# CHAPTER IV
# LAND REVENUE

## 4.1 Introduction

### 4.1.1 Tax administration

The administration of Land Revenue Department vests with the Principal Secretary, Revenue Department. For the purpose of administration, the State has been divided into six divisions and each division is headed by the Divisional Commissioner who is assisted by district Collectors. There are 35 district Collectors, 110 revenue sub divisions, 370 *talukas* headed by the Tahsildars. The Revenue Inspector and village officers (*talathis*) are responsible at the grass root level for collecting the land revenue and dues recoverable as arrears of land revenue.

### 4.1.2 Trend of receipts

Actual receipts from Land Revenue during the years 2006-07 to 2010-11 alongwith the total tax receipts during the same period is exhibited in the following table:

**(₹ in crore)**

| Year | Budget estimates | Actual receipts | Variation excess(+)/ shortfall(-) | Percentage of variation | Total tax receipts of the State | Percentage of actual receipts vis-à-vis total tax receipts |
|---|---|---|---|---|---|---|
| 2006-07 | 940.00 | 484.17 | (-) 455.83 | (-) 48.49 | 40,099.24 | 1.20 |
| 2007-08 | 690.00 | 512.22 | (-) 177.78 | (-) 25.77 | 47,528.41 | 1.08 |
| 2008-09 | 700.00 | 546.22 | (-) 153.78 | (-) 21.97 | 52,029.94 | 1.05 |
| 2009-10 | 770.00 | 714.04 | (-) 55.96 | (-) 7.27 | 59,106.33 | 1.21 |
| 2010-11 | 1,647.74 | 1094.98 | (-) 552.76 | (-) 33.54 | 75,027.10 | 1.46 |

As can be seen from the above table, the revenue collection under Land Revenue increased by 126.15 *per cent* in 2010-11 as compared to 2006-07.

### 4.1.3 Impact of Audit Reports

#### Revenue impact

During the last five years, 2005-06 to 2009-10, we had pointed out in our Audit Reports cases of underassessments/non/short levy/loss of revenue of land revenue, etc., interest and other irregularities with revenue implication of ₹ 551.36 crore in 40,223 cases. Of these, the Department had accepted audit observations in 40,164 cases involving ₹ 53.45 crore and had recovered ₹ 3.74 crore in 59 cases. The details are shown in the following table:

**(₹ in crore)**

| Year | Amount objected | | Amount accepted | | Amount recovered | |
|---|---|---|---|---|---|---|
| | Number of cases | Amount | Number of cases | Amount | Number of cases | Amount |
| 2005-06 | 40,011 | 41.46 | 40,011 | 41.46 | Nil | Nil |
| 2006-07 | 44 | 0.91 | 44 | 0.91 | 7 | 0.11 |
| 2007-08 | 141 | 365.68 | 84 | 9.51 | 52 | 3.63 |
| 2008-09 | 26 | 140.51 | 25 | 1.57 | Nil | Nil |
| 2009-10 | 1 | 2.80 | Nil | Nil | Nil | Nil |
| **Total** | **40,223** | **551.36** | **40,164** | **53.45** | **59** | **3.74** |

**The Government may consider issuing instructions to the Department to recover the amount involved in accepted cases on priority.**

### 4.1.4 Results of audit

We reported under assessment, short levy, non-levy of Land Revenue, loss of revenue etc., amounting to ₹ 398.55 crore in 297 cases as shown below, on the basis of test check of records relating to land revenue conducted during the year 2010-11:

**(₹ in crore)**

| Sl. No | Categories | No. of cases | Amount |
|---|---|---|---|
| 1. | **Sale/allotment of land and levy and collection of conversion charges (A Performance Audit)** | 1 | 300.87 |
| **2.** | **Development of Hill Station at Lavasa, Pune** | 1 | 41.33 |
| **3.** | Non levy/short levy of measurement fees, sanad fees, license fee etc. | 13 | 20.77 |
| **4.** | Non levy/short levy of fine, unearned income, non-auction/short recovery of surface rent on account of sand ghats | 37 | 15.58 |
| **5.** | Non levy/short levy/incorrect levy of Non-Agriculture Assessment (NAA), ZP/VP cess and conversion tax | 174 | 10.68 |
| **6.** | Non levy/short levy of occupancy price, rent, royalty etc. | 43 | 8.27 |
| **7.** | Non levy/short levy/incorrect levy of increase of land revenue | 28 | 1.05 |
| | **Total** | **297** | **398.55** |

In response to the observation made in the local audit through Inspection Report during the year 2010-11 as well as during earlier years, the Department accepted under assessments and other deficiencies involving ₹ 10.13 crore in 304 cases, of which nine cases involving ₹ 27.27 lakh were pointed out during 2010-11 and rest during earlier years.

A Performance Audit on "**Sale/Allotment of land and levy and collection of conversion charges**" and a compliance audit on **"Development of hill station at Lavasa, Pune"** with a total financial effect of ₹ 342.20 crore including amount contested by the Department of ₹ 63.66 lakh; in addition loss/notional loss of ₹ 81.17 crore and an audit observation involving ₹ 1.57 crore is included in the succeeding paragraphs.

## 4.2 Performance audit on "Sale/Allotment of land and levy and collection of conversion charges"

### Highlights

Database of land available in the State was neither maintained at Government level nor at the Collectorates and thereby the Government did not keep track of cases relating to breach of conditions of allotment of land, cases where lease period have expired, change in use of land, and de-reservations of land, etc.

**(Paragraph 4.2.8)**

There were irregularities in allotment of land for housing purposes to public representatives/land allotted in violation of conditions regarding income limits/to applicants already owning properties in Mumbai.

**(Paragraph 4.2.9)**

Land for educational purposes continued to be allotted in Mumbai on basis of Government Resolutions which were 18 to 35 years old, at throwaway prices thereby jeopardising the revenue interests of the Government, though educational activities are no longer only philanthropic in nature. One such case was where the R&FD cancelled the transfer of land to BMC, Mumbai and allotted the land (March 2008) to Arpan Foundation at a meagre amount of ₹ 0.90 lakh as against the market value of ₹ 6.53 crore (as per Ready Reckoner of 2008), for setting up a school on American school pattern.

(**Paragraphs 4.2.10.1 and 4.2.10.2)**

Land was allotted in Nashik to Mumbai Education Trust (MET) on occupancy right basis for Medical and Engineering College of which one Shri Samir Bhujbal was a Trustee for ₹ 9.08 lakh, as against market value of the land of ₹ 9.39 crore (as per Ready Reckoner of 2008), by dereserving land belonging to the State PWD and meant for mining purposes. Further, the entire land admeasuring 91,300 sq.mtr. allotted in November 2003/January 2009 was still lying unutilised as of July 2011.

**(Paragraph 4.2.10.3)**

The Collector, Pune did not resume land of five acres allotted to Gyaneshwari Trust Pune, for running an English-Marathi medium school though the land whose market value was ₹ 11 crore in 2007, was not utilised for the said purpose since its allotment in November 2008.

(**Paragraph 4.2.10.4)**

Land allotted in Andheri, Mumbai on concessional lease rent basis for a period of 30 years to a public trust "Sindhudurg Shikshan Prasarak Mandal", Kankavli, Sindhudurg for educational purposes/community centre, was misutilised for commercial banquet hall purposes. The Collector Mumbai had no system in place to detect such violations for resumption of Government land.

(**Paragraph 4.2.11)**

The Vasant Dada Patil Pratishthan undertook construction activity which was in violation of the terms and conditions under which land was allotted, but no action was taken by the Department to resume the land to the Government and also to recover the premium of ₹ 17.30 crore from the Pratishthan, though four years have elapsed after the breach of conditions came to the notice of the BMC, thereby conferring undue benefits to the allottee.

**(Paragraph 4.2.12)**

Though several allottees in Pune/Nashik/Thane had not utilised lands allotted to them by Government, for five to 54 years, since allotment, these lands were not resumed by the Government for breach of conditions. The cost of these lands allotted for residential/educational/recreational purposes aggregated to ₹ 93.46 crore as per current market value.

**(Paragraph 4.2.13)**

The Government/BMC had irregularly granted redevelopment rights of land to Simplex Mills Mumbai and Jakhubhai Lalji Dal Mill Co. Ltd, instead of resuming the land, though the lease of their land had expired in 1983/1992 and had not been renewed.

**(Paragraph 4.2.14)**

Huge tracts of land comprising 532.78 hectares granted to the Maharashtra Industries Development Corporation (MIDC) in various districts were lying idle since four to 22 years from their allotment. Similarly, 446.86 hectares of land granted to other five State Corporations were lying unutilised for various periods ranging from five to 36 years, in absence of a periodic review of utilisation of land.

**(Paragraph 4.2.15)**

Ownership of land originally allotted free of cost to Malti Vasant Heart Trust (Nitu Mandke and family) for a hospital at Andheri, Mumbai was changed by agreements with the Reliance Dhirubhai Ambani Group of Industries, a corporate Group, without prior approval of the Government. The Trust was liable to pay unearned income of ₹ 174.88 crore, which was not recovered by Government in absence of an independent mechanism to enquire timely, about changes in ownerships of original allotments of land and commercialisation of activities thereon.

We also noticed 18 cases of changes in ownership of land in Mumbai, where the Department had not recovered unearned income of ₹ 37.94 crore.

**(Paragraphs 4.2.16)**

Unjustified reduction of ready reckoner rates of two villages alone in Thane District, resulted in loss of revenue of ₹ 63.57 crore.

**(Paragraph 4.2.17)**

Non-renewal of lease agreements and delay in fixation of lease rent on part of the Government resulted in non-realisation of lease rent of ₹ 17.60 crore.

**(Paragraph 4.2.18)**

Non-mentioning of mandatory conditions of time frame to commence activities, in contraventions of Rules resulted in non-resumption of land and undue benefits to the allottee on land allotted in Mumbai Suburban, for a dental college to Manjara Educational Trust.

**(Paragraph 4.2.19)**

Non-consideration of market value resulted in short recovery of occupancy price of ₹ 2.04 crore, in one case of a co-operative housing society in Mumbai and in two cases in Pune for land allotted for educational purposes.

**(Paragraph 4.2.20)**

Non-finalisation of annual lease rent on land allotted to the Piramals (HUF) at Worli, Mumbai, resulted in non-recovery of revenue of ₹ 3.75 crore.

**(Paragraph 4.2.23)**

Irregular sale, non-taking physical possession of surplus lands and absence of monitoring mechanism was noticed in respect of surplus land falling under the Urban Land Ceiling and Regulation Act.

**(Paragraphs 4.2.25.1 to 4.2.25.3)**

Though there was breach of conditions, land allotted to President, Nagpur Zilla Congress Committee was not resumed by Nagpur Improvement Trust after cancellation of the allotment in April 2005.

**(Paragraph 4.2.26)**

## Introduction

Land is a premium asset, the value of which always shows an increasing trend due to which it has an impact on economy of the State. Due to this the State Government has an important role to play in land management and in making land available for various purposes such as residential/industrial and commercial. Land is a major source of revenue to the Government in the form of sale/alienation of land; lease/ground rent and conversion charges. Under the Maharashtra Land Revenue (MLR) Code, 1966, the Government is empowered to allot any land vested in it, on such terms and conditions, as it deems fit. Further as per MLR (Disposal of Government land) Rules, 1971, power of disposal of Government land costing upto ₹ 2.5 lakh is vested with the Collector, upto ₹ 6.25 lakh it is vested with the Divisional Commissioner and for land costing more than ₹ 6.25 lakh it is vested with the Government. The Revenue and Forest Department (R&FD) is vested with financial powers upto ₹ 25 lakh for disposal of land. The cases dealing with revenue above ₹ 25 lakh, should be got approved by the Finance Department and Chief Minister. The allotment of land is made by the R&FD which includes revenue free allotment, allotment on payment of occupancy price also called market value, allotment on lease hold rights, etc. In cases of grant of land for industrial and commercial purpose the auction of land is being done as per provision of MLR code. However, the occupant/allottee holds the title of land as occupant Class-II irrespective of whether it is granted on full market value or concessional rate.

### 4.2.2 Audit objectives

Test check of the records of sale/allotment of land by Government was conducted with a view to ascertain whether:

- allotment of land was as per existing laws and procedure and that Government got the best price for the value of the land;
- the policy of Government have been followed while allotting the land at concessional rate;
- the land allotted at revenue free/concessional rate has been put to use for the purpose for which it has been granted;
- appropriate action has been taken in case of breach of terms and conditions as mentioned in the allotment order;
- there exists appropriate monitoring and evaluation mechanism after allotment of land at revenue free/concessional rate;
- occupancy price, lease rent, etc. are levied and recovered properly; and
- any land allotted remained unutilised, if so, has it been resumed by the Competent Authority or necessary action taken in that regard.

### 4.2.3 Audit criteria

The audit criteria adopted are:-

- to ensure that the rules and procedure of the MLR (Disposal of Government land) Rules, 1971, were complied with.
- implementation of the provisions of MLR Code including rules framed there under as amended from time to time through issue of GRs, circulars, orders, etc., regarding allotment, assessment, levy and collection of land revenue were strictly adhered to. The Government Resolutions in respect of which observations are made in the performance audit are listed in **Annexure III.**

### 4.2.4 Scope of audit

With a view to check the adequacy of the systems and procedures of the Revenue Department relating to sale/allotment of Government land and its utilisation, test check of records in the office of four Divisional Commissioners[1] and six District Collectors[2] were conducted between March 2011 and June 2011 covering the period from 2005-06 to 2009-10.

### 4.2.5 Organisational set-up

The monitoring and control of allotment of land at Government level is done by Principal Secretary, R&FD, Government of Maharashtra, Mumbai. The superintendence of the allotment of land is vested with 35 Collectors in the State. They are assisted by the Sub Divisional Officers and Tahsildars in their respective districts. The District Plan is prepared by Town Planning

[1] Konkan Division, Nagpur, Nashik and Pune.
[2] Mumbai City, Mumbai Suburban District, Nagpur, Nashik, Pune and Thane.

Department in consultation with other Government Departments. The same record is maintained by City Survey Officer working under the Director of land records and Settlement Commissioner, Maharashtra State. The disposal of Government land is being done by the R&FD.

For this performance audit, six major districts in Maharashtra were taken up as the land cost in these cities shows increasing trend, to ascertain whether the disposal of Government land was in accordance with the existing rules and regulations.

### 4.2.6 Acknowledgement

Indian Audit and Accounts Department acknowledges the co-operation of the R&FD, Relief and Rehabilitation Department and its subordinate offices for providing necessary information and records for audit. An entry conference for the performance audit was held in May 2011 with the Principal Secretary, R&FD and the Executive was informed about the scope, objective and methodology of audit. The Principal Secretary explained the various aspects of allotment/sale of land and also its administration and implementation. The draft Review Report was forwarded to the Government in September 2011 and the audit conclusions and recommendations were discussed in the exit conference held in October 2011. The Principal Secretary, R&FD, Deputy Secretaries, Collectors and other senior officials from the Department attended the meeting. The replies given during the exit conference and at other times have been appropriately included in the relevant paragraphs.

While accepting the recommendations, the Principal Secretary stated that many observations in the performance audit are of a propriety nature and the policies and GRs need to be reviewed at Government level.

### 4.2.7 Trend of revenue

The budget estimates and realisation of Land Revenue during the year

2005-06 to 2009-10 is as shown in the following table:

**(₹ in crore)**

| Year | Budget estimates* | Actuals* | Variation excess (+) shortfall (-) | Percentage of variation |
|---|---|---|---|---|
| 1 | 2 | 3 | 4 | 5 |
| 2005-2006 | 424.07 | 428.97 | (+) 4.90 | (+) 1.16 |
| 2006-2007 | 940.00 | 484.17 | (-) 455.83 | (-) 48.49 |
| 2007-2008 | 690.00 | 512.22 | (-) 177.78 | (-) 25.77 |
| 2008-2009 | 700.00 | 546.22 | (-) 153.78 | (-) 21.97 |
| 2009-2010 | 770.00 | 714.04 | (-) 55.96 | (-) 7.27 |

*Source: Finance Accounts

As can be seen from the above table, the collections under the head "Land Revenue" increased by 66.45 *per cent* in 2009-10 as compared to 2005-06. However, there has been significant shortfall in the actual receipts against the budget estimates for the years 2006-07 to 2008-09 indicating that the budget estimates were not realistic.

## Audit findings

### 4.2.8 Database of land

As per Government instructions issued in February 1996, the Collector is required to maintain a land distribution register containing the details of grant of Government land, i.e. names of grantee, area, purpose, period of grant and terms and conditions of grant, etc. Further, periodic review of the said register is also required to be carried out so as to keep track of the cases of expiry of lease period and/or breach of conditions of lease. Further, any Government land which is shown as reserved for a particular purpose in the Development Plan, which is a public document can be requisitioned by any individual who intends to use the land for the purpose for which it is shown to be reserved in the Development Plan by paying the cost of land.

We noticed that no database of land was maintained at the Government level. We further noticed from the information furnished by the Collectorates at Mumbai Suburban District (MSD), Pune and Thane that the land distribution register giving details of land, area, purpose, etc., was not being maintained. In Nagpur Collectorate and City Survey Office, Nagpur, we noticed that details of Government land does not exist and register of Government land leased was either not maintained or was not updated and/or improperly maintained.

After we pointed out the matter, Collector, Nagpur accepted the fact. City Survey Officer, Nagpur stated that due to shortage of staff and heavy workload, registers could not be updated, but would be updated within three months.

The collectors did not ensure maintenance of the prescribed register resulting in non-monitoring of cases relating to breach of conditions, keeping track of cases where lease periods of land had expired, etc.

In the exit conference the Principal Secretary directed Deputy Secretaries and Collectors to update the records by adhering to the instructions issued in this regard.

**The Government may consider maintaining a data base of land allotted containing details of area, purpose, period, place, name to whom allotted, etc.**

### 4.2.9 Irregularities in allotment of land for housing purpose

Section 40 of MLR code read with rule 27 of MLR (Disposal of Government land) Rules 1971, empowers the State Government to allot land to co-operative housing society (CHS) constituted under law on occupancy rights basis on inalienable and impartible tenure on payment of such concessional occupancy price as the State Government may fix from time to time, regard being had to the nature of scheme and in the case of CHS, to the income of the member, thereof, such income being ascertained after making such enquiries as the State Government may think fit to make in this behalf. The Collector should satisfy himself that the member of the society do not own any building, plot either in their own name or any member of their family any where in any urban area of the State or outside the State. Further, Government issued G.R. on 9 July 1999 framing policy for allotment of Government land to various CHS such as Society formed by freedom fighters, actors, players, literary persons, journalists, etc. The land can further be granted to societies formed by the Government servants, SC/ST/NT communities, public representatives, etc.

As per the said G.R. the permissible carpet area admissible was as under:

| Sr. No. | Permissible carpet area | Income limit for non-Govt. servants (per month from all sources) | Category of Govt. servant (as per fifth pay commission) | Rates to be applied on market value for occupancy rights |
|---|---|---|---|---|
| 1. | 2. | 3. | 4. | 5. |
| 1. | 27.87 sq. mtr. | Up to ₹ 5,000 | Group D | Five *per cent* |
| 2. | 41.82 sq. mtr. | ₹ 5,001 to ₹ 7,500 | Group C | 10 *per cent* |
| 3. | 60.40 sq. mtr. | ₹ 7,501 to ₹ 12,500 | Group B | 15 *per cent* |
| 4. | 100 sq. mtr. | Not admissible | Group A | 20 *per cent* |

Though the monthly income limits are specified in relation to the allotted area, the G.R. exempts public representative from any income limit.

The R&FD vide its memorandum dated 24 August 2004 allotted land admeasuring 4,296.31 sq. mtrs. in survey no. 141A, part of CTS no. 833, *mouja*-Ambivali, Tahsil-Andheri to the Ashirwad CHS in response to their request dated 16 July 2003. In all, 44 members were approved as per the above Government Memorandum. Information independently collected from Brihanmumbai Municipal Corporation (BMC) revealed that the society had constructed stilt plus 21 upper floors. All the flats were of equal size and the built up area of each flat was approximately 119.96 sq. mtrs (i.e. 99.67 sq. mtrs. of carpet area)

Our scrutiny of the list of members of the Society revealed that, 11 of the public representatives whose memberships were approved by the Government, had monthly income in the range of ₹ 2,500 to ₹ 12,500. As such, being non-Government servants they were entitled to flats of carpet area of 27.87 to 60.40 sq. mtrs. only, however flats of carpet area of 99.67 sq. mtrs. were allotted to them. It may be mentioned here that Rule 28 of MLR (Disposal of Government Land) Rules, 1971, provides that, building sites of suitable sizes may be granted by the Collector on receipt of application for residential use

with previous sanction of the Government to freedom fighters, serving members of armed forces and ex-servicemen who are ordinarily residents in the State for not less than 15 years without auction in occupancy right. This Rule 28 does not include the term public representatives, freedom fighters, actors, players, literary persons, journalists etc., hence grant of flat in the society was enabled by the GR issued by the Government in July 1999, which was in the nature of an administrative policy. These public representatives would otherwise have had the status of non-Government servants. As administrative policy were required to be in conformity with the statute, amendment to the existing provisions was necessary prior to issuing the GR which was not done.

Further during scrutiny of the affidavits/information furnished by the members of the society, we noticed that the proforma in which information was collected from the persons to whom flats were to be allotted did not specify the ownership of any pre-existent property by the incumbent, but only indicated the current address. Further, the income of one lady member was ₹ 6,000 per month hence was entitled to a flat of carpet area of 41.82 sq. mtr. only, against which , a flat of carpet area of 99.67 sq. mtr. was allotted irregularly. Moreover, the husband of the same member is chief promoter and member of Rajyog society, Versova, Andheri Mumbai.

We cross verified the list of members of Ashirwad CHS with the membership of Rajyog Society, Versova, Andheri, Mumbai and noticed that two members who had flats in Ashirwad CHS had subsequently acquired flats in Rajyog CHS. Scrutiny of R&FD files also revealed that two of the members of Ashirwad CHS were already having houses in their own name. These were in violation of provisions of the MLR code.

It was also noticed that though the land was allotted in the year 2004 and possession of land handed over to the society in April 2005, the actual execution of the agreement between the President of the society and the Collector, MSD, Mumbai took place much later in December 2009.

After we pointed out the case, the Collector MSD, Mumbai, stated in reply that all the memberships were approved by the Government.

In the exit conference the Principal Secretary agreed to check the necessary provisions in the MLR Code/Rules and stated that amendment would be made, if necessary. The reply is silent on memberships which were given in violation of conditions regarding income limits and existing ownership of properties.

### 4.2.10 Allotment of Government land for educational purpose

**4.2.10.1** The Government allots land for various purposes such as schools, colleges, charitable institutions, hospitals to private institutions at concessional rate. These lands are required to be utilised by the allottee for the purpose for which it is granted within the time frame stipulated by the Government in the GRs. In respect of land which is allotted for primary and secondary education the GR dated 11 May 1984 issued by the Government is still applicable. As per the GR the rate applicable on 1 February 1976 shall be considered for valuation and 25 *per cent* of such amount shall be recovered as occupancy price from the institutions. In respect of the land allotted for higher education (college) the GR issued on 30 June 1992 is to be considered for valuation. As

per the GR for land falling within Municipal Corporation limits the rate applicable five years before (i.e. 1 January of that year) from the date of allotment shall be considered for valuation and 50 *per cent* of that amount shall be recovered as occupancy price from the institution. For land falling outside the Municipal Corporation limits the rate applicable would be 25 *per cent* of the amount worked out.

As can be seen from the above the valuation is based on the GRs which were issued 18 to 35 years back. Considering the fact that the land is a premium asset with ever increasing value in Maharashtra and also taking into account the fact that it is a source of revenue to the Government, **it is necessary to have a re-look into the criteria fixed for valuation which was determined several years back especially now that education is no longer a philanthropic activity in urban areas.**

In the exit conference the Principal Secretary after discussing the issue stated that the rates could be revised only after obtaining the approval of the Government.

**4.2.10.2** Test check of the records of Collector, MSD, Mumbai revealed that 1,800 sq. mtr. of land at *mouja*- Ambivali Survey no. 111D, CTS no. 825/1, Taluka-Andheri, Mumbai was reserved and transferred to BMC, Mumbai in the year 2000 for starting a school. In September 2001, Arpan Foundation applied to the Chief Minister for allotment of 1,800 sq. mtr. of land for starting a school for middle class citizens based on the pattern of American School. In response to the application of Arpan Foundation, the R&FD cancelled the transfer of land to BMC, Mumbai and allotted the land (March 2008) to Arpan Foundation at a meagre amount of ₹ 0.90 lakh (at the rates applicable as on 1 February 1976, as per GR dated 11 May 1984) as against the market value of ₹ 6.53 crore (as per Ready Reckoner of 2008). Reason for transfer and change in reservation was not available in the records of the Collector.

After we pointed out the case, the Collector, MSD, Mumbai stated that the information may be obtained from the Government.

**4.2.10.3** As per the Government Memoranda dated 7 January 2009, land admeasuring 50,000 sq. mtrs. at Gat No 32, *mouja*-Goverdhan, Taluka/District Nashik was allotted to Mumbai Education Trust (MET) on occupancy right basis for Medical and Engineering College at occupancy price of ₹ 7.53 lakh. This allotment was in addition to earlier allotment of land measuring 41,300 sq. mtrs (in same Gat No. 32) made in November 2003 at occupancy price of ₹ 1.55 lakh.

During test check of the records of Collector, Nashik we noticed that the land measuring 91,300 sq. mtrs. was initially reserved for mining activity (extraction of minor minerals) by the Public Works Department(PWD). The same land was requisitioned by one Shri Samir Bhujbal, a trustee of MET, for opening an engineering and technical college in May 2000. In November 2003, out of 91,300 sq. mtrs. land measuring 41,300 sq. mtrs. was initially allotted to MET after changing the purpose of reservation from mining activity to education purpose, at occupancy price of ₹ 1.55 lakh. Thereafter, Shri Samir Bhujbal again applied for allotment of the balance land admeasuring 50,000 sq. mtrs. for expansion of engineering and technical college. In January 2009, the Government allotted additional land measuring 50,000 sq. mtrs. to

MET at an occupancy price of ₹ 7.53 lakh after changing the purpose of reservation. Scrutiny of the file in the R&FD revealed that Finance Department to whom the file was referred had objected on 21 November 2008 to allot land at concessional rate to the Trust as it had already been allotted 1.53 lakh sq. mtr. of land in Nashik district itself, hence there was no need to grant another land at concessional rate. Further, if at all land was to be allotted, it would be at the market rate of 2008. We also observed that the Revenue Department had communicated to the Finance Department that in one case as per the policy of the Higher and Technical Education Department, granting land at concessional rate to an un-aided society would tantamount to giving a non-recurring grant to the society, which was not proper. Despite the objection raised by the Finance Secretary, the Finance Minister on 4 December 2008 agreed to the recommendation made by the Revenue Department to allot the land at concessional rate in the same manner as done earlier. The total market value of the land was ₹ 9.39 crore (as per Ready Reckoner of 2008) which has been given to MET at ₹ 9.08 lakh.

Further, scrutiny revealed that as per the *panchanama* report (June 2011) submitted by the *Talathi*, village-Goverdhan, Taluka/district–Nashik to the Collector, Nashik, the entire land admeasuring 91,300 sq.mtr. was still lying unutilised.

After we pointed out the case, the Government stated (November 2011) that a notice has been issued (October 2011) to MET for non-utilisation of the allotted land. However, the reply is silent on the matter regarding change in reservation.

**4.2.10.4** The Collector, Pune allotted land admeasuring five acre i.e. 20,000 sq. mtrs. bearing survey no. 94/1A/1, *mouja*-Yerwada to Gyaneshwari Education Trust, Mumbai (in response to their application dated 10 September 2007) for running Marathi-English medium school vide his order dated 18 November 2008. The Trust paid ₹ 1.5 lakh which was 25 *per cent* of the cost of land as on 1 February 1976.

During test check of the records of the Collector, Pune, we noticed that these 20,000 sq. mtrs. of land was part of the land admeasuring 50,500 sq. mtrs. in possession of the Government Department (Maharashtra Mental Health *Sanstha*) since 1994 which could not initiate construction activity due to non-availability of funds from the Government. The Collector, Pune, vide order dated 27 September 2007 resumed the land treating it as breach of condition and reallocated the land to the Trust at concessional rate. The market value of the land in 2007 was ₹ 11 crore. The *panchnama* report of the *Talathi* revealed that even though 27 months have passed no construction activity has commenced for starting a school. The Department had not initiated any action to resume the land from the Trust.

After we pointed out the case, Collector, Pune stated that matter would be scrutinised and final reply would be given in due course.

**4.2.10.5** During test check of records in the R&FD it was noticed that Jawahar Education Society was allotted 31,000 sq. mtr. of land in the year 2007. The society had subsequently applied to the Government for allotment of additional land of 9,000 sq. mtr. Accordingly, as per the Memorandum issued by R&FD dated 31 August 2009, the Collector had allotted land

measuring 9,000 sq. mtr. to Jawahar Education Society at *mouja*-Govardhan at Taluka/District Nashik bearing survey No 55 (*Gat No.*48/A/1/1B-1) on 4 March 2011 on occupancy right basis at cost of ₹ 62 lakh for an engineering College.

During test check of records of land allotment, we noticed that the Collector, Nashik had informed the R&FD in January 2008 that the land is classified as a "restricted area" as it falls within 500 metres of Gangapur dam. This was based on the report received by him from the Taluka Inspector of Land Records, Nashik. Moreover, the Town Planning and Valuation Department also intimated in January 2008 that the land falls within 500 meter from land acquired for dam for irrigation purpose and could not be utilised for any type of development/non-agricultural use as per clause 7.1 A-1 (ii) of Development Control Rule for regional development. Though the Government had allotted the land at full market value in this case for education purpose, the fact remains that the allotment is in gross violation of rules and procedures in existence wherein the Collector had also objected to the allotment of land, as it was in a restricted area.

After we pointed out the case, the Collector, Nashik stated that the matter would be referred to the Government for necessary action.

The Government stated (November 2011) that the additional land was allotted on the condition that it would be utilised for gardening and sports activities only. However, the reply is silent on the allotment of land in the restricted area.

**The Government may consider evolving a system for ensuring utmost care in grant of land to private institutions and its utilisation for the purposes for which it is allotted.**

### 4.2.11 Misutilisation of Government land allotted at concessional rate

The R&FD allotted land admeasuring 1,500 sq. mtrs. and 169.5 sq. mtrs. vide order dated 22 September 1999 and 26 May 2004, respectively, at survey no. 141/A, *mouja*-Ambivali, *taluka* Andheri on concessional lease (annual lease rent of ₹ 9851-40 + ₹ 869) for a period of 30 years to a public trust "Sindhudurg Shikshan Prasarak Mandal", Kankavli, Sindhudurg District for the purpose of "Community Centre". The activities of the trust mainly relate to education. As per the terms and conditions of allotment of land, the land shall not be used except for the purpose of Community Centre and the construction of Community Centre should be completed within three years from the date of possession. If any terms and conditions are breached the lease shall be cancelled and possession of the land and construction on it shall be taken over by Government. The possession of the land was given to the trust on 1 October 1999.

Our scrutiny/visit revealed that a building named "Sindhudurg Bhavan" was constructed with a basement and four floors at survey no. 141/A, *mouja*-Ambivali, *taluka* Andheri. It has a multipurpose banquet hall named "Grande Imperial Banquet" wherein the hall rent for exhibition /events / shoots/ conferences etc was ₹ 2 lakh per day, food

(vegetarian and non-vegetarian) and liquor (with bar accompaniments) is served and also DJ with Console Equipment. Visit to the site revealed that the other floors were empty. Thus it is clear that the constructed building, catered to the needs of the upper class/rich and was not meant for the common man.

From the above it is seen that the Trust which is meant for educational purposes acquired Government land at concessional rate of lease for the purpose of community centre and used it for commercial purposes. This has resulted in breach of terms and conditions. As such, the land is required to be resumed by the Government alongwith the structure on it as the land whose market value was ₹ 6.68 crore (as per Ready Reckoner of 2010) was allotted to the Mandal for a meagre amount.

After we pointed out the case, the Collector, MSD, Mumbai stated that the entire land is being used for the purpose for which it has been permitted. Moreover the matter is also *sub judice*.

The contention of the Collector is not acceptable as no survey report of the plot and building was produced to substantiate his point of view, facts independently collected by audit pointed that the entire structure is being used for commercial purpose as on date defeating the very purpose of allotment.

In the exit conference the Principal Secretary agreed to look into the intent of the matter.

**The Government may consider putting in place a system of periodic returns to the Government so that the Collectorates take prompt action in case of violations for resumption of such lands at once or recovery of the penalty.**

### 4.2.12 Undue benefit to occupant of land and non-recovery of premium

As per order dated 4 August 1983, issued by the Additional Collector, Bombay (Mumbai), a Government land admeasuring 12,886 sq. mtrs. out of survey no. 356 of Chembur in Tahsil-Kurla was granted to Vasantdada Patil Pratisthan subject to the condition that all the buildings to be constructed on the land should confirm to the plans which were approved by the Collectorate and the Municipal Corporation. Further, after construction no addition or alteration thereto shall be made without the prior approval of the Collector. In the event of any breach of condition, the said land was to be vacated and delivered to the Government free of all claims or encumbrance of any person, whatsoever. The BMC had granted commencement certificate to Vasantdada Patil Pratishtan on 8 May 1985 for construction upto the fifth slab.

During test check of records of the Collector, MSD, Mumbai, we noticed that, Vasantdada Patil Pratisthan had constructed additional two floors in 2007 without prior approval of the Government, as per the objection raised by BMC, Mumbai in their notice issued to the Pratisthan on 19 July 2007. The action of the Pratisthan amounted to breach of condition requiring the land to be vacated. Despite the BMC's notice, the Government approved the unauthorised construction in August 2009

as a regular sanction, instead of taking possession of the unauthorised construction as well as the land. The Government then asked the said Pratisthan to pay premium of ₹ 17.30 crore only without levy of any penalty. Though two years have elapsed after issue of the Government order the recovery of such a huge amount of ₹ 17.30 crore has not been made.

In their reply, the Department stated (May 2011) that intimation had been sent to the Pratisthan on 15 March 2010 to pay ₹ 17.30 crore within eight days and it has been followed up with a reminder also. It was further stated that hearing in the matter is in progress before the Collector, MSD, Mumbai.

However, the fact remains that though the construction was in violation of the terms and conditions under which land was allotted, no action was taken by the Department to resume the land to the Government and also to recover the premium from the Pratisthan, though four years have elapsed after the breach of conditions came to the notice of the BMC.

In the exit conference the Principal Secretary agreed to look into the aspect of levy of penalty as a deterrent measure for breach of condition.

### 4.2.13 Non-resumption of Government land involving breach of conditions

Under the provision of MLR (Disposal of Government Land) Rules 1971, read with circular dated 8 February 1983, the Government is empowered to allot land at concessional rate/ revenue free on occupancy right/lease hold rights to educational institutions, charitable trusts, housing societies, hospitals, playgrounds, gymkhanas, religious society etc. However, before allotment of such land the revenue authorities should satisfy itself that, 25 *per cent* of capital expenditure required for putting up of the building is immediately available and the remaining 75 *per cent* is likely to become available within a period of two years, so that actual working of institution will commence within a period of two years from the date of allotment. As per the mandatory terms and condition, the land shall be liable to be resumed by the Government, if it is not used for the purpose for which it has been granted or the activity is not commenced within two years from the date of allotment.

During test check of the land allotment files of the Collectors at Nashik, Pune and Thane, we noticed from the reports submitted by the *Talathis* to the respective Collectorates that between October 2010 and June 2011, in 11 cases land admeasuring 3,31,273 sq. mtrs., which were allotted as "revenue free" or at concessional rates, between February 1957 and October 2005, for the purpose of housing, education, garden/ swimming pool etc; were lying vacant for various periods ranging from five to 54 years, as shown in **Annexure IV.**

After we pointed out these cases, Collector, Pune, stated that compliance would be submitted after detailed scrutiny (seven cases), Collector, Thane, stated that the matter had been referred to the Government in June 2010 (one case).

The Government stated (November 2011) that notices have been issued (July, September and October 2011) by Collector, Nashik in three cases for non-utilisation of land.

The fact remains that though these allottees had not utilised the lands from five to 54 years, these lands were still not resumed by the Government revealing absence of follow up action by the Department. The cost of these lands aggregated to ₹ 93.46 crore as per current market value.

### 4.2.14 Irregular grant of redevelopment rights

As per Section 38 of MLR Code, 1966, the Collector is empowered to grant land on lease to any person, for such period, for such purpose and on such condition as he may determine in accordance with the rules and in any case the land shall be held for the period, purpose and subject to the condition so determined. As per note two below section 38, on expiry of lease period, the Government would be entitled to resume the land.

During test check of the lease records in office of the Collector, Mumbai city, we noticed that leasehold land admeasuring 7,836.18 sq.mtrs under survey no 1960 (Part) of Byculla Division was allotted on lease to M/s.Simplex Mills Co Ltd on 26 August 1884 effective from 22 April 1884 on annual lease rent of ₹ 48.13 for a period of 99 years. The lease period had expired on 22 April 1983. The Government had not resumed the land till date. Meanwhile the mill was closed and the leaseholder intended to redevelop the land by constructing multi-floored residential towers. Accordingly, the leaseholder got the Development Plan approved by BMC in October 2004 and commenced the work without taking prior permission of the Collector. The Collector granted a "No Objection Certificate" for development of residential building on 26 April 2006 with the condition that the lease rent would be regularised on the basis of lease policy being determined at the Government level. The R&FD also granted ex-*post facto* sanction for development rights to the lease holder on 29 May 2009 subject to the condition that the lease holder will pay temporary valuation at the rate of 10 *per cent* of the market value of the land and conversion charges at three *per cent* of market value for the change in use from industrial to residential purpose till a policy for grant of development rights on leasehold land is decided.

The fact remains that the development rights were granted to the company though the lease was not renewed instead of resuming the land as per the provision of the MLR Code.

In another case of office of Collector, Mumbai city we noticed that land admeasuring 1,004.18 sq.mtrs of Survey No. 7/138 of Mazgaon Division was allotted on lease to Anandrao Vinayak on 20 March 1895, effective from 1 October 1893, for 99 years. The aforesaid land was subsequently leased out three[3] times by the lessee till it was finally leased out to Jakhubhai Lalji Dal Mill Co. Ltd on 26 June 1992. The lease period expired on 1 October 1992. However, the Collector, Mumbai city instead of resuming the land on expiry of lease period (as lease was not renewed), had granted permission for

[3] Anandrao Vianyak (on 01-10-1893 for 99 years), M/s Shaw Wallace Co. Ltd (from 02-01-1956 for 36 years), Shri Amanulla H. Pathan (from 01-07-1964 for 28 years), Smt. Hurbai Chunawala and Partner (from 26-09-1972 for 20 years) and Jakhubhai Lalji Dal Mill (from 26-06-1992).

redevelopment of the aforesaid land in pursuance of Government approval in July 2008.

After we pointed out these cases, the Collector, Mumbai City, stated that permission for development was given as per the orders of the Government since the policy for renewal of lease had not been finalised.

The contention of the Collector was not acceptable as in these cases the lease had expired 18 to 27 years back but neither the lease agreement was renewed nor was the land resumed by the Government and these lands irregularly continued to remain with the lessee without payment of lease rent at enhanced rate.

## 4.2.15 Land granted to Corporations lying idle

### 4.2.15.1 Land granted to MIDC lying idle

As per R&FD circular dated 4 February 1983, Government land shall be granted to the Maharashtra Industrial Development Corporation (MIDC) for industrial purpose, without charging any occupancy price at the time of grant, subject to condition that the Corporation should utilise the land for development of industries.

Information collected from the Deputy Chief Accounts Officer (A and R), MIDC, Mumbai, revealed that in respect of 15 offices of MIDC in nine districts[4], 532.78 hectares of land was lying unutilised, for various periods ranging from four to 22 years, due to non-finalisation of layout plan, non-establishment of industries, court case, non-availability of water, etc., as shown in the following table:

| Sr. No. | District level office of MIDC | Area lying vacant (in hectare) | Period from which the land is vacant | Reasons for the land lying idle |
|---|---|---|---|---|
| 1. | MIDC, Patur (Akola) | 7.26 | 18 yrs | non-establishment of industrial area |
| 2. | MIDC, Addl. Amravati | 21.23 | 16 yrs | non-establishment of industrial area |
| 3. | MIDC, Dhamangaon (Amravati) | 18.30 | 21 yrs | non-establishment of industrial area |
| 4. | MIDC, Achalpur (Amravati) | 14.66 | 21 yrs | non-finalisation of layout plan |
| 5. | MIDC, Chandur Railway (Amravati) | 17.26 | 20 yrs | non-finalisation of layout plan |
| 6. | MIDC, Dharni (Amravati) | 5.12 | 21 yrs | non-establishment of industrial area |
| 7. | MIDC, Nandgaon Khandeshwar (Amravati) | 10.64 | 21 yrs | non-establishment of industrial area due to water problem |
| 8. | MIDC, Khultabad(Aurangabad) | 9.95 | 17 yrs | non-establishment of industrial area |
| 9. | MIDC, Lonar (Buldhana) | 5.20 | 14 yrs | non-finalisation of layout plan |
| 10. | MIDC, Kolhapur | 28.37 | 22 yrs | objection of Forest Department |
| 11. | MIDC, Vinchur(Nashik) | 115.08 | 9 yrs | non-commencing of winery industry |
| 12. | MIDC, Sangli | 167.88 | 10 yrs | non-establishment of industrial area |

[4] Akola, Amravati, Aurangabad, Buldhana, Kolhapur, Nashik, Sangli, Washim and Yavatmal.

| | | | | |
|---|---|---|---|---|
| 13. | MIDC, Washim | 71.52 | 18 yrs | non-establishment of industrial area as it was not plotable |
| 14. | MIDC, Risod (Washim) | 11.35 | 14 yrs | due to court cases |
| 15. | MIDC, Pandharkavda (Yavatmal) | 28.96 | 4 yrs | land belongs to Forest Department |
| | **Total** | **532.78** | | |

At the time of allotment to MIDC, Government had not specified any time period for utilisation of these lands.

### 4.2.15.2 Land granted to other Corporations lying idle

Information collected by us from five Corporations revealed that 446.86 hectares of land were lying unutilised for various periods ranging from five to 36 years, as seen from the following table.

| Sl. No. | Name of the Corporation | Area lying vacant (in hectare) | Period from which the land is vacant |
|---|---|---|---|
| 1. | Maharashtra State Road Transport Corporation | 12.15 | 24 yrs |
| 2. | Maharashtra State Power Generation Company | 19.73 | 5 yrs |
| 3. | Maharashtra State Mining Corporation Limited | 408.50 | 36 yrs |
| 4. | Maharashtra State Handloom Corporation Limited | 2.08 | * |
| 5. | Development Corporation of Konkan Limited | 4.40 | 32 yrs |
| | **Total** | **446.86** | |

***** Stated to be idle since construction of structure but date of construction not intimated by the Corporation.

The reasons for which the lands were lying vacant have been called in the matter from the Corporations concerned, which are awaited. Further reply is awaited (November 2011).

**The Government may consider instituting a mechanism for periodic review of the lands allotted to MIDC and other Corporations so as to ensure that land not required by them would be available to the Government for other welfare measures instituted by them.**

## 4.2.16 Non-resumption of Government land/non-recovery of unearned income in cases of violation of conditions

As per rule 8(a) of the Maharashtra Land Revenue (Disposal of Govt. Land) Rules, 1971, land or any part thereof or any interest therein shall not be transferred, except with the previous sanction of the State Government. As per the Resolution of the Revenue Department in November 1957, the Collector may grant permission for sale of such land on payment of a sum equal to 50 *per cent* of the unearned income i.e. difference between the sale price approved by the Collector and the original price paid to the Government including the cost of improvements, if any, made in the plot by the grantee. In case of sale without prior permission of the Government, the grantee was required to pay 62.5 to 75 *per cent* of the unearned income.

**4.2.16.1** During test check of the records of Collector, MSD, Mumbai, we noticed that land admeasuring 12,050 sq. mtrs. in survey no. 141A, part of CTS no. 833, plot no. one, *mouja*-Ambiwali Taluka-Andheri was allotted for hospital and research centre at lease rent of ₹ One per year for the period

of 30 years to Malti Vasant Heart Trust vide Government order dated 29 December 1997. At the time of allotment of land the trustees were Shri Nityanand Vasant Mandke, Smt. Alka Nityanand Mandke and Smt. Jyotsna Vasant Mandke.

Our scrutiny of records revealed that only Smt. Alka Nityanand Mandke remained of the original trustees and in place of the two other original trustees, three new trustees[5] were brought in. The hospital building was constructed in January 2009 on the allotted land and named Kokilaben Dhirubhai Ambani Hospital and Research Institute. There were seven share/stake holders[6] of the hospital. One of the trustees namely Smt. Tina Ambani informed the Chief Minister on 23 January 2009 that it was a flagship hospital of Reliance Anil Dhirubhai Ambani Group. The business group had invested ₹ 291 crore for the hospital. Three more trustees were subsequently added to the trust and decision making was now with the new trustees. Thus the original trustees excluding one are no longer on the Board of Trustees of the Hospital.

However, from the letter written by the Collector to the trustees on 6 February 2007 **it is clear that no prior permission was taken from the Government for change/ownership in the trustees.** Effecting such changes without the knowledge of the Government was irregular. **As the ownership had been changed without prior approval of the Government the Trust was liable to pay unearned income of 75 *per cent* of the market value of 2009 which worked out to ₹ 174.88 crore.**

According to a circular issued by the Government in February 1983, when land is allotted by the Government at concessional rate, 40 *per cent* of the total/ available operational beds should be available to the general public on payment of fees which is fixed by the hospital with prior approval of the Public Health Department. Information independently collected by us revealed that the bed charges in the hospital ranged between ₹ 15,000 to ₹ 20,000 per day. The Collector, MSD, Mumbai confirmed (August 2011) that the rates for bed charges were not approved by the Government.

As per the agreement (*sanad*) between the Chairman (original trustee) of Malti Vasant Heart Trust and the Collector, MSD, Mumbai in April 2003, the fees and rates to be charged in the Out Patient Department (OPD) of the hospital shall be in accordance with the rates charged in the Government Hospital in the Municipal Corporation area. Information independently collected by us, revealed that the OPD charges of the hospital were ₹ 600 whereas the OPD charges in Government hospitals in the municipal area were ₹ 10. The data collected by us from the hospital revealed that the building is put to use for commercial activities such as - gift shop, spa, beauty saloon, food court, office of Reliance Company and business centre comprising of video conference facility, ready to use office blocks, etc., in violation of conditions of the agreement.

The records maintained by the Collectorate did not corroborate the above facts of violation and commercialisation of the plot which was granted by Government virtually for free (₹ one).

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[5] Smt. Kokilaben D. Ambani, Shri Anil D. Ambani and Smt. Tina A. Ambani.

[6] Smt.Kokilaben D.Ambani, Shri Anil D.Ambani, Smt.Tina A.Ambani, Shri Satish Shah, Shri Amitabh Jhunjunwala, Shri Gautam Joshi, ADA Enterprises and Ventures Pvt. Ltd.

After this was brought to notice, the Collector, MSD, Mumbai stated (May 2011) that notice was issued in 2007 and 2010 for change in ownership and commercial use. On scrutiny of records, we found that the notice issued by the Collector was based on the report appearing in the Times of India, rather than his independent monitoring to ensure that violation of conditions does not occur.

This only goes to confirm that the monitoring mechanism in the Department was grossly inadequate and even after lapse of more than four years the Government was not aware of the charges in ownership of the plot, commercialisation of activities at the plot. Consequently no action was taken to recover the unearned income of ₹ 174.88 crore as per the Government instructions applicable.

**4.2.16.2** As per the Government Resolution, R&FD of May 1961, read with Government Resolution, Industries and Labour Department of December 1961, land in the layout of Government Industrial Estate at Kandivali was leased for 30 years for establishment of industrial units. Further, as per memorandum issued by the R&FD in December 1982, sanction was accorded for transfer of the occupancy rights of these plots on payment of occupancy price to the existing lessees with certain terms and conditions. As per condition no. 3, the State Government shall be entitled to half the unearned income in respect of disposal of land along with the factory, plant, structures and other installations, by way of sale.

During test check of the records of Collector, MSD, Mumbai, we noticed from the reports submitted by the concerned *Talathis* to the Collector that the properties had changed hands in 17 cases, involving land admeasuring 22,844 sq. mtrs. The above cases were not brought to the notice of the Collector by the authorities concerned due to which the approval required from the Government had not been taken. This resulted in violation of terms and conditions under which land was granted to the original allottees. It is pertinent to note that the required information was available in the records of the Department itself, which could have been collated with the information of the original lessees The Government was entitled to 50 *per cent* of the unearned income which worked out to ₹ 36.31 crore according to the ready reckoner of 2011, as detailed in the **Annexure V.** Failure of the Department to take action under the Rules, resulted in non-realisation of unearned income of ₹ 36.31 crore.

After we pointed out these cases, the Collector, MSD, Mumbai accepted the observations and stated that the amounts would be recovered. Further report on recovery is awaited (November 2011).

**4.2.16.3** As per Memorandum of March 1978 issued by R&FD, Government land admeasuring 543.487 sq. mtrs. was allotted on lease for a period of 30 years to Dr. S.R. Pawar for the purpose of construction and running of dispensary on payment of yearly lease rent. As per the terms and conditions, the lessee could not directly or indirectly transfer, assign, encumber, mortgage or part with his interest under or the benefit of the agreement of lease or any part thereof, in any manner, without the previous consent in writing of the Government. The Government was free to refuse such consent or grant it subject to such conditions including a condition regarding the payment of

premium as Government may in its absolute discretion think fit (condition no. 17).

During test check of the records, we found that the Tahsildar, Kurla had intimated to the Collector, MSD, Mumbai that out of 543.487 sq. mtrs., only 110.63 sq. mtrs. of land had been utilised for the dispensary and in remaining area (432.857 sq. mtr.), the allottee had constructed and sold three shops and 17 residential flats without obtaining Government permission and earned an income of ₹ 1.56 crore. As per the provisions of MLR Code the land was either required to be resumed by the Government or unearned income of ₹ 1.17 crore (75 *per cent* of ₹ 1.56 crore) was to be recovered from the lessee for unauthorised construction and sale. Though more than four years have elapsed neither the unearned income was recovered nor was the land resumed by the Government.

The Collector stated that notice (date of issue of notice not specified) has been given to lessee and developer to pay unearned income for unauthorised sale and transfer for which hearing is in progress. Further reply in the matter is awaited (February 2012).

**4.2.16.4** As per Para 1 of the G.R. issued by R&FD in September 1983 any person who holds agriculture land as occupant Class-II[7] seeks permission to sell agriculture land for agriculture purpose, the holder shall pay to the Government an amount equal to 50 *per cent* of the net unearned income[8]. Further, as per R&FD letter of September 2006, the unearned income should be levied on the market value or sale consideration whichever is higher, so as to ensure that Government is not put to any loss.

During test check of the records relating to permission granted for sale of Class-II land, we noticed in respect of three cases of the Divisional Commissioner, Pune and seven cases of the Collector, Nashik that unearned income of ₹ 56.71 lakh was levied at 50 *per cent* of the market value on the sales aggregating ₹ 1.13 crore. Cross verification of this data with the records of the Sub-Registrar at Pune and Nashik revealed that the actual sale consideration in respect of these nine cases aggregated to ₹ 2.06 crore. Thus total unearned income recoverable was ₹ 1.03 crore against which only ₹ 56.71 lakh was recovered. This resulted in short recovery of unearned income of ₹ 46.13 lakh.

After we pointed out these cases, Collector, Nashik accepted the audit observation in respect of seven cases amounting to ₹ 30.47 lakh. The Divisional Commissioner, Pune accepted the audit observations in two cases involving ₹ 9.82 lakh and stated that recovery would be made.

In another case involving ₹ 5.84 lakh the Divisional Commissioner, Pune stated that recovery of unearned income was correctly made based on the market value. The reply is not tenable as the recovery of unearned income is to be made at the market value or sale consideration whichever is higher and

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[7] In note 2 below section 29 of the MLR Code, occupant Class II means the person who holds unalienated land in perpetuity subject to restrictions on the right to transfer.

[8] 50 *per cent* of the difference between current market value or the price realised by way of sale whichever is higher and occupancy price at which the land was originally granted to the applicant plus the structural and permanent improvement which will create assets and the same will influence the valuation of land.

in this case the recovery of unearned income was made on the market value, instead of sale value.

In the exit conference the Principal Secretary agreed to the observations and assured to effect recovery in accordance with the codal provision and GRs applicable. Further, as regards allotment of land to Kandivali Industrial Estate, the Principal Secretary directed the officials to look into the matter with a view to recover unearned income.

**The Government may consider prescribing a mechanism to conduct periodic surveys to ensure that land allotted is being utilised for the purpose for which it is granted and terms and conditions under which land is allotted are not violated.**

### 4.2.17 Short realisation of revenue due to reduction of ready reckoner rates of two villages

The R&FD vide Resolution dated 29 May 2006, had made it mandatory to adopt the rate given in the ready reckoner for computing the value of land for all purposes related to levy of revenue. The ready reckoner, which is the basis of determination of valuation of land, is prepared by the Inspector General of Registration (IGR) in consultation with Town Planning Department. Ready reckoner is prepared for each calendar year based on the current market rate.

The R&FD vide its order dated 17 August 2010 allotted land admeasuring 1,41,628.57 sq. mtrs. bearing survey no.156/1 and 27 other survey numbers at *mouja*-Kolshet Taluka,Thane and 1,98,225 sq. mtrs. bearing survey no. 58/1 and 16 other survey no. at *mouja*-Kavesar Taluka-Thane to Roma builders at the prevailing market rate for the year 2010 on occupancy rights basis. M/s Roma builders vide challans dated 13-09-10 had paid ₹ 60.94 crore for 1,98,225 sq. mtrs. land at Kavesar and ₹ 67.35 crore for 1,41,628.57 sq. mtrs. land at Kolshet respectively.

During test of the records of Collector, Thane, we noticed that despite no natural calamity/ external aggression/ no change in topographic condition of land between year 2008 and 2010, the value of land in these two particular villages were reduced in the year 2010 as compared to 2008 (there was no change in rates during the year 2009). In Kolshet, out of 28 surveys nos. in 18 survey nos. the rate of ready reckoner of year 2010 was reduced compared to the prevailing rate of year 2008, though all these area falls in same village and there is no change in topographic condition of land. At Kavesar, in entire 17 survey nos. the ready reckoner rate of year 2010 was less than the ready reckoner rate of year 2008. Thus, application of reduced rate in 2010 resulted in loss of Government revenue[9] of ₹ 63.57 crore, as detailed in **Annexure VI.**

[9] For Kolshet the amount is worked out in respect of 28 survey nos. on the basis of increase in rates during 2010 for 10 survey numbers and due to reduction in rates for 18 survey numbers where in ready reckoner rates of year 2008 are adopted. For Kavesar, due to reduction in rates for all 17 survey numbers ready reckoner rates of year 2008 are adopted.

After we pointed out these cases, Collector, Thane stated that every year the market rate of land is determined by the IGR, Pune which was applied in toto while computing cost of land.

We referred the matter to the IGR, Pune and the Assistant Director, Town Planning, Thane, for ascertaining the reasons for reduction of rates particularly in those two villages. The IGR in reply stated that the reduction in rates in the two villages was based on the representations received from the Indian Merchants Chamber (IMC) as well as the local representatives who wanted a reconsideration of the rates due to worldwide recession which had reduced the rate of properties. Other factors, such as, location, nearness of main road, creek, etc., were also taken into consideration.

The reply is not tenable as it was observed that in the neighbouring four villages viz. Dhokali, Balkum, Boriwade and Wadavali, the rates of open land as per the ready reckoner of 2010 had either remained constant or had been increased as compared to the ready reckoner of 2008. Further, the contention of the IGR in considering the area near the creek as a reason for reducing the rates was also not acceptable as in one case in village Kolshet, the rate of land was reduced to ₹ 3,200 in 2010 as against ₹ 7,050 in 2008 on the plea that area is near the creek (CRZ) whereas in Kavesar which is also near the creek, the rate of the land was increased to ₹ 3,200 in 2010 as against ₹ 2,500 in 2008.

The land rates were also booming in Maharashtra and as such there was no specific reason for reducing the rates of land which resulted in short realisation of revenue.

In the exit conference the Principal Secretary stated that matter is being looked into and reply from the Government would be sent. Further reply is awaited (February 2012).

### 4.2.18 Non-realisation of revenue due to non-renewal of lease agreement in time

As per section 38 of MLR code,1966, the Collector is empowered to grant land on lease to any person for such period, for such purpose and on such condition as he may determine as per rule and in any case the land shall be held only for the period, purpose and subject to the conditions so determined. Further as per the GR of July 1999, the annual lease rent shall be calculated at prime lending rate declared by the State Bank of India from time to time on full market value of land determined as per section 108 of MLR code, 1966, read with rule 13 of MLR (Conversion of use of land and Non-Agriculture Assessment) Rule, 1969.

During test check of the records of the Collector, MSD, Mumbai, we noticed that, in six[10] cases the lease periods had expired between November 2004 and November 2009. However, the Department had neither renewed the lease nor withdrawn/ resumed the lands from these lease holders. Failure of the Department to renew the lease agreement in time resulted

[10] Shram Sadhana Trust, Bandra; CKP Samaj Chembur, Kurla; Ind. Premises CHS, Ghatkopar; Rayat Shikshan Sanstha, Kandivali; Tata Hydro Electric Supply, Kandivali; Eastern International Hotel (P) Ltd., Juhu.

in non-realisation of lease rent of ₹ 17.60 crore being the differential lease rent worked out on the basis of the prime lending rates for the respective years in which lease has expired.

After we pointed out these cases the Collector, MSD, Mumbai stated that the Government had decided on a policy for renewal of lease as per GR issued in October 1999. However the GR was challenged by the lessee in the High Court. The High Court in its order requires that the GR issued be withdrawn and lease rent be collected at old rate till lease rent is refixed after giving opportunity to the lessee. A proposal for fixation of lease rent and renewal of lease was also stated to have been sent to the Government by the Collectorate.

In the exit conference the Principal Secretary stated that the policy of renewal of lease is under consideration of the Government and is yet to be finalised.

The contention of the Department is not acceptable for the reason that, the High Court in the same order had also directed the Government to revise the rate for renewal of lease at the earliest for fixation of lease rent. However, despite lapse of more than six years, the Government has still not decided on the issue of fixation of lease rent and its renewal, resulting in non-realisation of lease rent of ₹ 17.60 crore.

### 4.2.19 Non-mentioning of mandatory conditions of time frame for commencement of educational activities resulted in undue benefits to the allottee

As per the provisions of MLR (Disposal of Government land) Rules, 1971, read with R&FD circular dated 8 February 1983, for grant of Government land at concessional rate/revenue free to educational institutes (clause 6e), the Revenue Department should satisfy itself that 25 *per cent* capital expenditure required for putting up the building is immediately available and remaining 75 *per cent* is likely to become available within a period of two years, so that actual working of institution shall be commenced within a period of two years from the date of possession. Further, as per clause 6(f) of the said circular, if the school/college is not started within the prescribed period or in case of breach of any conditions, the land would be resumed by the Government immediately without payment of any compensation.

During test check of the land allotment records of Collector, MSD, Mumbai, we noticed that land admeasuring 23,840 sq. mtr. situated in survey no. 263, CTS-6-A, plot no.1 *mouja*-Malvani, Taluka-Borivali, MSD, Mumbai was allotted by Government order dated 28 September 2005 at concessional rate on occupancy rights basis to Manjra Charitable Trust for opening a Dental College by charging 50 *per cent* of the market value of the land prevailing prior to five years of the date of allotment (as per provision contained in Government decision dated 30 June 1992). The condition No.6 of the said order directed the Collector to hand over the land by making agreement with the Trust incorporating all mandatory terms and conditions. The Trust paid ₹ 6.56 crore as occupancy price. The

possession of the land was given to the Trust in 2006 and Agreement to the effect was executed between the Trust and the Department on 4 October 2006.

Our scrutiny of the land records revealed that Collector, MSD, Mumbai, while allotting the said land to the Trust, vide letter dated 23 November 2006, did not mention about the basic condition regarding "completion of entire work within a period of two years so as to commence educational activities". While scrutinising the records in the R&FD, it was noticed that out of four applicants for the said plot of land the Chief Minister had approved the application of Manjra Charitable Trust for allotment of land in preference to three other applicants without assigning any specific reasons for the preferential allotment. Though four years have elapsed after taking possession of land, the same was not put to use for the intended purpose. Further, the Trust under letter dated 11 April 2011 had requested the Collector to alter the purpose of use of land from "Dental College" to "Educational activity" as it was not in a position to start a Dental College.

Thus non-inclusion of the mandatory clause deprived the Government from resuming back the land and the Trust got privilege of retaining the land on occupancy rights basis by merely paying ₹ 6.56 crore (against the market value of ₹ 30.37 crore as per ready reckoner of 2006).

After we pointed out the case, Collector, MSD, Mumbai, stated that as the permission of Medical Council of India was required for starting education activity no specific time limit was fixed. The Collector further assured that henceforth the time clause of two year would be incorporated in terms and conditions of similar allotment order.

The reply is not tenable as the conditions prescribed in the MLR code are mandatory, hence non-inclusion of the conditions was contrary to the provisions of the Rules. Not having a time frame clause itself amounted to an unintended favour to the Trust.

### 4.2.20 Short recovery of occupancy price

According to the GR issued by the R&FD on 25 July 2007 for grant of land at concessional rate, the occupancy price of land shall be 20 *per cent* of the market value of land determined as per rate prescribed in the ready reckoner. Earlier the R&FD vide Resolution dated 29 May 2006, made it mandatory to adopt the rate given in the ready reckoner for computing the value of land for all purposes relating to recovery of cost of land.
Further as per the instruction issued every year in the ready reckoner by the Inspector General of Registration, Maharashtra State, Pune (Sr. No. 3), in respect of the land situated in Mumbai (City) and Mumbai (Suburban), where TDR can be utilised, for the purpose of valuation of the land, 40 *per cent* increase of the cost would be considered.

**4.2.20.1** During test check of records of Collector, Mumbai City we noticed that, as per Memorandum dated 20 August 2009 issued by the R&FD, land admeasuring 7,424.09 Sq mtrs, situated at City Survey No. 3/147 in *mouja*-Vadala (Salt Pan), Mumbai City, was allotted to Shree Panchasheel Co-operative Housing Society having 125 members. Detailed scrutiny by us revealed that the occupancy price was determined at ₹ 3.68 crore which is 20 *per cent*

of the land cost of ₹ 18.41 crore as per ready reckoner. However, the market value, considering FSI usable land worked out as ₹ 4.90 crore[11] on land costing ₹ 24.49 crore.

Thus non-consideration of the market value on FSI usable land had resulted in short realisation of Government revenue to the tune of ₹ 1.22 (4.90-3.68) crore.

In the exit conference the Principal Secretary stated that the differential amount of occupancy price on 0.33 FSI would be levied and recovered.

**4.2.20.2** As per the R&FD GR dated 30 June 1992, in respect of the land allotted to an education society which is within the limits of the Municipal Corporation, the valuation rate of the land would be reckoned as applicable before five years (i.e. from 1 January of that year) with respect to the year in which allotment is made and 50 *per cent* of that amount shall be recoverable as occupancy price from such education society.

- During test check of the records in the office of Collector, Pune we noticed that land admeasuring 8,094 sq. mtrs. was allotted to Dr. Vikhe Patil Foundation, Pune in June 1988 for the purpose of secondary education. Out of this 5,396 sq. mtrs of land was reallocated for higher and technical education (Degree College) in November 2002. Though the market value of the land was to be determined on the basis of 1 January 1997 for calculating the occupancy price which works out to ₹ 91.33 lakh, the occupancy price was determined on the basis of market value as on 1 January 1983 and levied at ₹ 17.35 lakh. This resulted in short recovery of occupancy price of ₹ 73.98 (91.33-17.35) lakh.

- In another case of Pune district, we noticed that land admeasuring 4,000 sq.mtrs. was allotted to Vijay Foundation, Pune in June 2004 for cultural purpose. On the basis of the application received from the Foundation for change of use from cultural purpose to education purpose, the R&FD accorded sanction for change of use of land in November 2008. Though the market value of the land was to be determined on the basis of 1 January 2003 for calculating the occupancy price which works out to ₹ 52.70 lakh the occupancy price was determined on the basis of market value as on 1 January 1999 and levied at ₹ 44.80 lakh. This resulted in short recovery of occupancy price of ₹ 7.90 lakh.

After we pointed out these two cases, Collector, Pune accepted the observation in respect of Vijay Foundation and stated the recovery would be made and in respect of Dr. Vikhe Patil Foundation it was stated that action would be taken after detailed scrutiny.

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[11] Area of the land = 7424.09 Sq mt
Market value of land per sq m =₹ 24800
Market value of land = 7424.09 X ₹ 24800 X 1.33= ₹ 24,48,76,185
Occupancy price as per Audit = 20 *per cent* of 24,48,76,185= ₹ 4,89,75,237.

### 4.2.21 Non-recovery of differential amount of cost of land due to breach of conditions

As per the R&FD GR of June 1992, while allotting land to an educational society for education purpose the rate for valuation shall be considered as under:
(i) For primary and secondary education, as per GR of May 1984 the rate applicable on 1 February 1976 shall be considered for valuation and 25 *per cent* of that valuation shall be recovered as occupancy price from education society.
(ii) For higher education/ College within municipal corporation limits, rate applicable five year before (i.e. on 1 January of that year) from the date of allotment order shall be considered for valuation and 50 *per cent* of that valuation shall be recovered as occupancy price from education society.

During test check of the records of the Collector, Pune, we noticed that the R&FD vide GR of November 2001 accorded sanction for allotment of land for education purpose (pre-primary, primary and secondary, vocational courses and hostel for boys and girls) admeasuring 29,550 sq. mtr. bearing survey no.-35, *mouja*-Lohgaon, Taluka-Haveli, District-Pune to Marathwada Mitra Mandal. On the basis of this sanction, Collector Pune issued order on 13 November 2002 to Marathwada Mitra Mandal for payment of ₹ 4,802 i.e. 25 *per cent* of the cost of land as on 1 February 1976. Information collected by us revealed that, as per the brochure published by Marathwada Mitra Mandal (Institute of Technology), the Mandal has started degree courses in engineering and MBA from 2008 itself. This was in violation of the purpose for which the land was originally allotted by the Government. No information was available on record to show that prior permission was obtained for change of purpose and also whether the entire or part of the land allotted was used for technical education and management courses. In any case the amount payable for the land would be 50 *per cent* of the rate applicable which worked out to ₹ 16.94 lakh, which was not recovered and not ₹ 4,802 being 25 *per cent* of the rate applicable as was paid by the Mandal. There is no mechanism put in place to ensure that violations of the conditions are brought to the notice of the Collector. We also noticed that there are no deterrent provisions in the conditions for change in use of the land.

After we pointed out the case Collector, Pune agreed to recover the differential amount and further stated that all similar cases would be reviewed on the basis of audit observation.

### 4.2.22 Incorrect waiver of license fee

The R&FD under circular issued in September 1999 granted permission to Gymkhana & Sports Institution for use of hall and open space for marriage, reception functions, exhibition, etc., on payment of license fee of ₹ 25,000 for first day and ₹ 15,000 for each forthcoming days. The license fee was further enhanced vide circular dated 4 August 2006 to ₹ 50,000 and ₹ 25,000, respectively, on the following terms and conditions:-

- gymkhana should pay in advance ₹ 50,000 for first day and thereafter ₹ 25,000 for each day for the same function.
- prior permission of the Collector is required to be taken by the Gymkhana in every organisation of any non-sports activity.
- double the licence fee will be charged if any non-sports activity was conducted in the hall/open space without the prior permission of the Collector.

During test check of the records of Collector, MSD, Mumbai, we noticed that Khar Gymkhana had given permission for use of hall/ open space on rent for marriage ceremony to 39 different persons from 2 December 2007 to 2 March 2008, without the prior approval of the Collector. However, the license fee payable by the Gymkhana for giving permission for utilising the hall was at ₹ 19.50 lakh and penalty leviable for not seeking prior approval was ₹ 19.50 lakh. Total amount recoverable was ₹ 39 lakh. The Department had served notice to the Gymkhana for payment of license fee of ₹ 18.50 lakh only. Against this notice, the Gymkhana preferred an appeal to the Revenue Minister, who ordered that only ₹ 4.57 lakh was to be recovered, which was 50 *per cent* of earnings of the Gymkhana for the said period. This was contrary to the provision of the Government Resolution issued in August 2006 and resulted in irregular/incorrect waiver of ₹ 34.43 lakh.

After we pointed out the case, the Collector, MSD, Mumbai stated that the decision taken by the Revenue Minister on 25 August 2009 was based on the merits of the case.

In the exit conference the Principal Secretary stated that, as the observation is of a propriety nature it needs to be reviewed at Government level.

In absence of any provisions in the MLR Code for waiver or reduction of any charges payable, the recovery of license fee at reduced rates was irregular/incorrect.

### 4.2.23 Non-recovery of lease rent

As per Section 38 of MLR code,1966, the Collector is empowered to grant land on lease to any person for such period, for such purpose and on such condition as he may determine as per rule and in any case the land shall be held only for the period, purpose and subject to the conditions so determined. Further the lease rent payable is determined by the Government on an annual basis.

During the test check of records of the Collector, Mumbai City, Mumbai, we noticed that Land admeasuring 1,256.56 sq.mtrs (situated adjacent to plot Nos.67 and 67-A, Worli Scheme No.52) was allotted to Ashok G.

Piramal, Dilip G. Piramal and Ajay G. Piramal (HUF) (who are lessees in respect of plot No.67, CS No.788, Worli Division) for a period of 30 years vide R&FD memorandum of May 2005. The provisional annual lease rent (subject to final lease rent to be decided by Town Planning Department) was fixed at ₹ 57.21 lakh. The possession of the land was given on 19 July 2005. The lessee paid lease rent in the first year (June 2005).

We saw that the Department had neither finalised the annual lease rent nor recovered provisional lease rent during the last five years (i.e. from 2006-07 to 2010-11) due to which Government revenue to the extent of ₹ 3.75 crore was not realised.

After we pointed out the case the Collector, Mumbai City, Mumbai assured that recovery would be made.

### 4.2.24 Avoidable payment of interest

Under GR dated 5 October 1999, the Government of Maharashtra formulated a policy for fixation of lease rent and extension of lease period. As per this policy, a lease hold land could be given on occupancy right basis for charitable, residential and educational purposes. However, the clubs and gymkhanas are not included in the GR.

During test check of the records of the Collector, MSD, Mumbai, we noticed that the Collector vide his order dated 20 February 2001 had sanctioned the conversion of leasehold land into outright purchase to Otters Club. The land measuring was 4,180.65 sq. mtrs., in survey No. CTSNo.C/1658, village-Danda, Tahsil-Andheri. Accordingly two crore was paid by the Club as occupancy price on 29 March 2001. The order issued by the Collector was not in keeping with the GR issued by the Government since clubs and gymkhanas were not to be considered for such conversion. Hence, the Collector approached the Government for ex-post facto sanction which was rejected, due to which the amount paid by the club was refunded by the Department on 23 January 2006. As there was delay of more than four years in returning the amount, Otters Club filed a writ petition in Mumbai High Court for payment of interest on delayed refund. The High Court in its decision dated 14 March 2005 directed the Government to pay interest at 6 *per cent* from 29 March 2001 to 23 January 2006. In pursuance of the court's order, the Department paid ₹ 57.82 lakh towards interest on delayed payment of ₹ 2 crore in September 2006.

Thus, the Collector had incorrectly allowed conversion of land from leasehold to occupancy rights basis and the refund of ₹ 2 crore was also delayed.

After we pointed out the case, the Department stated that the Government had used ₹ 2 crore during the period March 2001 to January 2006, and the club had been paid interest at 6 *per cent* only, though the prime lending rate was higher during that period. Hence, the payment of interest of ₹ 57.82 lakh was held as justified.

The reply is not acceptable since discretionary powers used by the Collector in sanctioning the conversion from lease to occupancy right, though not admissible and irregular retention of the amount of ₹ 2 crore resulted in avoidable payment of interest of ₹ 57.82 lakh out of Government funds.

## 4.2.25 Disposal of land under Urban Land Ceiling and Regulation Act

### 4.2.25.1 Irregular sale of surplus land under ULC Act.

Under Land (Ceiling and Regulation) Act, 1976 (ULC Act), no person is entitled to hold any vacant land in excess of the ceiling limit. State Government shall by notifications declare the vacant land in excess of ceiling limit to be deemed to have been acquired by the Government. However, if any person declares before competent authority that such vacant excess land will be utilised for construction of dwelling units for weaker sections of the society, Government may exempt such land from acquisition on certain terms and conditions as may be prescribed. Further, the said persons shall submit report from time to time in order to indicate the progress of the work done.

As per the provisions of Section 20 of Urban Land Ceiling (ULC) Act, 1976, the land declared surplus is exempted from acquisition, if the land owner develops the land by providing plots and/or construction of tenements in accordance with the terms and conditions of the exemption order. If there is any violation of terms and conditions, Government shall withdraw the exemption.

During the test check of records of the Additional Collector and Competent Authority, ULC, Nagpur, we noticed that land declared surplus was exempted from acquisition. The terms and conditions *inter alia* stated that the land owner is permitted to transfer total/part area under scheme submitted on surplus land to any group of purchasers intending to propose a Co-operative Housing Society. However, land owner sold the land (in January 2007) to J.P. Realties Private Ltd violating the condition as it is neither a co-operative housing society nor a group of purchasers intending to form a co-operative housing society. No action was taken to withdraw the exemption. This resulted in irregular transfer of land worth ₹ 3.96 crore.

On being pointed out by audit in May 2011, the Additional Collector and Competent Authority, ULC, Nagpur, accepted the observation and issued notice to the land holder.

### 4.2.25.2 Non-taking of physical possession of land declared surplus under ULC Act

As per the provisions of ULC Act, 1976, the State Government shall notify the vacant land held by any person in excess of ceiling limit as surplus and such surplus land shall be deemed to have been vested absolutely in the State Government. The Competent Authority shall, by notice in writing, require the person to deliver the possession of such vacant land to State Government failing which the Government may forcefully take possession. The ULC Act, 1976 was repealed by both the Houses of Maharashtra Legislature with effect from 29 November 2007.

During the test check of records in Additional Collector and Competent Authority, ULC, Nagpur, we noticed that in 656 cases, 1,164.41 hectare land was vested in the State Government by virtue of section 10 of ULC Act, 1976. However, neither possession of the vacant land was delivered to the

Government nor possession was taken forcefully by the Government. Out of 656 cases of such land, in 20 test checked cases we noticed that possession of the land worth ₹ 76.88 crore based on ready reckoner for the year 2011, was not taken over by the Government.

After we pointed out in May 2011, the Additional Collector and Competent Authority, ULC, Nagpur stated that concerned Tahsildars were instructed to take possession but the instructions were not complied by them.

#### 4.2.25.3 Absence of monitoring mechanism on ULC Land

As per the provisions of ULC Act, 1976, the land declared surplus is exempted from acquisition, if the land owner develops the land by providing plots and/or construction of tenements in accordance with the terms and condition of the exemption order. The terms and conditions *inter alia* stated that the land exempted shall be used for providing plots and/or constructions of tenements as per the terms and conditions of exemption order. Further, the said persons shall submit report from time to time in order to indicate the progress of the work done.

During the test check of records in Additional Collector and Competent Authority, ULC, Nagpur, we noticed that in six cases, wherein the competent authority granted exemption under section 20(1) of the ULC Act between 2002 and 2005, the landholders did not submit the report on progress of work.

After we pointed out in May 2011, the competent authority while accepting the fact stated that notices will be issued to the concerned landholders and report will be furnished after spot verification.

**The Government may issue directions to the Sub- Registrar that an NOC from the Additional Collector and Competent Authority (ULC) may be obtained and verified before registering a document. An affidavit may be obtained on non-judicial stamp paper from the original land holder mentioning that the land being sold is not part of the land allotted by the Government under ULC Act.**

### 4.2.26 Non-resumption of land by Nagpur Improvement Trust on breach of condition

Under the provisions of Nagpur Improvement Trust (NIT) Land Disposal Rules, 1983, lands are leased out to public institutions, Co-operative Societies and shall be subject to the terms and conditions of the grant. In case of any breach of condition, the allotment of land shall be cancelled and land shall be resumed.

During the scrutiny of records of NIT in May 2011, we noticed that land admeasuring 1,126.45 sq. mtrs. was leased to President, Nagpur Zilla Congress Committee (Rural Circle) for a period of 30 years from November 1973. The terms and conditions *inter alia* stated that land shall be used for construction of building for carrying out the aims and object of the Committee. Further, no shops, hostels, offices, canteens, etc., shall be permitted and any breach on this count and diversion of the purpose for which the land is allotted will entail forfeiture of whole lease and resumption of the entire land. The lessee violated these conditions by constructing building having seven shops on the front portion, a meeting hall on the backside, office

of the Committee on the mezzanine floor and construction up to lintel level on the upper floor. The lessee sold the shops between April 1993 and May 1995. The NIT after issuing notices for breach of condition cancelled the allotment in March 2005. Action taken to resume the land worth ₹ 2.02 crore, on the basis of ready reckoner for the year 2011, was not found on record.

After we pointed out, NIT confirmed the construction of building and sale of shops and also stated that notice for cancellation of allotment was pasted in April 2005 at the office of the Committee. The Committee thereafter requested to suspend the action till they hold the organisational election. The possession was given back to the Committee in April 2005 and is presently being used by them. Thus, non-resumption of land by NIT on breach of condition has resulted in undue benefit to allottee.

### 4.2.27 Conclusion

Being a premium asset with ever increasing value, land management is to be dealt with efficiently and promptly. For this purpose, having a data base of land in possession and its allotment is of paramount importance. We noticed during the review that such a data base was not maintained either at the Government level or by the Collectorates. We also noticed that land allotted free of cost/concessional rates for specific purposes was irregularly utilised for commercial exploitation and other activities, etc., or were simply kept vacant. There were blatant violations of the conditions under which land was granted and action either to resume the land or recover the unearned income was not made due to a lackadaisical approach of the Department. Absence of follow-ups and action on follow-up reports resulted in huge tracts of land lying idle with private persons/govt corporations for several years. Monitoring mechanism was weak and ineffective. There were cases of non-realisation of lease rent due to non-renewal, non fixation of lease rent, short determination of occupation price, incorrect waiver of license fee and avoidable payment of interest, resulting in revenue loss to the Government.

### 4.2.28 Recommendations

The Government may consider:

- ***maintaining a database of the land allotted containing details of area, purpose, period, place, name to whom allotted, etc at district levels and government level.;***
- ***evolving a system for ensuring utmost care in grant of land to private institutions for the purpose of education/health and other activities and to ensure that land is utilised for the purpose for which it is granted by an effective reporting mechanism and dissuade the allottees from misusing the land for commercial purpose by enforcing the penal provisions;***
- ***instituting a mechanism for periodic review of the lands allotted to MIDC and other Corporations so as to ensure that land not required by them would be available to the Government for other welfare measures instituted by them; and***
- ***monitoring of surplus land exempted under the ULC Act and ensure that it is utilised for the purpose for which it was exempted.***

## 4.3 Development of Hill station at Lavasa, Pune

### 4.3.1 Highlights

Hill-station type areas in Pune District were identified without any expert study or survey and Lavasa Corporation Ltd (LCL), the project proponent (developer) was selected without any transparency. The project was driven by private interests rather than public interest.

The State Government's policy decision in November 1996 to develop townships in hill-station type areas with participation of the private sector, was implemented without wide publicity/inviting Expressions of Interest, resulting in only one project namely the Lavasa, being sanctioned in June 2001 in Pune district. Though the policy is now more than a decade old, no other hill stations have been developed with private participation in other parts of the State resulting in skewed rather than balanced development in the State.

**(Paragraph 4.3.7)**

Grant of Special Planning Authority (SPA) status to LCL, the project developer was the very first of its kind without a precedent in the State and instead of closely monitoring all aspects of the project implementation Government abdicated monitoring of the project resulting in extension of undue favours/benefits to the developer.

**(Paragraph 4.3.9)**

The Special Planning Authority (SPA) approved plans and layouts of LCL which were not in conformity with the Maharashtra Regional Town Planning Act, 1966 (MRTP Act, 1966) and Development Control Regulations by permitting an increase of 67.33 ha in the layout of the area to 681.27 ha. for construction activities which was also inclusive of the non-submergent land admeasuring 12.368 ha. taken on lease from Maharashtra Krishna Valley Development Corporation Ltd. (MKVDC); falling within a distance of 500 mtr from the HFL(high flood level) of Warasgaon Lake and dam for irrigation project constructed on Mose river. The Director of Town Planning, Pune also did not monitor these irregular modifications though he was a member of the Committee, thereby facilitating crucial changes in violation of the rules and procedures prescribed for ecological safety.

**(Paragraph 4.3.10)**

The State Government gave environmental clearance to the project without referring the project to the GoI, by stipulating that, no development was to be made in area beyond a height of 1,000 mtrs and above, since development beyond 1,000 mtrs required clearance from the Ministry of Environment and Forests (MoEF). The developer exceeded these limits and non-compliance of Environment (Protection) Act, 1986/non-monitoring of the works by the Environment Department resulted in stoppage of work (October 2008, June 2009 and November 2010). However, in November 2011, GoI gave a conditional clearance to the project.

**(Paragraph 4.3.11)**

The MKVDC irregularly leased land in its possession admeasuring 141.15 ha. (128.78 ha. of submergent area and 12.368 ha. of non-submergent area) in

Mulshi Taluka to LCL in August 2002 at a nominal lease rent of ₹ 2.75 lakh per annum, which they had acquired for irrigation purposes.

Permission given to LCL for construction of *bandharas* on Mose river valley was not only irregular but may also affect water availability to Pune City and adjoining areas at the cost of public interest.

**(Paragraphs 4.3.12.1 and 4.3.12.2)**

LCL leased the land to private parties on long-term basis for 999 years of which the Government had no knowledge. An inquiry as to whether LCL purchased tribal land without prior permission is being conducted by the Collector, Pune.

**(Paragraphs 4.3.13 and 4.3.14)**

Lavasa Project being purely a commercial venture designed to reap rich dividends for itself from the appreciation of land prices and the proposed activities of the project catering to the elite, we are of the opinion that the grant of exemptions and concessions from payment of stamp duty and registration fees and *nazrana* fees are unwarranted and devoid of subservience of any public interest. The concessions availed were ₹ 4.36 crore towards stamp duty and registration fees and ₹ 3.71 crore on account of *nazrana* fees.

**(Paragraph 4.3.16)**

Breach of provisions of the Bombay Tenancy and Agricultural Land Act 1948 (BTAL Act) and Maharashtra Agriculture Land (Ceiling on Holdings) Act, 1961, (MALCH) Act in 120 purchase transactions of *watan* and ceiling lands by LCL , which were in the knowledge of the Collector, Pune, resulted in irregular acquisition of land and non-realisation of *nazarana* fees amounting to ₹ 36.43 crore.

**(Paragraphs 4.3.17.1 and 4.3.17.2)**

### 4.3.2 Introduction

The Government of Maharashtra (GoM) framed Special Development Control Regulations (SDCR) to permit the private sector to undertake development of townships in hill-station type areas (November 1996). The Urban Development Department (UDD) of the State Government was empowered to declare any suitable area at appropriate height and suitable topographical features for the purpose of development as hill station. Accordingly, the UDD modified and sanctioned the Pune District Regional Plan in November 1997 and designated 20 villages in Mulshi and Velhe Talukas for Hill Station development. Subsequently, the UDD accorded sanction in June 2001, for Hill station development to M/s.Lake City Corporation Pvt. Ltd. {which was previously known as M/s.Pearly Blue Lake Resorts Private Ltd. and named as M/s.Lavasa Corporation Ltd. with effect from June 2004}. This project was first of its kind in the country and envisaged to have lakeside stylish apartments, hillside luxury villas, golf courses, hotels, spas, country clubs, boutique convention centers, schools, colleges, Institutes, Sports academics, Research and Training centers, incubation centers, nature and adventure activities and health and wellness centers. The project was expected to be completed in four phases by 2022. LCL purchased 3,882 hectares (ha.) of land of which construction activities are underway in 681 ha. Under Phase I the estimated expenditure incurred was ₹ 1,500 crore till August 2011, and was expected to be completed by 2012-13. The details of land purchased by LCL and the sequence of events relating to the project is mentioned in **Annexure VII**. However, MoEF stopped the work on the project in November 2010 due to environmental issues.

### 4.3.3 Audit objectives

The audit was conducted to ascertain whether:

- the Government's objectives of permitting private sector involvement in the development of hill stations in the State was achieved;
- there was transparency in the selection of the project proponent by way of procedures of selection through competitive bidding, invitation of expression of interest, etc.,
- there was compliance with the rules and regulations for sanction of the project and there was justification for allotment of government land for the project;
- adequate controls were in place to safeguard the interest of the Government while sanctioning the project for development by a private agency;
- whether the planning for and implementation of the project was adequately monitored by the Government and environment regulations were complied with; and
- grant of various concessions by the Government in payments of stamp duty, registration fees, *nazarana* fees, etc., was proper.

### 4.3.4 Audit Criteria

The audit criteria adopted were:

1. the SDCR framed by GoM in November 1996 and the notifications issued by the UDD;
2. implementation of the provisions of the Environment (Protection) Act, 1986 and notifications issued thereunder; and
3. the circular instructions, orders and Government Resolutions of the Land Revenue and other concerned Departments.

### 4.3.5 Audit Methodology

A test check of records of the Revenue and Forest Department (R&FD), Environment Department (ED), UDD, Industry, Energy and Labour Department (IE&LD) and Water Resources Department[12] (WRD) at the Government level and offices of the Directorate of Industries (DI), the Collector, Pune, Executive Director, MKVDC, Pune, Assistant Director of Town Planning (ADTP), Pune and Joint District Registrar and Collector of Stamps, Pune (Rural) were carried out during the period May 2011 to September 2011.

### 4.3.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the cooperation of the UDD, ED, R&FD, WRD and IE&LD for providing necessary information and records for audit. The compliance audit report was forwarded to all the above Departments in September 2011. The audit conclusions and recommendations were discussed in the exit conference held in October 2011, attended by the Principal Secretaries of the UDD and R&FD and the Collector, Pune. The replies given have been appropriately included in the relevant paragraphs.

### 4.3.7 Lack of transparency in identification of Hill-Station type areas and for selection of project proponent (developer)

The Regulations provided for on-site infrastructure to be provided by the project proponent, permission to purchase agriculture land without any ceiling limit, grant of status of industry, non-requirement of NA permission[13] as required under the provisions of Maharashtra Land Revenue Code, 1966 (MLR Code). Considering the broad objectives of developing hill station type areas with private participation and the numerous concessions and facilities which were offered towards the stated objectives to the private partner, it was absolutely essential that the State Government should have carried out feasibility studies for developing areas across the State and also ensured wide publicity of the policy/regulations to broad base the participation of private agencies.

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[12] Formerly known as Irrigation Department.
[13] Permission to use agricultural land for other purposes.

During the audit we noticed that:

- Government framed the Special Regulations without any expert study or survey for identification of areas where hill stations could be developed. The Regulations also do not provide for a feasibility report to examine whether the site was suitable for development of a hill station covering the issues such as, eco-sensitivity, environmental compatibility and construction activity working to the detriment of the local residents and their life styles, etc. Further, the Regulations did not prescribe any procedure for selection of developers in a transparent manner through invitation of Expression of Interest, etc.

- All the six[14] hill station development projects including Lavasa Project which were sanctioned by the UDD in the State were in Pune District. Thus equitable development of hill stations in rest of the districts of the State was not planned for and the development was driven by interest of the project developers. Thus, Government did not fulfill its obligations to develop other hilly areas in the State, which had potential for development either in Western Maharashtra, Vidarbha or Marathwada areas.

- After UDD had approved the Regional Plan for Pune District in November 1997, two private parties viz. M/s.Aqualand (India) Ltd. and M/s.Pearly Blue Lake Resorts Pvt. Ltd. approached the Government in January and March 2000 respectively, seeking permission for development of hill station in 18 villages in Mulshi and Velhe Talukas in Pune District. On the basis of requests made by M/s.Pearly Blue Lake Resorts Pvt. Ltd. for those particular 18 villages, between March 2000 and June 2000, the Department declared the land in 18 villages as suitable for development of hill station in June 2001, though this area was earlier reserved for afforestation. UDD notings indicated that M/s Pearly Blue Lake Resorts Pvt. Ltd. restricted its project area with elevation of less than 1,000 mtr as in that case GoI's clearance was not necessary. The project of M/s Pearly Blue Lake Resorts Pvt. Ltd. was approved by the UDD in June 2001. Reasons for selection of M/s Pearly Lake Resorts Pvt. Ltd. in preference to M/s Aqualand (India) Ltd. were not available on record. As per UDD's sanction, the development was to be made in designated villages with some conditions, such as, no development was to be made in the area beyond the height of 1,000 mtrs and above as development beyond 1,000 mtrs requires clearance from the Ministry of Environment and Forests (MoEF) and prepare an Environmental Impact Assessment (EIA) report as per the guidelines of MoEF and obtain approval from the ED of GoM.

Non-invitation of Expression of Interest by the Government for selection of agency to execute the project and unilateral acceptance of land/project preference shown by LCL made the selection process non-transparent. Further, allowing of land as hill station on the request of the project proponent though the land was earmarked for afforestation was irregular.

In the exit conference, Principal Secretary, UDD stated (October 2011) that the project was sanctioned on first come first serve basis with the intention of

[14] M/s.Lavasa Corporation Ltd., M/s.Aqualand (India) Ltd., M/s.Katraj Hill Club and Resorts Pvt. Ltd., M/s.Sahara India Commercial Corporation Ltd., M/s.Satind Infrastructure Pvt. Ltd. and M/s.Maharashtra Valley View Pvt. Ltd.

development of hill station and it is not necessary to float a tender or Expression of Interest.

The reply is not tenable as the project being first of its kind in the State, the selection of the site as well as the developer should have been done with the widest of publicity and transparency.

### 4.3.8 Project approvals and increase in project area without environmental/cabinet approvals

In April 1999, GoM declared tourism as an industry and in July 1999 included development of hill station as tourism activity. By virtue of amendment to Section 63-I-A(II) of BTAL Act powers were vested in Development Commissioner (Industries) to grant permission for purchase of land for *bonafide* industrial purpose as proposed by the project proponents. Accordingly, the Directorate of Industries granted permission to purchase agriculture land admeasuring 6,671.06 ha. (4,000 ha. in December 2002 and 2,671.0633 ha. in November 2010) under the BTAL Act. The Maharashtra Pollution Control Board (MPCB) granted (May 2002) 'No Objection Certificate' (NOC) for the project under the provisions of Water Act, Air Act and authorization under the provisions of Hazardous Wastes (Management & Handling) Rules. The ED granted clearance on 18 March 2004. UDD declared (June 2008) the Corporation as SPA for the area in their jurisdiction under Section 40(1)(B) of MRTP Act.

Our scrutiny of the records revealed that UDD had initially fixed the area for development between 400 ha. and 2,000 ha. as per the Regulation No.2 of notification issued in November 1996. The UDD by way of an amendment in May 2001 deleted the said maximum limit and thus there was no cap on the total area which could be developed under any project.

As hill areas are ecologically and environmentally sensitive and development thereof involves socio-economic undertones, UDD should have accorded sanction for development of hill station on the basis of a study report on these issues, in consultation with the ED and the IE&LD. A cabinet approval for the same was also necessary considering it's long term ramifications, but these requirements were bypassed.

### 4.3.9 Grant of Special Planning Authority status to LCL-dilution of Government's role and undue favour

The State Government inserted clause 1(B) in Section 40 of the MRTP Act, 1966 in 2002, whereby it was provided that the State Government may, by notification in the official Gazette, appoint any agency or authority created by or in accordance with Government order or instrument, or any company or corporation established by or under any State or Central law, to be the SPA for any notified area.

A meeting was held at Lavasa in January 2007 in which officials from LCL, Chief Minister, Union Minister for Agriculture, State Minister for Irrigation, Chief Secretary, Additional Chief Secretary and other officers had participated. In the meeting LCL had made a request to appoint them as SPA, under the plea that approval processes of plans in the Government are long drawn and would delay their project. In response, the then Chief Minister

indicated that he was in favour of minimal control by the Government and hence could consider appointing promoters of large projects as SPAs for their projects. Thereafter, LCL brought these considered views expressed by the Chief Minister to the notice of the UDD and reiterated (February 2008) its request to appoint them as SPA. On the basis of this request and also in view of sub-section 1(B) under Section 40 of MRTP Act, 1966, a notification was issued by UDD in June 2008 to appoint LCL as the SPA. According to one of the conditions of the notification, a committee to perform the duties and functions of SPA should be formed.

During scrutiny of the records in the UDD and office of the Assistant Director of Town Planning (ADTP), Pune, we noticed that there were irregularities with respect to constitution, delegation of powers and functioning of the SPA as discussed below:

- LCL is a private limited company registered under the Companies Act, 1956 and whether the Section 40(IB) was wide enough to cover such a private company for appointment as SPA was questionable. Also, a writ petition in the matter is pending in the Bombay High Court.

- As per the MRTP Act, 1966, provisions of Chapter VI in relation to the Development Authority (DA) were to be applied to the SPA also. Under Chapter VI of the said Act, the new Town Development Authority was to be constituted and its Chairman, Vice Chairman and all other members were to be appointed by the State Government. The DA would have all powers and carry out all the duties of Planning Authority under this Act. The State Government could give directions to any such DA for restricting the powers of the DA.

- LCL passed a resolution in September 2008 constituting a committee of 10 members including the Director of Town Planning, Pune (DTP, Pune) to be called as SPA committee. We noticed that majority of the committee members were from Hindustan Construction Company (HCC) of which LCL is the subsidiary in which the parent company is having major share holding. The Chief of HCC's Planning Section was made Chairman and Chief Executive Officer of the SPA. As the head of the SPA, he acts as building regulating agency for all development projects of LCL. This situation was facilitated by the conditions of the notification issued in June 2008 by the UDD restricting the Government representation in the SPA Committee to one member (Director of Town Planning) in violation of Chapter VI of MRTP Act, 1966.

Thus, the arrangement made by the State Government for implementation of the Lavasa Project did not protect the interest of the State and its people. As such granting of SPA status to LCL without any control by the Government left scope for irregularities, perceived conflict of interest and did not help the development of Hill Station as per the objective of Hill Station Development Policy of the Government.

In effect the Government's participation in the planning and approval of the project was diluted as the decision making process could reach finality through a majority consisting of only one Government member. As plans prepared by the SPA would have bearing on several related issues of public welfare, environment etc., wholesome participation of Government was

necessary, however, the Government chose to relinquish its hold on the project and its implementation.

Grant of SPA status to LCL, the project developer and abdication of Government monitoring of the project amounted to extension of undue favour and was without any such precedence in the State.

In exit conference, Principal Secretary, UDD stated (October 2011) that the appointment of LCL as SPA and provisions relating to grant of SPA in MRTP Act, 1966 are being reviewed and a decision would be taken accordingly.

### 4.3.10 Irregular approval of plans and layouts by the SPA

As per the Section 115 of the MRTP Act, 1966, before preparing a final plan the objections and suggestions are to be invited from the people living in that area and considered. Thereafter the plan has to be approved by the Government.

As per the regulations for development of special townships notified by the UDD in November 2005, for areas falling under the Pune Regional Plan, the land which comes within the belt of 500 mtr from the high flood level (HFL) of a major lake and also command area of an irrigation project shall not be included for any type of township project. Further, according to the conditions of the notification of June 2008, the SPA has no right to grant any relaxation in the prevalent Development Control Regulations (DCR) applicable to the notified area, all the development permissions granted shall be brought to the notice of ADTP, Pune within a period of three months from the date of grant of permission and any violation in DCR and provision of Regional Plan shall be liable for legal action by the Collector, Pune.

During test check of the records in the office of the ADTP, Pune, we noticed the following irregularities:

- According to the resolution passed by the LCL, the duty of the SPA committee was to prepare a draft plan proposal for Lavasa Hill Station and to suggest, as part of the planning proposals, such modifications or additions to DCR, as was necessary for implementation of the planned project. This indicated that the LCL had the intention to go beyond the provisions of the existing DCR. Hence, the modifications in the draft plan proposals should have been monitored by the DTP and the Collector.

- The Master Plan sanctioned by SPA is primarily a layout plan. Though objections and suggestions from the public are to be invited before final plan is prepared and got approved from the State Government, this set procedure was not followed by the SPA of LCL.

- Collector, Pune had approved (June 2008) an area of 613.94 ha. for development of project. LCL, on being granted SPA status, made additions (October 2008, June 2009 and November 2010) of 67.33 ha. to the already approved area, increasing the layout to 681.27 ha. for construction activities. This was also inclusive of the non-submergent land admeasuring 12.368 ha. taken on lease from MKVDC. This non-submergent land was falling within 500 mtr from the HFL of Warasgaon lake and dam for irrigation project constructed on Mose river. As such, the additions and modifications approved

by the SPA were irregular being in violation of the November 2005 Regulations.

- Three modifications as detailed above in the layout plans were carried out by SPA. However, we noticed in the report submitted by DTP, Pune to Principal Secretary, UDD in February 2011 that two modifications were intimated after two years and one modification was not intimated at all, though this was to be brought to the notice of the ADTP, Pune within three months.

- While revising layouts, the LCL changed the internal roads, and the location and planning of buildings.

- The company did not demarcate independently the area with slopes having gradient of 1:3 and above and that between 1:3 and 1:5 in the "Contour Map". Due to this, the construction activity undertaken in the area with such slopes could not be ascertained. The aforesaid areas are not eligible for development. Further in the absence of such demarcation in the "Contour Map" it is difficult to know how much cutting of the hills and filling were made by the company. It is also seen that the company has done construction activity after digging the area situated on the slope having gradient between 1:3 and 1:5.

- The height of one hotel is more than 20 mtr though the SDCR had prescribed the limit of 20 mtr.

It is pertinent to mention here that the Expert Level Committee (ELC) on environment issues had observed in its report that LCL itself had stated that it has kept the planning flexible to suit the commercial demand. Under the circumstances the State Government was required to supervise the activities of LCL, which was not done. The DTP, Pune also did not monitor this though he was a member of the Committee, thereby facilitating crucial changes in violation of the rules and procedures prescribed to safeguard ecological concerns. It was only after the recommendation of the ELC, in January 2011, that the DTP, Pune recommended (February 2011) to the State Government that the provisions for constitution of SPA need to be reviewed. Collector, Pune could have taken legal action on SPA which was not done.

In exit conference, Principal Secretary, UDD stated (October 2011) that a hearing on the matter is in progress and a decision would be taken thereafter.

### 4.3.11 Non-Compliance with Environment (Protection) Act, 1986

The Environment Department, Government of Maharashtra issued a provisional NOC to LCL in December 2002 to develop the hill station in 7,000 ha. at Mulshi and Velhe Talukas in Pune District and which was converted into final environmental clearance in March 2004 for 2,000 ha. with specified terms and conditions. We noticed that LCL did not comply with the specified conditions as discussed below:

- Though clearance was granted in March 2004 for development of the project in area of 2,000 ha., the MPCB issued (January 2005) consent to operate in 6,181.37 ha of land which was irregular. LCL had purchased 3,882 ha. up to September 2009. Moreover the Directorate of Industries had also granted permission subject to the condition that all necessary clearances were required to be taken by LCL.

- We are of the opinion that the environmental clearance given by the State Government (March 2004) was irregular, by avoiding the clearance to the project from the MoEF on the ostensible reason that the development would not be beyond 1,000 metres. As this project had a huge ramification in terms of area being developed in the eco-sensitive Western Ghats and partially in forest/tribal land by a private agency and being first of its kind in the State, *ab-initio* clearance should have been sought by the State Govt from the GoI. As can be seen from the progress of the project, development beyond 1,000 mtrs was done by LCL without MoEF clearance (Expert Committee Report). Thus the State Government failed to monitor their own conditions stipulated by them in various clearances. LCL continued developmental activities violating the condition to maintain the distance to protect flora and fauna from the effect of these activities in the surrounding area.

- The condition stipulated that waste water disposal system shall be designed in such a manner that no waste water directly or indirectly enter into surrounding water resources. However, as per Expert Committee report, the treated waste water is discharged in water bodies through storm water drainage and directly during the rainy season.

The State Government did not insist compliance to the conditions of EIA notification issued by GoI, MoEF in 1994 as amended in 2004 and 2006 for clearance from the MoEF for development of this hill station. On being pointed out by the MoEF (July 2005) that the provisions of EIA notification of July 2004 were applicable in case of Lavasa Project, the State Government directed LCL in August 2005 to obtain environmental clearance for the project. In November 2010, MoEF passed an order stopping the work in view of the environmental violations and thereafter directed (June 2011) the State Government to initiate necessary action under the Environment (Protection) Act, 1986 against LCL. Meanwhile, the LCL filed a writ petition (No. 9448/2010) in the Bombay High Court. The Hon'ble High Court directed (July 2011) the State Government to seek clarification from the GoI regarding the action to be initiated. On direction of the Hon'ble High Court to pass final orders on the application of LCL, the MoEF issued a conditional clearance on 9 November 2011 for first phase of a hill station township development on a plot area of 2000 ha. and directed the State Government to constitute a high level Verification and Monitoring Committee consisting of eminent experts, representatives of MoEF, State Government, District Administration and other stakeholders.

- The Principal Secretary, ED stated (November 2011) in reply that the Department does not have any mechanism to ensure compliance of the conditions. We do not agree with the response, since all agencies including the ED of the State failed to monitor the progress of the project as per the stipulated conditions and for compliance to various environmental laws, thereby facilitating the violations that took place on part of LCL.

## 4.3.12 Irregular grant of permission for construction of bandharas and lease of land by MKVDC

### 4.3.12.1 Irregular grant of permission for excess water requirements and for construction of bandharas

The Khadakwasla Irrigation Project has four storage dams at Khadakwasla, Panshet, Warasgaon and Temghar. This Project also supplies water for drinking and industrial purposes to the Pune City. The LCL had been given permissions to provide water supply for its project by construction of bandharas[15] in catchment and submergence areas of Warasgaon Dam.

During test check of the records of Khadakwasla Irrigation Division, Pune, we noticed that in October 2001, LCL approached MKVDC for permission to construct ten bandharas, eight on Mose river valley (storage capacity 871 mcft) and two on Kal river valley (storage capacity 160 mcft). In view of the fact that the Minister, WRD who was also Chairman, MKVDC had granted approval in May 2002 itself to construct ten bandharas on Mose and Kal rivers, MKVDC granted *post facto* approval in June 2002. Mose river valley is the main source of water for Warasgaon dam. MKVDC's permission to a private party for construction of *bandharas* to store and utilise water was first of its kind in the State. By constructing 10 bandharas, LCL proposed to utilize 1,031 million cubic foot (mcft) of water (93 mcft for domestic use, 170 mcft for plantation and 768 mcft for industrial use). The construction of eight bandharas on Mose river would decrease the water level of Warasgaon dam by 871 mcft. Further possibility of reduction in the storage capacity of the dam due to haphazard way of hill cutting resulting in land slides, high erosion and siltation could not be ruled out.

Further, two of the eight *bandharas* constructed in the submergence area of Warasgaon dam would decrease the storage capacity of the dam by 284 mcft. The requirement of water for drinking purpose determined by Pune Municipal Corporation was 15,920 mcft and for irrigation and industrial purpose as determined by MKVDC was 26,420 mcft. Thus the total requirement of water was 42,340 mcft, whereas the storage capacity of Khadakwasla dam (for which one of the storage dams was Warasgaon) was 29,160 mcft. Hence permitting LCL to utilise 871 mcft from Mose river valley would likely have adverse impact not only on the water requirements of irrigation projects and drinking water supply to Pune City but also to the Talukas at Daund, Indapur and Baramati, which are chronic scarcity areas.

It is also pertinent to note that as per the report submitted by the Assistant Chief Engineer, WRD, Pune to MKVDC on 29 April 2002, the requirement of water for the Lavasa Project was only 547 mcft (93 mcft for domestic use, 170 mcft for plantation use and 284 mcft for tourism and boating). Thus, it is clear that MKVDC's permission to LCL which is a private project, for excess utilisation of 484 mcft of water, is at the cost of lesser availability of water to Pune City and surrounding talukas.

The Government (WRD) replied (February 2012) that permission granted to LCL for storage of 1031mcft of water out of Mose River Valley which is the

[15] Check dams

main source of water to Warasgaon Dam, was not in excess of LCL's requirement and would not affect the irrigation projects and drinking water supply to Pune City.

The fact remains that a private project was given permission to lift water directly from an irrigation project which serves a larger public purpose and such permission was first of its kind. Further, though LCL which is a private agency was given the possession and management of water from two bandharas, no deterrent clause was incorporated for any violations in the Agreement executed between MKVDC and LCL, in the interest of the Government and public at large. The issues raised now relating to loss of water due to evaporation/silt etc to deny that there is any excess sanction of water to LCL, could have been taken into account before giving approval for constructing bandharas.

### 4.3.12.2 Irregular grant of land by MKVDC to LCL

It has been held by the Supreme Court in the case of Shri Bhaskar Pillai v/s State of Kerala (Appeal No.2628/1997), that if land is acquired for a public purpose, after the said public purpose was achieved, rest of the land could be used for other public purpose only. In case there was no other public purpose for which the land was needed, then, instead of disposing it by way of sale to erstwhile owner, the land should be put to public auction and the amount fetched in the public auction could be utilised for the public purpose envisaged in the Directive Principles of the Constitution. In light of the above mentioned judgment the WRD issued a circular in July 2002 according to which a decision on excess land which is not required by Irrigation Development Corporations would be taken by their Executive Directors.

During test check of the records pertaining to Khadakwasla Irrigation Division, Pune we noticed that MKVDC has leased out land in its possession admeasuring 141.15 ha. (128.78 ha. of submergent area and 12.368 ha. of non-submergent area) in Mulshi Taluka to LCL in August 2002 at lease rent of ₹ 2.75 lakh per annum for 30 years. The submergent land was to be utilised for *bandharas* and water sports activities by LCL. The non-submergent land acquired for the Warasgaon Dam was declared surplus by MKVDC on which LCL constructed commercial buildings (hotels, convention centre, etc.). Grant of non-submergent land on lease to LCL was not in conformity with the judgement of the Supreme Court and the directives issued by the State Government, was thus irregular. This surplus land should have been utilised for other public purposes or put to public auction or surrendered to Collector and was certainly not to be given for commercial purposes to a private party.

After we brought this to the notice (September 2011), the Government stated (February 2012) that MKVDC was empowered to lease the land to LCL which is not a permanent disposal.

The reply is not tenable since a long lease of land for 30 years is virtual devolvement of land to LCL, which they have already developed for commercial purposes and given to third parties. It would not be easy now for the MKVDC/Government to retrieve the land and thereby they have violated the Supreme court directives and their own circular based on the same.

### 4.3.13 Grant of land on extended lease and as partnerships with national/international institutes

During test check of the computerised property records (Index No. II), we noticed that several lands purchased by LCL were given on a long term lease for a period of 999 years. The total area of such land was not available in the Departmental records.

Further, as per the brochure of the LCL, it had entered into strategic partnerships with various national and international hospital and educational institutes like Apollo Hospitals, National Aeronautics and Space Administration (NASA), Oxford University etc. Copies of the agreement entered into by LCL with these parties were not available for scrutiny as also whether the concurrence was obtained from Ministry of Defence for lease to NASA. The Copies of partnership agreements were also not furnished, though requisitioned.

In the exit conference, Principal Secretary, R&FD stated (October 2011) that the matter in respect of land leased on 999 years would be checked. He further stated that matter regarding partnership with NASA would be examined. The response only highlights, as mentioned earlier, that there is no governmental control on the activities of the LCL.

### 4.3.14 Purchase of Tribal land

As per the conditions under which permission was granted by Development Commissioner (Industries) for purchase of land in November and December 2010, the purchase of land from a person belonging to a Scheduled Tribe is subject to the provisions of Section 36 and 36A of MLR Code and Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974. As per Section 36A of the MLR Code, no occupancy of a tribal shall, after the commencement of the MLR Code and Tenancy Laws (Amendment) Act, 1974, be transferred in favour of any non-tribal by way of sale (including sales in execution of a decree of a civil court or an award or order of any Tribunal or Authority), gift, exchange, mortgage, lease or otherwise, except on the application of such non-tribal and except with the previous sanction of the Collector in the case of a lease or mortgage for a period not exceeding five years and in other cases from the Collector with the previous approval of the State Government.

During test check of the records of the Collector, Pune, we noticed that LCL had purchased land admeasuring 23.47.72 ha. at Mugaon village (Mulshi Taluka) from four persons belonging to the tribal (Katkari) community. It was not ascertainable from the records whether prior permission was obtained by LCL for purchase of these lands from the tribals. In this connection a writ petition is pending in the Bombay High Court.

In the exit conference, the Collector, Pune stated (October 2011) that an inquiry in the matter is going on and in cases where prior permission for purchase of tribal land has not been obtained, necessary action to restore the land would be taken.

### 4.3.15 Purchase and sale of land

During test check of the records relating to purchase and sale of land at offices of Joint District Registrar and Collector of Stamps, Pune (Rural) and the Collector, Pune, we noticed that LCL had purchased land during the period between October and December 2002 at Dasave village in Pune district. The rates at which land was purchased fall in the range of ₹ 13 to ₹ 35 per square mtr. All these lands were developed and subsequently sold during the period between November 2009 and March 2010 at a price of ₹ 3,114 to ₹ 6,034 per square mtr. The development costs of the land not withstanding, the huge difference in purchase and sale price was definitely on account of the hill station development being undertaken by LCL, which was used by it for its own financial gains.

### 4.3.16 Exemptions/concessions of duty, fees, etc.

As per the Government Resolution dated 7 April 1999, tourism has been accorded the status of an 'Industry'. Further, as per the notifications issued in June 2006, July 2006 and June 2007, by the R&FD, payment of Stamp duty and Registration fees were fully exempted by way of amendment to Section 63-I-A of the BTAL Act. Concession in lieu of *nazarana* fees or such other charges, which may otherwise be payable were also granted.

During the test check of the records of the Collector, Pune, we noticed that LCL had availed of exemption from payment of stamp duty of ₹ 4.31 crore, Registration fees of ₹ 5.39 lakh and concession in payment of *nazarana* fees of ₹ 3.71 crore. This was not justified as only that area which was to be developed for tourism purpose should have been identified and exemptions and concessions should have been restricted to that area alone. Extension of exemption to areas being developed for commercial purposes like sale of land, flat, etc. was not justified in absence of any public interest being served.

There was nothing on record to indicate that the Government had made it mandatory to ensure medical and educational facilities at Lavasa are provided at concessional rates to the local poor people.

Lavasa Project is purely a commercial venture as the proposed activities of the project caters to a lavish life style of the elite for which the Corporation was expected to reap rich dividends, grant of exemptions and concessions from payment of stamp duty and registration fees and *nazarana* fees appears to be unwarranted and unjustified.

### 4.3.17 *Nazarana* fees

#### 4.3.17.1 Non-realisation of *nazarana* fees for purchase of *watan* land

According to Resolution dated 8 September 1983 of R&FD, when permission is to be granted to the occupant to sell the agricultural land held as Occupant Class-II land for the purposes of non-agricultural use, the holder (alienor) shall pay to Government an amount equal to 75 *per cent* of the net unearned income i.e. 75 *per cent* of the difference between current market value or the price realised by way of sale, whichever is higher and the occupancy price at which the land was originally granted to the applicant. However, according to Section 63-I-A(2) of the BTAL Act, an amount of two *per cent* of the

purchase price shall only be payable within one month of execution of sale deed in lieu of *nazarana* fees for purchase of *watan* (Class-II) land for bonafide industrial use. Further as per the conditions under which the Directorate of Industries had granted (December 2002 and November 2010) permission for purchase of agriculture land under the BTAL Act, LCL has to submit a report every six months furnishing the details of purchase and use of land to the Collector.

During test check of the records of the Collector, Pune, we noticed that LCL had undertaken 72 transactions, between October 2006 and July 2010, for purchase of w*atan* (Class-II) lands admeasuring 119.32 ha. the aggregate market value of which worked out to ₹ 44.36 crore, for industrial use. In these cases the *nazarana* fees payable at two *per cent* has not been recovered as of August 2011. Further as the *nazarana* fees was not paid within the stipulated period of 30 days, it amounted to breach of conditions attracting levy of *nazarana* fees at 75 *per cent* which amounted to ₹ 33.26 crore. No demand notices were issued by the Collector, Pune for recovery of the amount.

After we pointed out this case, Collector, Pune stated (July 2011) that on the basis of directions issued by him the Sub-Divisional Officers at Maval and Bhor, had issued show cause notices to the concerned persons and inquiry in the matter is in progress.

It is pertinent to mention that the six-monthly returns in respect of purchase and use of agriculture land furnished by the LCL should have been utilised by the Collector for levy and recovery of *nazarana* fees in time. Failure of Collectorate to check these six monthly returns resulted in non-realisation of ₹ 33.26 crore.

In the exit conference, the Collector, Pune stated (October 2011) that an inquiry in the matter is going on and necessary action to recover *nazarana* fees at 75 *per cent* would be taken considering the views of LCL and regularisation thereafter in respect of proven cases.

### 4.3.17.2 Non-realisation of *nazarana* fees for breach of conditions in the purchase of agricultural ceiling land

According to R&FD GR of September 1983, when permission is to be granted to the occupant to sell the agricultural land held as Occupant Class-II land for the purposes of non-agricultural use, the holder (alienor) shall pay to Government an amount equal to 75 *per cent* of the net unearned income i.e. 75 *per cent* of the difference between current market value or the price realised by way of sale whichever is higher and the occupancy price at which the land was originally granted to the applicant. As per Section 21 of the Maharashtra Agriculture Land (Ceiling on Holdings) Act, 1961, the Collector shall announce his declaration regarding surplus land and such surplus land shall be distributed to the landless persons as stipulated in Section 27 of the Act. Further, Section 29 of the Act stipulates that without the previous sanction of the Collector, no land granted under Section 27 shall be transferred by way of sale, gift, mortgage, exchange, etc.

During test check of the records of the Collector, Pune, we noticed that LCL had undertaken 48 transactions, between October 2002 and February 2009, for

purchase of ceiling lands admeasuring 214.58 ha., the aggregate market value of which worked out to ₹ 4.23 crore for industrial use. In none of these cases prior permission from the Collector, Pune was obtained. We are not aware whether these sale deeds were registered in favour of the purchaser LCL without the requisite permissions of the Collector. In these cases the *nazarana* fees payable at 75 *per cent* of the market value was attracted due to breach of conditions of the Act. No demand notices were issued by the Collector, Pune for recovery of the fees, which worked out to ₹ 3.17 crore.

After we pointed out this case, Collector, Pune stated (July 2011) that on the basis of directions issued by him the Sub-Divisional Officer, Maval had issued notices to the concerned persons and inquiry in the matter is in progress.

It may be pertinent to mention here that the six-monthly returns in respect of purchase and use of agriculture land furnished by the LCL should have been utilised by the Collector to ascertain how land was acquired without Collector's permission and action taken for breach of the conditions for levy and recovery of *nazarana* fees. ***Failure of the Collectorate to check these six monthly returns resulted in land being purchased/registered in favour of LCL*** without the requisite permissions, besides non-realisation of ₹ 3.17 crore.

In the exit conference, the Collector, Pune stated (October 2011) that an inquiry in the matter is going on and necessary action to recover *nazarana* fees at 75 *per cent* would be taken considering the views of LCL and regularisation thereafter in respect of proven cases.

### 4.3.18 Non-recovery of royalty charges

As per Schedule-I appended to Rules 18, 22 and 29 of the Bombay Minor Minerals Extraction Rules 1955, royalty was recoverable from the licencees who extract minor minerals at ₹ 100 per brass between 15 December 2006 and 10 February 2010 and at ₹ 200 per brass with effect from 11 February 2010.

During test check of records of the Collector, Pune, we noticed that permission had been granted by District Mining Officer, Pune for extraction of minerals from five quarries. As seen from a report prepared by the Additional Collector, Pune, LCL had excavated murum of 8,08,246 brass in order to construct buildings, bungalows, shops, offices, roads and dams on the basis of reports received from Tahisildar, Mulshi, Executive Engineer, Zilla Parishad, Pune and Deputy Engineer, Khadakvasla Irrigation Division, Pune. This excavation was made from other sites in consonance with the agreements made with Zilla Parishad and MKVDC. However, the royalty charges of ₹ 15.05 crore were not paid by LCL for quantity of *murum* extracted.

In the exit conference, the Collector, Pune stated (October 2011) that the dispute is regarding eligibility of LCL for incentives in respect of payment of royalty charges as per the tourism policy of the Government. Further Principal Secretary, R&FD stated that the matter would be examined and decision would be taken considering the writ petition filed by LCL in Bombay High Court.

### 4.3.19 Non-levy of entertainment duty on water-sports and other amusement activities

Under Section 5A(a) of the Bombay Entertainments Duty Act, 1923, tax shall be levied and paid by the proprietor to the Government in respect of any water sport activity. Further, as per the provisions of Section 5A(a)(i), no duty shall be levied for the first three years from the date of commencement of water sports activities, at the rate of 50 *per cent* of the amount collected for the subsequent two years and full entertainment duty was payable from the sixth year as per Section 5A(a)(ii) and 5A(a)(iii), respectively.

During test check of the records of Collector, Pune, we noticed that water-sports and other amusement activities were being conducted by LCL since December 2008 in the project area. The proceeds collected during the period from December 2008 to March 2011 were ₹ 1.74 crore for conducting water sport activities, etc., which would have attracted entertainment duty. For commencement of water sport activities, permission from the Collector, Pune was required to be obtained by LCL. However, no such permission has been granted till July 2011 and neither was entertainment duty paid by LCL. From the records of the Collector, Pune it transpired that the matter relating to grant of exemption is pending at Government level (September 2011).

In exit conference, Principal Secretary, R&FD stated (October 2011) that a decision on the matter would be taken shortly.

### 4.3.20 Conclusion

We conclude based on our findings above that the policy decision of the State Government to develop hill station type areas in the State with private participation was not achieved and it appears that the entire regulations framed and amendments to existing laws and procedures made by the State Government were propelled by private interests for setting up the Lavasa project alone. The amendments which diluted well established government procedures were made to ensure that LCL had a free hand to develop the project to serve its own commercial interests at the cost of public interest.

We have brought out the total lack of transparency in selection of the project proponent. Granting of SPA status to LCL without any control by the Government left scope for irregularities, perceived conflict of interest and violation of environmental laws. Though the State Government was required to supervise the activities of LCL, they did not do so. In the absence of any public purpose being served, exemptions and concessions given to LCL were unwarranted and not in public interest. The Government had no knowledge of sub lease of land by LCL to private agencies on long term basis. Requisite permissions of Government/Collector were not obtained by LCL for purchase of Tribal Land. The State Government at the highest level and its agencies at executive/implementation level went out of its way to facilitate a single project, with scant regard for ensuring compliance to its own conditions laid down for the project and disturbing the already ecologically fragile environment.

### 4.3.21 Recommendations

The Government may consider:

- ***conducting a feasibility study to identify locations so that hill station development is uniform and balanced throughout Maharashtra;***
- ***inviting expression of interest, etc. to ensure transparency in selection of project proponent;***
- ***reviewing the policy of granting SPA status to private agencies;***
- ***evolving suitable mechanism for effective monitoring of compliance to various environmental laws;***
- ***restricting grant of exemptions and concessions which have revenue implications only in cases where public purpose is served; and***
- ***undertaking a social cost benefit analysis of the Lavasa project.***

## 4.4 Audit observations

*During scrutiny of records of the various land records and land revenue offices we noticed several cases of non-compliance of the provisions of the Maharashtra Land Revenue Code, 1966 (MLR code), Government notifications/instructions as mentioned in the succeeding paragraphs of this chapter. These are illustrative cases and are based on the test check carried out by us. As such cases are pointed out by us repeatedly; there is need on the part of the Government to improve the internal control system so that recurrence of such cases can be avoided.*

## 4.5 Non-observance of the provisions of Acts/Rules

*The provisions of the Maharashtra Land Revenue Code, 1966 (MLR code), Government notifications/instructions provides for:-*

*(i) Levy of unearned income on market value as on date of order granting permission to sale Government land or price realised by way of sale whichever is higher.*

*We noticed non-compliance of the above provision which resulted in short levy of ₹ 1.57 crore as mentioned in paragraph 4.5.1.*

### 4.5.1 Short levy of unearned income

**Tahsildar, Raigad at Alibagh; Tahsildar, Baramati and Tahsildar, Shirur**

As per Government Resolution (GR) issued in September 1983, permission to sell agriculture land shall be granted to landholder, holding land as class II occupant, on the condition that he shall pay unearned income equal to 50 *per cent* of the difference between current market value or the price realised by way of sale whichever is higher and the occupancy price at which the land was originally granted to the applicant plus improvement cost influencing the valuation of land. In case of non-agriculture land, unearned income shall be levied at the rate of 75 *per cent*. Further, as per GR issued in May 2006, the market value shall be determined as per ready reckoner as on the date of order granting permission to sell. Government clarified in September 2006 that in case the market value so determined is less than price realised by way of sale, the unearned income shall be determined on sale price.

During the scrutiny of records in January 2009 and May 2009 we noticed that in 12 cases, while granting permission (between August 2005 and June 2008) to sell the agriculture and non agriculture land held by class II occupant, unearned income was determined on the basis of market value instead of price realised by way of sale which was higher than the market value. In one case we noticed that unearned income was determined on the basis of market value of earlier year instead of market value as on date of order granting permission to sale. This led to short levy of unearned income of ₹ 1.57 crore as detailed in **Annexure VIII**.

After we pointed out these cases in February 2009 and June 2009, in seven cases the Tahsildar, Raigad at Alibag accepted (March 2010) the omission and stated that in six cases the recovery is under process and in one case the

landholder approached court against recovery order and obtained status quo. In one case (sl. no. 13), the Commissioner, Pune Region (August 2010) stated that the unearned income is determined on the market value as on date of order granting permission to sale and is correct as per GR but was silent on remaining five cases. The report of recovery is awaited (February 2012).

We reported the matter to the Government in June 2011; their reply has not been received (February 2012).