

CHAPTER VIII

MUNICIPAL CORPORATION OF GREATER MUMBAI

The Municipal Corporation of Greater Mumbai (MCGM) is the custodian of Government land entrusted to it under Section 91A of the Mumbai Municipal Corporation Act, 1888 (MMC Act) from the date on which the City of Bombay Municipal (Amendment) Act, 1933 came into operation. The Corporation works under the administrative control of the Urban Development Department, Government of Maharashtra. All the immovable and other properties and all other interest and rights of the Board of Trustees for the improvement of the city of Bombay constituted (prior to 1933) under the City of Bombay Improvement Trust Transfer Act, 1925, including all the estates, rights, titles and interest of the said Board in and to the lands specified in Schedule 'W' and 'V' (Section 89 A) were transferred to the Corporation.

There were 184 cases of Government land given on lease and regulated by MCGM. The lease records were not computerised and as per the records, the total area involved in 167 cases was 19,05,980 sq m and in 17 cases the area was not available. Out of these, 52 cases [Residential (28), Commercial (18) and Industrial (06)] were scrutinised during the Performance Audit. The period for which land was given on lease ranged from 19 years to 999 years.

8.1 Organisational set up

MCGM is headed by the Municipal Commissioner who is assisted by the Additional Commissioner and Assistant Commissioner (Estate). The Government land which was leased by the erstwhile Bombay Improvement Trust vested in the Corporation. As per Section 49A of MMC Act, MCGM shall appoint a committee to be called the Improvements Committee (IC) for the purpose of improvement of the City in accordance with the provisions of this Act.

8.2 System of allotment

Section 91 B of the Act provided that on termination of existing lease, the property shall vest with the Government. As per amendment to Section 91B of the Act, from October 1998 such revested property can be leased afresh for a further period of 30 years. MCGM may revise the rates of lease rent after every 10 years, provided that, while revising such rates it shall be bound by the policy of Revenue and Forest Department for leasing of Government land. Furthermore, MCGM shall pay to the Government, an amount equal to half of the lease rent received by it. After expiry of lease period, the land, free from all encumbrances shall again vest or re-vest with the Government. As per the Estate Manual of MCGM, the lessee shall not change the use of the land without prior permission of MCGM. Such change of use may be allowed with the approval of the IC on payment of additional premium. If the lessee had unauthorisedly changed the use, MCGM may regularise the breach on payment of penalty along with additional premium chargeable. Under Section 105 B of MMC Act, MCGM had the power to evict the lessee by giving one month notice. Transfer of land is allowed either by surrender method or by

assignment method as provided in Part III (A)(d) of chapter-II of the Estate Manual of MCGM.

8.2.1 Non-resumption of land

As per Section 105 B of the MMC Act, the lessee is required to be evicted in case of breach of condition(s). The Act does not provide for regularisation of the breaches. However, the Estate Manual provides for regularisation of breaches.

We noticed that in six cases¹, lands were leased (41,716 sq m) to five textile and one Dal mill. These plots of land were granted primarily for purposes like industrial, residential, etc. As the mills had shut down their operations, these plots of lands could not be put to use for the intended purpose, hence should have been resumed. However, this was not done. Out of these six cases, in two cases the purposes were changed from residential to commercial and in one case it was changed from residential to industrial. The land continues to be in the possession of the lessees. The two lessees who have got the land use changed to commercial have gained financially.

MCGM should have terminated the lease agreements and resumed the land to the Government in all these six cases.

8.2.2 Non-utilisation of land and non-execution of lease agreements

A plot admeasuring 3,480 sq m was leased (May 1982) for a period of 60 years with effect from 11 July 1986 to the Indian National Theatre for redevelopment of the existing municipal market by constructing a market on the ground floor and a drama theatre on the first floor. No lease agreement was executed by MCGM.

We noticed that although redevelopment work of market-cum-drama theatre building had not been completed even after a lapse of 26 years, MCGM did not resume the land. In two² more lease cases, no lease agreements were executed by MCGM even after a lapse of 72 and 46 years, respectively, from the date of lease.

8.2.3 Financial gain made by lessees

(i) Land admeasuring 5,96,953 sq m was leased by the Government to MCGM for 99 years from May 1914 with a condition to revest the same in the Government on expiry of lease. MCGM was allowed to lease out the land for periods not exceeding 30 years at a time for horse racing, public recreation or amusement after obtaining prior sanction of the Government. Accordingly, this land along with an adjoining municipal land admeasuring 2,58,245 sq m was leased to Royal Western India Turf Club Ltd (RWITCL). The lease was last renewed in February 2000 for 19 years with retrospective effect from

¹ Bansiwala Mills Pvt. Ltd., Haji Bilal Patrawala and ten others, M/s Morarjee Gokuldas Spg. & Wvg. Co. Ltd., The Phoenix Mills Ltd., Raghuvanshi Mills Ltd. and Shri Laxmi Woollen Mills Estate Pvt. Ltd..

² (1) Shri Gokul Das Pujari & six others and (2) Government of Maharashtra for Police accommodation.

1 June 1994 upto 31 May 2013 at a lease rent of ₹ 20 lakh per annum to be increased by 10 *per cent* every year. The basis on which the revised rent was fixed was not available on record. The lease agreement was made in April 2004 and did not permit third party to enter into the premises.

We noticed that, though the lease was due to expire on 31 May 2013, the lessee in violation of the terms of lease agreement, entered into an agreement (July 2008) with M/s BJR's (Conductor) to conduct catering services for 10 years upto June 2018, for which the Conductor would pay to the lessee conducting fees of ₹ 3.25 crore per annum fixed for first three years and thereafter with 10 *per cent* increase every year. The Improvements Department of MCGM issued (November 2008) notice to RWITCL for the breach of condition by allowing a third party to enter the leased premises without permission. It is pertinent to note that though the issue of regularisation of breach as per the Estate Manual was pending, the Health Department of MCGM continued granting licenses to M/s BJR's to carry out the business of eating house and liquor bar upto December 2012. This indicated absence of co-ordination between the Health Department and the Improvements Department of MCGM which had issued notice for breach. Further, though the MCGM was realising revenue of only ₹ 20 lakh per annum towards lease rent on the entire leased plot, the lessee continued to make financial gain of ₹ 3.25 crore per annum from the Conductor without passing on any share to MCGM. Though four years had elapsed after MCGM came to know of the breach, action in the matter is still pending.

(ii) Similarly, land admeasuring 1,278.69 sq m situated at Esplanade Estate, Fort Division, was leased (December 1903) for 99 years by the Bombay Improvement Trust to Robert Laidlaw of Kolkata, an European at an annual ground rent of ₹ 1,128 for the first 10 years, ₹ 1,340 for the next 10 years, ₹ 1,551 for subsequent 30 years and ₹ 1,763 for the remaining 49 years. The lease expired in 2002.

As per the lease, the plot was to be utilised for shops, offices and residential purposes. The land was transferred four times to different parties and in 1987 it was in the possession of M/s Stallion Investment Pvt. Ltd who had applied for transfer of lease in their name only in 1990. Thereupon, MCGM issued a notice (September 1991) to M/s Stallion Investment Pvt. Ltd for the unauthorised construction of mezzanine floors in violation of the lease agreement and directed to pay security deposit of ₹ 2,88,343 to rectify the breaches within a period of six months, failing which the security deposit was to be forfeited. The security deposit was paid by the lessee in February 1992. There was nothing on record to indicate that the land was regularised by MCGM and additional lease/ground rent has been demanded and recovered though 21 years have elapsed after the notice was served upon the lessee.

8.3 Encroachment

8.3.1 Breach of conditions and encroachment of Government land

Land admeasuring 1,66,851.89 sq m was leased to Willingdon Sports Club from October 1922 for a period of 99 years at an annual ground rent of ₹ 13,469.

MCGM had issued notices to the lessee in January 1998 and April 2009 for 18 breaches noticed on the property. This included erecting permanent as well as temporary structures such as residences, gas cabins, godowns, etc.. Though more than 14 years had elapsed, final decision to resume the land as provided for in the MMC Act is still pending (November 2012). In addition, MCGM had noticed that part of the leased plot had been encroached by Akhade Brothers. The encroachers had constructed chawls /structures and put them to use for residential/commercial purposes. No effective steps were taken by MCGM/lessee to prevent or remove encroachers and part of leased land continued to be in the possession of encroachers (November 2012).

The matter was brought to the notice of MCGM. In reply, MCGM stated that the concerned ward office was intimated to institute action against breaches in September 2011. Further action taken in this regard was not made available to audit.

8.4 Lease rent

8.4.1 Non-finalisation of the rate of lease rent

Land admeasuring 5,797 sq m situated opposite CST Railway Station was leased to M/s Bennett, Coleman & Co. Ltd. by the erstwhile Bombay Improvement Trust for 99 years from 4 April 1901 at an annual ground rent of ₹ 15,166. As per the lease agreement, the land was to be used for steam printing, publishing newspapers, books or periodicals, residential purpose and a portion of the building for shops and offices. The said lease expired on 3 April 2000.

In September 1994, the Estate Department of MCGM noticed that the lessee breached the lease agreement by way of unauthorised construction of mezzanine floor and commenced several commercial activities without obtaining prior permission. The lessee applied (March 1999) for renewal of lease and MCGM fixed (March 2002) annual lease rent of ₹ 1.18 crore applying the rate applicable to industrial users at two *per cent* of the market value of land. However, renewal and execution of lease deed had not been finalised yet (November 2012).

On a Writ Petition filed by the lessee, the High Court passed (March 2003) order for ad-hoc payment of lease rent at ₹ 50 lakh per annum for four years from 1 April 2000 and directed MCGM to appoint an officer for deciding the appropriate amount of rent to be recovered after giving opportunity to the lessee to present their stand. Accordingly, the lessee paid an amount of ₹ two crore between May 2003 and December 2003. But even after lapse of more than nine years and reminder from the lessee in this regard MCGM failed to finalise the annual rent (November 2012). The abnormal delay of 18 years in regularisation of breach, delay in fixation of rent and renewal of lease deed resulted in huge loss of revenue to MCGM.

8.4.2 Non-recovery of arrears of lease rent

Land admeasuring 1,338.29 sq m in Marine Lines Estate, Fort Division was initially leased (December 1901) by the erstwhile Bombay Improvement Trust

to Hormusji Sorabji Battliwalla for a period of 99 years for residential purposes at an annual ground rent of ₹ 1,226.68. The lease was subsequently transferred (April 1995) in the name of the Secretary of the United States of America. The lease period expired in December 2000 and MCGM fixed (April 2010) the rent at ₹ 8.45 lakh per annum which was to be increased by 10 *per cent* every 10 years. The lessee, however, did not pay the rent resulting in accumulation of arrears of ₹ 112.41 lakh for the period from 5 December 2000 to 4 December 2012.

MCGM stated (September 2012) that as a new lease policy is being finalised for levy of lease rent, the lease rent could not be recovered. However, the fact remained that the lease rent had not been recovered.