

## CHAPTER-V LAND REVENUE

### 5.1 Tax administration

Allotment of land and assessment and collection of land revenue are governed by the provisions of the Gujarat Tenancy and Agricultural Lands Act, 1948 and the Gujarat Land Revenue Code, 1879 and the rules framed thereunder. Land revenue mainly comprises premium price, conversion tax, non-agricultural assessment (NAA) and occupancy price/ lease rent from allotment/ lease of Government land. The Revenue Department (Department) functions as the Administrative Department of the Government. The Department exercises overall control on revenue related matters, supervision and monitoring over revenue officers and maintenance of land records. The Department is assisted by 33 District Collector offices at district level for management of land. Further, there are offices of 120 *Prant* Officers (POs) at the sub-division level and 260 *Mamlatdars* at the *taluka* level to assist the District Collector offices.

### 5.2 Results of Audit

There are 41 auditable units in the Revenue Department dealing with Land Administration. Out of these, audit selected 15 units for test check during 2018-19. These units comprise offices of the District Collectors, POs and *Mamlatdars* (Land Revenue), Director of Deendayal Institute of Survey and Revenue Administration, Settlement Commissioner and Director of Land Records and Principal Secretary, Revenue Department. 9,283 cases of allotment/lease of Government land/conversion of tenure of land/conversion in land use etc., were finalised in the selected units during 2018-19. Out of these 5,450 cases (58.71 *per cent*) were selected for audit and of these 5,437 cases (99.76 *per cent*) produced to audit were test checked.

Scrutiny of these cases revealed underassessment of tax and other irregularities involving ₹ 470.22 crore in 965 cases (17.75 *per cent*) which were pointed out to the Department through 209 Inspection Report (IR) paragraphs and one Performance Audit. Irregularities noticed broadly fall under the following categories:

**Table 01: Results of Audit**

Sl. No.	Category	No. of cases	Amount (₹in crore)
1	Performance Audit of “Grant of Government land and monitoring of its proper utilisation”	1	262.25
2	Non/short levy of occupancy price/premium price	55	181.04
3	Non/short recovery of NAA(Non-Agricultural Assessment)	73	9.80
4	Non/short recovery of Conversion tax	35	8.75
5	Other irregularities	46	8.38
	<b>Total</b>	<b>210</b>	<b>470.22</b>

During the course of the year, the Department accepted under-assessment and other irregularities of ₹ 68.69 lakh in 23 cases, which were pointed out in audit during 2018-19 and earlier years and made recovery in these cases.

A performance audit of “Grant of Government land and monitoring of its proper utilisation” involving ₹ 262.25 crore is mentioned in the succeeding paragraphs:

### **5.3 Performance Audit of ‘Grant of Government land and monitoring of its proper utilisation’**

#### **Highlights**

Department did not have a database of the lands granted/leased which was a key aspect of land management. In the absence of consolidated data of various categories of Government land allotted for various purposes and available for disposal, department is not in a position to take informed decisions regarding allotment of Government land and/ or monitoring the land already allotted.

**(Paragraph 5.3.6 (i))**

Average comparable sale value was incorrectly worked out resulting in undervaluation of Government land and short levy of occupancy/premium price of ₹ 69.14 crore in four cases of allotment/regularization of encroachment of lands measuring 34,79,964 sq. m. in three districts.

**(Paragraph 5.3.8.1)**

In 26 cases of allotment of *Gauchar* land for industrial purpose, 30 per cent of *Jantri* value aggregating ₹ 10.40 crore for *Gauchar* Development Fund was either not recovered or short recovered.

**(Paragraph 5.3.10 (iii))**

Irregular permission for conversion of new tenure Government land to old tenure land for the purpose of sale resulted in undue financial benefit of ₹ 67.30 crore in one case.

**(Paragraph 5.3.11.2)**

In two cases, premium of ₹ 14.80 crore was not realised from Companies which had changed their constitution without prior permission of the offices of the District Collector/Government.

**{Paragraph 5.3.12.3 (i) and (ii)}**

#### **5.3.1 Introduction**

The Gujarat Land Revenue Code (GLR Code) 1879 read with the Gujarat Land Revenue Rules (GLR Rules) 1972 provides for grant/allotment of Government land<sup>1</sup> on occupancy or leasehold rights either as revenue free or at the rates decided by the Government from time to time. Government has

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<sup>1</sup> *Gauchar* land, waste land and *Gamtal* land etc.

framed various policies for grant/allotment and regularisation of encroachment of Government waste and grazing (*Gauchar*) land with reference to the purpose of usage of land.

The allotment of Government land is made by the Revenue Department (RD) on an application before the office of the District Collector by individual/trust/company etc. On receipt of application for grant of land for any non-agriculture purpose, the office of the District Collectors initially ascertains the availability of land from the office of the jurisdictional *taluka Mamlatdar*. The *Mamlatdar* office forwards his report on the title and availability of the land demanded with reference to the Government policy of allotment to the office of the *Prant Officer* for verification. The office of the *Prant Officer* after verification of the case, submits the proposal to the office of the District Collectors for approval. The offices of the District Collectors depending upon the delegated powers of allotment either decides and issues final order of grant/ allotment after collecting requisite occupancy price, taxes and duties from the allottee or forwards the case to the Revenue Department for further action.

### 5.3.2 Organisational set-up

The administration of Land Revenue vests with the Additional Chief Secretary, Revenue Department, Government of Gujarat. For the purpose of administration, the State is divided into 33 districts. Each district is further sub divided into sub-divisions of *talukas* and villages.

The District Collectors are overall in-charge of their respective districts and are responsible for the administration of land related matters. Districts are subdivided into sub-divisions which are group of *talukas* looked after by *Prant* officers. At *taluka* level, *Mamlatdar* looks after the revenue administration. There is a Circle Officer for a group of villages and at village level, the *Talati* (Village Accountant) is entrusted with the work of collection of land revenue and other receipts including recovery of dues treated as arrears of land revenue.

### 5.3.3 Audit Objectives

The Performance Audit (PA) was conducted to get a reasonable assurance that:

- the system for maintaining the records was reliable and adequate;
- adequate system and procedures were in place in the Department to ensure correctness of assessment/ valuation of land and timely collection of revenue;
- the allotment of Government land was done in a transparent manner and was in accordance with the existing provisions, procedures and policies framed by the Government; and

- there exists an effective monitoring and evaluating mechanism after allotment of land.

#### **5.3.4 Scope of Audit and Methodology**

The Performance Audit (PA) included test check of the records of grant of Government land including cases of grant of land on lease as revenue free as finalised by the Revenue Department for the period from 2013-14 to 2017-18. Out of 33 Districts of the State of Gujarat, 10<sup>2</sup> districts were selected using ‘Stratified Simple Random Sampling’ on the basis of the total area of Government land allotted with the help of Interactive Data Extraction and Analysis (IDEA) tool. Further, to ascertain the level of compliance at the *taluka* level, two *talukas*, from each of these 10 districts, were selected on the basis of the area of the Government land allotted to the private organisation/trusts. In addition to the above, the Revenue Department and the village *Talati* (wherever required) were also covered in the audit. The audit was conducted between October 2018 and June 2019. Apart from the observations noticed on scrutiny of the records produced by the Department, the audit observations regarding allotment/ grant of Government land noticed during regular compliance audits of the Revenue Department/District Collectors offices have also been included in this report, wherever feasible.

An entry conference was held at the level of Additional Chief Secretary, Revenue Department, Government of Gujarat (GoG) on 13 December 2018 during which audit objectives, scope and methodology were explained. The draft Performance Audit report was issued to the Department/Government in February 2020 for their comments. Exit Conference was held with the Secretary and Commissioner (Land Reforms) on 24 June 2020 during which major audit findings were discussed. The replies/responses received from the Department during the exit conference have been suitably incorporated in the relevant paragraphs.

We acknowledge the co-operation extended by the Revenue Department in providing the necessary information and records during the course of the audit.

#### **5.3.5 Audit Criteria**

The audit criteria had been derived from the following Acts/ Laws and the Rules made there under governing the allotment/ grant of Government land:

- Gujarat Land Revenue Code 1879;
- Gujarat Land Revenue Rules 1972;
- Gujarat Government Rules of Business 1990 and
- The Notifications/Resolutions/Circulars/Orders issued by the Government/ Department from time to time.

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<sup>2</sup> Ahmedabad, Aravalli, Banaskantha, Dahod, Devbhoomi Dwarka, Jamnagar, Kutch, Mehsana, Surat, Vadodara.

## Audit Findings

### 5.3.6 Maintenance of records

#### (i) Absence of reliable database of Government land

Effective management of land resources requires a database of its land resources, identification of lands for disposal and database of lands granted/leased.

Audit found that the Revenue Department does not have a database of the lands granted/leased which was a key aspect of land management. It was crucial in monitoring the lands transferred to ensure due compliance with the conditions of transfer of land and also to verify the intended utilisation of the same. Further, scrutiny of land allotment records revealed that no orders/instructions for determining the qualifications of allottees or for inviting applications were issued by the Revenue Department, instead allotments were considered in respect of only those who applied for allotment. The status of applications, proposals received from the offices of the District Collectors for grant of Government land during the period covered under audit was also not available with the Department. Due to absence of this data, the audit could not ascertain the status of pending alienations. However, the approval orders in the form of Resolutions (GR) issued by the Government for allotment/ grant of the Government land was maintained by the respective branch of the Department in a file called “Select File”. It was observed that neither any index of the GRs issued was linked with these Select File(s) nor the files were page numbered. Further, the GRs issued were kept in the Select files without following any chronological order. In absence of this, audit could not ascertain the exact number of cases of allotment/grant of Government land during the audit period.

Consequently, there was absence of year wise reliable consolidated data of various categories of Government land allotted for various purposes and available for disposal. As such the Department was not in a position to take informed decisions regarding allotment of Government land and/ or monitoring the land already allotted.

#### (ii) Inadequate record maintenance at District level

As per Section 53 of Gujarat Land Revenue Code, 1879, a register shall be kept by the District Collector offices in such form as may from time to time be prescribed by the State Government, of all lands, the alienation of which has been established or recognised under the provisions of any law for the time being in force.

As intimated to audit, there was no system of maintaining registers for monitoring of receipt of applications, their disposal, approval/sanction received and allotment made at the District Collector offices. Accordingly, three District Collector offices<sup>3</sup> stated that no such registers were maintained

<sup>3</sup> Dahod, Kutch and Vadodara

and the remaining seven District Collector offices did not produce any register for audit to ascertain the number of cases of allotment/grant of Government land. The test-checked District Collector offices placed all the allotment/grant orders in a file in loose form and on request of audit, list of such orders was made available to audit.

Thus, there was inadequate record maintenance at District level due to which there was lack of monitoring of receipt, disposal of applications for allotment of Government land and monitoring of land usage for intended purpose.

After this being pointed out, the Department while accepting the need of such database during the exit conference agreed to look into the matter. Further reply is awaited (June 2020).

### **5.3.7 Disposal of Government land without auction**

Rule 42 of the Gujarat Land Revenue Rules, 1972 provides that unoccupied land required or suitable for building sites or other non-agricultural purpose shall ordinarily be sold after being laid out in suitable plots by auction to the highest bidder whenever the District Collector is of an opinion that there is a demand for land for any such purpose; but the District Collector may, at his discretion, dispose of such land by private arrangement, either upon payment of a price fixed by him, or without charge, as he deems fit.

Audit noticed that the following cases of allotment / grant of Government land has been done by the State Government /Department, on an application made before the District Collector office without following the auction route.

#### **Cases of allotment / grant / regularisation of Government land furnished to audit**

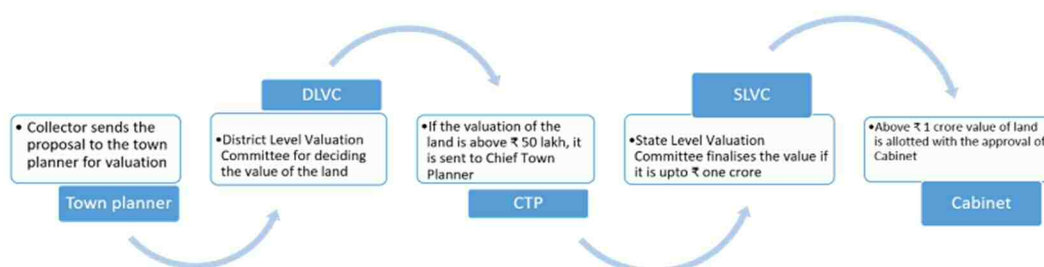
In absence of a structured database of Government land allotted / granted, the case files extracted based on the GRs in the Select Files maintained by the Revenue Department and the District Collector offices during the last five years were verified in audit. As per the GRs, 865 allotments covering an area of 8,91,29,144 sq. m. falling in 10 selected Districts were made by the Department between 2013-14 and 2017-18. Of these 865 allotment cases, files in respect of 800 cases were produced and checked in audit. In remaining 65 cases, files were not produced to audit despite repeated reminders. Further, 1,311 cases of allotment/grant of Government land finalised by the respective District Collector offices were also scrutinised during audit.

The scrutiny of these cases revealed a number of irregularities such as ambiguity in valuation mechanism, lack of uniformity and transparency in allotment/grant of Government land, non-adherence to the policies and guidelines, lack of monitoring of utilisation of the land etc. The system and compliance deficiencies noticed in these cases are discussed broadly in four categories of Valuation and Allotment of Government land, management of *Gauchar* land and post allotment issues.

### 5.3.8 Valuation of Government land

The guidelines for assessment of value of Government land intended to be allotted/ granted for non-agricultural purposes prepared by the Urban Development and Urban Housing Department (UDUHD) were adopted by the Government from September 2002. The process of assessment of value of land was modified in October 2008 and April 2011. The Government constituted two committees for assessment of market value of Government land: The District Land Valuation Committee (DLVC) and State Land Valuation Committee (SLVC). In case the value of land as determined by the DLVC exceeds ₹ 50 lakh, the Revenue Department refers the case to SLVC for finalisation of value of the land. After finalisation of market value of the land by the SLVC, the case is put up before the Cabinet for approval. The limit of ₹ 50 lakh for the Cabinet approval was increased to ₹ one crore in 2010. The assessments of the land are made on the reports (called valuation reports) prepared by the concerned Town Planner and the Chief Town Planner. The hierarchy of valuation system is as depicted below:

**Chart 1: Process of Valuation of Government land:**



On receipt of Cabinet approval, a Government Resolution (GR) is issued by the Revenue Department asking the concerned District Collector office to grant/allot the land after collecting requisite occupancy price, taxes and duties. The District Collector office issues final order of grant/allotment with certain specific conditions attached to the grant/allotment. The possession of the land is handed over to the allottee by the office of the *Mamlatdar*.

#### 5.3.8.1 Deficiencies in mechanism of valuation of Government land

The guidelines for valuation of Government land issued vide Government Resolution of April 2011 stipulate that the value of the land proposed for allotment shall be arrived at after considering average comparable sale value of similar type and area of land situated within a radius of 1.5 kilometers as ascertained by the Town Planner from the registered sale deeds of last six months<sup>4</sup>/one year, as the case may be. In case of non-availability of sufficient number of sale deeds executed prior to six months/one year of date of DLVC, the committee may consider the sale deeds more than one year old. However,

<sup>4</sup> In case of six cities and their Urban Development Authorities namely Ahmedabad, Gandhinagar, Jamnagar, Rajkot, Surat, Vadodara.

in such case the sale value is to be increased by 12 *per cent* per annum. The average comparable sale value so arrived is to be increased/ decreased by the percentages mentioned against the criteria<sup>5</sup> influencing the valuation of the land.

### Absence of uniform criteria for considering the number of sale deeds/ period of sale deeds

During scrutiny of the valuation cases, Audit noticed that the guidelines did not provide any specific criteria for deciding the sufficient number of sale deeds for arriving at the average comparable sale value. In absence of such criteria in some cases, some sale deeds were ignored while working out average comparable sale value. Further, in some other cases, the sale deeds more than one year old were considered but the applicable increment of 12 *per cent* per annum was not provided while calculating the average comparable sale value. Due to this, in four cases of allotment/regularization of encroachment of lands measuring 34,79,964 sq.m. in three<sup>6</sup> out of 10 selected districts, the average comparable sale value was incorrectly worked out which subsequently resulted in undervaluation of the land and short levy of occupancy/premium price of ₹ 69.14 crore as discussed below:

**Table 02: Short levy of Occupancy price/premium**

Sl. No.	Name of Allottee/ Date of order	Area in Sq. m.	Rate of land <i>per sq. m.</i>		Short levy of occupancy price (₹ in crore)
			Leviable (₹)	Levied (₹)	
1.	Company A/ 02 March 2015 <sup>7</sup>	24,85,897	947	673	68.11
<p><b>Nature of observation:</b> Office of the Town Planner had calculated the average sale value based on five comparable sale deeds out of which two were executed more than one year prior to the date of DLVC meeting. Audit found that office of the Town Planner had left out four more comparable sale deeds executed within the last one year from the date of DLVC. Thus, out of the total nine sale deeds, seven sale deeds executed within the last one year were available for consideration. However, two sale deeds of lower value, executed prior to one year of the date of DLVC meeting were considered and four sale deeds were not considered for calculating the average sale value. This has resulted in reduced average comparable sale value. Further, it is pertinent to mention here that the said land was valued at ₹ 1,100 per sq. m. for Gujarat Industrial Development Corporation in August 2009. However, this fact was not brought to the notice of the Cabinet while finalising the value of ₹ 673 per sq. m. Thus, the irregular valuation and fixation of value of land resulted in short levy of occupancy price of ₹ 68.11 crore.</p>					
2.	Company 'A' 02 March 2015 <sup>8</sup>	3,03,525	398	385	0.39
<p><b>Nature of observation:</b> The DLVC considered ten sale deeds for arriving at the average comparable sale value including one sale deed executed prior to one year from the date of its meeting. Considering one additional sale deed executed prior to one year of the date of meeting of the DLVC reduced the average comparable sale value. This resulted in short levy of occupancy price of ₹ 0.39 crore.</p>					

<sup>5</sup> Municipal Corporation/ Urban/ Area Development Authority/ Municipalities/ Village area, Approach roads, national/ State Highways, Natural/ manmade parameters and development projects etc.

<sup>6</sup> Ahmedabad, Mehsana, Surat

<sup>7</sup> Block No.293, Hansalpur, Taluka: Mandal, District: Ahmedabad (24,85,879 sq. m.)

<sup>8</sup> S No.53 Udhojpur, Taluka: Mandal, District: Ahmedabad (3,03,525 sq. m.)



3.	Company 'B' / 02 March 2015 <sup>9</sup>	6,87,960	940	934.50	0.38
<b>Nature of observation:</b> The DLVC considered 27 sale deeds including two sale deeds executed prior to one year from the date of its meeting. Considering two additional sale deeds executed prior to one year of the date of meeting of the DLVC, reduced the average comparable sale value. This resulted in short levy of premium of ₹ 0.38 crore.					
<b>Non-increase of 12 per cent in the average comparable sale value</b>					
4.	Company 'C' / 30 December 2016 <sup>10</sup>	2,582	5,329	4,928	0.26
<b>Nature of observation :</b> The DLVC valued (23 January 2015) the land encroached by the company for regularisation thereof on the basis of two sale deeds executed prior to one year (07 January 2014 and 20 April 2012) from the date of its meeting as no sale deed executed within the last one year was available for consideration. The DLVC was required to increase the value by 12 per cent per annum, however no increase was made by the DLVC. This resulted in under valuation of land with short levy of penal occupancy price of ₹ 0.26 crore.					

It could be seen from the cases listed at Sl.No.1 to 3 above that there were no specific criteria for deciding the number of sale deeds which could be termed as sufficient for the purpose of arriving at the average comparable sale value. Thus, the deficiency in the valuation system allowed the valuation authorities to artificially deflate the market value of the land to provide undue advantage to the recipient of the land. In cases listed at Sl. No.4, the incorrect calculation of average comparable sale value took place at the lowest level of valuation but went unnoticed till audit pointed out these cases.

After this being pointed out, the Department during the exit conference stated that the valuation policy has been revised effective from September 2018 and the audit observations were taken into care in the revised policy.

### 5.3.8.2 Short levy of occupancy price due to incorrect categorisation of *nagarpalika* area

The GR of 29 September 2008 resolved to allot the land for playground (for schools) in rural areas (B, C and D category *nagarpalikas*)/ urban areas upto 8,094 sq. m./4,047 sq. m. respectively at a token rent of ₹ one for 30 years. For the period beyond 30 years, the land can be allotted at the rate of 25/ 50 per cent of the market value. Further, in rural areas (B, C & D category *nagarpalikas*), land up to 600 sq. m. can be granted free of cost and revenue free for the construction of school building while land in excess of 600 sq. m. can be granted at 25 per cent of the market value. In urban areas, land for school building has to be allotted on recovery of 50 per cent of the market value.

During scrutiny of the records of the office of the District Collector, Banaskantha, it was revealed that the trust 'Q', Deesa had already been allotted 836 sq. m. of City Survey No.5042, Nava Deesa for the purpose of

<sup>9</sup> Block No.1056/B *paiki* Village: Bharbodhan *Taluka*: Olpad, District: Surat (6,87,960 sq. m.)

<sup>10</sup> S No.768P1, Vill. Indrada, Tal Kadi, District Mehsana

construction of school building and 2,641 sq. m. of land for the purpose of playground on token rent of ₹ one per annum. The trust vide its application dated 21 July 2009 again applied for allotment of Government land<sup>11</sup> and the Revenue Department vide its GR dated 16 February 2015, allowed the allotment of the land measuring 1,673 sq. m. and 5,453 sq. m. for construction of school building and school playground respectively. In the said GR, the Department had considered village Nava Deesa under category 'B' and levied occupancy price at the rate of 25 *per cent* of the market value of land measuring 1,673 sq. m. allotted for school building while land measuring 5,453 sq. m. for playground was to be allotted without any recovery of occupancy price. The trust paid the occupancy price of ₹ 52.12 lakh on 03 November 2015.

As per the opinion (July 2012) of the office of the Chief Officer of Deesa *nagarpalika*, village Nava Deesa is an urban area falling under Area Development Authority of Deesa *nagarpalika*. This was further clarified with the issuance of Circular dated 24 July 2015 of the UDUHD, wherein Deesa *nagarpalika* was categorised in category 'A' based on the census data of 2011. Accordingly, the trust was intimated by the District Collector office to pay occupancy price at the rate of 50 *per cent* of the market value on 1,909 sq. m. [(1,673+836) - 600] for school building and on 4,047 sq. m. [(5,453+2,641)-4,047] for playground. However, no payment was made by the Trust. The District Collector office had also requested the Revenue Department for further clarification/ instructions in this matter. Finally, the Revenue Department stated (December 2015) that there was no need for revaluation of land as the GR for allotment of land was issued in February 2015 after due consideration. Accordingly, the District Collector office vide order dated 18 December 2015 allotted the said land to the trust.

The opinion of the Revenue Department of December 2015 was not as per the Government policy as at the time allotment of the land to the trust, the category of the village Nava Deesa had changed from 'B' to 'A'. In this case the trust was required to pay occupancy price at the rate of 50 *per cent* of the market value of land measuring 2,509 sq. m. allotted for school building (without any deduction) and land measuring 4,047 sq. m. as demanded by the District Collector office. Thus, incorrect consideration of the category of the area of the land allotted by the Department resulted in short levy of occupancy price of ₹ 3.06 crore<sup>12</sup>.

After this being pointed out, the Department during the exit conference stated that the valuation policy has been revised effective from September 2018 and the audit observations were taken into care in the revised policy.

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<sup>11</sup> R.S. No. 89, Village: Navadeesa, Taluka: Deesa

<sup>12</sup> [6,556 sq. m. (4,047+2,509) x ₹ 10,920 x 50 *per cent*] - ₹ 52.12 lakh

### 5.3.9 Allotment of Government land

#### 5.3.9.1 Re-grant of Government land in contravention of the extant provisions

The Revenue Department vide its GR dated 30 September 2014 resolved to re-grant the agricultural land to the original owners or their legal heirs from whom Government had purchased the land under auction against the outstanding loan amount (*taccavi* loan<sup>13</sup>) due from those agriculturists. The above re-grant is subject to the following conditions:

- after taking the land under Government head, the possession of the land should have been held continuously by the original owner or their legal heirs or they should have continuously used the land for agriculture under Government's '*Eksali*' scheme<sup>14</sup>;
- the land so re-granted shall not be sold, transferred or used for non-agricultural purpose up to five years from the date of re-grant;
- the land must be used for agricultural purpose to make livelihood;
- the conditions of the Gujarat Agricultural Land Ceiling Act 1976 must be fulfilled.

The land so re-granted as new tenure land can be converted into old tenure after completion of five years on payment of the prescribed premium. However, the land falling in-between the industrial land of mega industrial units, can be transferred to the industrial unit after payment of premium even before the lock-in period of five years on recommendation of the Industries and Mines Department and prior approval of the Revenue Department.

During scrutiny of records of office of District Collector, Ahmedabad, in one case of re-grant of land to original occupant, the land was taken under Government head effective from 1954-55, but was encroached upon by the occupant of the land.

Audit observed that vide orders dated 29 December 2016 and 27 December 2017, land measuring 77,599 sq. m. was re-granted to legal heirs of original occupants on recovery of ₹ 5.43 lakh after obtaining permission (April 2016 and September 2017) of the Revenue Department as per GR dated 30 September 2014. However, audit noticed following irregularities in the re-grant order:

- the Department did not ascertain whether the land being re-granted was for the livelihood of the grantees and the re-grant fulfils the provisions of the Gujarat Agricultural Land Ceiling Act, 1976.

<sup>13</sup> *Taccavi* loan is short term loan given to poor farmers to purchase seeds, fertilizers, equipment's and for other agriculture purposes. This was introduced to enhance productivity of crop cultivation and help poor farmers to increase their income.

<sup>14</sup> *Eksali* scheme means grant of land for cultivation on one-year lease basis.

- As per the 'panchnama' submitted by the office of the *Talati-cum-Mantri* of Vithlapur village, out of the said land, land measuring 16,694 sq. m. was not in continuous possession of the legal heirs of the original occupants as per land records. Further, as per 'panchnama' dated 01 March 2017 and the photographs furnished by the office of the *Talati-cum-Mantri* and Circle Officer, Mandal the land measuring 16,694 sq. m. was used by the Company 'E' for office, garden, lawn and parking purpose before the re-grant order (December 2017).
- The grantees had executed a registered sale deed (Document No.07 dated 07 January 2017) for transfer of S.No.405 *paiki* measuring 60,905 sq. m. to Company 'E'. However, no permission for transfer of the land was obtained from the Government/Department by the grantee before executing the sale deed. Thus, the transfer stands irregular.

In view of above, it can be concluded that the re-grant of the Government land was in contravention of provisions of the GR and the transfer of the land to the company was either required to be revoked or regularised on recovery of occupancy price/ penal occupancy price of ₹ 30.79 crore<sup>15</sup> by considering the transfer as unauthorised possession.

After this being pointed out, the Department during the exit conference agreed to look into the matter. Further reply is awaited (June 2020).

### 5.3.9.2 Regularisation of the excess measured land

#### (i) Short levy of premium

As per GR dated 09 July 2013, the excess land arising during resurvey of land adjoining Government land, river, pond or any public road at one or more sides can be regularised by levying premium at the *Jantri* rates where the excess land is within 20 *per cent* of the existing area. Where the additional area is in excess of 20 *per cent*, the premium is to be levied at twice the *Jantri* rates on such excess area. In case the *Jantri* rate of the particular survey number is not available, then *Jantri* rate of the adjacent survey number shall be applied. The rate is to be adopted according to the usage of the land.

Scrutiny of the records in the offices of the Revenue Department and District Authority, Kutch revealed that in case of excess measured land arising on resurvey, there was short-levy of premium due to adoption of incorrect *Jantri* rates in the following five cases:

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<sup>15</sup> (60,905 sq. m. x ₹ 3,000 per sq. m.<sup>15</sup>) + (16,694 sq. m. x ₹ 3,000 per sq. m.) x 2.5)

**Table 03: Short levy of premium price on excess measured land**

Sl. No.	Name of occupant/ Description of land	Original area (in sq. m.)	Excess measured area (in sq. m.) (percentage excess)	Rate of land (per sq. m.)		Short levy of premium (₹ in crore)
				Leviable (₹)	Levied (₹)	
1.	Company 'F' S No.570 of AnjarSim, Taluka: Anjar	88,829	5,362 (six)	2,600	2,100	0.27
<b>Nature of observation:</b> The land falling under urban area was being used for industrial purpose. In the instant case <i>Jantri</i> rates applicable to 'open land' was required to be applied for levy of premium on excess measured area. However, the Department applied rate of ₹ 2,100 per sq. m. applicable to 'industrial use' instead of ₹ 2,600 per sq. m. applicable to 'open land'. It is pertinent to mention here that in a similar case belong to the same Company for the land 1,720 sq. m. situated at Survey No.575 of Anjar Sim, Taluka Anjar, the Revenue Department charged ₹ 2,600 per sq. m. based on the opinion of the Valuation Authority, Bhuj. This resulted in short levy of premium of ₹ 26.81 lakh.						
2	Two individual 'A' & 'B' / S No. 364, 365/1 and 365/2 of Madhapar, Taluka: Bhuj	1,08,557 (NA: 64.55 per cent, Agriculture 35.45 per cent)	9,915 (nine) 6,400.13 (Non- Agriculture) 3,514.87(Agriculture)	1,250 235	235 235	0.65
3.	Individual 'C' / S No. 772 of Bhachau, Taluka: Bhachau	16,188 (NA: 62.78 per cent, Agriculture: 37.22 per cent)	6,374 <sup>16</sup> (39) 2,032.18 1,204.81 1,969.41 1,167.59	1,150 225 1,150 x 2 225 x 2	225 225 225 225	0.72
<b>Nature of observation:</b> In above two cases, excess measured land was regularised by levying premium at <i>Jantri</i> rate applicable to agricultural purpose though the part of the land was under non-agricultural (residential) use before issuance of GR by Revenue Department. Hence, premium was required to be levied in accordance with the land use and the proportionate area under the agriculture and non-agriculture use. The non-levy of premium on pro-rata basis resulted in short levy of ₹ 1.37 crore in the above two cases.						
4.	Individual 'D', S.No.1191/1 of Bhachau, Taluka: Bhachau	19,122	5,564 (29) 3,824 1,740	175 175 x 2	1 138 138 x 2	0.03
<b>Nature of observation:</b> In the above case, for regularization of excess measured non-irrigated land, premium was required to be levied at <i>Jantri</i> rate of ₹ 175 per sq. m. However, the District Collector office applied incorrect rate of ₹ 138 per sq. m. which was not mentioned in the <i>Jantri</i> . The incorrect application of rate resulted in short levy of premium of ₹ 2.70 lakh.						
5.	Individual 'E' / S No. 497 of Bhimasar, Taluka: Anjar	29,947	10,724 3,844 6,880	545 545 x 2	303 303 x 2	0.43
<b>Nature of observation:</b> In the instant case, total land including excess measured land was sold to a Private Ltd Company vide registered deed (March 2016) before issue of GR. Hence, the Department was required to apply <i>Jantri</i> rate applicable for industrial purpose for levy premium. However, <i>Jantri</i> rate applicable to 'agriculture use' was applied. This resulted in short levy of premium of ₹ 42.60 lakh.						

**(ii) Lacunae in the policy**

The GR dated 09 July 2013 provides option to the land holder to either get the excess measured land regularised on payment of prescribed premium or surrender such excess land. However, the GR does not entrust any authority/power to the jurisdictional District Collector to ensure that the land occupant invariably exercises either of the two options. Moreover, the Land management laws of the State are also silent on the options available with the

<sup>16</sup> Within limit of 20 per cent: NA: 2,032.18 sq. m., Agriculture: 1,204.81 sq. m. Above 20 per cent: NA: 1,969.41 sq. m., Agriculture: 1,167.59 sq. m.

departmental authorities to take penal action on the land holders who wilfully do not obey the orders issued under various GRs of the Government.

Scrutiny of the records relating to regularisation of excess measured land in the office of the District Collector, Kutch revealed that the Revenue Department approved regularisation of excess measured land of 28,125 sq. m. in four cases on condition to levy premium of ₹ 2.45 crore as per the GR of July 2013. The District Collector office accordingly intimated the concerned land holders to pay premium for regularisation of excess measured land. However, the land holders neither paid the premium nor surrendered such land. Since the GR and the existing laws did not empower the District Collector office to enforce the provisions of the GR/ order issued to the land holders, three out of the four cases were filed for the time being subject to the condition that the unauthorised occupant shall apply for regularisation of excess land in future and the *Jantri* rates as well as Government rules applicable at that time will be considered while processing the application. Audit noticed that the option to regularise has been left to the unauthorised occupants of the land irrespective of any time limit. While, in the land records no mention of the unauthorised occupation of the excess land has been made which may result in undue benefit to the occupant while transferring or mortgaging the land. Thus, the lacunae in the policy of not mentioning the time limit within which the applicant was required to regularise the excess land has a possibility of potential revenue leakage of ₹ 2.45 crore and the land remains in unauthorised possession.

After this being pointed out, the Department during the exit conference agreed to look into the matter. Further reply is awaited (June 2020).

**It is recommended that the Government may consider revising the policy by mentioning the time limit within which the excess land holding shall be regularized. Further, Government may also take necessary action to resume the excess land to the Government account wherever it was not regularised.**

### **5.3.9.3 Renewal of lease of land in excess of prescribed area**

Rule 32(1) of the Gujarat Land Revenue Rules 1972 provides for allotment of Government land for setting up schools, hostels, hospitals, etc., without recovery of occupancy price or revenue. Further under Rule 32-A of the GLR Rules, the District Collector office is empowered to allot Government land on lease for a period not exceeding 15 years at a nominal rent of ₹ one per annum for playground or other recreational purposes to educational institutions/ local *mandali* gymnasiums recognised by Government. In case of Panchayat, Municipality or any other local authority, the area and the revenue free value of land should not exceed five *acres* (20,235 sq. m.) and ₹ 25,000. In other cases of public body or institution, the upper limit is 2 ½ *acres* (10,117 sq. m.) and ₹ 5,000.

Audit noticed excess allotment/lease of Government land and consequent short/non levy of occupancy price in the following cases:

**Table 04: Non levy of occupancy price**

Sl. No.	Name of lessee	Purpose	Area leased (in sq. m.)	Area eligible for grant on lease (in sq. m.)	Excess area leased (in sq. m.)	Market Value of excess/irregular grant of lease of land (₹ in crore)
1	One Sports Club. R.S.No.5027 paiki, Village: Nava Deesa, Taluka: Deesa, District: Banaskantha	Playground	28,493.19	10,117	18,376.19	18.65
2	One Higher Education Society. R.S. No. 86 and 87, Village and Taluka: Modasa District: Aravalli	Playground	56,790	10,117	46,673	28.00

**Nature of observation :**

**One Sports Club:** The land measuring 28,846.20 sq. m. was originally granted on 23 September 1968 for playground on lease. The lease period was continuously extended till February 2004. The lessee applied for the extension of lease for a further period of 15 years on 08 March 2004. Meanwhile, the club unauthorisedly used land measuring 353.02 sq. m. for commercial purpose which was taken to Government head by the District Collector office in January 2014. Subsequently, the lease period for remaining 28,493.19 sq. m. was extended up to 17 February 2019 vide GR dated 19 May 2015 i.e. after lapse of 11 years after the date of application.

**One Higher Education Society:** The land measuring 73,148 sq. m. was initially granted (20 June 1963) on lease for a period of 15 years ending on 20 June 1978 as per GR dated 20 June 1963. The society applied for extension of lease on 11 January 1979. However, the Department did not take any action till 01 May 2003. Meanwhile, out of the original area of 73,148 sq. m.; land measuring 10,000 sq. m. was allotted for Modasa town police station vide District Collector office; Aravalli order dated 7.1.2015. The lease period of remaining 63,148 sq. m. was extended up to 20 June 2018 vide GR dated 08 June 2015. Thus, the lease period of 40 years was extended by a single order passed after 36 years of application. Subsequently vide amended GR dated 23 October 2015 the Revenue Department reserved land measuring 6,358 sq. m. for Government purpose and remaining 56,790 sq. m. land remained with the lessee.

Since in these cases, the Government had modified its policy regarding allotment of Government land vide Rule 32-A of the GLR Rules after the initial allotment, the competent authority was required to renew the lease period keeping in view the existing policy. The lease of land measuring over and above the maximum prescribed 10,117 sq. m. was required to be extended after recovery of occupancy price at market rate. Thus, there was loss of revenue in the form of occupancy price of ₹ 46.65 crore.

After this being pointed out, the Department during the exit conference agreed to look into the matter. Further reply is awaited (June 2020).

**5.3.10 Management of Gauchar land**

The Government Circular of 30 December 1988 stipulates that for every 100 cattle in a village, there must be 40 acres (16 hectare) of *Gauchar* land. In case where *Gauchar* land is less than the above norms, it should not be granted except for public utility purpose.

The irregularities noticed in the management of the *Gauchar* land during scrutiny of the records of the Revenue Department and offices of District Collectors are discussed below:

**(i) Regularisation of the encroachment of *Gauchar* land against the extant policy**

The Government, on the basis of the Supreme Court’s judgement dated 28 January 2011, pronounced policy for the management of the *Gauchar* land vide its GR dated 01 April 2015. The policy prohibits regularisation of cases of encroachment of *Gauchar* land in any case under any circumstances at any level.

During scrutiny of the records of the Revenue Department it was noticed that in the following two cases, the Department accorded permission (December 2015 and September 2017) for regularisation of the encroachment of the *Gauchar* land by treating the cases as of ‘exceptional nature’. Since the policy does not mention any circumstances under which encroached *Gauchar* land could be regularised, the decision of the Department was not in consonance with the prevailing policy.

**Table 05: Regularisation of the encroachment of the *Gauchar* land**

Sl. No.	Name of Allottee	Description of property	Area in sq. m.	Purpose
1.	Trust ‘T’, Keshiya	RS No.413 <i>paiki</i> 10, Village: Keshiya, Taluka: Jodiya, District: Jamnagar	1,493	Community
2.	Trust ‘U’, Ghodasar	R.S.No.203 <i>paiki</i> , Village: Asodar, Taluka: Tharad, District:Banaskantha	151.20	Hostel

**(ii) Non levy of *Gauchar* Development Fund on land granted on RoU basis**

The GR of April 2015 stipulates that *Gauchar* land may be allotted for laying of pipeline on the basis of right of use at 10 *per cent* of prevalent market value of the land. Further, 40 *per cent* of *Jantri* value of the *Gauchar* land is required to be deposited in the *Gauchar* Revolving Fund for *Gauchar* Development.

During scrutiny of the records in the office of the District Collector, Mehsana, it was observed in four cases that *Gauchar* land measuring 21,754 was given (January 2017) on Right of Use (RoU) basis to one Central PSU for Salaya-Mathura Pipe Line Project at 10 *per cent* of market value of the land. However, 40 *per cent* of *Jantri* value for the Revolving Fund for *Gauchar* Development was neither recovered nor any mention in this regard was made in the order issued by the District Collector office. This resulted in non-levy of *Gauchar* Development Fund amounting to ₹ 0.39 crore.



**(iii) Non/short levy/ recovery of additional occupancy price for Gauchar Development Fund**

As per GR dated 01 April 2015 read with GR dated 09 March 2016, where *Gauchar* land is to be allotted for public purposes such as road, railways *etc.*, the organisation is required to pay 30 *per cent* of *Jantri* value of the land in addition to the occupancy price to the Government for further transfer to the concerned *Gram Panchayat* for improvement/development of the *Gauchar* land.

The Government vide GR dated 07 July 2015 read with GR dated 11 February 2013, allowed advance possession of the *Gauchar* land to the State Public Sector Undertakings (PSUs) engaged in industrial activities and Central Public Sector Undertakings (PSUs).

Scrutiny of the records revealed that in eight<sup>17</sup> districts, *Gauchar* land measuring 2,52,769 sq. m. was allotted/ advance possession was given to three<sup>18</sup> allottees in 26 cases for industrial purpose. However, the additional occupancy price of 30 *per cent* of *Jantri* value aggregating to ₹ 10.40 crore recoverable for *Gauchar* development fund was either not recovered or short recovered from the allottees.

**(iv) Recoupment of the Gauchar land**

As per GR dated 01 April 2015 read with GR dated 09 March 2016, where *Gauchar* land is to be allotted for public purposes such as road, railways *etc.*, the District Collector office shall reserve the equivalent area of the Government waste land for *Gauchar* purpose and shall hand over the land to the concerned *Gram Panchayat* so that the area of *Gauchar* land does not reduce.

During scrutiny of the *Gauchar* land allotment/ advance possession cases in three<sup>19</sup> District Collector offices, it was revealed that 1,21,642 sq. m. of *Gauchar* land had been allocated to State Departments<sup>20</sup>/ PSU<sup>21</sup> and Central PSU. In these cases, equivalent land was required to be declared as *Gauchar* land by the respective District Collector offices, transferred to the concerned *Gram Panchayat* and suitable entries were to be made in the revenue records. However, it was noticed that:

- In eight cases of these three districts, though land measuring 82,366 sq. m. was required to be declared as *Gauchar* land, no orders in this regard were issued by the jurisdictional District Collector offices.
- In eight cases of Banaskantha district, land measuring 39,276 sq. m., equivalent to the *Gauchar* land allotted, was ordered by the District Collector office for transfer as *Gauchar* land to respective *Gram*

<sup>17</sup> Ahmedabad, Aravalli, Banaskantha, Bharuch, Devbhumi Dwarka, Gandhinagar, Mehsana, Vadodara

<sup>18</sup> State PSU 'B', State PSU 'G', Central PSU

<sup>19</sup> Banaskantha, Devbhoomi Dwarka, Jamnagar.

<sup>20</sup> Home Department, Revenue Department (GSDMA), Roads and Buildings Department.

<sup>21</sup> State PSU 'B'.

*Panchayat*. However, no corresponding entries were found made in the revenue records of the particular village.

The above facts indicate that the Department did not (i) ensure availability of the *Gauchar* land as per the prevailing policy and (ii) update the land records to authorize the respective *Gram Panchayat* to take up development work of the *Gauchar* land assigned to them.

**(v) Monitoring of allocation of additional occupancy price/ *Gauchar* Development Fund**

The additional occupancy price levied under 27 January 1999 read with 01 April 2015 is to be used for development of *Gauchar* land. The additional occupancy price shall have to be credited to *Gauchar* Development Revolving Fund<sup>22</sup>.

During scrutiny of the records of 10<sup>23</sup> District Collector offices, it was noticed in 75 cases of advance possession/ allotment/ regularisation of encroachment of *Gauchar* land that additional occupancy price/ *Gauchar* Development Fund of ₹ 61.31 crore was recovered. However, nothing was on record to establish that the said amount had been credited to the *Gauchar* Development Revolving Fund and subsequently transferred by the Department to the concerned *Gram Panchayat* for the development of the *Gauchar* land. The above fact indicates that the Department did not adhere to the policy for the conservation and development of the *Gauchar* land.

After this being pointed out, the Department during the exit conference stated that regarding transfer of *Gauchar Development Fund* to *Gram Panchayat*, the work of creation of a new account head for *Gauchar* Development Fund is in progress.

**It is recommended that the Government may strictly abide by its own policy of management of *Gauchar* land in the State.**

**(vi) Delayed payment of additional occupancy price**

During scrutiny of the records it was noticed in three<sup>24</sup> District Collector offices that in seven cases of allotment of *Gauchar* land, the allottees did not pay the additional occupancy price at the time of advance possession. Instead, the amount was paid along with differential occupancy price at the time of issue of allotment order. Though, the Government prescribed for payment of interest on the differential occupancy price from the date of advance possession to the date of payment of such differential amount, no provisions had been made to levy interest on the delayed payment of additional occupancy price. The interest amount foregone by the Government in these cases worked out to ₹ 3.46 crore.

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<sup>22</sup> Major Head 0029- Land Revenue, Minor Head 107-Sale proceeds of waste land and redemption of tax, Sub Minor Head 03- Receipt from sale of *Gauchar* land for industrial purpose

<sup>23</sup> Ahmedabad, Aravalli, Banaskantha, Dahod, Devbhoomi Dwarka, Jamnagar, Kutch, Mehsana, Surat, Vadodara.

<sup>24</sup> Ahmedabad, Mehsana, Vadodara

### 5.3.11 Post allotment issues

#### 5.3.11.1 Government land not resumed

The Government vide its Circular dated 10 July 2008 instructed the District Collectors not to renew the lease period and resume the Government land given for 'Krishi/ shala farm' (farming education purpose) to *uttarbuniyadi* schools and primary/secondary vocational schools in the event of conversion of such schools as regular schools.

(i) During scrutiny of the records in the office of the District Collector, Banaskantha and Mehsana it was noticed that land allotted for 'Krishi/shala farm' was not resumed to Government head by the District Collector offices as detailed below:

**Table 06: Government land not resumed**

Sl. No.	Name of lessee	Area of land leased (in sq. m.)	Occupancy price leviable for irregular grant of lease on market value of land (₹ in crore)
1.	Trust 'V', Deodar. R.S.No.265A/paiki 2/ paiki 2, Village: Duchakwada Taluka: Deodar, District: Banaskantha	24,282	1.01
<p><b>Nature of observation:</b> The trust was in possession of 40,470 sq. m. land granted on lease for school farm. However, the Revenue Department vide its GR dated 24 February 2014 ordered to take 24,282 sq. m. land under Government head. Remaining 16,188 sq. m. land was left with the trust for playground (4,047 sq. m.) and tree plantation. The trust, vide its letter dated 15 April 2014, stated that the land measuring 24,282 sq. m. may be kept with the trust in the interests of the students and requested the Revenue Department to reconsider the GR dated 24 February 2014. The Revenue Department instructed (24 July 2014) the District Collector office to initiate appropriate action as per the prevailing law. However, village form-6 revealed that the District Collector office vide orders dated 14 September 2015, had extended lease period of the whole land measuring 40,470 sq. m. for a period up to 31 July 2020. The action of the District Collector office to extend lease period of land 24,282 sq. m. valuing ₹ 1.01 crore against the orders of the Revenue Department was in contravention of the Government policy enunciated vide Circular dated 10 July 2008.</p> <p>On this being pointed out in audit, the District Collector office rectified the order dated 14 September 2015 vide entry no.3300 dated 03 January 2020 and the lease area was renewed to 12,141 sq. m. (three acre) instead of 40,470 sq. m. (10 acres) in the record of rights (VF No.6). However, the entire 40,470 sq. m. (10 acres) is still in the name of the Trust as per mutation records (VF No.7) and hence, actual possession of the 28,329 sq. m. (seven acre) was not taken back into government head.</p>			
2.	Trust 'W', Sakari. R.S.No.1 paiki, Village:Sakari, Taluka: Kheralu, District:Mehsana	10,000	0.23
<p><b>Nature of observation:</b> As per letter dated 06 August 2014 of the Revenue Department, addressed to the District Collector office, Mehsana the trust has ceased to impart agriculture related education. Thus, the Department instructed to take land measuring 10,000 sq. m. back to the Government head which was allotted to the trust for agriculture purpose. However, as per village form-7, after promulgation dated 16 June 2015, the land was still under the possession of the trust. Thus, it can be concluded that the District Collector office had not taken the land back in Government head even after lapse of more than one year since the instructions of the Revenue Department. The market value of the land under irregular possession of the trust was ₹ 0.23 crore.</p>			

(ii) The GR dated 06 June 2003 prescribes that the allottee to whom Government land had been allotted for residential/ other non-agricultural purpose should complete the construction within two years of the allotment. In case the allottee fails to complete the construction work within the stipulated time, the District Authority may extend the time limit to six years by giving extension of two years at a time on levy of applicable premium. However, in case the allottee fails to commence construction activity even after lapse of six years, the land shall vest with the Government and shall be disposed as per the prevailing policy. In the event of part construction/ construction after six years, the land is to be re-granted to the allottee on recovery of market value.

During scrutiny of the records in the office of the District Collector, Kutch it was noticed in four cases that the office had given (between October 2014 and May 2015) extension for completion of construction work for further period of one/ two years though six years had already elapsed from the date of allotment of the land. In these cases, the land was to be re-granted to the allottees after recovering the prevailing market value of the land. Omission to do so resulted in foregoing of occupancy price of ₹ 0.64 crore as detailed below:

**Table 07: Irregular extension of time limit to complete construction**

Sl. No.	Name of allottee/ description of property	Area (in sq. m.)	Date of initial allotment	Extension granted beyond six years (in number of years completed)	Jantri rate (in ₹)	Market value (in ₹)
1.	Individual 'F'R.S.No.129 <i>paiki</i> Village: Galpadar, Taluka: Gandhidham, District: Kutch (Resort and Tourism Complex-Industrial use)	9,523	07.01.2002	07	570 (190 x 3)	54,28,110
2.	Individual 'G'R.S No.163 <i>Paiki</i> Village: Bhuj, Taluka:Bhuj, District: Kutch	90	05.02.2007	02	1750	1,57,500
3.	Individual 'H', Tra.S.No.870 <i>Paiki</i> Village: Bhuj, Taluka: Bhuj, District: Kutch	90	31.05.2004	05	4250	3,82,500
4.	Individual 'I' Tra.S.No.870 <i>Paiki</i> Village: Bhuj, Taluka: Bhuj, District: Kutch	100	02.05.2007	02	4250	4,25,000

### 5.3.11.2 Conversion of new tenure<sup>25</sup> Government land to old tenure<sup>26</sup> for the purpose of sale

The clause 9(A) of GR of June 2003 stipulates that the District Collector office may permit to sell the land/plot along with construction given on new tenure for non-agricultural purpose on payment of premium on furnishing proper reasons. However, unconstructed land/plot given for non-agricultural purpose

<sup>25</sup> New tenure land means the tenure of occupancy of the land which is non-transferable and impartible without the prior approval of the District Authority

<sup>26</sup> Old tenure land means land free of all restrictions of transfer but subject to permitted purpose of usage of land.

on new tenure may not be converted to old tenure for the purpose of transfer by sale, mortgage *etc.*

Scrutiny of the records in the office of the District Collector, Surat revealed that the office vide order dated 16 May 2015, permitted conversion from new tenure to old tenure for industrial purpose and sale of open<sup>27</sup> Government land measuring 6,87,960 sq. m.<sup>28</sup> (out of 13,60,000 sq. m.) to Company 'B' Mumbai. The office passed the above order under clause No.30(1)(b)(2) of the GR dated 6 June 2003 levying premium of ₹ 64.05 crore with prior approval (March 2015) of the Revenue Department. However, the above clause relates to only change of tenure of land and is not applicable to grant permission to sell the land. In this case, clause 9(A) of the GR was applicable which does not permit sale of Government land allotted for non-agricultural purpose without any construction. On further scrutiny of the records it was revealed that the company had subsequently sold (Document No. 9459 dated 16 June 2015) land at a consideration of ₹ 131.35 crore to a firm.

Thus, the permission given for conversion of such vacant new tenure Government land to old tenure for industrial purpose and sale thereof was not in consonance with the policy of the Government. This resulted in undue financial benefits to the company of ₹ 67.30 crore (₹ 131.35 crore- ₹ 64.05 crore).

When this was pointed out in audit, the District Collector office, Surat stated (June 2019) that the detailed reply would be submitted after verification of records and obtaining the required guidance from the Revenue Department.

### 5.3.12 Internal Control

Scrutiny of the land records, allotment cases etc., revealed that data of land records was not maintained correctly by the Department. Discrepancies in revenue entries, not obtaining approval of the competent authority for grant of land, non-monitoring of conditions of grant of land were also noticed. These deficiencies indicated that the data available with the Department was unreliable and internal controls and monitoring mechanism of the Department were weak. A few cases are mentioned in the following paragraphs:

#### 5.3.12.1 Allotment of land by District Collector office in excess of powers

Government of Gujarat, *vide* GR dated 27 November 2000, has delegated the power to District Collector offices for allotment of Government land for different purposes subject to the limits prescribed on the basis of area and value of land. Accordingly, District Collector office was empowered to allot Government land valuing ₹ 15 lakh or 20,000 sq. m. for industrial purposes. Allotment of Government land in excess of stipulated area or value thereon should be forwarded to Government for approval.

<sup>27</sup> As per *Panchkayas* dated.31 May 2013 of the Circle officer, Olpad.

<sup>28</sup> Situated at Block No.1056/B *paiki* Village: Bharbodhan, *Taluka*: Olpad

Test check of the allotment cases in the office of the District Collector, Mehsana revealed that in five cases Government land measuring 45,994 sq. m. was allotted to one Central PSU for laying Salaya-Mathura pipeline for Right of Use (RoU). Though in these cases, the market value of the land exceeded ₹ 15 lakh the District Collector office allotted the land without the approval of the Government.

### **5.3.12.2 Monitoring of utilisation of land**

In order to ensure that Government land allotted was being utilised for the specified purpose and as per the terms of the allotment order, the Revenue Department vide its Circular dated 20 December 2003 stipulated that the grantee/ lease holder shall submit a declaration in the prescribed form by first of August every year to the jurisdictional District Collector offices. The District Collector offices were instructed to maintain a 'declaration form register', scrutinise the declaration forms received and carry out necessary site inspection. In case of violation of the terms and conditions of the allotment order, action should be initiated as per prevailing rules and an annual detailed report is to be submitted to the State Government by the end of the December.

During 2013-14 to 2017-18; 1,821 cases of allotment of Government land were finalised in 10 districts selected under the Performance Audit. However, neither the grantee/ lease holder filed the prescribed declaration form nor any register was maintained to watch the submission of such declaration forms in all the selected 10 districts. As such, no annual detailed report was submitted to the Revenue Department by the offices of the District Collectors of these districts. Moreover, the Revenue Department also did not pursue the matter with the District Collector offices to ensure that the instructions issued under the Circular dated 20 December 2003 were meticulously complied with. This indicated poor monitoring by the Department to ensure that the Government land was being utilised for the specified purpose and as per the terms of the allotment order.

After this being pointed out, the Department during exit conference stated that action would be initiated to collect the declaration form annually from every allottee.

The above system deficiency of not monitoring usage/transfer of Government land allotted resulted in violation of the Government policy/ allotment orders as detailed in the following paragraphs:

### **5.3.12.3 Non levy of premium on reconstitution of allottee**

As per GR dated 06 June 2003 read with GR dated 21 June 2016, in case of change<sup>29</sup> in constitution of the partnership firm/ company, which has been allotted Government land, prior permission of District Collector/Government shall be obtained on payment of premium at 20 *per cent* of the notional market value of the land.

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<sup>29</sup> Partners, merger, demerger, amalgamation, share holding pattern.

(i) Scrutiny of the records in the office of the District Collector, Kutch revealed that land measuring 1,17,258<sup>30</sup> sq. m. was allotted (July 2012 rectified in February 2016) to company 'J', a subsidiary of company 'K', for setting up of 300 MW Power Plant at Village Bhadreswar of *Taluka* Mundra. The immediate parent company of company 'J' was company 'L', another subsidiary of company 'K'.

Scrutiny of the annual accounts of the company for the year 2013-14 to 2017-2018 available on its website, revealed that:

- name of the allottee (company 'J') was changed from company 'J' to company 'M' during the year 2012-2013.
- the equity shares and voting rights of the immediate parent company kept on changing between 2013-14 and 2016-17 and were reduced to 51 *per cent* in 2016-17.
- the name of the allottee company 'M' was further changed to company 'N' and the immediate parent company (company 'L') sold five *per cent* of its shareholding to company 'O' in 2017-18. Thus, shareholding of company 'L' was further reduced to 46 *per cent* and the Group (immediate parent company) lost control and significant influence over company 'N'.

In view of above change in the constitution of the allottee (company 'J'), prior permission of the District Collector office was required to be obtained by the allottee on payment of premium of ₹ 2.24 crore<sup>31</sup>. However, no records showing grant of prior permission from the Government/ District Collector office were available in the district office.

(ii) Scrutiny of records in the office of the District Collector, Surat revealed that Government land measuring 13,60,000 sq. m. situated at village Barbodhan, *Taluka*, Olpad was in possession of company 'B' (the allottee). Out of this, land measuring 6,87,960 sq. m. was converted from new tenure to old tenure for the purpose of sale on payment of premium of ₹ 64.05 crore vide order dated 16 May 2015 of the District Collector office, Surat after obtaining previous approval of the Revenue Department (02 May 2015). Thus, land measuring 6,72,040 sq. m. under new tenure remained in the possession of the allottee.

On scrutiny of the Annual Report for the year 2015-16, it was revealed that in pursuant of Share Purchase Agreement (SPA) dated 21 May 2015, 74.71 *per cent* of total shares including 48.62 *per cent* of the Promoters were acquired by company 'P' (Acquiring Company). Thus, the constitution of the company was altered due to change in shareholding pattern of the company. In this case, prior permission of the Government/ District Collector office was required to be obtained by the allottee on payment of premium of

<sup>30</sup> At the rate of ₹ 955 per sq. m.

<sup>31</sup> 1,17,258 sq. m. x ₹ 955 per sq. m. x 20 *per cent*.

₹ 12.56 crore<sup>32</sup>. However, no such prior permission from the Government/ District Collector office was obtained.

After this being pointed out, the Department during exit conference stated that replies in respect of cases of reconstitution of companies would be furnished in due course. Further reply is awaited (June 2020).

#### **5.3.12.4 Resumption of Government land for breach of condition of allotment**

The District Collector office specifies the conditions for grant of land in allotment order and in the event of breach of any condition, land is required to be resumed back to the Government. In the following two cases, though the conditions for grant/ lease of the land were not fulfilled, the land was not resumed back to the Government indicating that the conditions for grant of land were not being properly monitored.

(i) The District Collector office, Ahmedabad, vide order dated 8 August 2016, allotted Government land measuring 4,350 sq. m. under the head *talav* (pond) situated at R.S.No.566, village Vithalapur, *taluka* Mandal to company 'E' in exchange of Company's land measuring 4,350 sq. m. situated at R.S.No.594 *paiki* of the above village. The company was required to build '*talav*' on the land exchanged at company's own expenses and hand over to the Vithalapur *Gram Panchayat*. However, the District Collector office did not prescribe the time limit within which the *talav* was to be built and handed over to the *Gram Panchayat*. No details of the '*talav*' having been built on the exchanged land and handed over to the Vithalapur *Gram Panchayat* were available in the revenue records. This indicates that the departmental authorities did not monitor the conditions for grant of land for ensuring necessary compliance by the allottee.

(ii) The District Collector office, Ahmedabad, vide order dated 07 August 2000, renewed lease period up to 26 December 2004 for the land<sup>33</sup> measuring 40,417 sq. m. which was allotted to *UttarbuniyadiShala* in 1988 for farm/*krishi* education under Rule 32A of the Gujarat Land Revenue Rules. Though the lease period had expired, the allottee neither applied for the extension of lease period nor surrendered the land to the Government. The Department also did not ascertain the land use even after lapse of 15 years from the expiry of lease period. In this case land was required to be resumed to Government after expiry of lease period since the allottee did not apply for the extension of the period as per conditions of allotment.

#### **5.3.12.5 Irregular utilisation of Government land allotted revenue free**

Rule 32(1) of the GLR Rules empowers the Revenue Department to allot of Government land as revenue free for establishing schools by the registered

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<sup>32</sup> 6,72,042 sq. m. x ₹ 934.50 per sq. m. x 20per cent.

<sup>33</sup> Situated at R.S.No.21p (new no.20), Village Sher, *Taluka* Mandal



trusts. However, the Rule does not provide for allotment of Government land as revenue free for the purpose of college.

On scrutiny of the records of the Revenue Department, it was noticed that the Department, *vide* its GR dated 08 December 1976, allotted Government land<sup>34</sup> measuring 4,047 sq. m. as revenue free for school building and 3,478 sq. m. for playground at token rent of ₹ one for 15 years to Trust ‘X’. The initial lease period of the playground had expired in December 1991. However, the trust applied for renewal of the lease period from 1991 to 2021 only in February 2012 i.e. after lapse of 20 years from the expiry of the initial lease period. The District Collector office intimated (May 2015) the Revenue Department that the trust was running College along with the School in the building and number of College students was much higher than the school students. Thus, the land allotted for school building was also being used for running College without permission of Government/ District Collector office. However, Revenue Department, *vide* its GR dated 22 July 2016, accorded permission for renewal of the lease for playground measuring 3,478 sq. m. without initiating any action for the breach of condition of initial allotment of land measuring 4,047 sq. m. for school building. In this case the land was required to be allotted afresh as per prevailing Government policy by recovering market value of ₹ 66.78 lakh<sup>35</sup>.

The above case indicates that the departmental authorities need to ensure utilisation of the Government land as per intended objective.

**It is recommended that the Department may strengthen internal control mechanism to ensure effective monitoring of utilization of the Government land for the intended objectives.**

### 5.3.12.6 Incorrect mutation entries in the revenue records

In order to amend the Record of Rights and Mutation entries, the concerned office of the *Talati*/Circle Officer is required to put up the mutation case with evidence to the Deputy *Mamlatdar* office for authorisation. Deputy *Mamlatdar* office refers the same to *Mamlatdar* office for final certification. *Mamlatdar* office, after verification of documents and giving notices to the party involved in mutation, certifies the entry and accordingly mutation is carried out.

During test check of the records pertaining to allotment of land it was observed in two<sup>36</sup> District Collector offices that:

- The District Collector office, Kutch *vide* order dated 07 September 2015, regularized excess measured land of 3,237 sq. m. of RS No.657 of Village Varsamedi, *Taluka*: Anjar, pertaining to company ‘F’ (*khata* no.1346). Further scrutiny of records revealed that lands situated at RS No.662/p2 and 671/p2 of the above village had been declared as “Government land”. However, the *Mamlatdar* office, Anjar *vide* orders dated 28 September

<sup>34</sup> Situated at Bagasara (Old *Gamtal* of Natvarnagar), Taluka. Bagasara, District Amreli

<sup>35</sup> In absence valuation of land by DLVC/ SLVC, rates as per *Jantri* has been adopted.

<sup>36</sup> Ahmedabad, Kutch

2006 and 03 October 2005, treated the above lands measuring 10,825 sq. m. and 25,900 sq. m. of the R.S.No.671/p2 and R.S.No.662/p2 respectively as excess measured land and regularized the same in the name of the company. The above orders of the *Mamlatdar* office, Anjar were cancelled (07 January and 07 February 2009) by the Additional Collector office and revision application of the Company against the order of Additional Collector office was also not entertained (07 June 2010) by the District Collector office, Kutch. Thus, the lands of RS No.671/p2 and R.S.No.662/p2 were established as Government land. However, scrutiny of the village form 6 and 7 pertaining to the R.S.No.671/p2 and R.S.No.662/p2 revealed that the above Government lands were being shown in the name of the Company.

When this was pointed out in audit, the District Collector office, Kutch stated (May 2019) that audit would be intimated after verification of records and after taking action as per rules.

The above facts indicate that the mutation entries were being not properly supervised by the responsible authorities which resulted in incorrect mention of ownership of the Government land with the Corporation/ Company.

The above inaccuracies in the land records may result in subsequent unauthorised/ irregular transfer of the Government land against the existing policies.

### **5.3.13 Non/short levy of taxes and duties**

During Performance Audit, it was observed that there was lack of effective mechanism at district level to watch compliance of conditions of various resolutions, orders and instructions issued by the Government from time to time in respect of the conversion of the land use and monitoring the levy and collection of various receipts relating thereto. Absence of such mechanism leads to continuous shortfall in Government revenue. The instances of non/short levy of revenue noticed during scrutiny of the relevant records of the district offices are detailed below:

#### **5.3.13.1 Non levy of conversion tax**

Section 67A of the GLR Code 1879 read with GR dated 18 December 2006, provides for the levy of conversion tax on change in the mode of use of the land from agricultural to non-agricultural (NA) or from one NA purpose to another NA purpose. Different rates of the conversion tax are prescribed for residential/ charitable and industrial/other purposes depending upon the population of the city/town/notified area/ village. Further, as per Section 48 of the GLR Code Non-Agricultural Assessment (NAA) at the prescribed rates is also leviable annually.

- (i) During test check of the records, it was noticed that in seven<sup>37</sup> District Collector offices, in eight cases of allotment and 72 cases of advance possession of Government land for NA purpose, conversion tax was not levied by the concerned offices. This has resulted in non-levy of conversion tax of ₹ 2.07 crore.

**(ii) Non levy of conversion tax and NAA from SIR**

Scrutiny of the records of District Collector office, Ahmedabad revealed that Government land measuring 28,50,28,940 sq. m. situated at various survey numbers falling in 22 villages of *Taluka* Dholera was allotted (March 2011) to Special Investment Regional Development Authority (SIRDA) for the development of Special Investment Region (SIR) with prior approval (January 2011) of the Revenue Department. Though the Revenue Department had specifically instructed to levy applicable taxes, neither conversion tax nor NAA as per applicable rates was levied by the District Collector offices. This resulted in non-levy of conversion tax of ₹ 171.02 crore<sup>38</sup> and NAA of ₹ 79.81 crore<sup>39</sup> aggregating to ₹ 250.83 crore.

**5.3.13.2 Non/short levy of stamp duty**

According to the Article 20(a) of Schedule-I read with Section 3 (aa) of Gujarat Stamp Act 1958, in case of conveyance of immovable property, stamp duty at the applicable rate is chargeable on the amount of consideration for such conveyance or, as the case may be, the market value of the property which is the subject matter of such conveyance, whichever is greater. As per Government instructions issued vide Circular 01 April 2002, the possession of Government land was to be handed over to the allottee only on payment of the appropriate amount of stamp duty.

During scrutiny of records, it was noticed in 41 cases of allotment of Government land under nine<sup>40</sup> District Collector offices that the land was handed over to the allottees without verifying whether the allottees had paid the applicable stamp duty. Out of these 41 cases,

- In 29 cases, the Government land was allotted on concessional value/ revenue free, the stamp duty was levied on such concessional value of the land instead of actual market value resulting in short levy of stamp duty of ₹ 6.88 crore.
- In 11 cases of allotment of Government land, the stamp duty of ₹ 0.18 crore leviable on market value of land was not levied.
- In one case of allotment of Government land, the stamp duty of ₹ 1.50 lakh was levied on *ad hoc* occupancy price. However, the final occupancy price was higher than the *ad hoc* amount paid. However,

<sup>37</sup> Ahmedabad, Aravalli, Devbhoomi Dwarka, Jamnagar, Kutch, Mehsana, Vadodara.

<sup>38</sup> 28,50,28,940 sq. m. x ₹ 6 per sq. m.

<sup>39</sup> 28,50,28,940 sq. m. x ₹ 0.40 per sq. m. annually for seven years from 2011-12 to 2017-18

<sup>40</sup> Ahmedabad, Aravalli, Banaskantha, Dahod, Devbhoomi Dwarka, Jamnagar, Kutch, Mehsana, Vadodara.

differential stamp duty of ₹ 0.42 lakh leviable on such differential amount was not levied.

After this being pointed out, the Department during exit conference stated that the matter would be reviewed and replies would be prepared in consultation with the concerned District Collector offices.

#### **5.3.14 Non/short levy of interest**

Section 148 of GLR Code, 1879 empowers the State Government to levy penalty/interest at applicable rates in the event of default in payment of any instalments of land revenue within the prescribed time. Further, the GR dated 23 February 2015, prescribes for levy of interest at the rate of eight *per cent* on differential amount of occupancy price in the cases of advance possession to Boards/Corporations for the period from the date of advance possession of the land to the date of payment of such differential occupancy price.

During the audit, it was noticed in 16 cases of allotment of land under six<sup>41</sup> District Collector offices that the interest was either not levied or short levied on delayed payment of differential occupancy price. This resulted in non/short levy of interest of ₹ 0.33 crore.

In addition to above, short levy of interest in two other cases of allotment of Government land is discussed below:

- During test check of the records in the office of the District Collector, Ahmedabad, it was noticed that Government land measuring 44,51,700 sq. m. was allotted (November 2008) to company 'Q' at the market value ₹ 400.65 crore to be paid in eight instalments along with compound interest at eight *per cent* starting after completion of two years from the date of possession (09 October 2008) of land. The company paid the first instalment on 21 March 2011 against due date on 09 October 2010 and thereafter also there were instances of late payment of the instalments (October 2011 to October 2017). In the instant case, the company was required to pay interest of ₹ 206.15 crore on delayed payments of instalments. However, the Company paid interest of ₹ 205.25 crore only resulting in short payment of interest of ₹ 0.90 crore.

After this being pointed out, the Department during exit conference stated that the matter would be reviewed and replies would be prepared in consultation with the concerned District Collector offices.

#### **5.3.15 Conclusion and Recommendations**

There were deficiencies in maintenance of records pertaining to Government land at the District as well as Department level. The lack of uniformity in the valuation process and non-compliance to the specific instructions resulted in undervaluation of the Government land and consequent short realisation of revenue. The authorities did not adhere to the guidelines/ policies with reference to area eligible for grant/ regularisation and the penalties prescribed

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<sup>41</sup> Aravalli, Banaskantha, Gandhinagar, Kutch, Mehsana, Tapi.

for the unauthorised possession of the Government land. The *Gauchar* land was not being managed as per the policy pronounced by the Government. There was lack of monitoring of the Government land allotted for the specific purpose(s). The instances of non/ short levy of taxes and duties were noticed.

**In view of above it is recommended that the Government/Department may:**

- **consider revising the policy mentioning the time limit within which the excess land holding shall be regularized. Further, Department may also take necessary action to resume the excess land to the Government account wherever it was not regularised.**
- **strictly abide by its own policy of management of *Gauchar* land in the State.**
- **strengthen internal control mechanism to ensure effective monitoring of utilization of the Government land for the intended objectives.**

#### **5.4 Irregularities noticed during audit of cases of conversion of new tenure land into old tenure**

Scrutiny of 764 cases of conversion of new tenure land into old tenure land for agriculture and non-agriculture purposes in four offices during the period between October 2017 and May 2018 revealed that in 19 cases (2.49 *per cent*) there were irregularities in levy of premium prices, levy of stamp duty and registration fees and loss of revenue as discussed below:

##### **(i) Short/non-levy of premium price**

As per the Revenue Department Resolutions<sup>42</sup> issued under Section 43 of the Gujarat Tenancy and Agricultural Lands Act, 1948, in case of conversion of land under new and restricted tenure to old tenure, premium at the prescribed rates is required to be recovered by the concerned District Collector office. As per Government Resolution dated 03 May 2011, the rate of premium is 25/ 40 *per cent* of the market value of the property for agriculture/ non-agricultural purpose. However, no premium is levied for conversion of land for agriculture purpose situated in rural areas.

The market value of the property is determined in accordance with the *Jantri*<sup>43</sup> rates and subject to the conditions prescribed therein. The Government Resolution dated 03 December 2011 provides that in the case of conversion of land under new and restricted tenure to old tenure for residential/ industrial/ commercial purposes, where the market value of the property is not prescribed in the *Jantri*, two/ three/ four times of the agricultural rate of the same survey number of the property should be considered for the purpose of levy of

<sup>42</sup> Dated 13 July 1983 read with the Resolution No NSJ-102006- 571-J (Part 2) dated 04 July 2008

<sup>43</sup> Annual Statement of Rates issued by the Government showing the rates for the purpose of determination of value of immovable properties and levy of stamp duty.

premium. The rates so arrived at should not be less than the rates provided in the previous *Jantri* effective from 1 April 2008 to 31 March 2011 (old *Jantri*).

Audit noticed (between October 2017 and May 2018) short/non-levy of premium price in 17 cases in five offices<sup>44</sup> amounting to ₹ 4.08 crore as detailed below:

- a. In one case of conversion of land measuring 28,531 sq. m. at Shripur Tibi, Vadodara from new and restricted tenure to old tenure for residential purpose, the District Collector office, Vadodara had adopted *Jantri* rate of ₹ 930 per sq. m. (two time of ₹ 465 per sq. m.) as opined by the Dy. Collector (SDVO) office based on new *Jantri*. Neither the office of the Dy. Collector (SDVO) nor the District Collector office verified the *Jantri* rates prescribed in the old *Jantri* for the specific land. The *Jantri* rate prescribed in the old *Jantri* was ₹ 1,000 per sq. m. The District Collector office was required to adopt ₹ 1,000 per sq. m. prescribed in the old *Jantri* for determination of market value for levy of premium price. This resulted in short levy of premium price of ₹ 7.99 lakh at the rate of 40 *per cent*<sup>45</sup> of the market value of the land.
- b. In nine cases of conversion of land measuring 78,901 sq. m. situated at various villages of three<sup>46</sup> districts from new and restricted tenure to old tenure for non-agricultural purposes<sup>47</sup>, the Department adopted (between April 2015 and April 2017) incorrect *Jantri* rates. The premium levied was ₹ 12.24 crore instead of ₹ 14.79 crore. This resulted in short levy of premium price of ₹ 2.55 crore.
- c. In one case new and restricted tenure land measuring 3,765 sq. m. (out of 50,081 sq. m. of Revenue Survey No. 703/A+B) at Adajan, Surat was acquired (October 2013) by the office of the Special Land Acquisition Officer for 'Cable strayed approach bridge' and compensation of ₹ 2.54 crore<sup>48</sup> was paid (October 2013) to the occupant of the land. Further scrutiny of the records revealed that there was breach<sup>49</sup> of condition of the 'new and restricted tenure' by the owner of the land and the land was under dispute due to ownership claims made by various stakeholders of the land. Finally, the Revenue Department directed (August 2014) the District Collector office to recover premium price for breach of conditions of the new and restricted tenure by the occupants of the land. Though, action for recovery of applicable premium price was under process in the concerned branch of the District Collector office, the office of the Special Land Acquisition Officer paid compensation of ₹ 2.54 crore to the heirs of the original land holder without recovering/ adjusting premium price of ₹ 1.27 crore<sup>50</sup> on the land acquired. Thus,

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<sup>44</sup> Ahmedabad, Banaskantha, Principal Secretary office (Revenue Department) Gandhinagar, Vadodara and Surat

<sup>45</sup> [28,531 sq. m. x ₹ 1,000 per sq. m. x 40 per cent] – ₹ 1,06,13,532 levied = ₹ 7,98,868

<sup>46</sup> Ahmedabad, Banaskantha and Vadodara

<sup>47</sup> Residential, Religious and Commercial

<sup>48</sup> 80 *per cent* of the total compensation of ₹ 3.17 crore

<sup>49</sup> Unauthorized transfer of the land through will (1981) and gift (1995)

<sup>50</sup> 3,765 sq. m. x ₹ 8,420 per sq. m. x 40 *per cent*.

absence of coordination between the branches of the District Collector office, Surat had resulted in non-recovery of premium price of ₹ 1.27 crore.

- d. In five cases of conversion of land measuring 70,174 sq. m. situated at two<sup>51</sup> villages of Vadodara district from new and restricted tenure to old tenure for agricultural (four cases) and industrial purpose (one case), the District Collector office levied (October and November 2016) premium price of ₹ 1.54 crore. On further scrutiny of the records it was revealed that as per promulgation (September 2015 and June 2016), the area of the land in above five cases was 72,907 sq. m. Thus, the District Collector office was required to levy premium price on the differential area of 2,733 sq. m. However, no premium price was levied on the differential area. This resulted in short levy of premium price of ₹ 5.99 lakh.
- e. In one case, land measuring 72,844 sq. m. (Survey No. 75/1/7 of Village Zankhi, Taluka: Dholera, District: Ahmedabad) was converted to old tenure for agriculture purpose vide *Mamlatdar* office order dated 23 September 2010 without levying premium price considering the land as falling under rural area. Subsequently, the land was sold to three purchasers and one of the purchasers applied (February 2016) for conversion of tenure of land measuring 24,281 sq. m. (out of 40,468 sq. m.) from agriculture to residential purpose. It was further noticed that the said land was included in the Special Investment Region (SIR) vide Notification dated June 2009. Thus, premium price was required to be levied on the land included in SIR as per Government Resolution dated 03 May 2011. As the land was converted to old tenure agriculture without charging premium with reference to Mamlatdar office's Order dated 23 September 2010, the District Collector office had taken corrective action vide order dated 31 July 2017 and granted permission for the tenure change after levying premium price for both agriculture to agriculture and agriculture to residential purpose. Audit noticed that the District Collector office was required to levy premium price of ₹ 12.14 lakh on the remaining land admeasuring 48,563 sq. m. (72,844 sq. m. - 24,281 sq. m.). However, no action was found initiated as per records produced to audit, to recover the premium price. Accordingly, there was non-levy of premium price of ₹ 12.14 lakh in this case.

## (ii) Short levy of stamp duty and registration fees

During scrutiny of cases relating to conversion of new tenure land into old tenure land for agriculture and non-agriculture purposes, Audit noticed (May 2018) from the records furnished by the applicants along with the application that there was short-levy of stamp duty and registration fees in two cases amounting to ₹ 18.52 lakh as detailed below:

<sup>51</sup> Jesangpur and Masar

**(a)** As per Article 45 (f) of Schedule I of Gujarat Stamp Act 1958, Power of Attorney (PoA) authorising an unrelated person (PoA holder) to sell or transfer the immovable property attracts stamp duty at the rates applicable to the conveyance deeds under Article 20.

In one case, the District Collector office, Vadodara granted (January 2017) permission for conversion of 'new and restricted tenure' land<sup>52</sup> to 'old tenure' for residential purpose. On further scrutiny of the records it was noticed that five co-owners of the said land, who were residing outside India, had executed PoAs in favour of unrelated persons authorizing them to apply for the conversion of tenure of land and execute sale deeds. Since, the PoAs were executed in favour of unrelated person authorizing the PoA holder to sell the property, stamp duty at the rates applicable to conveyance was required to be levied in these cases. However, out of the five PoAs executed by the co-owners, only in one case (May 2014) proper stamp duty and registrations fees was levied. Remaining four PoAs were unregistered and were executed (October/ December 2014) on payment of stamp duty of ₹ 100 in each case. Thus, non-registration of PoAs resulted in short levy of stamp duty and registration fees of ₹ 9.32 lakh.

**(b)** An instrument of release of ancestral property or part thereof under Article 49 (a) of Schedule I of Gujarat Stamp Act, 1958 attracts stamp duty of ₹ 100. In other cases of release and gift deeds under Article 28 stamp duty is leviable at the rates applicable to a conveyance deed under Article 20.

In one case, the District Collector office, Vadodara vide its order dated 9 September 2016, granted permission for conversion of new tenure land<sup>53</sup> to old tenure for residential purpose. On scrutiny of the records it was noticed that the agriculturist had sold the land in September 2016 and the purchaser of the land had obtained District Collector office's Order on 27 April 2017 to utilise the land for non-agricultural residential purpose. Subsequently, the purchaser had applied for inclusion of names of his three family members in the land record which was acceded (October 2017) to by the office of the jurisdictional *Mamlatdar* on the basis of affidavit (August 2017) filed by the owner. Subsequently, the three members of the family released (October 2017) their rights in favour of the remaining one member by a registered release deed on payment of stamp duty of ₹ 100. On the basis of the said release deed, the revenue authority entered (December 2017) name of the single member of the family in the land records. The office of the Sub Registrar had misclassified the release deed under Article 49 (a) instead of 49 (b) and there was short-levy of stamp duty. Audit noticed that as the property transferred was not an ancestral property, the release deed was required to be classified under Article 28 and Article 49 (b) as containing two distinct matters of gift and release and aggregate stamp duty and registration fees of ₹ 9.20 lakh was chargeable. However, stamp duty and registration fees were not levied on the gift of property using affidavit and in the case of subsequent release of property in

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<sup>52</sup> Final Plot 115, Town Planning Scheme 44 of Revenue Survey No. 494 of Village Bapod, Taluka Vadodara

<sup>53</sup> Final Plot 16, Town Planning Scheme 01 of Revenue Survey No. 44 of Village Ankodiya, Taluka Vadodara



favour of one of the family member stamp duty of ₹ 100 only was levied. This has resulted in short levy of stamp duty and registration fees of ₹ 9.20 lakh.

### **5.5 Non levy of premium/penalty under Gujarat Tenancy and Agricultural Lands Act**

Scrutiny of 32 out of 127 cases finalised under Section 63 of Gujarat Tenancy and Agricultural Lands (Amendment) Act, 2015 by the District Authority, Vadodara, revealed that in three cases (9.38 *per cent*), there was breach of conditions of the provisions of the Tenancy Act. The breach of condition has resulted in leakage of revenue in one case and in other two cases, penalty was not levied. The details of the cases are mentioned below:

#### **(i) Leakage of revenue due to lack of monitoring mechanism to identify breach of condition**

Section 63 of the Gujarat Tenancy and Agricultural Land Act 1948 (the Tenancy Act), prohibits sale of agricultural land to non-agriculturist. However, Section 63AA provides for sale of agricultural land for bonafide industrial purpose without prior permission of the District Collector office subject to certain conditions. There was no provision in the Act regarding the permissibility of subsequent sale or transfer by the industrial concern. Consequently, the State Government amended (September 2015) the Tenancy Act and introduced a new sub-section 4(A) to Section 63AA of the Act *ibid* to provide for subsequent sale of land purchased for bonafide industrial purpose. As per Section 63AA (4A) of the Tenancy Act effective from 5 December 2015, in cases where the purchaser fails to commence the production of goods or provide the services within three years from the date of certificate issued by the office of the Industries Commissioner/District Collector or thereafter, the District Collector office may, after an application is made to him in that behalf, grant permission by an order for sale or transfer of such land after charging 40/60/100 *per cent* of the prevailing *Jantri* value where the application to this effect was made before completion of five/seven/more than seven years respectively.

During test check of records of the District Collector office, Vadodara for the year 2016-17, audit noticed (April 2018) that a Company (Company 'PP'), had purchased (2007) agricultural land measuring 1,33,243 sq. m. falling in 24 survey/block number of village Kandari, Taluka Karjan and District Vadodara for bonafide industrial purpose and obtained the Industries Commissioner office's certificate in May 2009 and District Collector office's certificate under Section 63AA between 2009 and 2012. However, the Company 'PP', instead of starting industrial activities, sold (between February 2015 and December 2017) the said land to another Company (Company 'RR') after five/eight years from obtaining certificate from the Industries Commissioner office. In such a situation, the Company 'PP' was required to obtain permission from the office of the District Collector to sell/ transfer such land to the Company 'RR' but no application was made by the Company 'PP' under Section 63AA (4A) seeking permission of the District Collector office. Further, Audit noticed that name of Company 'RR' was entered in the record

of rights and certified by the Circle Officer between May 2015 and March 2018.

Audit noticed that the Department did not have any monitoring mechanism to identify such sale of land by Companies without the permission of the District Collector office and to restrict the certification of the sale transactions in the record of rights. Further, the amended Tenancy Act provides for levy of premium only in cases where the application seeking permission for sale of land is received by the District Collector office. As there is no provision in the Act to regularise such sale without permission, the land should have been vested with the Government. However, the Department had neither vested the land with Government nor could it levy premium of ₹ 8.26 crore for granting permission to sell the land. This has an impact of leakage of revenue to an extent of ₹ 8.26 crore.

### **(ii) Non levy of penalty under Section 63AC**

As per Section 63AC of the Tenancy Act amended in 2015, if the land has been purchased in contravention of the provisions by a public trust or company for charitable purpose, the District Collector office may allow conversion of such land into non-agriculture purpose on receipt of an application to this effect from the trust/ company within six months of the commencement of the Amendment Act 2015 and payment of 25 *per cent* of the prevailing *Jantri* by the trust/ company.

During scrutiny of the records of the District Collector office, Vadodara for the year 2016-17, audit observed (May 2018) in one case that a charitable trust had purchased (December 2013) agricultural land measuring 27,620 sq. m. for educational purpose without prior permission of the District Collector office. The trust had applied for permission for regularisation of the purchase under Section 63AC on 28 August 2015. Further, as per the *punchnama* furnished (January 2017) by the office of the Circle Officer, the trust had done unauthorized construction on the land so purchased. The trust was liable to pay 25 *per cent* of the market value of the land as per prevailing *Jantri*, as penalty. However, the District Collector office regularized (February 2017), the unauthorized purchase and use of agricultural land without levying penalty under Section 63AC of the Amendment Act. This resulted in non-levy of penalty of ₹ 85.35 lakh.

### **(iii) Non levy of penalty under Section 63AD**

As per Section 63AB (1) and (2) of the Tenancy Act amended in 2015, in breach of provisions of Section 63, if any transfer of agriculture land had taken place in favour or a person who was not an agriculturist and that certain transaction or transactions have taken place thereafter and the person in whose favour the last transaction was made on or before 30 June 2015, is an agriculturist, the *Mamlatdar* shall levy 10 *per cent* of prevailing *Jantri* value of the land for regularising the last transaction for agriculture purpose. Section 63AD of the amendment Act 2015 provides for levy of penalty at the rate of three times the amount of the prevailing agricultural *Jantri* value of land

invalidly transferred to a non-agriculturist or institution in breach of provisions of sub-section (1) of Section 63.

During test check of the records of permission granted under Section 63 AB of the Tenancy Act in District Collector office, Vadodara for the year 2016-17, audit observed (May 2018) that in one case an agriculturist had sold (September 2011) his land through registered sale deeds to two individuals out of which one was a non-agriculturist. Subsequently, the two individuals had sold (October 2014) the land through registered sale deeds to a Company for bonafide industrial purpose. The Company had applied (November 2014) to the District Collector office for permission under Section 63AA of the Tenancy Act and the District Collector office in view of the above transactions, referred the case to *Mamlatdar* office for initiating action as per the relevant provisions of the Act. The *Mamlatdar* office had levied 10 *per cent* penalty in this case under Section 63AB vide his order dated 20 May 2016. Audit noticed that the last transaction was made in favour of a Company and hence Section 63AB was not applicable in this case. Further, the land was purchased by non-agriculturists against the provisions of Section 63 and hence penalty of ₹ 55.57 lakh under Section 63 AD of the Act was leviable. However, penalty of ₹ 5.90 lakh was only levied. This has resulted in short levy of penalty of ₹ 49.67 lakh.

## 5.6 Short levy of conversion tax

Section 67A of the Gujarat Land Revenue Code, 1879 provides for the levy of conversion tax at prescribed rates on change in the mode of use of land from agricultural to non-agricultural (NA) purpose or from one NA purpose to another in respect of land situated in a city, town or village. Different rates of conversion tax are prescribed for residential/charitable/ temporary non-agriculture and industrial/other purposes, depending upon the population of the city/town/notified area/ village. The conversion tax shall be paid in advance by a challan in the Government treasury. As per Revenue Department's Circular of 13 February 1979, in cases of acquisition of agricultural land for non-agricultural purposes, conversion tax shall be recovered from the allottee.

Scrutiny of 76 cases of conversion of lands from agriculture to non-agriculture in the District Collector office, Rajkot for the period 2014-15 to 2016-2017, revealed that in 48 cases (63.16 *per cent*), there was short-levy of conversion tax of ₹ 1.16 crore. Audit noticed in these cases that for conversion of lands situated in municipal areas of Gondal from agricultural to non-agricultural purposes, i.e. residential, commercial or industrial, conversion tax was levied by the Revenue Authorities without taking into consideration the population figures available on the website of the Census of India 2011. As the population of Gondal Municipality exceeded one lakh, conversion tax was leviable at higher rates<sup>54</sup>. The aggregate amount of conversion tax leviable in these cases was ₹ 1.48 crore while the authorities have levied only ₹ 0.32 crore. This resulted in short levy of conversion tax of ₹ 1.16 crore.

<sup>54</sup> ₹ 10/ 30 per sq. m. instead of ₹ 2/ 6 per sq. m. for residential/ commercial/ industrial purposes

The assessing authority stated that in absence of Census booklet, higher rates were not levied. The reply is not acceptable as the population figures were available on the website of the Census of India. These should have been made use of for levy of conversion tax. The Department may circulate these figures to all Assessing Authorities for levy of conversion tax. Besides, no provision in the Act prevents the Department from recovery of the amount realised short.