 14(3), 215–229.

<sup>40</sup> From DCPR 2034, Greater Mumbai- 33 (10) VI 1.11 - Premium for ownership and terms of lease-. That part of Government/MCGM/MHADA land on which the rehabilitation component of the SRS will be constructed shall be leased to the Cooperative Housing Society of the slum- dwellers on 30 years. Annual lease rent of Rs. 1001 for 4000 per sq. m. of land or part thereof and lease shall be renewable for a further period of 30 years at a time simultaneously land under free sale component shall be leased directly to the Society/Association of the purchasers of the tenement under free sale component. Pending the formation of the Society/Association of the purchasers in the free sale component with a provision for further renewal for a period of 30 years at a time. The lease rent for the free sale component shall be fixed by SRA.

<sup>41</sup> From DCPR 2034, Greater Mumbai 33(9) (B) 14

## 2.4. Collective leasehold rights on built structures

In this form of tenure, the built structures are leased out to a collective entity, say a cooperative society or a trust. The collective entity doesn't have all rights to the built structures but a combination of some of the control rights, use rights and transfer rights. The collective may sublease parts of the building to its members. The terms of the sublease would determine the rights members may be able to enjoy. The process of decision making by the collective may be informed by guidelines (on quorum, consent etc.) as may be the terms of the collective. The collective entity may be regulated by the relevant law as applicable. For example, cooperative housing societies in India are regulated through respective Cooperative Societies Acts and Cooperative Societies Rules administered by the Registrar of Cooperative Societies appointed by the Government.

One of the forms listed in the Delhi Cooperative Societies Act is "co-ownership co-operative housing society" also known as "house building" or plotted society. In this, the land is held either on lease-hold or free-hold basis by the co-operative society and the houses constructed on it are owned or to be owned by its members.<sup>42</sup> Another form is "co-partnership co-operative housing society",

also known as "group housing". In this, land and buildings are held by the co-operative society on lease and members are allotted parts of built structures on this land for occupation on terms of lease and bye-laws as applicable.<sup>43</sup> Both of these are models of this form when cooperative societies have the built structures on leasehold rights.

A suitable form within the Act, in fact, could be the 'multi-purpose co-operative group housing society' meant specifically for "slum-dwellers or EWS" households which allows functions other than residential to be a part of the group housing, and is geared towards improving quality of life.<sup>44</sup>

## 3. Ownership Rights

Ownership rights give residents transfer rights in addition to use and control rights. Here, land ownership shifts away from current ownership. Such transfer has the advantage of giving households the opportunity for long term tenure security but also the ability to leverage housing as property for both developmental security and wealth creation. Ownership rights have the easiest entry into other connected formal markets like mortgage and finance. Such forms of tenure immediately create formal and legal housing markets though exchange has always existed

<sup>42</sup> 74. (e) (iv) "co-ownership co-operative housing society" means a co-operative society known as "house building" or plotted society in which the land is held either on lease-hold or free-hold basis by the co-operative society and the houses constructed on it are owned or to be owned by its members;

<sup>43</sup> 74. (e) (v) "co-partnership co-operative housing society" known as group housing means a co-operative society in which land and buildings are held by the co-operative society on lease-hold or free hold basis and members are allotted flats or such other premises in such buildings with a right to occupy the same in

accordance with terms of lease, Government's guidelines and the bye-laws of such group housing;

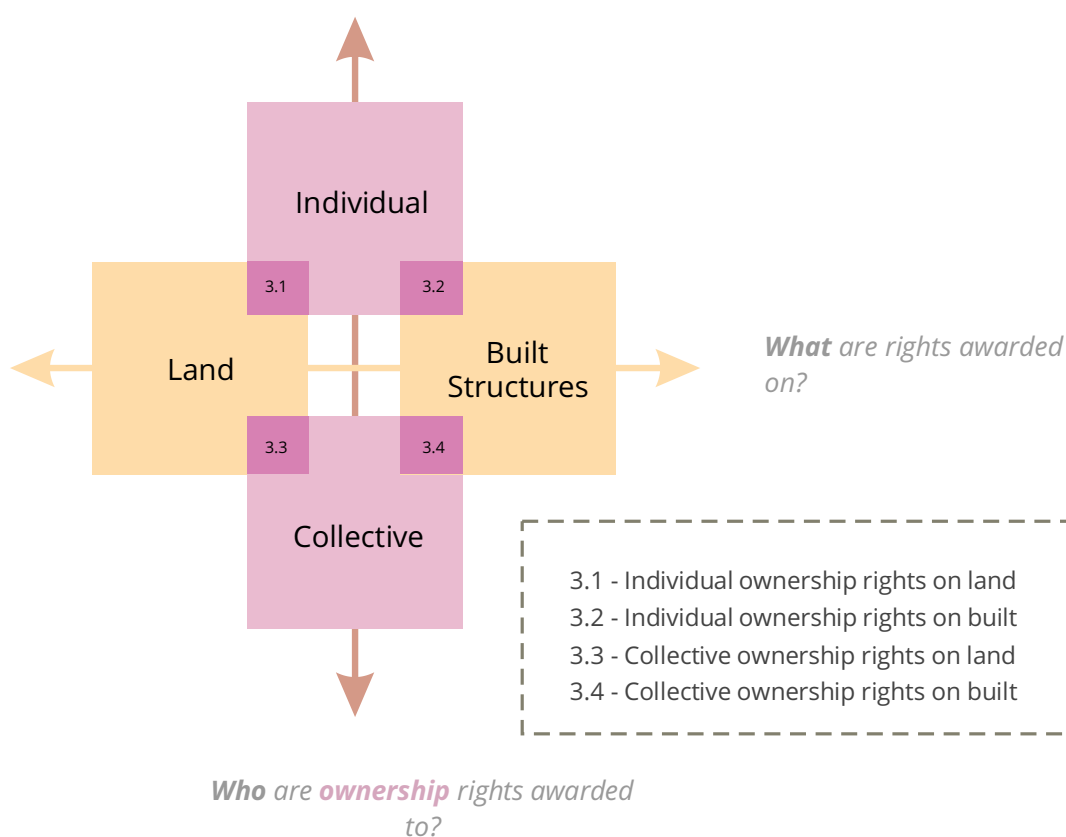
<sup>44</sup> 74. (e) (vi) "multi-purpose co-operative housing society" means a society formed with the object of undertaking multifarious activities for the economic and social development of its members, particularly of slum dwellers and economically weaker sections of the people, in addition to providing better housing accommodation and better environment to improve their quality of life;

in such housing landscapes. This has benefits but, like all markets, it also has risks, including escalation in land and housing prices that can create unaffordability. However, the gains for households are immense and therefore households must balance gains and risks in considering these forms of tenure security. Policy makers, as Part IV will argue in detail,

must therefore use households own consent and preference as the basis of deciding what quantum of risk is acceptable.

Here too, rights can be given to individuals or collectives, and be given on land or on built structures. We illustrate each with examples.

**Figure 5 Forms of ownership**



### 3.1. Individual ownership rights on land

Forms of tenure within this model give full control and transfer rights to households in perpetuity. These thus give freehold, individual titles to households without restrictions and effectively act as a land redistribution strategy. Individual titling is suitable particularly for communities that have long resided in consolidated settlements

and are de facto owners, possibly with even legal claims under adverse possession laws further strengthening their case to be treated as full owners.

### 3.2. Individual ownership rights on built structures

In this form, often used with regularisation, households are given full transfer and control



rights on built structures but not on land, which remains, most often, publicly owned. The distinction from leasehold models is that

registration of the built structure as freehold property in perpetuity.

### **PETT (Programa Especial de Titulación de Tierras), Peru**

PETT was created to improve land titling and provide tenure security to farmers who had informal documents supporting their land ownership status. Cadastre surveys were conducted along with surveys to create a database that included field characteristics, proof of informal rights etc. This database was used by the PETT regional office to issue a Cadastre Certificate. Further this information was used to determine the levels of proof of ownership over the land parcels. If the documents were adequate, the file was processed for registration of ownership rights. In case of inadequate documents, the process allows for issuing a certificate of possession by proving direct, continuous, peaceful and public possession of the land for a specified period (1 year for state land and 5 years for private land). This can be proved by getting a declaration from adjacent neighbours or from producers association in the region. Thereafter it is processed for ownership rights, with a window of 6 months open to issue any complaint.<sup>45</sup> This model is noteworthy as it takes mutual guarantee from members of the community as proof of residence and ownership, in lieu of strong documents, and relies on the community and individuals to verify the multiplicity of claims.

### **Land Titling Program, Lima, Peru**

COFOPRI (Commission for the Formalization of Informal Property) was established in 1990s in Peru following a national policy formulated formalization of informal settlements. It involved four main aspects: campaigns, general strategy, titling procedures and application of system tools. Organized into five phases, the procedure for granting title takes approximately 70 days to complete. 1) Diagnostic phase: This involves the actual identification of and information on informal settlements in the selected areas in terms of socio-physical characteristics. 2) Settlement evaluation: Includes physical and legal analysis of individual settlements to determine constraints to their formalization. For example, if they are located on public land or private property. The final output of this phase is a layout plan and cadaster drawing which is eventually registered at the Urban Registry of Properties (RPU). 3) Verification and application organized in the form of door-to-door census, where residents are informed on the scope and the documents required for regularisation. 4) Evaluation of Application 5) Granting Title deed:

<sup>45</sup> See Fort, R. (2008). *Assessing the impact of rural land titling in Peru: The case of the PETT program*. Paper presented at the World Bank Conference on New Challenges for Land Policy and Administration, 14-15 February, 2008 Washington D.C. Retrieved from <https://pdfs.semanticscholar.org/247b/2c95d9af8d347d5e7287bd322681bab76527.pdf>.

This is the final phase and the output of the entire titling procedure. The title deed is formally granted to the informal residents and archived as registered property.

### 3.3. Community ownership on land

In this form of tenure, the land is owned by a collective entity, say a cooperative society or a trust. The collective entity has all rights to the land, including control and use rights and rights to transfer through sublease, mortgage, sale. The collective may either construct buildings on the land and sublease them to its members. Alternatively, the collective may also sublease the land itself to its members. The terms of the sublease would determine the rights members may be able to enjoy. The process of decision making by the collective may be informed by guidelines (on quorum, consent etc.) as may be the terms of the collective. The collective entity may be regulated by the relevant law as applicable. For example, cooperative housing societies in India are regulated through respective Cooperative Societies Act and Cooperative Societies Rules administered by the Registrar of Cooperative Societies appointed by the Government.

One of the forms listed in the Delhi Cooperative Societies Act is "co-ownership co-operative housing society" also known as "house building" or plotted society. In this, the land is held on free-hold basis by the co-

operative society and the houses constructed on it are owned or to be owned by its members.<sup>46</sup>

### 3.4. Community ownership on built structures

In this form of tenure, the built structures are owned by a collective entity, say a cooperative society or a trust. The collective entity has all rights to the built structures but not the land, including control and use rights and rights to transfer through sublease, mortgage, sale of built structures. The collective may sublease parts of the building to its members. The terms of the sublease would determine the rights members may be able to enjoy. The process of decision making by the collective may be informed by guidelines (on quorum, consent etc.) as may be the terms of the collective. The collective entity may be regulated by the relevant law as applicable. For example, cooperative housing societies in India are regulated through respective Cooperative Societies Act and Cooperative Societies Rules administered by the Registrar of Cooperative Societies appointed by the Government.

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<sup>46</sup> 74. (e) (iv) "co-ownership co-operative housing society" means a co-operative society known as "house building" or plotted society in which the land is held either on lease-hold or free-hold basis by the co-operative society and the houses constructed on it are owned or to be owned by its members;

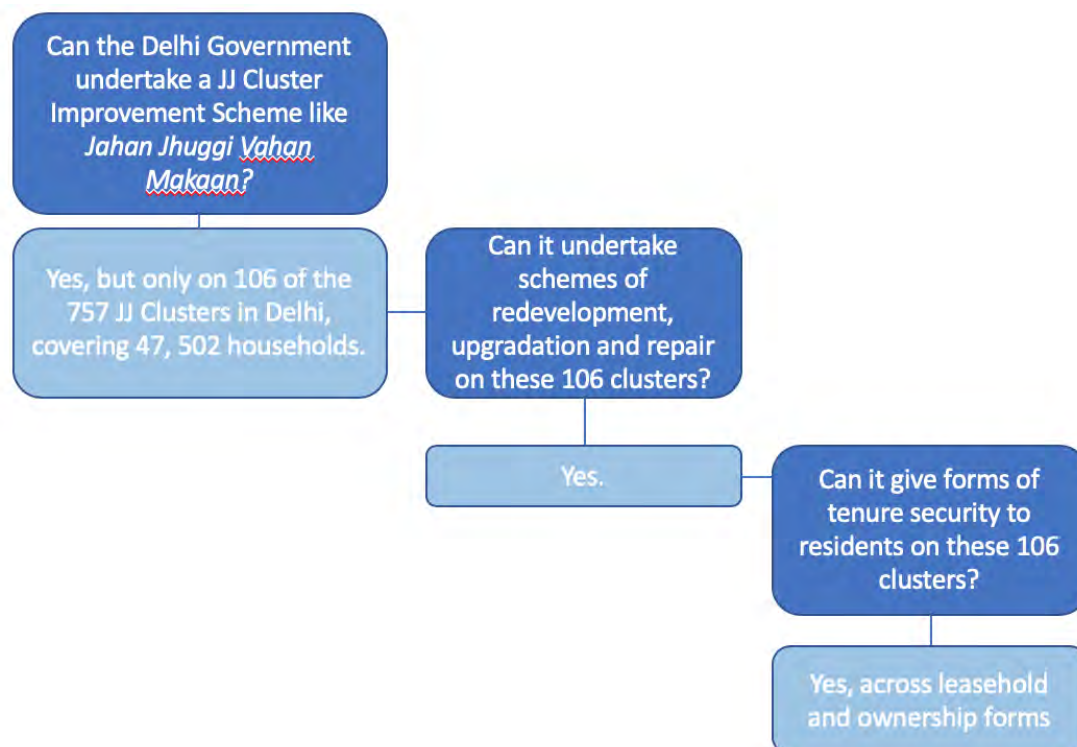
**In Summary**

The Delhi Government has the jurisdiction to give secure tenure to households as part of an improvement scheme in the 106 clusters on DUSIB land. Different forms of tenure can be given to individuals or households, on built structure and/or land. Further, these can be ownership or leasehold based forms. Each form comes with a range of different functions, from occupancy at the most basic to full control and transfer rights at its most extensive. Each of the forms outline above are viable options for the Delhi Government. Different forms of tenure have different consequences for the medium and long term development of settlements. This section has laid out the possible frameworks of tenure forms that can be used, with examples from India and globally of their use. What is critical is that each form comes with constraints and opportunities – the ultimate decision of what form of tenure a particular settlement should have must lie, therefore, with the residents of that settlement alone.

## IN CONCLUSION

The NCT of Delhi is a complex legal and governance environment. The intent of this study has been to examine what the Delhi Government – distinct from the Government of India and its agencies – can do independently to fulfill a now cross-party election promise of improvement in JJ Clusters across the city. This promise of in-situ improvement is a welcome one given Delhi's long and scarred history of eviction and peripheral resettlement. The challenge is to examine the viability of fulfilling this promise within the NCT's dual governance frameworks.

Our analysis finds that a Delhi Government can indeed undertake a scheme of improvement, but with limitations. Without the consent of land owning agencies in the Central Government, Municipalities and other agencies, no scheme in Delhi can be universal. However, acting independently, a Delhi Government scheme can immediately cover 106 JJ Clusters and reach 47, 206 households, covering 14% of all clusters and 15% of all households respectively. Within such a scheme, the Delhi Government has the right to undertake schemes of redevelopment and upgradation in all forms, and has the authority to give wide ranging forms of tenure security across leasehold and ownership forms. Figure 5 summarises.



**Figure 6: What can the Delhi Government Do?**

Beyond the scope of this report but important is to think about what forms of improvement should be undertaken. Policy approaches to affordable housing in India currently favour the building of new units of 25-30 sq. m in vertical towers. While this is one option, we must proceed with caution to treat as the dominant mode of housing delivery. Particularly for Delhi, the plot sizes of the clusters and their attendant densities indicate that vertical redevelopment is unlikely to be either the most feasible or most efficient form of improvement. Approaches that focus on upgradation and repair will likely achieve far better outcomes and at far lower cost outlays. Further, our finding that the 106 eligible clusters naturally lend themselves to cluster based redevelopment should offer significant food for thought for designing improvement schemes.

Similarly, the Delhi Government has multiple options on forms of secure tenure, ranging from individual to collective, leasehold to ownership, and given on land or built structures. Each of these has advantages and disadvantages that ultimately will determine the possibility and risk landscape for households. It is the residents of the

settlements being improved that must be the final arbiter of choosing between tenure forms as well as the model of improvement. Any scheme for JJ Cluster improvement in Delhi therefore must first determine how community consent and participation will be determined, and design guidelines that protect and enhance such participation. This study has refrained from prescriptions of the “best model” precisely for this reason – the determination of “best” is not a simple, technical selection but a balance of risks and opportunities that communities must live with, not any researchers or policy makers.

The fact that the promise of *jahan jhuggi, wahan makaan* has entered the election manifesto for the city's elections in February 2020 certainly represents an opening that must be leveraged by residents, housing rights activists and policy makers alike. When the pressure to deliver on such an election promise builds, the refrain often is that no single government in Delhi has the authority to act. Our analysis offers a clear answer to this claim and lays out a significant (if not universal) scheme covering a 106 JJ Clusters that a newly elected Delhi Government can implement immediately entirely on its own.







#### About IGSSS

Indo-Global Social Service Society (IGSSS) is a non-profit organisation working with the mandate for a humane social order based on truth, justice, freedom and equity. Established in 1960, IGSSS works for development, capacity building and enlightenment of the vulnerable communities across the country for their effective participation in development.

With its presence in 25 states and one Union Territory of India, IGSSS has set its thematic focus on promoting sustainable livelihood, energising the youth as change makers, protecting lives, livelihood and assets from the impact of hazards, advocating for the rights of City Makers (Homeless Residents) and developing cadre of leaders from the community and civil society organisations. Gender and Youth are underlining theme across all its interventions.

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