

Chapter 3

Implementation of Guidelines/Policies

The success or failure of any guidelines or policies would depend on their implementation in an efficient manner, complying with its contents and framework so that the benefits are derived by stakeholders. In this backdrop, the activities of 12 ports were examined to see how the important issues relating to land management were dealt with by these ports with reference to the guidelines/policies in place.

3.1. Land use plan

The guidelines issued in 1995 stipulated that all major ports should draw a perspective land use plan for the area (including waterfront) owned by them, if not already prepared or revise the existing land use plan indicating the immediate, short term and long term requirements of the port, keeping in view the socio-economic objectives set before it and obtain the approval of the Ministry by 30 June 1995. The guidelines further stipulated that the perspective plan should cover a minimum period of 30 years clearly indicating area(s) reserved for (i) operational purposes, (ii) direct port related activities, (iii) port related industries⁷, (iv) miscellaneous and non-port related activities, locating captive power plants, environmental upgradation, etc., and (v) reserved for commercial exploitation for augmentation of budgetary resources. The land use plan thus prepared should be in conformity with the master plan of the city/town and should be revised after every five years or whenever found necessary with the prior approval of the Ministry. The policy of 2010 further stipulated that any proposal for revision of land use plan should be published on the web-site of the ports inviting objections and suggestions and shall be finalized by the Board after considering the objections and suggestions so received. Similar provision was also included in the policy of 2014. Audit examination revealed the following:

3.1.1. Non-compliance of policy guidelines in relation to land use plan - Audit observed that 11⁸ out of 12 ports did not comply with the direction of preparing or revising the land use plan before 30 June 1995. Instead, nine⁹ out of 12 ports prepared land use plan between 2001 and 2005. Two ports¹⁰ did not prepare their own land use plan and followed the Master Plan prepared by Indian Ports Association (1997) and Kolkata Metropolitan Development Authority, while KoPT/HDC prepared the land use plan in 1991. In four cases, it was noticed that the land use plan prepared did not cover the entire area under the possession of the ports. Similarly, all the ports except CoPT did not comply with the stipulation of revising the land use

⁷ The industries which require port facilities for bulk import or export

⁸ One port, KPL was constituted in the year 1999 and land use plan was prepared in 2003.

⁹ Name of port and year of preparation of land use plan: ChPT (2002), VOCP (2005), CoPT (2001), NMPT (2002), MbPT (2002), MPT (2002), KPT (2002), VPT (2003).

¹⁰ PPT and KoPT/KDS

plan/master plan after every five years, but continued to follow the plan originally prepared. Thus, the spirit in the guidelines of 1995 was not adhered to by the ports, which denied them an opportunity of being updated with developmental plans of the city/town in which these ports were located so that they could leverage the potential of growth and revenue optimization. Non-compliance by the ports also indicated that there was a need to strengthen administrative oversight from the Ministry to ensure that the guidelines/policies were adhered to by the ports and ascertain the status of landholdings of individual ports and how these were planned for future use.

Ports (except VPT and JNPT) stated (between January 2013 and July 2014) that action was being taken for revising the land use plan or for correcting the variation between areas covered in land use plan and actual land under their possession. VPT stated that allotment had been made in line with available master plan approved by the Board. JNPT replied (April 2014) that the present land use plan was being reviewed and would be submitted to Coastal Zone Management Authority. The fact remains that non-adherence to the guidelines created a situation where the ports were not able to update their land use plan, thereby losing track of an important asset, which might prove detrimental in the long run exposing them to the threat of encroachment.

3.1.2. Non-identification of land for future activity - Though land policy guidelines issued in 1995 provided that each port should identify land for future activities, the ports did not initiate steps in this direction despite the fact that vacant/idle land was available in their possession as depicted in **Annexure-II**. It may be noted from the Annexure that land admeasuring 22949.82 acres was identified for future activities by ports, while 13045.56 acres were yet to be earmarked for any future activity. Thus, 35995.38 acres representing 46.63 *per cent* of total land under the possession of ports remained unutilized. Similarly, in cases where land was earmarked for future activities, ports did not prepare specific timelines for implementation of proposed activities. Ports were thus not effectively planning and implementing initiatives that could ensure growth and revenue optimization for sustainability.

3.1.3 Non-ascertaining custom bond area - Land policy guidelines stipulated that the ports should clearly demarcate land under their custody into two categories, viz. custom bond area and outside custom bond area. The custom bond area is generally notified by the Customs Authorities from time to time. Thus, port records should specify the extent of inside custom bond area, and the same should match with the area notified by the Customs Authorities. A review of relevant records indicated that eight¹¹ ports did not reconcile the same with the area earmarked by the Customs Authorities.

KoPT stated (December 2013/January 2015) that it was contemplating to undertake detailed survey for introducing GIS for HDC and no classification was made in the case of

¹¹ ChPT, KPL, MPT, KoPT/HDC & KDS, VPT, COPT, VOCPT and MbPT

KDS. CoPT and MPT stated (December 2014) that notification of Customs Authorities was not traceable, while VOCPT stated (December 2014) that Customs Authorities notified appropriate areas. MbPT stated (December 2014) that it did not reconcile the custom bond area with the notification of Customs Authorities.

The Ministry, in the exit conference (May 2015), admitted that there had been inconsistency in preparation of land use plan and instructions have since been issued to all ports to complete the process in a time bound manner and preparations of the same was in progress.

3.1.4. Inconsistency in title and land holdings – In order to comply with the policy guidelines relating to preparation and revision of land use plan, each port was expected, in their pursuit to achieve updated information to supplement future planning, to examine the land holdings vis-à-vis primary and authentic records at a given periodicity. This would include, *inter alia*, updating information regarding title deeds of land under their possession, cross verification of records with that of State Revenue Authorities, and reconciliation of land holdings internally and also with revenue authority records. Audit examination on the performance of ports in relation to availability of title deeds and reconciliation with revenue authority records revealed inconsistency in title deeds and in extent of land holdings between port records and that of revenue authorities.

3.1.4.1. Absence of title deeds - Audit observed that out of 12 major ports, not even one port possessed title deeds for their entire land holdings (**Annexure – III**). Out of the total land holdings of 77191.14 acres, title deeds were not available for 34943.41 acres representing 45.27 per cent of total land holdings. Further examination also revealed that six ports did not have title deeds for their land holdings of 28816.08 acres, while other seven ports possessed title deeds only for partial land (42249.73 acres) out of 48375.06 acres of land under their possession. Land under possession of two ports (ChPT and JNPT) included reclaimed land, for which the ports did not obtain title documents after conducting survey to register the land in their name. Ports were thus not regularly reviewing the status of possession of title deeds and did not take up the matter with the State Revenue Authorities concerned for obtaining and/or for regularizing the records so as to avoid likely future complications or claims. Failure to do, would, therefore, hamper the prospects of considering projects or allocation of land. Two illustrative cases in this regard observed from the records of JNPT and PPT are discussed below:

(i) 12 Village Panchayats claimed (from 1984 onwards) an amount of ₹ 129.53 crore as property tax from JNPT, as the latter did not have title deeds, which approached the Supreme Court/Mumbai High Court against the demand. However, the Courts directed JNPT to approach the State Government for carrying out a survey of the land and deposit (October 2010/November 2011) ₹ 58.97 crore with the Courts. Accordingly, JNPT facilitated the State

Government in carrying out the survey of the land and the report was submitted to the Mumbai High Court. Meanwhile, the legal counsel of JNPT intimated (October 2013) that as per the survey, land in five villages was outside the boundaries of JNPT and therefore, property tax payable was revised to ₹ 40.74 crore against the deposit of ₹ 58.97 crore by JNPT. Now, JNPT was left with the only option to approach the Supreme Court/Mumbai High Court for refund of ₹ 18.23 crore (₹ 58.97 crore – ₹ 40.74 crore). This situation was directly attributable to JNPT not obtaining/updating title of lands under its possession due to which the Village Panchayats had demanded property tax and JNPT had to deposit money as per direction from the Courts.

JNPT stated (April 2014) that as per the direction of the Mumbai High Court, survey of the land was carried out and the report was submitted to the Court, and the appeal was pending. The fact, however, remains that the situation occurred only due to failure of port authorities to obtain/update the title deeds of lands under their possession.

(ii) In respect of PPT, Audit observed that the port did not initiate mutation¹² process to obtain title deeds of 186.81 acres of land. During construction of the port, 207.86 acres of land was acquired in 1963 at Haridaspur and a building was also constructed in connection with movement of stone from quarry at Haridaspur to Paradip. During consolidation operation undertaken by revenue authorities in 1986, records were obtained by the port for 20.04 acres of land and recorded in favour of the port. However, port authorities did not take necessary steps to complete the mutation process to obtain title deeds for the remaining 186.81 acres of land (207.86 acres – 20.04 acres) and the acquired land stood recorded in favour of old tenants.

PPT stated (July 2014) that it had recently engaged a retired Revenue Officer of Government of Odisha to identify the balance land of 186.81 acres. However, the fact remains that the port did not take timely action to identify and complete the mutation process so as to repossess and regularize the title to the land.

3.1.4.2. Discrepancy in land holdings – Audit also observed discrepancies between land holdings as per records maintained at the ports and that with the State Revenue Authorities concerned. Similarly, discrepancy was also noticed in records maintained by different departments of the ports.

(i) A test check of records relating to land holdings in ChPT, VOCPT and CoPT was conducted by comparing the same with those of the State Revenue Authorities concerned and the following were observed.

¹² 'Mutation' refers to a procedure or process in land revenue administration system which results in changes in records for land holdings arising due to various transactions such as inheritance, contracts of sale and mortgage, court decree, registration, gift, etc. Under this process, the mutation transaction gets updated to the main land database once it is formally completed and legalized.

Table 3: Discrepancies between Port and Revenue Records

Nature of discrepancy	Name of port	Area involved (in acres)
Land found in the records of the port, whereas the same land was showed in the name of other persons in revenue authority records	CoPT	1999.35
	VOCPT	71.20
	ChPT	4.71
Land found in the name of port in the records of revenue authorities, but not showed in the records of ports	VOCPT	143.86
	ChPT	1.04

The Ministry stated (June 2015) that in the case of VOCPT, necessary action was being taken to set the revenue records right, and in the case of CoPT a special team has been constituted for regularizing the title deeds and the same would be completed by March 2016.

(ii) In respect of JNPT, it was noticed that the port was in possession of 2896 acres of private land, while the land records of the port indicated 2928 acres of land as available with them. Thus a difference of 32 acres was not reconciled. Similarly, in the case of MbPT, a difference of 40.07 acres was noticed between the records of Accounts Department (land available 1998.03 acres) and Estate Department (land available 2038.10 acres), which remained un-reconciled.

The Ministry stated (June 2015) that it was true that though major ports had possession of land acquired through Government Orders and statutes, in many cases the transfer of title in the revenue records had not been carried out. It has set a deadline of one year, i.e., by 30 June 2016, to complete mutation in the revenue records and acquire land titles.

3.2. Encroachment in port land

The guidelines of 1995 stipulated that all major port trusts should take necessary steps to prevent encroachments on the lands owned by them and responsibility should be fixed for non-removal of encroachments. It was also stipulated that the ports should take immediate steps to demarcate the boundaries of properties and wherever the land/land structures were lying unutilized and where encroachments were likely to take place, ports should consider disposing of such lands/structures on outright sale basis. Audit examination, however, revealed encroachment of **396.44** acres in nine out of 12 ports as indicated in **Table-4**.

Table-4: Encroachment of land in ports

Name of the port	Total land available (in acres)	Encroached area (in acres)		Reply of the port
		As per LDS ¹	As per audit	
ChPT	688.55	3.88	3.88	Action was initiated to remove the encroachment legally and through local authorities.
VOCPT	2774.63	18.48	21.87	The matter was being pursued with State Government.
CoPT	2188.53	0.00	14.55	It was stated (June 2015) that the matter was taken up with the District Authorities for resuming the land, but much progress has not been achieved. Once the survey of entire port land was completed, fencing on the boundary would be done to avoid further encroachment.
MPT	533.48	0.00	0.94	It was stated (June 2015) that 13 cases were filed for eviction of unauthorized occupation and in 19 cases survey of encroached land was required as these were encroached prior to 1961.
MbPT	1998.03	0.00	16.58	It was stated (May 2014) that after proper survey and preparation of land records, it would explore creation of proper boundary wall with watch and ward to protect the land from encroachment.
KPT	31408.00	0.00	87.00	It was stated (June 2015) that private security services were deployed from 2009 onwards and encroachments removed in a phased manner. In some cases, there were litigations and these would be removed once the court case is decided.
KoPT/ KDS	4576.00	78.00	78.00	It was stated (June 2015) that the property of KoPT was guarded by either static security guards or mobile units. In spite of this, there were encroachments and these were evicted with the help of police authority.
KoPT/ HDC	6367.00	100.00	100.00	
PPT	6521.03	73.50	73.50	It is stated (June 2015) that it has been continuously pursuing with the State Government for necessary police assistance for removal of encroachment.
VPT	7618.30	0.12	0.12	Management has not furnished reply.
Total	64673.55	273.98	396.44	

It may be noted that as against information furnished by ports indicating encroachment of 273.98 acres, Audit observed total encroachment of 396.44 acres. This indicated that the records maintained by the ports were not accurate and updated to reflect the real position of

¹³ Land Distribution Statement

encroachment, and the ports failed to take action to remove encroachments and repossess the land under their custody. Audit could not, however, ascertain the time/period since when these encroachments had occurred and therefore, the financial impact of the encroachments could not be ascertained. In addition, Audit also observed instances where failure of the ports to acquire land with clear title and without encumbrance that could lead to possible encroachment as described in the following paragraphs.

3.2.1. Acquiring land under litigation – KPL has acquired (March 2005) 20.73 acres of land for construction of staff quarters as per award notice of District Revenue Authorities (DRA) of Government of Tamil Nadu. Audit observed that at the time of acquiring the land, some litigation was pending against the acquisition, and even after taking over possession of the land by KPL, fresh litigation was filed (No.12199 of 2008) in the High Court, Chennai. The complainant had even displayed a board for sale of the property under litigation. This was thus a situation of potential encroachment, which was the result of acquisition of land under litigation. In reply, KPL stated (April 2014) that there was no encroachment noticed in KPL lands and DRA had been asked to survey the acquired lands so as to fence the lands and after survey, if any portion of the acquired land was found to be encroached, the same would be removed. The Ministry stated (June 2015) that the land under litigation was never handed over to KPL by Revenue Department and hence any activity in the said land cannot be taken as an encroachment. However, the fact remains that though the land was acquired in March 2005, the efforts of KPL did not fructify and even after 10 years of acquisition, the encroachment-like situation was not resolved and fencing could not be constructed.

3.2.2. Non-repossession of 148.26 acres of land from unauthorized occupation – During 1984-85, land was acquired by the CIDCO¹⁴ for the development of New Bombay Project and transferred to JNPT. In April 2009, CIDCO/NMSEZ¹⁵ erected a boundary wall on JNPT's land and constructed four-lane road with drainage, encroaching 148.26 acres of land of JNPT. JNPT had been corresponding with CIDCO with no positive results. Incidentally, though the original land acquisition was dated back to 25 years, JNPT was not able to conduct joint survey with CIDCO to earmark their land and protect it with fencing or boundary wall. JNPT, in reply, stated (April 2014) that the matter was being pursued with the Government of Maharashtra and CIDCO for conducting a joint survey. However, the fact remains that even after 25 years of acquisition of land, JNPT failed to conduct joint survey and protect their land with proper fencing.

In the exit conference (June 2015), Ministry accepted the fact that there had been encroachments, but stated that considering the extent of land, quantum of encroachment was not substantial. It was further stated that the process of eviction was cumbersome and entangled in litigation, and that the security system has been strengthened to prevent encroachments.

¹⁴ City and Industrial Development Corporation, Government of Maharashtra

¹⁵ Navi Mumbai Special Economic Zone

3.3. Allotment of land

In case of allotment of land on lease basis, the Board of ports could decide with a maximum lease period of 30 years (including renewals) and any lease beyond 30 years and up to 99 years could be made only with prior approval of the Ministry. On the other hand, maximum period for which land could be given on license basis was fixed at 11 months and each renewal thereafter would be considered as fresh license. Audit examination revealed that these stipulations were not adhered to by the ports as discussed in the following paragraphs.

3.3.1. Extension of lease beyond 30 years without approval – Audit observed that in five out of 12 ports, allotments were made beyond 30 years without obtaining prior approval of the Ministry, as indicated in **Table 5**.

Table 5: Allotment of leases without approval of Ministry

Sl. No.	Name of port	Land allotted (acres)	No. of lease	Lease period ended	Reply of port
1	ChPT	5.00	14	Between 1991 and 2012	Except in 2 cases, port has already taken up the matter with the Ministry, and action would be taken for the remaining two cases also.
2	MbPT	1.66	1	2006	No reply
3	VOCPT	481.80	12	Between 2003 and 2012	It was stated (June 2015) the matter was referred to the Empowered Committee and the decision was awaited.
4	NMPT	14.66	8	Between 2008 and 2012	The cases sent to Ministry for approval have since been returned with a direction to resubmit in accordance with Land Policy 2014 and would be resubmitted.
5	VPT	35.63	7	Between 1987 and 2013	The cases sent to Ministry for approval have since been returned with a direction to resubmit in accordance with Land Policy 2014 and would be resubmitted.

It may be noted that though the matter was taken up with the Ministry for approval for extending the lease period beyond 30 years, ports were not successful in obtaining the approval, which, in turn, indicated that the follow-up mechanism in ports was either not effective or the same was not available. Moreover, the pendency of these issues with the Ministry indicates the need for enforceable timelines at the Ministry for according approval to leases and avoid possible legal complications. It is pertinent to note that in the case of VPT, the oldest lease had expired in 1987 and even after 27 years, the port could not obtain approval from the Ministry.

3.3.2. Allotment of land on nomination basis – The policy of 2004 provided that lease should be given only by inviting tenders to private parties, while the Policy of 2010 provided that allotment of land on nomination basis could be made to private parties. The proposal for allotment should first be evaluated by a Land Committee and thereafter, subject to approval of the Board, the same should be sent for approval of the Ministry. Audit examination, in this regard, revealed that two ports, viz., VPT and NMPT, allotted land on nomination basis to private parties without obtaining approval of the Ministry.

In the first instance, Audit observed that NMPT decided (January 2010) to allot 0.23 acre of land to M/s Bharathi Shipyard Limited for 30 years from 20 March 2010 on nomination basis, which was not in accordance with the guidelines/policies. NMPT stated (March 2015) that the allotment was made by Board based on prevailing land policy guideline. The reply was not factually correct as the prevailing policy guideline referred to by NMPT was the Policy of 2004 which did not provide for allotment of land to private parties on nomination basis. The Ministry stated (June 2015) that the firm had no alternative land to route their cable and their request was considered as a special case. However, Audit did not object to allotment of land, but that NMPT did not obtain Government approval for allotment of land on nomination basis.

In the second instance, VPT allotted 2.24 acres land to M/s Hygrade Pellets Limited (2006) up to 5 February 2010 and 11.53 acres of land to M/s Rain CII Carbon (India) Limited (2011) on nomination for a period up to 27 October 2022. VPT stated that the allotment to M/s Hygrade Pellets Limited was not a fresh allotment and if tender-cum-auction process had to be followed for additional requirement, there was every possibility that another agency might be the successful bidder and the existing lessee might not get the opportunity. In regard to allotment of land to M/s Rain CII Carbon (India) limited, VPT stated that the Ministry was requested to accord post-facto approval in January 2014. The reply is not acceptable as the policy guidelines prevailing at the time of allotment of the land did not permit VPT to allot land, either afresh or to meet additional requirements on nomination basis, and as a transparent practice, VPT should have conducted auction and asked the existing lessee to accept the best price so arrived.

3.3.3. Allotment of land on license basis – The policy of 2004 provided that allotment of land could be made on license basis inside custom bond area for a maximum period of 11 months only. Renewal of license should be treated as fresh license and guidelines for fresh allotment should be applied for such renewal of license. Test check in audit indicated that PPT had allotted land on license basis to five lessees between February and December 2007 for periods ranging between three years (one case) to six years (four cases). In reply, PPT stated (August 2014) that as per Board approval, land/space could be allotted to commercial units for six years on license basis. If the period was only 11 months, no bidders would be interested as huge money was required to be invested. Hence, such decision was taken by the Board in

order to attract bidders by giving more security for allotment and also to give them sufficient time to recover their investment. The reply needs to be viewed in the light of the fact that the prime responsibility of the port is to adhere to the policy guidelines of GOI/ Ministry and not only protect the interest of investors. Moreover, as PPT knowingly violated the provisions of policy guidelines, it should have at least obtained approval from the Ministry before allotment.

3.3.4. Deviation from policy guidelines – As per the policy guidelines issued in 2004 and 2010, the Ministry stipulated that license could be granted by Chairman of a port for a maximum period of 11 months. The policy guidelines of 2010 further stipulated that Chairman could renew such license twice and any further renewal should be with the approval of the Board or by the Chairman subject to ratification by the Board. Audit examination, in this regard, revealed deviation from policy guidelines in respect of granting and renewal of license, and an illustrative case is discussed below.

Audit observed that subsequent to issue of policy guidelines of 2010, Chairman of KoPT issued (March 2011) order delegating his power to grant and renew license to the two Deputy Chairmen of the port. Accordingly, the Deputy Chairman of KDS allotted/renewed 87 licenses and Deputy Chairman of HDC allotted/renewed 92 licenses. Similarly, in VPT, 86 licenses to 19 parties were allotted/renewed by the Traffic Manager, instead of by Chairman, in accordance with the powers delegated vide para 2.4 of the Manual of Delegation of Powers issued on 31 October 2009. In this connection, Audit observed that KoPT had previously obtained (February 1976/1981) approval from the Ministry for delegating power to Deputy Chairman of KDS and HDC when there was no such stipulation available at that time. On the other hand, even after specifying in the policy guidelines issued in 2004 and 2010 that these powers were to be exercised by Chairman, it was delegated to Deputy Chairmen without obtaining approval from the Ministry, which was not in order. In the case of VPT also, no approval was obtained from the Ministry, nor was the prevailing delegation of power modified in line with new policy guidelines.

The Ministry clarified (June 2015) that under section 34 of MPT Act, the Chairman of a port is empowered to execute contracts on behalf of the port, and these powers could be delegated to any officer not below the rank of Head of a Department. As such, the delegation was well within powers of the Boards and did not require the approval of the Government. However, Audit is of the view that the Ministry referred to a section which was not relevant to the observation. Section 21 of MPT Act specifically stated that such delegation of power could be made with approval of the Government. In the instant cases, such approval was not obtained by the ports. Further, in the exit conference (June 2015) Ministry clarified that though it may have different view on the policy deviations by ports, those were taken by the Board concerned using their discretion and competence. However, the fact remains that exercise of discretion and competence of the Board of ports should invariably be within the ambit of power delegated under relevant rules and guidelines.

3.4. Lease Rent and Scale of Rates (SoR)

Audit examination to evaluate compliance of ports regarding submission of proposals for revising SoR to TAMP revealed that there was delay in submitting SoR in time and non-adherence to procedures for fixing tariff under SoR, as indicated below:

3.4.1. Inordinate delay in submitting SoR to TAMP – Audit observed inordinate delay by ports in submitting SoR for consideration and approval of TAMP though it has been specifically stipulated in ‘Guidelines for Regulation of Tariff at Major Ports-2004’ that tariff proposal should be forwarded to TAMP at least three months before these were due. In this backdrop, the TAMP orders of 11 ports¹⁶ were collected from the TAMP website in order to examine the compliance of ports in revising SoR at an interval of five years. The data compiled from TAMP orders of these ports is indicated in **Annexure-IV**. It may be noted from the details in the Annexure that approval of tariff proposal submitted by ports for revision of SoR took two years and four months to 11 years and 10 months. The main reason for the delayed approval was either incomplete proposal or it were not prepared in accordance with the process outlined in the land policy guidelines issued by the Ministry. In many cases, TAMP had to send the proposals back number of times for compliance of ports and directing them to submit the proposals in accordance with the guidelines. In some cases, ports submitted proposals for two block years (one block is five year period) together and ports were to implement revised tariff retrospectively. As a result, ports were incurring losses, quantification of which was not feasible in the absence of relevant data relating to market value and other costs that were normally reckoned in preparation of SoR. Also, this causes difficulties to port users with consequent delay in recovery of revenue or accumulation of debts. An illustrative case in this regard noticed in KPT is detailed below.

KPT leased salt land admeasuring 16187 acres during March 1962 to February 1990 to 41 lessees at a nominal rent ranging from ₹ 10 to ₹ 30 per acre per annum for various periods. The lease rent was revised from time to time and the lease rent applicable for the period of five years from 5 July 2005 to 4 July 2010 was fixed by TAMP at ₹ 144 per acre per annum in view of the fact that no market value was available. Meantime, while approving the tariff, TAMP directed (January 2006) KPT to obtain market valuation of land and submit proposal for revision of SoR for the next block year (2010-2015). As per the land policy guidelines, KPT was required to submit proposal for revision of SoR three months before commencement of next block year, i.e., before 4 April 2010, while the same was actually submitted to TAMP only in February 2011, i.e., after a delay of 10 months. KPT obtained extension for applying the previous tariff from the TAMP since submission of proposal and final approval of the same by TAMP was in April 2012. It was noticed that the delay in approval of revised SoR was due to KPT’s failure to provide up-to-date market value of the land to the satisfaction of TAMP. As

¹⁶ KPL was not forwarding their proposal to TAMP. The Board of the port approved SoR. The SoR last revised was in April 2004 and was due for revision in April 2009. Rent was revised with effect from January 2012 for BOT operators. During the period of five years rent was escalated at the rate of 5 per cent levied. TAMP order was not available in TAMP website in respect of JNPT.

the revised tariff was applicable from 5 July 2010, KPT raised differential bills to the lessees, who refused to pay the differential rent, because of huge increase (from ₹ 144 to ₹ 23250 per acre per annum). Subsequently, KPT evicted all 41 lessees between July 2011 and June 2012. In this process, KPT was not able to recover lease rent amounting to ₹ 132.55 crore from a total claim of ₹ 192.09 crore. Since the lessees were evicted by invoking provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971, the chances of recovery of ₹ 132.55 crore are remote.

The Ministry stated (June 2015) that the delay in submission of rate structure was only due to following the procedure mentioned in the land policy and the matter was referred to Estate Officer to recover the dues from ex-lessee. However, Audit is of the view that the port should have initiated action well in advance so that the laid down procedure could have been completed before the commencement of new tariff cycle.

3.4.2. Non-obtaining market value of land resulting in loss of opportunity to generate additional revenue of ₹ 61.86 crore - KPT allotted (between March 1962 to February 1990) 16,187 acres of salt land to 41 lessees at a nominal lease rent of ₹ 10 to ₹ 30 per acre per annum. After the expiry of original lease period, it was extended from time to time. KPT submitted (October 2005) a proposal for lease rent revision to TAMP recommending ₹ 144 per acre per annum and TAMP approved (January 2006) the same. The rate was effective from 5 July 2005 to 4 July 2010. Audit observed that while approving (January 2006) the tariff, TAMP took exception to the methodology adopted by KPT in the proposal as it did not follow the extant policy guidelines of obtaining market value of the land for fixing the lease rent. KPT contended before TAMP that valuation of salt land was neither available in the State Government ready reckoner nor any sale transaction had taken place during that time. Meanwhile, it was noticed that KPT had been granting permission to lessees to obtain mortgage finance facility on the leased land since 1994. Such permission was given to one of the lessees for a loan of ₹ 50¹⁷ crore by mortgaging 3891 acres of leased land. Normally, banks arrive at mortgage value of land through independent valuation of the land, which was valued ₹ 1.28 lakh per acre. Considering six *per cent* of market value, the lease rent worked out to ₹ 7787 per acre. On the other hand, KPT had levied **₹ 144 per acre resulting in short-levy of lease rent of ₹ 7643 per acre**. As a result, KPT lost an opportunity to generate additional revenue of ₹ 61.86¹⁸ crore as it had not considered available information regarding market value of the leased land.

The Ministry contended (June 2015) that KPL has been granting permission to lessees to obtain mortgage finance facilities; however, the loan was based not only on market value of land but also on structures and developments made on the land. As such, it was hypothetical to state that the mortgage value reflected market value of the land. It was also contended that any

¹⁷ ₹ 25 crore each from State Bank of India, Ahmadabad and ₹ 25.50 crore from Punjab National Bank, Gandhidham.

¹⁸ ₹ 7643 x 5 (years) x 16,187 acres = ₹ 61,85,86,205

rate increase in one sub activity of the port operation would be offset by reduction or increase in another sub activity, keeping in mind overall Return on Investment (ROI) (16 per cent) of the port. Thus, the rates fixed in 2005 were within overall returns of KPT, no loss to the exchequer had occurred and alleged non-protection of financial interest was merely hypothetical.

The contention is not acceptable in view of the fact that mortgage facilities were generally extended up to certain percentage of asset value, and as such ₹50 crore considered by Audit was justifiable even after taking into account that other assets were also mortgaged along with the land. It is also pertinent to note that while granting permission for mortgaging port land, it was specifically stated that the mortgage was against land only. As far as overall ROI and offsetting of revenue among different sub activities was concerned, it may be noted that the entire exercise of fixing SoR for land becomes redundant so long as ports could generate revenue from other sub activities to match with allowable ROI.

3.4.3. Non-obtaining TAMP approved tariff – As per the notification (March 2005) of TAMP issuing revised guidelines for tariff fixation to major ports, whenever a specific tariff for a service was not available in the notified SoR, the port could submit a suitable proposal. Simultaneously with the submission of the proposal, the proposed rate as mutually agreed upon by the port and the user concerned could be levied on adhoc basis till the proposal was approved by TAMP. An illustrative case noticed in MbPT where the port failed to adhere to this stipulation of TAMP is discussed below.

MbPT granted (1994) 'No Objection Certificate' to Maharashtra Tourism Development Corporation (MTDC) to start water sports activities at Girgaum Choupatty subject to the condition that MTDC would take prior sanction from MbPT if they desired to construct any facility therein. No formal request was made thereafter by MTDC for carrying out any other activity. In 2004 M/s Drishti Adventure Sports Private Limited (DASPL) applied for permission for floating jetty when it came to notice of MbPT that MTDC had entered into a license agreement (March 2001) with DASPL for developing, financing and operating the water sport complex for a consideration without any intimation to MbPT.

Audit observed that though construction activities by DASPL had come to the notice (2004) of MbPT, it decided (November 2007) to fix tariff for floating jetty at ₹ 24971 per pontoon. MbPT issued (December 2012) notice to DASPL to pay arrears of ₹ 3.30 crore towards license fee for 10 pontoons from March 2001 to December 2012 but it did not initiate steps to adhere to the tariff fixation guidelines issued by TAMP in 2005 requiring them to fix appropriate tariff in consultation with the licensee and obtain approval of TAMP. Instead, MbPT issued (January 2013) notice asking DASPL to pay the dues of ₹ 3.30 crore plus penalty of ₹ 0.43 crore within 30 days of notice, failing which MbPT would take appropriate legal action. DASPL contended (January 2013) that the demand notice of MbPT did not state the details of the gazette notification of the rates approved by TAMP and therefore, they were ready and willing to pay the rates approved by TAMP.

MbPT stated (May 2014) that legal proceedings were initiated against DASPL under Public Premises (Eviction of Occupants) Act, 1971. The reply needs to be viewed in light of the fact that MbPT did not obtain tariff approved from TAMP and took more than 10 years to initiate legal action. The Ministry stated (June 2015) that the area was outside the operation area and MbPT took the stand that it does not fall under the jurisdiction of TAMP. However, the fact remains that as per policy guidelines of 2004 and 2010, tariff fixation of all port land fell under the jurisdiction of TAMP irrespective of its location and/or proximity to core operations.

3.4.4. Non-obtaining TAMP approval for land outside custom bond area – As per clause 49 of MPT Act, 1963, the TAMP is competent to frame SoR for any place or properties belonging to major ports within the limits of the port. The land policy guidelines also stipulated that the SoR for land should be recommended to TAMP for approval. Scrutiny of records, however, revealed that in PPT, rates applicable for license fee and lease rent for ground rents and land premium were approved by the Board as per Regulation 6 and 7 of the Paradip Port Trust Immovable Properties (Lands & Houses) Leasing and Licensing Regulations, 1975. In case of custom bond areas, the rates were sent for approval of TAMP.

PPT stated (July 2014) that though no approval from TAMP for the rates of license fees and lease rent for outside custom bond area had been taken, the rate had been recommended by the Committee consisting of a representative of Ministry, FA&CAO-PPT, Secretary-PPT and one local Revenue Officer of the State Government at the rank of Additional District Magistrate. It was also stated that the rate prevailing outside custom bond area was higher than those of prohibited area as fixed by TAMP. However, the fact remains that the Committee as stated by the port was not competent to fix tariff, and the action of PPT contravened the MPT Act and land policy guidelines.

3.5. Lease agreements

The guidelines of 1995 stipulated that all major port trusts should prepare a suitable lease format in consultation with their legal and finance departments and such lease should incorporate provisions to safeguard the interests of the ports. The conditions stipulated in the guidelines, *inter alia*, included that the ports should have an option to re-fix the base of lease rent every five years. The policy guidelines of 2004 also stipulated that SoR should be revised every five years and therefore, the lease agreements by ports should have specific provision to incorporate the SoR revision. Following observations were noticed during examination of lease agreements of ports.

3.5.1. Non-inclusion of revision of lease rent in the agreement – Audit observed the JNPT allotted (2006) 66.29 acres of land to M/s Speedy Multimode Limited for 20 years extendable by 10 years at a lease rent of ₹ 11.60 crore per annum with five *per cent* escalation

every year. The rent fixed by JNPT, therefore, worked out to ₹ 23.48 per square metre per month. However, there was no provision in the allotment letter to take care of future revision of lease rent in accordance with revision of SoR (every five years). As a result, the lease rent under this allotment was not revised.

Audit observed that JNPT obtained (July 2012) valuation of land meant for lease through a Government registered valuer, and the report indicated a lease rent of ₹ 190 per square metre against the land under the above allotment. Though the port had considered a proposal for submission to TAMP in this regard, it was not got approved from TAMP. JNPT was not able to revise the lease rent due to non-incorporation of stipulated clause in lease allotment order. Considering the valuation obtained in 2012, the benefit foregone by JNPT would work out to ₹ 134.62 crore for three years (2011-12 to 2013-14).

JNPT stated (April 2014) that lease rent for land/paved, open area, building, covered shed and other facilities had been considered subject to an annual increase of five *per cent* in subsequent years till expiry of entire license period. The fact, however, remains that as against an escalated lease rent of ₹ 48.28 per square metre, ₹ 50.69 per square metre and ₹ 53.23 per square metre for 2011-12, 2012-13 and 2013-14 respectively, the valuation in 2012 indicated a lease rent of ₹ 180.95 per square metre, ₹ 190 per square metre and ₹ 199.50 per square metre respectively for the same period. Such being the case, the escalation of five *per cent* per year was inadequate and proved detrimental to financial interest of the port.

3.5.2. Occupation of land beyond permissible area resulting in loss of ₹ 13.03 crore

– Audit observed that CoPT allotted 120.06 acres of land to M/s Indian Gateway Terminal Private Limited (IGTPL). Lease commenced from 11 February, 2009 and the land was taken over in December 2007/February 2008. However, a joint survey conducted (December 2010) revealed that IGTPL constructed a boundary wall covering an area of 223.55 acres of land, which meant that the latter had taken possession of additional area of 102.97 acres of land beyond the permissible area as per lease agreement. The joint survey report intimated by Superintending Engineer (CP) to Deputy Secretary, CoPT stated that as the additional land area was inside their compound wall, they could not use it for other purposes, and recommended that arrangements be made to regularize the land allotment as per relevant provisions of the agreement. Audit, on the other hand, observed that CoPT regularized only 32.52 acres of land, taking the total area of lease to 153.10 acres. Accordingly, lease rentals were levied. However, the regularization was not correct as the remaining area of 70.45 acres of land was lying inside the boundary of IGTPL and as opined by Superintending Engineer (CP), CoPT, port would not be able to use this area for any other purpose. Consequently, CoPT sustained loss of ₹ 13.03 crore for the period February 2009 to March 2014.

CoPT, in the exit conference, stated (July 2014) that the SEZ¹⁹ regime required that entire area be protected by compound wall and IGTPPL had only constructed the wall and was not using the additional area falling under the compound wall. It was also stated that the additional area was marshy and had not been consolidated or paved for use, unlike the area for which rent was being paid. The Ministry stated (June 2015) that the additional area alleged to have been occupied by IGTPPL was earmarked for their next stage development and the same was still in possession of the port. Hence, there was no revenue loss. The reply is to be viewed against the fact that the Superintending Engineer (CP), CoPT had clearly stated that the area was under the control of lessee and inside the boundary wall and thus the same could not be used by the port. CoPT, had regularized only 33.04 acres and did not charge lease for 70.45 acres causing loss of ₹ 13.03 crore from February 2009 to March 2014.

3.5.3. Non-levy of penal interest of ₹ 12.99 crore – As per TAMP order dated 5 November 2011, ports were allowed to charge penal interest for delayed payments of lease rentals and other charges from the lessees/licenseses between a minimum of two *per cent* above the prime lending rate of the State Bank of India and a maximum of 18 *per cent* within which the port could choose the rate convenient to their purpose. During the course of audit, it was observed that 10 out of 12 ports had charged interest on delayed payments. Of the remaining ports, while VPT did not collect penal interest from 12 parties (10 parties with insignificant value), JNPT levied penal interest only in respect of BOT operators. The following table indicates the penal interest (at 18 *per cent* as per lease agreement) not collected from two major parties by VPT.

Table 6: Details of Non Collection of Penal Interest

Name of licensee	Upfront fee (₹ in crore)	Delay (months)	Interest not collected (₹ in crore)
Central Warehousing Corporation	9.05	66	8.96
IOCL	7.74	60	4.03
Total			12.99

VPT stated (May 2014) that interest calculation has been sent for finance scrutiny and on return from finance, necessary bills would be raised. It was also stated that the status of realization of penal interest would be intimated to audit. The Ministry stated (June 2015) that while demand for penal interest was raised against IOC, action was being initiated to demand penal interest from CWC.

3.5.4. Subletting of leased land/area – As per policy guidelines issued in 1995, the lessees should not directly or indirectly assign, or transfer whether by sale, mortgage, gift,

¹⁹ Special Economic Zone

sub-lease the land or any part thereof without prior approval of the port. Any subletting, assignment, etc. without such prior approval would make the lease liable to be cancelled. The policy guidelines issued in 2010 further clarified that ports had the right to impose appropriate penalty or cancel the lease depending on the nature of breach or violation. Audit noticed 34 instances of subletting in five out of 12 ports, of which 30 cases related to PPT, two cases to VPT and one case each to CoPT and ChPT. However, ports did not initiate any penal action against these violations in terms of either charging penalty or cancellation of lease, and allowed the lessees to continue subletting. VPT stated (May 2014) that the matter was taken up for immediate review and suitable action would be taken. The policy guidelines issued in 2014 stated that no subletting should be allowed in respect of leases after introduction of 2014 guidelines and the lessee should surrender the leased premises if not required for their use, while it permitted the earlier subletting to continue.

The Ministry stated (June 2015) that in order to discourage subletting, PPT levied 50 *per cent* of subletting charges from lessees to which Hon'ble High Court of Odisha ordered that PPT should not pressurize the lessees for payment of 50 *per cent* of sublet fee. Therefore, no coercive action could be taken against the lessees who had sublet the constructed premises/built-up space. In respect of VPT, it was clarified that the lessees entered into service contract with various customers and these never tantamounted to subletting. However, the fact remains that none of the lessees took approval from the ports to sublet the premises, nor ports took remedial action in accordance with policy guidelines.

3.6. Computerization of land management process

Land management encompasses preparation of land use plan identifying area under different zones depending on intended use of land, approval process for allotment, raising bills and monitoring revenue from estate, lease/license agreement management, and other administrative measures as and when required to protect the interests of the port. Computerization of land management requires a comprehensive and state-of-the-art application that would cover (a) possession data of land, buildings, other facilities, etc., (b) estate related data for every tenant with name, address, area of land, zone, period of lease/license, rent payable, escalation/revision of rent, and related activities, (c) raising of bills and monitoring estate revenue and recovery and (d) generation of various management information reports.

The policy guidelines issued in 2010 stipulated, as one of administrative reforms measures, that the ports should computerize entire land management system in a GIS based system. The system was to capture, store, manipulate, analyze, manage and present all types of geographically referenced data. Basically, GIS enables port users in need of land to access the details directly through internet. This system brings intervention free environment with transparency in allotment of port lands to users/customers/ stakeholders and also ensure speed and accuracy in the transaction of allotment of land.

In this connection, Audit observed that though the policy guidelines/stipulations were issued by the Ministry in January 2011, this aspect was not covered in 2014 policy. None of the 13 ports, except CoPT, came out with a computerized land management initiative. CoPT has introduced GIS based land management system during 2010-2011, declaring itself as India's first e-port. Other ports were yet to initiate measures for computerizing land management process, while MbPT, KoPT/HDC and KoPT/KDS had initiated their computerization initiative to billing of estate revenue. Thus, the ports were yet to take concrete and effective steps towards computerization of land management as stipulated by the policy guidelines of the Ministry.

While all ports stated (between May and October 2014) that action was being initiated for computerization of land management process, KoPT/KDS stated (January 2015) that GIS based system was introduced for tenancy management and the same would be geo-referenced for other areas also in line with land policy. The fact remains that even after four years of introducing policy guidelines stipulating computerization, concrete steps were yet to be taken by ports.

The Ministry stated (June 2015) that it was monitoring the computerization of land records and fixed a deadline of 31 December 2015 for completing computerization of land records with GIS. The initiative along with ERP was expected to be completed by July 2016 and it would be ensured that the entire land management system was modern.

Recommendations:

- 5. A review mechanism may be put in place in the Ministry stipulating at least half yearly review of land management decisions and activities of individual ports, which would help ensure compliance with the policies in vogue.*
- 6. Similarly, a structured quarterly review may be introduced in the ports in order to report status of land management process and procedures to the respective Board vis-à-vis compliance of land policy guidelines.*