

CHAPTER III

COLLECTOR, MUMBAI CITY

This chapter contains the results of audit of the lands given on lease in Mumbai City. There were 1,257 lease cases out of which 320 cases were selected for detailed scrutiny. Of these 320 cases, in 97 cases, copy of the lease deed, property card and land lease information system alone were furnished. We have noticed 162 irregularities, these are mentioned below:

Sr. No.	Category	No. of observations
1.	Breach of lease conditions relating to change in purpose, transfer of leasehold rights	34
2.	Action for eviction not taken in case of breach of conditions	15
3.	Non-recovery of lease rent	16
4.	Non-renewal of expired leases	97
	Total	162

A few observations are discussed in the following paragraphs:

3.1 Non-execution/registration of lease deed

According to Section 17(1)(d) of the Registration Act, 1908, the lease documents of immovable property either executed year to year, or for any term exceeding one year, or reserving a yearly rent are to be compulsorily registered. Thus, in respect of Government Land given on lease it is necessary to have a lease deed/agreement prepared incorporating all the terms and conditions under which the lease is granted and also get it registered with the Registering Authority.

- During test check of the lease cases, we noticed that in 11 cases, the possession of the leased plots admeasuring 84,089.57 sq m had been given between 1958 and 1983. Though 29 to 54 years had elapsed after the possession of the plots had been taken by the lessees, in none of these cases, lease deeds had been executed/registered with the registering authorities as shown in **Appendix-IX**. This resulted in non-fulfilment of the above provision. Registration of the lease deeds also attracted Stamp Duty and Registration Fee, hence, non-registration resulted in non-realisation of Stamp Duty and Registration Fee as well.

After this being pointed out, the Department stated (September 2012) that necessary action would be taken to execute and register the deeds on priority.

- In paragraph 3.10 of the Comptroller and Auditor General's Audit Report (Revenue Receipts) for the year ending 31 March 1998, we had pointed out 57 lease cases in Mumbai City wherein registration of the lease deeds had not been done with the registering authorities. In this regard, the Collector informed (November 2012) that 56 of these lease deeds are yet to be executed and registered and also stated that this work is being taken up on a priority basis. This indicated that the

Department is not monitoring the execution and registration of the leases. Thus, despite a lapse of 15 years, since the matter was pointed out by audit, the leases have not been executed and registered.

3.2 Incorrect application of Annual Schedule of Rates

In Mumbai City, since May 2006, the valuation of land is being done by adopting the Annual Schedule of Rates (ASR) prescribed for the year in which the land was allotted on lease or permission for redevelopment was accorded. The ASR provides for the rate of base value of open land with one FSI only and in case if the FSI is more than one or less than one then the rate has to be increased or decreased accordingly.

As per Regulation No. 32 of the Development Control Regulations, 1991 for Mumbai City, the maximum permissible FSI of the land used for residential and residential-cum-shop purposes in the island city of Mumbai is 1.33. However, it was noticed that in the following instances, FSI of one was applied instead of 1.33, which resulted in short recovery of various charges.

- **Redevelopment charge:** Redevelopment charge is a charge levied by the Government for permitting redevelopment on leased Government lands. The concept of redevelopment charge is not present in the MLR Code. However, redevelopment charge is being levied at 10 *per cent* of the market value of the land. During test check of the lease cases in Mumbai City, we noticed that in five cases, while computing the redevelopment charges recoverable, the Department had valued the land at the rate of one FSI instead of proportionately increasing the rates, though 1.33 FSI was admissible. The potential revenue forgone was ₹ 5.75 crore as shown in **Appendix-X**.
- **Transfer charge:** In another case of leased land the lessee M/s Simplex Reality applied for change of use of land from industrial to residential purpose. As per the GR of May 2009 issued in the case, transfer charges among other charges was leviable @ three *per cent* of the market value of the land, though the concept of transfer charges is not present in the MLR Code. In this case, the transfer charges were calculated taking FSI as one instead of 1.33. This resulted in short realisation of ₹ 13.81 lakh¹.

The Department while accepting the audit observation stated that the MLR code needed modification so as to make the concept of FSI clear.

3.3 Breach of lease agreements

3.3.1 Unauthorised auction of lease land belonging to Collectorate to M/s Jainam Construction by MCGM

Land admeasuring 3,811.49 sq m at Mazgaon, Mumbai, was given on lease for a period of 99 years with effect from 1 September 1903 under two separate

¹ Recovered ₹ 41.84 lakh, as against, ₹ 55.65 lakh.

lease orders of February 1910 and September 1919 to a Trust held by an individual. The lease expired on 31 August 2002. This allotment on lease was made by the Collector as this was land belonging to the Collectorate.

Test check of the records revealed that the lessee had made a number of breaches before the expiry of lease. A few are mentioned below:

- As per the lease agreement the lessee was required to pay the annual lease rent and in case of non-payment of the lease rent, the lessee could be evicted from the land under section 53 of the MLR code, 1966. We noticed that the lessee had not paid lease rent since 1991. The Collectorate cancelled the lease in 1997 i.e. after a lapse of six years from which the lessee had stopped paying the lease rent. However, in the meantime the following development occurred:
- The lessee had to pay dues (such as property tax) to MCGM. MCGM found that ₹ 3 lakh due to it had not been paid by the lessee and therefore, in September 1996 it auctioned this property to M/s Jainam Construction (a partnership firm) who bought the property for ₹ 11.31 lakh. There was nothing on record to indicate that the land was auctioned with the knowledge and approval of Collectorate/Government.
- The firm (M/s Jainam Construction) redeveloped the property and constructed flats in 2005 and requested for execution of sale agreement to the Collector. However, the request was not acceded to by the Government on the grounds that the process of redevelopment of the property was without the permission of the Government. Thereafter, no action was taken and the land continued to be in the unauthorised occupation of the firm despite lapse of seven years from when it came to notice.
- Thus, Government land was unauthorisedly auctioned by MCGM and a third party interest created.

3.3.2 Lease of land to M/s Eastern Chemical Co. Ltd.

Two plots of land at C.S No. 85 (measuring 17,769.43 Sq. m.) and C.S No. 93 (measuring 14,418.88 Sq. m) of Saltpan Division, Wadala, were leased to Eastern Chemical Company Ltd for a period of 99 years in 1913. As per the Property Card M/s J.K Chemical is the present lessee in respect of the above property. As per the condition of the original leases, the above lands were to be used for erecting a chemical factory for the manufacture of certain permitted chemicals.

- a) We found that the gradual relaxations allowed to the lessee in a phased manner enabled commercial exploitation of the property.

Relaxation No.	Government order	Relaxation provided
1	R&FD Memorandum dt 23 July 1974 also resolution dt 16 April 1980	The first relaxation permitted change of use from chemical factory to purely residential purpose subject to the condition that the land shall be used for providing residential flats to employees of the firm and that the land shall not be used for commercial purposes.
2	R&FD Resolution dt 18 August 1984	The lessee constructed residential flats and shops and sought relaxation for permitting him to sell the constructed residential flats and shops in the open market. This was allowed subject to the condition that the construction should be completed within a period of three years (17 August 1987) and should be sold to the middle income group with the family income of members not exceeding ₹ 2,999 per month. Lease rent should be recovered from the date of signing of the agreement or from the date of occupation certificate (OC) whichever was earlier.
3	R&FD letter dt 06 November 1984 to the company	The ceiling on income limit of ₹ 2,999 mentioned in the above resolution was deleted on request from the lessee. Thus the lessee could sell in the open market without any restriction by forming a co-operative housing society (CHS). Further, the lease rent was allowed to be recovered from CHS from the date of issue of OC.
4	R&FD letter dt 5 October 1988 to the Developer (M/s Kalpak Development Corporation)	Time for completion of the project was extended upto 17 August 1989 from 17 August 1987, however, lessee had to pay the enhanced lease rent fixed at 8 <i>per cent</i> of 50 <i>per cent</i> of market value with effect from 18 August 1987 i.e. original stipulated date of completion.
5	Order of Revenue Minister dt. 4 February 1993 on petition under section 257 of MLR Code	Extension in time limit for completion of project provided up to 17 August 1994. Lease rent recovery at enhanced rate was to be made from the date of issue of OC.

Thus, freedom was given to the lessee to exploit the Government land for commercial gains.

b) Non-realisation of enhanced lease rent

As per the GR No. 18 issued in August 1984, read with R&F letter dated 5 October 1988, (mentioned at Sl. No. 2 and 4 of the above table). The above Co-operative Housing Society CHS in whose favour fresh lease was created was required to pay lease rent at eight *per cent* of 50 *per cent* of market value of the land from 18 August 1987.

The CHS did not execute the revised lease agreement and continued to pay the lease rent at old rates of ₹ 691.13 per annum. The lease rent payable by the CHS as per the above mentioned GR worked out to ₹ 7.36 lakh per annum. Most of the buildings had received occupation certificate between 1987 and 1996, however, full details were not available in the lease records due to which the exact amount of short recovery could not be ascertained.

In reply, the Collector stated (September 2012) that necessary action to recover lease rent from the lessee was being taken and added that the land in question was allowed to be commercially exploited by the Government without recovering any additional premium on the orders of the Revenue Minister (February 2003).

Thus, the land which was originally intended to be used for a chemical factory was permitted to be used for residential purpose for low income groups. Subsequently, even this condition was waived off and it was allowed to be sold in the open market. In addition to this, lease rent payable was also relaxed thereby leading to a loss of revenue to the Government.

3.3.3 Lease of land to Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Ltd.

In August 1973, Government approved lease of land admeasuring 2,440.57 sq m (CS No. 1971) of Fort division, Mumbai to Maharashtra Rajya Sahakari Sakhar Karkhana Sangh Ltd. (MRSSKSL) for a period of 99 years to build commercial offices for “member sugar factories” which also encompassed a receiving station of the Bombay Electric Supply and Transport (BEST), at an annual lease rent of ₹ 5.71 lakh. This lease rent was fixed at a concessional rate of ₹ 3,600 per sq m instead of the market value of ₹ 4,750 per sq m. MRSSKSL was given possession of the land in March 1975 without executing any lease agreement. Instead a sanction order (May 1977), was issued which stipulated that the lease deed should be executed within three months and the construction of the building should be completed within five years from the date of possession. However, no lease deed has been executed and registered till date. The plot was also rent free for a period of first two years.

Our examination of records revealed that irregular relaxations and concessions granted to the lessee from time to time resulted in undue favour to the lessee as mentioned below:

- The lessee did not start the construction work, instead asked R&FD (1 February 1978) for outright sale/subleasing of the plot on the plea that the “member sugar factories” showed reluctance to own commercial office space in the proposed building to be constructed. Since this violated the very purpose for which land was leased, the land could have been resumed at this stage by the Collectorate. However, no action was taken by the Collector.
- R&FD on 23 February 1978, relaxed the rent free condition extending the rent free period from two to five years (i.e. from 1975 to 1980). There was nothing on record to indicate that the lessee had asked for it.
- On 20 February 1978, the lessee handed over the possession of the plot to a developer² and entered into an agreement with him in July 1978 for construction of a multi-storeyed building. The agreement stipulated that the developer would pay the ground rent for the plot to the Government from the date of possession. As per information obtained

² M/s Aesthetic Builders Pvt. Ltd.

on 9 November 2012 from Superintendent, Mumbai City Survey and Land Records, the total built up area was 1.27 lakh sq ft, out of which, 1/5th area was occupied by BEST, 1/5th by the original lessee and the remaining 3/5th was occupied by 20 private parties (not member sugar factories) and the developer.

- R&FD was responsible for grant of permission for construction and change in use. However, in this case we noticed that the above deviations were approved (March and July 1978) by the General Administrative Department, Government of Maharashtra, though initially it had also not approved the proposal for grant of land on lease in February 1978.

Thus, MRSSKSL did not utilise the land for the purpose for which it was allotted but misused the lease rights. The land could have been resumed to the Government in terms of Section 53 of the MLR Code, had timely action been taken.

3.3.4 Lease of land to MTDC

The Government in R&FD vide Resolution of 21 October 1989 approved the leasing of property admeasuring 711 sq m (C.S.No.1761 and 1762, Plot No.100A and 100B, BBR-I, Fort Division) to Maharashtra Tourism Development Corporation (MTDC) on an annual lease rent of ₹ 11.38 lakh. MTDC took possession of the plot in September 1990. However, the lease agreement had not been executed and registered till date.

We noticed that

- MTDC subleased a portion of the above land on 21 October 1989 to Indian Oil Corporation (IOC) for a consideration of ₹ 1.42 crore without obtaining prior permission from the Government. Though the Government cancelled the allotment to MTDC and ordered resumption in October 1999, we found that the land was not resumed and a portion of it was still in the possession of IOC.
- Government also ordered for recovery of ₹ 1.42 crore which was received by MTDC from IOC. This amount has not been recovered so far. Besides, lease rent of ₹ 1.93 crore and interest of ₹ 2.70 crore payable by the lessee as of August 2010 has also not been recovered.

After the case was pointed out in Audit, the Department stated (September 2012) that in response to the notices issued to MTDC for payment of dues and resumption of land, MTDC had approached the Principal Secretary, Home Department in December 2001. However, resumption of land and action for recovery of dues are pending though 13 years had elapsed since the issue of Government orders in the matter. Further, IOC is still in possession of the plot.

3.3.5 Grant of building on sub lease by Ayurved Prachar Sanstha

As per sanction order dated 29 October 1971, Government allotted land admeasuring 1,974.56 sq m of Bhuleshwar, Mumbai to Ayurved Prachar Sanstha on lease basis for period of 99 years at an annual concessional lease

rent of ₹ 19,252³ with effect from 1 April 1970. However, the lease agreement was not executed and registered by the lessee till now.

The terms and conditions of the sanction order stipulated that the land was to be used for running an Ayurvedic hospital/college and ancillary purposes including residence of bonafide members of the staff of the hospital and college and not for any other purpose.

- We found that the Sanstha constructed a building with 12 floors in 1975 having 7,580.12 sq m of built-up area. Out of which, five floors were given on lease to a Central Government Department (Income Tax) on annual rent of ₹ 4.25 lakh. Of this, as per R&FD memorandum of October 1997, 50 *per cent* of the rent was to be remitted to the Government as lease rent. However, we noticed that the 50 *per cent* of the lease rent paid by the ITD was not demanded from the Sanstha. The minimum amount recoverable from the Sanstha amounted to ₹ 55.25 lakh⁴ for the period from July 1986 to June 2012.
- The Sanstha approached the Chief Secretary for getting back the sub-leased floors in July 1994 for expanding medical facilities. However, the floors have not been given back to the Sanstha till date. Thus, the sub-leased portion of land continued to be used contrary to the purpose for which the land was leased.
- there was nothing on record to confirm whether the bonafide staff of the hospital/college was accommodated in the building itself.

After non-recovery of rent was pointed out by Audit, the Collector stated that the Sanstha had represented for waiver of the rent received from the ITD, it further stated that the Sanstha was involved in welfare activities and therefore, concessional lease rent had been allowed. However, the reply was silent about the non-execution of the lease deed with the lessee, return of the sub-leased floors to the lessee and on whether accommodation of the building was being provided only to the bonafide staff of hospital/college by the Sanstha.

3.4 Failure to take action against encroachment

The MLR Code, 1966, prescribes that in case encroachment is detected by the authority, the encroacher shall be evicted forthwith and assessed for non-agricultural assessment/land revenue at the prescribed rate and fines. In case the encroachment is regularised on occupancy rights, the encroacher would have to pay penal occupancy price and penal land revenue at the prescribed rates.

3.4.1 Lease of foreshore land

The Government in October 1951 leased land admeasuring 3,525 sq. yard and 168 sq. yard at Colaba, Mumbai for 21 years from December 1949 to Shri

³ calculated at the rate of 6.5 *per cent* per annum on value of the land @ ₹ 150 per sq m.

⁴ The amount to be recovered may be worked out by the Department after obtaining the details of the actual rent received by the Sanstha from ITD during the periods from July 1986 to June 2012. (50 *per cent* of ₹ 4.25 lakh per annum X 26 years).

Shivchandra Poddar for residential purpose. As per Clause 2(f) of the lease deed, if the lessee sold, assigned or parted with the leased land, he was required to intimate the Collector within 21 days of such action. We found that lease periods were extended from time to time for 21 years up to 1991. However, in 1981, the lessee sold the lease rights to Chunnilal Co-operative Housing Society (CCHS) without intimating/approval of the Collector.

During test check of lease records of the CCHS, we noticed that

- In 1982 CCHS had constructed a 16 storey building after obtaining the approval of the building plan from MCGM in 1981. The building plan included an encroached foreshore land of 622.08 sq m which was not leased/allotted to the original lessee or to CCHS. By including this foreshore land in the plan, CCHS obtained a higher FSI for its building and constructed the building accordingly. The approval of the building plan on encroached land by MCGM was irregular as the encroached land did not belong to the lessee.
- To get the above encroached land regularised, CCHS approached (September 1984) the Revenue Minister for allotment of the foreshore land on lease for utilisation as a playground, garden and other recreational purpose for the society. It was stated that the land was in the possession of the original lessee and was now in possession of CCHS.
- The period of lease expired in 1991, however, no action had been taken for renewal/eviction.

After we pointed out the case, the Collector, stated (September 2012) that the matter was reported to the Government between 1989 and 1994 after which a meeting was convened with the Chief Secretary in February 1995. However, no final decision has been taken till date.

3.4.2 Land leased to Mumbai Gymkhana

As per the lease agreement of November 1908, Government leased 37, 044 sq. yards of Azad Maidan land, Mumbai to Mumbai Gymkhana for a period of 99 years.

During the audit of Deputy Director, Sport and Youth Services, Mumbai, we found that:

- Superintendent, City Survey and Land Records (SCSLR) had carried out measurement of the land leased to Mumbai Gymkhana in November 2004. He had found that the Gymkhana had encroached upon 4,268.81 sq m of land adjoining the land leased to it. Though eight years had elapsed after the encroachment was detected by SCSLR, no action for eviction/regularisation as prescribed in the MLR Code has been initiated by the Department.
- The lease expired in December 2006, extension of lease period was not granted and the land continued to be in the unauthorised occupation of Gymkhana.

After this was pointed out, the lessee filed (April 2013) a writ petition in the Bombay High Court challenging the contention of the Department that there was encroachment of the land and had prayed for ordering/directing the Department to initiate a joint survey strictly in accordance with the provisions of the MLR Code. Further progress in this case has not been intimated.

3.5 Non-recovery of lease rent

3.5.1 Lease of land to Sportsfield Co-operative Housing Society

Government in R&FD decided in January 1983 to allot plot No. 9A under CS No.734 at Worli to Sportsfield Co-operative Housing Society (SCHS), under certain terms and conditions. The Society took possession of the plot (1,674 sq m) on 9 August 1984. Government order was passed in July 1997, granting the land on lease to the SCHS for 99 years as per the Government policy for allotment of land dated 12 May 1983. The yearly lease rent was fixed at eight *per cent* of 50 *per cent* of market value as of 1 February 1976 (i.e. ₹ 900 per sq m). Interest at the rate of eight *per cent* per annum was to be recovered on the unpaid amount.

We noticed a number of irregularities while examining the lease record of the society in the Collectorate office, as follows:

- As per the Collectorate's official record, area of the leased plot was 1,674 sq m. However, in 1984 as per joint survey conducted by Public Works Department, lessee and the Collectorate, the area of the leased plot was found to be 1,716.85 sq m. The excess area of 42.85 sq m was neither resumed nor included in the lease order. The lease rent of ₹ 0.86 lakh had also not been recovered.
- In April 1985, the Department amalgamated an adjacent plot admeasuring 87.84 sq m for generation of additional FSI of the plot. A flat of approximately 2,000 sq. ft. was built and leased out. However, the lease rent of ₹ 1.77 lakh for the additional plot area provided had not been demanded.
- In April 1989, the lease rights of a flat were sold by one member to another member of the SCHS with the approval of the Government subject to payment of premium ₹ 3.02 lakh to the Government. The amount has not been recovered so far though 23 years have elapsed.
- As per Government Resolution of June 1988 the lease rent was payable at commercial rate for commencement of commercial activities in a housing society. The commercial lease rent was 15 *per cent* of the market value of the leased area. It was noticed that an area of 1,959 sq ft was sub-leased to the Punjab National Bank. The lease rent of ₹ 55.39 lakh had not been recovered from SCHS.

After we pointed out the case, Collector, Mumbai City accepted (September 2012) the facts and stated that necessary action to recover the dues as arrears of land revenue would be carried out.

3.5.2 Lease of land to Foreshore Co-operative Housing Society

GR dated 14 June 1988 stipulates that 15 *per cent* of the demised premises could be utilised for commercial purposes, in which case additional lease rent at the rate prescribed in the said GR is payable by the lessee to the Government.

We noticed in October 1989 that Foreshore Co-operative Housing Society had leased 596.82 sq m of the constructed premises to Bank of Baroda for monthly lease rent of ₹ 1.60 lakh for 10 years with a clause for further renewal. In June 1995 and December 2003, the Collector sought order from the Government for recovery of additional lease rent of ₹ 3.36 crore @ ₹ 3.56 lakh per annum from October 1989 to December 2003.

The Collector stated (September 2012) that order from the Government was awaited. The reply of the Collector was not correct as demand for additional lease rent should have been raised as provided in the Government Resolution. There was no need to seek any order from the Government in this regard.