

CHAPTER IV : LAND REVENUE

4.1 Results of audit

Test check of records of land revenue conducted during the year 2005-06 revealed underassessment, short levy, loss of revenue etc., amounting to Rs 128.75 crore in 324 cases which broadly fall under the following categories:

(Rupees in crore)

Sl. No.	Category	No. of cases	Amount
1.	Review: Encroachment on Government Land in Urban Areas	1	41.34
2.	Non /short /incorrect levy of NAA, ZP/VP cess, conversion tax and royalty	179	61.32
3.	Non/short /incorrect levy of land revenue	53	7.28
4.	Non/short levy of education cess etc.	14	0.50
5.	Non/short levy of occupancy price/rent etc.	25	1.55
6.	Short levy of measurement fees, <i>sanad</i> ¹ fees etc.	52	16.76
	Total	324	128.75

During 2005-06, the department accepted underassessment, short levy etc., of Rs 3.87 crore in 301 cases which were pointed out in earlier years and recovered the same.

A review on “**Encroachment on Government Land in Urban Areas**” involving financial effect of Rs 41.34 crore and a few illustrative cases involving financial effect of Rs 11.82 lakh are given in the following paragraphs:

¹ A patent, an authority, in writing from ruling power to hold a land or an office, or to follow a certain calling or profession.

4.2 Review on “Encroachment on Government Land in Urban Areas”

4.2.1 Highlights

Results of action taken on accepted recommendations of the Public Accounts Committee (PAC) were not available in the Revenue or Housing departments.

(Paragraph 4.2.8)

Non issue of identity cards resulted in non realisation of fee of Rs 45.83 lakh.

(Paragraph 4.2.11)

Government share of Rs 20.47 crore on account of consolidated charges was not realised.

(Paragraph 4.2.12)

Penal occupancy price of Rs 20.41 crore was not levied in two cases of unauthorised retention of Government land.

(Paragraph 4.2.13)

4.2.2 Recommendations

Government may consider:

- strengthening the mechanism to check encroachments;
- introducing a system to track changes in the use of leased land in each collectorate; and
- introducing a system at Government level to ensure corrective measures as per the orders of court of law/competent authority.

4.2.3 Introduction

The Maharashtra Land Revenue (MLR) Code, 1966 and the rules framed thereunder regulate the grant of Government land on occupancy or lease hold right, as well as collection of occupancy price, lease rent and land revenue etc. The District Collectors (DCs) have been empowered to abate or remove summarily any encroachment made on any Government land. The encroacher is liable to pay, for the whole period of encroachment, the assessment for the entire survey number (if the land forms part of an assessed survey number) or if the land has not been assessed, such assessment as would be leviable for the said period, on similar land used for the purpose for which land is encroached.

4.2.4 Organisational set up

Subject to the superintendence, direction and control by the Secretary, Revenue and Forest Department at Government level, the State of Maharashtra has been divided into six² revenue divisions each headed by a Commissioner who is the chief controlling authority in all matters connected with land revenue. He is assisted by DCs at district level. The assessment and realisation of land revenue in respect of land held by the encroachers are to be

² Amravati, Aurangabad, Konkan, Nagpur, Nashik and Pune.

made by Additional Collectors (Encroachment) (AC-E), sub divisional officers (SDOs) and tahsildars etc., according to their respective delegation of powers. Occupancy price and fine are also leviable along with land revenue, which includes lease rent and cess, etc. Appeal, if any, with reference to the assessment lies with the next higher authority in the Revenue Department.

4.2.5 Scope of audit

A review of records including the cases of allotment of land on leasehold/ occupancy rights for the period 2000-01 to 2004-05 of 12³ out of 35 DCs was conducted between November 2005 and April 2006 to assess whether the provisions of MLR Code, MLR (Disposal of Government Land) Rules, 1971, allied laws and Government orders from time to time were correctly adhered to.

4.2.6 Audit objectives

The review was conducted with a view to:

- assess the efficiency in detection, eviction, regularisation and implementation of terms and conditions while granting occupancy/lease hold right;
- verify action taken on detailed instructions issued by Government in May 1999 subsequent to recommendations of the Public Accounts Committee (PAC) on paragraph 4.2 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 1989 (Revenue Receipts) Government of Maharashtra;
- assess existence of internal control and monitoring mechanism to prevent encroachment, detect or evict encroachers and to verify whether cases of encroachment are regularised in accordance with the applicable provisions.

4.2.7 Non maintenance of land distribution register

Government issued instructions on 22 February 1996 that 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 and period of grant and terms and conditions 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/breach of conditions of lease.

In Pune and Wardha Collectorates, it was noticed that no such register was maintained. Further, Collector, Nashik had started maintaining the register only from October 2002.

Government stated in September 2006 that instructions regarding maintenance of the register had been issued in August 2006.

³ Ahmednagar, Amaravati, Kolhapur, Mumbai (City), Mumbai (suburban), Nagpur, Nashik, Pune, Sangli, Solapur, Thane and Wardha.

4.2.8 Inaction on recommendations of the PAC

The PAC in its 27th report of September 1994 on paragraph 4.2 of the Report of the Comptroller and Auditor General of India for the year ended 31 March 1989 (Revenue Receipts), Government of Maharashtra regarding encroachment of Government land recommended to take stern action against the officers and staff responsible for encroachment; not to provide basic facilities like water and electricity to the encroachers to make unauthorised occupation of Government land problematic; regularise genuine cases of encroachments; amend suitably the MLR Code with a view to curb the tendency of encroachment by increasing the amount of fine and to create machinery at the headquarters to trace out the encroachments. Failure of Government in the matter was pointed out in paragraph 4.2.6 of the Audit Report for the year ended 31 March 1999 as no action was taken by Government by end of that period. To implement the above recommendations, Government issued detailed instructions in May 1999. However, even after a lapse of seven years from the issue of instructions, the results thereof were not available either with the Revenue or the Housing Department.

4.2.9 Unauthorised retention of Government land after expiry of lease period

MLR Code provides that a person who continues to occupy Government land after expiry of lease and without completing the renewal process three months before expiry of lease period, is liable for eviction, and penalty at twice the amount of lease rent for the period of unauthorised use of land is chargeable. Government issued orders on 5 October 1999 fixing lease rent in case of expiry of lease in Mumbai city and Mumbai suburban districts. Aggrieved by the assessments in terms of the order of 5 October 1999, the parties challenged the same in the Honourable High Court of Mumbai in 2001. Government withdrew these orders on 24 August 2004 and informed court accordingly. The case was decided on 25 August 2004 and the court directed that valuation of property shall be done by the State in accordance with law and the relevant provisions and terms and conditions laid down in the respective lease deeds in the above cases. Government was at liberty to issue fresh show cause notices to decide the cases after affording an opportunity of hearing. In the meantime, all the petitioners shall continue to pay the lease rent.

During scrutiny of records of Collector, Mumbai city, it was noticed that in 33 lease cases, where the lease period expired between September 2002 and September 2003, neither notices for the assessments were issued nor any directives were given by Government to the Collector to finalise the assessments. As a result, occupants continued to occupy the land unauthorisedly even after expiry of the lease period.

Government accepted the facts and stated in September 2006 that notices in terms of the High Court order of 25 August 2004 were not issued. However, policy for action against/recovery from the lessees was being framed.

4.2.10 Non regularisation of encroachment

MLR Code provides that if the revenue authority detects any case of encroachment of Government land, the encroacher is liable for eviction and

assessment of non agricultural assessment (NAA)/land revenue and fine at prescribed rates. Government instructions issued in April 2002 provide that if the encroachment is to be regularised on occupancy right, encroacher is required to pay an amount equal to two and half times of the market value of land on the date of encroachment and interest as applicable from time to time.

Test check of records of five tahsils revealed that in 5,772 cases, encroachment of Government land admeasuring 8,06,655 sq.m were detected between 2001-02 and 2005-06. However, these encroachers were neither evicted nor any action to regularise the encroachments was taken. This resulted in non realisation of revenue of Rs 240.77 crore including interest as under :

Sr. No.	Name of the district/tahsil	Year/date of detection of encroachment	No. of encroachers	Area in sq. mtrs.	Market value of land	2.5 times of market value	Interest	Total
(Rs. in crore)								
1.	Wardha	14 January 2005	392	52,800	3.53	8.83	12.52	21.35
2.	Khanapur Vita	24 May 2005	31	10,700	0.72	1.79	2.54	4.33
3.	Nashik	24 March 2005	650	10,500	1.40	3.51	4.97	8.48
4.	Ahmednagar	2003-04	40	20,900	2.79	6.98	9.88	16.86
5.	Kopergaon	2001-02	4,659	7,11,755	35.80	89.50	100.25	189.75
	Total		5,772	8,06,655	44.24	96.48	144.29	240.77

After this was pointed out, Government accepted in September 2006, the facts and agreed to take up the matter with Collectors to inform audit about the correctness of the figures within one month.

4.2.11 Non realisation of identity card fees

Government issued instructions on 11 July 2001 to recover one time identity card fee on issue of identity cards at prescribed rates, depending on use of Government land from eligible slum dwellers within six months from the date of issue of the instructions.

Test check of records of the Additional Collector, Western Suburban, Mumbai revealed that 1,16,943 slum dwellers were eligible for issue of identity cards but only 96,945 identity cards were issued. Non issue of identity cards which were to be issued by 10 January 2002 to the remaining 19,998 eligible slum dwellers resulted in non collection of identity card fees of Rs 45.83 lakh as follows:

Sl. No.	Category	No. of slum dwellers			Rate of fee (Rs.)	Amount recoverable (Rs. in lakh)
		Eligible	To whom I. Card issued	Balance		
1.	Residential	1,15,797	96,701	19,096	200	38.19
2.	Mixed	241	34	207	600	1.24
3.	Non residential	905	210	695	800	6.40
	Total	1,16,943	96,945	19,998		45.83

4.2.12 Non realisation of Government share of consolidated charges

4.2.12.1 Government instructions dated 11 July 2001 provide that consolidated charges such as service charges, administrative charges and ground rent are to be recovered, from eligible slum dwellers with effect from 1 January 2003 if the land is used for residential purposes and from 1 August 2003 if land is used for purpose other than residential, by the Brihan Mumbai Municipal Corporation (BMC). Forty *per cent* of the consolidated charges collected by BMC are required to be credited to Government account.

Test check of records of AC-E, Western Suburban, Mumbai revealed that due to non issue of identity cards to 19,998 eligible slum dwellers, consolidated charges of Rs 6.82 crore could not be realised by BMC during the period between January 2003 and July 2005. Consequently, share of Government of Rs 2.73 crore remained unrealised as detailed below:

Sl. no.	Category	Balance number of eligible slum dwellers	Rate of consolidated charges per month (Rs.)	Period	Amount recoverable (Rs. in crore)	Government share
1	Residential	19,096	100	1 January 2003 to 31 July 2005, (31 months)	5.92	2.37
2	Mixed	207	200	1 August 2002 to 31 July 2005 (36 months)	0.15	0.06
3	Non residential	695	300	1 August 2002 to 31 July 2005 (36 months)	0.75	0.30
	Total	19,998			6.82	2.73

Government accepted in September 2006 the facts and agreed to inform about the action taken in the matter within 15 days. No reply had been received (December 2006).

4.2.12.2 Test check of records of Additional Collectors, Eastern and Western suburban, Mumbai, revealed that 1,41,841 identity cards were issued to eligible slum dwellers and BMC was required to collect consolidated charges of Rs 44.35 crore during the period between August 2002 and July

2005. Out of this, Rs 17.74 crore being Government share at the rate of 40 per cent required to be deposited in Government account was not deposited by the BMC. This resulted in non realisation of Rs 17.74 crore as detailed below:

Sl. No.	Category	No. of slum dwellers to whom photo identity cards issued	Rate of monthly consolidated charges (Rs.)	Period	Total amount recoverable	Government share
					(Rs. in crore)	
1.	Addl. Collector (Encroachment), Eastern Suburban					
	Residential	45,184	100	1 January 2003 to 31 July 2005 (31 months)	14.01	5.60
	Mixed	13	200	1 August 2002 to 31 July 2005 (36 months)	0.01	0.004
	Non residential	258	300	1 August 2002 to 31 July 2005 (36 months)	0.28	0.11
	Total	45,455			14.30	5.72
2.	Addl. Collector (Encroachment), Western suburban					
	Residential	96,155	100	1 January 2003 to 31 July 2005 (31 months)	29.81	11.92
	Mixed	31	200	1 August 2002 to 31 July 2005 (36 months)	0.02	0.01
	Non residential	200	300	1 August 2002 to 31 July 2005 (36 months)	0.22	0.09
	Total	96,386			30.05	12.02
	Grand Total	1,41,841			44.35	17.74

Government agreed in September 2006 to intimate recovery made from BMC. No reply had been received (December 2006).

4.2.13 Unauthorised retention of Government land due to breach of conditions

Under MLR code, it shall be lawful for the collector to evict a person, who is unauthorisedly holding Government land, due to breach of any condition of the grant of such land. In case of regularisation of these cases, penal occupancy price not exceeding five times the value of the land price and penal assessment not exceeding five times the ordinary annual land revenue, subject to minimum of two and half times of penal occupancy price, is payable.

Test check of records of Collectors, Sangli and Thane districts revealed that in two cases there was breach of terms and conditions of grant of land. On breach of condition by the occupant he should have been treated as unauthorised occupant of Government land and was liable for eviction. No action was taken by the collectors either to evict the unauthorised occupants or

regularise the same. Penal occupancy price of Rs 20.41 crore including penal non agricultural assessment (NAA) was leviable as detailed below:

District	Name of the land holder	Area (in sq. mtrs.)	Purpose of grant of land	Actual use of land	Date of detection of breach	Market value	Penal occupancy price	Penal NAA	Total
(Rs. in crore)									
Thane	Bahubali Jain charitable Trust	49,600	Charitable	Commercial and residential	8 February 2001	5.78	14.44	0.04	14.48
Sangli	Sangli Zilha Maji Sainik Sahkari Bhadekaru Gruh Nirman Sanstha	49,500	Housing society for army persons	Sold to non army persons	23 July 2003	2.35	5.88	0.05	5.93
Total						8.13	20.32	0.09	20.41

After this was pointed out, the Collector, Sangli stated in October 2006 that the tahsildar had been directed to take necessary action in the matter. Reply in the other case had not been received (December 2006).

Government in September 2006 accepted the breach of condition by the landholders and assured to take appropriate action.

4.2.14 Conclusion

Even after issue of instructions to implement recommendations of PAC, relevant data was not available with Government to measure the effectiveness of the instructions. Non availability of an effective machinery to prevent cases of encroachment led to continuance of cases of encroachment.

4.2.15 Acknowledgement

Audit findings as a result of the review were reported to the department/Government in May 2006 with a specific request to attend the meeting of the Audit Review Committee so that the views of the department/Government could be taken into account before finalising the review. The Audit Review Committee meeting was held on 1 September 2006 and attended by the Principal Secretary, Revenue & Forest Department, the Commissioner and Collector, Nagpur. The viewpoint of Government has been taken into account while finalising the review.

4.3 Non realisation of revenue

Under the provisions of MLR Code, unauthorised extraction of minerals attracts penalty/fine amounting to three times of market rate of the minerals so extracted. The Bombay Minor Mineral Extraction Rules, 1955 (Rules), provide that any order passed in review shall on no account be further reviewed. Besides, Government instructions of August 1993 provide that Government revenue shall be recovered expeditiously either by vacating stay or deciding the appeal on priority basis in cases where substantial amount is involved and validity of stay orders shall not exceed three months, in any case, beyond which it will be deemed to be vacated.

In Palghar tahsil (district Thane), it was noticed in a case of unauthorised extraction of minerals that Government stayed the orders of the Assistant Collector, Dahanu for recovery of Rs 52.25 lakh on 6,716 brass⁴ minerals in September 2002 and ordered the sub divisional officer (SDO) Dahanu in October 2002 to review the case. SDO, Dahanu reviewed the case and issued recovery order for Rs 39.32 lakh in October 2004 by imposing penalty at three times the market rate for unauthorised extraction of 5,054 brass of minerals, including royalty. Reasons for variation in the quantity of minerals involving revenue of Rs 12.93 lakh were, however, not on record. The Additional Collector, Thane, however, stayed this order in December 2004 on the basis of an appeal by the contractor. Thus, stay given by the Additional Collector in this case which had already been reviewed by the authority nominated by Government contravened the provision that any order once reviewed shall not on any account be reviewed. The validity of the stay order issued in December 2004 expired after three months (i.e. in March 2005) as per Government instructions of August 1993. Thus, Government revenue of Rs 39.32 lakh recoverable from the contractor had not been realised (December 2006).

The matter was reported to Government in March 2006; their reply had not been received (December 2006).

4.4 Non/short levy of non agricultural tax

Under the provisions of MLR Code, non agricultural (NA) tax is levied annually with reference to the use of land and NA tax so fixed is revised whenever Government revises the rates by issue of notification subject to the expiry of the guarantee period⁵. The NA tax rates were revised by Government in September 2001 with effect from 1 August 2001.

In Haveli tahsil (district Pune), it was noticed in March 2005 in 12 cases of Hadapsar and Kothrud villages involving 1,67,199.43 sqm. of land used for residential and commercial purposes that NA tax was either not levied at revised rates or levied at pre revised rates. This resulted in non/short levy of NA tax of Rs 11.82 lakh.

After this was pointed out, the Tahsildar, Haveli accepted the omission in February 2006. Further action taken in these cases was awaited (December 2006).

The matter was reported to Government in May 2006; their reply had not been received (December 2006).

⁴ Unit of measuring minerals. One brass is equal to 4 metric tonnes/2.83 cubic meters of minerals.

⁵ The standard rate of NAA remains in force for a period of five years which is called 'guarantee period'.