

## CHAPTER IV

### COLLECTOR, MUMBAI SUBURBAN DISTRICT

This chapter contains the results of audit of the lands given on lease in Mumbai Suburban District. There are 295 lease cases out of which 74 cases were selected for detailed scrutiny. Results of analysis of the selected cases are mentioned below:

Sr. No.	Category	No. of observations
1	Non-fulfilment of conditions for grant of lease	1
2	Breach of lease conditions due to change in purpose, transfer of leasehold rights	46
3	Non-recovery of lease rent	3
4	Details of recovery of lease rent not available	37
5	Non-renewal of expired leases	37
	<b>Total</b>	<b>124</b>

A few observations are discussed in the following paragraphs:

#### **4.1 Grant of land on lease despite non-fulfilment of mandatory conditions**

As per GR of February 1983, Government land can be allotted for educational purposes at concessional rate subject to production of project proposal, information regarding financial status of the lessee, etc..

The State Government in September 1994 allotted 2,880 sq m of land for secondary school building on occupancy basis and 5,236 sq m of land for play ground attached to the school on lease basis to Samajonnati Shikshan Sanstha, Borivali, Mumbai. The period of lease was 15 years from February 1995.

We noticed that the Collector while forwarding the application of the lessee had informed the Government (August 1991) that the applicant institution had not submitted the mandatory project documents of the proposed school as well as the financial status of the institution. However, the Government allotted the land to the said institution. The Sanstha did not construct the school but constructed only three classrooms and an office. The lease period of the playground had expired in 2010 which had neither been renewed nor resumed till date. The possibility of the land having been used for some other purpose cannot be ruled out.

After we pointed out the case (July 2012), the Department accepted that only three classrooms and an office were constructed, however, the reply was silent regarding resumption of land for breach of condition.

#### **4.2 Non-resumption of land on lease despite repeated violations/breaches**

**4.2.1** The State Government in March 1977 leased out land admeasuring 91,057.6 sq m at Mankhurd to M/s Bombay Soap Factory, for industrial purpose i.e. for setting up a synthetic detergent plant for a lease period of 99

years at an annual rent of ₹ 1,91,909. The lessee was to utilise the land for the purpose for which it was granted within a period of three years from the date of taking over possession of land.

We noticed that the lessee violated the terms and conditions of lease from time to time. However, the land has not been resumed till date. The facts of the case are as follows:-

- The lessee has not utilised the land till date. The Collector issued a show cause notice to lessee in December 2004 and issued an order for resumption of land in January 2005 after a lapse of 28 years.
- The lessee filed an appeal before the Additional Commissioner, Konkan Division who quashed the resumption order and ordered (August 2008) a fresh enquiry. On fresh enquiry the Collector divided (February 2009) the land amongst the partners.
- In April 2010 the lessees (partners) entered into an agreement for the development of the said land with D.B. HI-Sky Construction Private Limited without the permission of the Government for which consideration of ₹ 53.56 crore was received by the lessees (partners).
- On 1 July 2011 and 26 July 2011 the Collector issued show cause notices for breach. As the lessees did not present themselves for the hearing in August 2011, the Collector issued notice to the lessees intimating that in case the lessees would not attend, action would be taken unilaterally in the case. The land has not been resumed till date.
- Out of ₹ 67.17 lakh lease rent payable from 1977 to 2012, lease rent of ₹ 19.81 lakh was outstanding.

Thus, through repeated violations the lessees gained financially at the cost of the state exchequer due to inaction on the part of the Government to resume the land in time.

**4.2.2** The State Government in November 1966 allotted 952.75 sq m of land at Vile Parle, Taluka Andheri, Mumbai, for industrial purpose on lease basis to M/s Mohamad Ibrahim and Sons for a period of 99 years. As per Collector's orders in July 2003, the rent was fixed at ₹ 71,316.60 per annum. As per scrutiny sheet of the Talathi, the lessee had paid rent till date.

A perusal of lease records showed that

- The land was reserved for service industry (commercial purposes) but was incorrectly allotted (1966) for industrial purpose. The mistake came to the notice of the Department in April 1972 and land was resumed by the Government (April 1972).
- It was again allotted to the same lessee in August 1983 for service industry purpose. It was stated that the land continued to be in his possession since 1972. The rate of annual lease rent was fixed on the basis of market value of the land at the rate of ₹ 1,150 per sq m against which he preferred an appeal before the High Court, which fixed in 1993 the annual lease rent as ₹ 71,316.60 with effect from 1983.
- The lessee did not start any service industry and sought permission for redevelopment of the land from the Government in 2003 which was

granted subject to the condition that service industry would be put up by July 2005 i.e. within a period of two years.

- Thereafter, lessee regularly sought extension in July 2007, which were granted by the Government, the latest being up to January 2014.

The facts indicate that the lessee was allowed repeated extensions for a period of 45 years though there were enough grounds to resume the land.

**4.2.3** The State Government in May 1985 sanctioned 15,461.23 sq m of land at Kanjur, Mumbai, for industrial purpose on lease basis to M/s Jolly Anil India Ltd. for a period of 30 years with an annual lease rent of ₹ 16,104. A lease agreement was executed in October 1999.

We noticed that the Collector issued notice to the lessee in February 2011 for breach of terms and conditions of the lease agreement based on the inspection report of Tahsildar, Kurla wherein it was noticed that only a shed had been constructed on the land and the remaining land was lying idle for a period of more than 27 years. Further action taken in the matter was not available on record.

After we pointed out the case, the Collector, stated (October 2012) that as the leased land fell under the Coastal Regulatory Zone (CRZ), the lessee could not utilise the land. However, action taken to resume the land was not intimated.

**4.2.4** The State Government in September 1977 and March 1979 allotted 4,839.503 sq m land for the construction of secondary school building and 1,146.60 sq m land for play ground at Chembur, Mumbai, on lease basis to Janata Seva Mandal (Trust). The lease periods for secondary school building and play ground were for a period of 30 years and 15 years and their annual lease rents were ₹ 10,091.44 and ₹ 1,028.10, respectively. It was stipulated in the lease conditions that the land or interest therein shall not be transferred except with the prior sanction of the Government and the land would be used within a period of two years from the date of possession.

The Trust violated the terms and conditions of the lease deed as detailed below:

- **Construction of school building** : The Trust was required to construct the school building within a period of two years i.e. by 1980. However, the school building had not been constructed till 1989. In view of this, the Collector invited applications from other societies which may qualify to take this land on lease through an advertisement in the news paper and in response received 24 applications and forwarded the proposal/application for reallotment of land to the Government in December 1989. The Government rejected the applications/proposal and extended the period of construction by two more years in favour of the lessee i.e. upto 31 July 1991. The reason for not considering the proposal of the Collector was not on record.
- **Surrender of rights** : After a lapse of seven years, the lessee in 1988 informed the collectorate that due to financial constraints he could not construct the building and sought approval for amalgamation of his trust with an another society. The Collector did not accept the amalgamation on the grounds that the two different entities were governed by the different Acts (i.e. Bombay Public Trust Act, 1950

and Societies Registration Act, 1860), and had different registration numbers. Despite this, the lessee allowed the society to construct and run Primary School, High School and Junior College on the land leased to him. The terms and the conditions under which the amalgamation was done, date of construction of the buildings by the Society were not found on record.

- **Incorrect regularisation by levy of unearned income** : There is no provision in the MLR code for regularisation of the irregularity committed by the lessee in transfer of land to the society. However, the Collector levied in August 2011 ₹ 7.80 crore as unearned income instead of resuming the land. Aggrieved by this, the lessee filed an appeal (February 2012) before the Revenue Minister who granted interim stay order in March 2012. The matter is still pending (November 2012).

The above facts reveal that despite gross violation of the lease conditions, the lessee was allowed to hold the land.

In the exit conference the Government accepted the facts.

**4.2.5** Government (July 1978) granted land admeasuring 16,722.54 sq m at Bandra, Taluka Andheri, Mumbai to Guru Nanak Quincentenary Memorial Hospital Trust for a lease period of 99 years on an annual rent of ₹ one. The land was to be used for construction of hospital cum medical college.

We noticed from the records that no medical college was constructed on the plot. Instead only a hospital-cum-research centre was functioning on it. For breach, notices were issued to the Trust in November 2006 and December 2006 by the Collectorate. However, no further action for resumption of the land allotted for medical college was initiated despite a lapse of 34 years.

**4.2.6** The State Government (November 1966) leased land admeasuring 984.76 sq m (1,177.77 sq yards) to M/s Gannon Dunkerly and Co. Ltd. at Santacruz, Mumbai, for industrial purpose for a period of 99 years. The lessee failed to develop and use the land and the Government resumed the land in February 1990.

However, the Government in May 1992, again leased out the resumed land to M/s Gannon Dunkerly and Co Ltd. for a lease period of 30 years for service industry purpose. An agreement was executed with the lessee in July 1993. The lease condition stipulated that lessee could not transfer the land/commercial building or interest therein without prior approval of the Government.

The lease records revealed that:

- in 1994, the lessee assigned the development rights of the land without prior permission of the Government to M/s Riaz Trading Ltd.
- The Collector permitted the lessee to change the use of land to commercial purpose in June 2002 with directions to utilise the land within a period of two years from the date of taking possession though by this time the land had already been transferred to M/s Riaz Trading Ltd.

- M/s Riaz Trading Ltd. merged with Reliance Properties Management (RPM) Services Pvt. Ltd. and in turn had transferred the development right to RPM without prior permission of the Government in December 2009.
- There was nothing on record to indicate that the property had so far been developed.
- Notwithstanding the fact of non-applicability of the GR of November 1957 to leased lands, the Collector regularised (November 2009) the breach by levying unearned income of ₹ 91.42 lakh.

Even the unearned income was not levied correctly. The Department should have determined the unearned income based on the rate of land (₹ 19,600) for the year 2002 i.e. the year in which the Collector permitted the change of use of land and not on the market rate as applicable in 1994. This resulted in the short levy of unearned income of ₹ 53.34 lakh.

Thus, it would be seen from the above that the rights of the land were transferred from one party to another party without any development.

As there was breach, the land was required to be resumed under Section 53 of the MLR Code.

**4.2.7** The Government in January 1983 allotted 810 sq m of land on lease (Survey No. 14) for construction of gymnasium and conducting sports and cultural activities on lease basis to Shivrushti Sport and Cultural Centre (SSCC) at Chembur, Mumbai. The lease was for a period of 30 years with a condition that the land be used within a period of two years from the date of grant.

We noticed that

- The lessee did not construct the sports complex. A proposal for resumption of land and also recovery of arrears of lease rent, interest and outstanding rent for commercial use aggregating ₹ 49.57 lakh was submitted to the Government in May 2008.
- Till date no decision has been taken by the Government. In the mean time, the lessee entered into a development agreement with a developer in May 2010 for a consideration of ₹ 1.87 crore without the consent of the Collector.
- This was communicated to the Collector in March 2011. The Collector, instead of taking action under Section 53 to resume the land, directed the lessee in February 2012 to pay outstanding rent and interest of ₹ 59.78 lakh to the Government within a period of 15 days.

The above facts indicate that for the breach, the land was required to be resumed under Section 53 of the MLR Code which the Department has failed to do.

**4.2.8** The Government in May 2002 allotted 5,572 sq m of land for construction of sports complex and play ground on lease basis to Dadasaheb Gaikwad Sanskrutik Kendra at Ambivali, Mumbai. The lease was for 15 years. The lessee was to construct a sports complex within a period of three years.

We noticed that the lessee had not completed construction of the sports complex. A notice for breach of condition was issued by the Collector in November 2011.

The Collector stated (October 2012) that action against lessee would be intimated to audit.

**4.2.9** The Government in November 1941 leased out land admeasuring 1,882.89 sq m at Juhu, Mumbai to Maharaja of Jodhpur, for the development of a garden for a lease period of 50 years. This leased land was a narrow strip of land between the sea and the private land belonging to the Maharaja. The lease expired in 1992.

We noticed that

- the lessee had sold the leased land along with the adjacent owned land to M/s Juhu Beach Resort Pvt. Ltd. in September 1984.
- Instead of resuming the land under Section 53 of the MLR Code, the Collector, in June 2008, regularised the unauthorised transaction by charging unearned income of ₹ 9.53 lakh.

**4.2.10** The Government (October 1967) leased land admeasuring 505.85 sq m (605 sq. yards), to Shri Madhusudan Shastri (Upadhyaya) at Bandra for a *mandir* and for residential purpose at an annual lease rent of ₹ 1,210 for a lease period of 30 years. As per the request of the lessee, the Government (November 1970) allowed him to surrender 338.63 sq m (405 sq. yards) of the land and allowed him to retain the remaining area of 167.22 sq m (200 sq. yards).

We noticed that

- As the lessee had surrendered 338.63 sq m in November 1970, the land in possession should have been only 167.22 sq m. But the property card of the incumbent showed a land admeasuring 563.4 sq m (673.8 sq. yards) in possession as of March 2008.
- The *Tahsildar*, Andheri reported to the Collector (August 2009) that the legal heirs of the lessee in March 2009 had sold the land to M/s Dominant Developers Pvt. Ltd. for a consideration of ₹ 2.01 crore which included the surrendered area.
- The Department issued a demand notice for ₹ 1.51 crore as unearned income which has not been recovered till date. Since the land had been surrendered the entire amount received by the lessee should have been demanded.

The Collector, in July 2011, issued an order to the *Tahsildar*, Andheri to resume the land and take punitive action against the lessee as well as purchaser and also instructed that the name of Government be entered in the property card. However, no action has been taken so far (March 2013).

**4.2.11** 48 plots situated at Mount Mary, Band Stand, Bandra, Mumbai were leased to private parties/co-operative societies from 1901 onwards for 50 years by the Council of State. The term was extended for a period of 30 years from 1 January 1951 to 31 December 1980 and further renewed for a period of 10 years from 1 January 1981 to 31 December 1990. There was nothing on record to indicate whether the lease was renewed beyond 1990.

As per the general terms and conditions of lease agreement, the lessees were prohibited from transferring or assigning the allotted plot or part thereof without the consent in writing of Collector and, the lessee could not at any time construct a building covering or projecting more than the area prescribed for the said plot of land.

- In November 2006, the Collector, MSD, Mumbai informed the Principal Secretary (Revenue) that in 22 cases (**Appendix XI**) the lessees transferred the allotted plot without the consent of the Collector and covered by way of construction, more area than was allowed as per the agreement.
- In nine cases (**Appendix XI**) the lessee covered/projected more than an area prescribed for the said plot of land.

After a lapse of 16 months (April 2008) the Collector sought guidance from the Government regarding action to be taken in the cases.

The Government, after a lapse of three years, in August 2011 directed the Collector to submit a case-wise proposal giving the nature of breach and penal action proposed for regularisation.

**4.2.12** In May 1985 R&FD sanctioned 39,690.85 sq m of land at Kanjur, Mumbai, to M/s Jolly Boards Ltd. for industrial purpose on lease basis for a period of 30 years at an annual lease rent of ₹ 3,300. As per the Development Plan of MCGM, the land was reserved for a district commercial centre.

The Government granted approval (June 2010) to the lessee for change of use of land from industrial to partially commercial, industrial and residential purpose with a condition that the land was to be developed without third party interest and the draft agreement between lessee and developers had to be submitted for approval of the Collector to ensure the interest of the Government.

Detailed scrutiny of records revealed that the lessee had entered into a development agreement in December 2005 itself (i.e. five years before Government granted approval for change of use) without prior permission of the Collector for construction of an IT park and for carrying out residential and commercial activities wherein the lessee and the Developer agreed to share the constructed area in proportion of 47.5 and 52.5 *per cent*, respectively.

As a result, a third party interest was generated and an IT Park was also constructed on 2,480 sq m of land without approval of the Collector. The Collector should have resumed the land for breach of condition.

We brought the matter to the notice of the Collector, MSD, in July 2012; reply is awaited (March 2013).

**4.2.13** An individual informed (date not available) the Collector that an area of five acre and 23 *gunthas* at Chembur, Taluka Kurla, Mumbai was granted to his forefathers on “Eksali lease” in 1949 for agricultural purpose and requested Collector, MSD, Mumbai to grant the land on lease for a period of 99 years. As per record, lease rent was paid by the lessee from 1949 to 1962. A proposal was submitted by the Collector in October 2002 and March 2009 to the Government. Meanwhile, the applicant also made an application before

the Revenue Minister in November 2008. The Revenue Minister decided (June 2009) the case in favour of the applicant and directed the Collector to lease the land for agricultural purpose with retrospective effect from February 1962 by charging lease rent and premium and renew the lease period for 30 years with effect from January 2009. A lease agreement was executed between the Government and the lessee in July 2009. Condition no. (vi) of the registered lease agreement envisaged that the lessee would not develop the said land without the prior permission of the Collector. Condition (xi) stipulated resumption of the land in case of breach of any of the conditions of the said agreement. The land measuring 18,722.9 sq m was handed over to the lessee in February 2010.

We noticed that immediately after getting possession of the land in February 2010, the lessee entered into a development agreement with M/s Supreme Constructions and Developers in June 2010 without the permission of the Collector. This reflects the intention of the lessee to make a financial gain from the land and not utilise it for agricultural purposes.

A notice for breach of lease condition was issued by the Collector in February 2011. The Collector referred (March 2011) the matter to the Government for their decision. Despite lapse of one year no action had been taken.

**4.2.14** The Government (May 1970) passed a resolution granting 80 acres of land which was already in their possession since 1957 to M/s Jolly Brothers Pvt. Ltd. on lease basis for a period of 99 years from 1970 for industrial purpose. As the lessee had sub-leased 14 acres of land out of 80 acres to four sister concerns, the Government issued a fresh resolution in February 1984 regularising the area of 66 acres in favour of the lessee M/s Jolly Brothers Pvt. Ltd. for 99 years. It was also decided to execute separate lease agreements with the four sub-lessees for the remaining area of 14 acres for a period of 30 years.

We noticed that the Government (June 2010), based on the request made by the lessee, accorded sanction for change of use, from industrial to other purpose<sup>1</sup> by charging five *per cent* premium i.e. ₹ 32.74 crore in respect of 66 acres of land in favour of M/s Jolly Brothers Pvt. Ltd, even though no such provision exists in the MLR Code. In the same order, permission to raise loan for development of land as well as to sell, transfer the constructed residential / commercial property was also given.

It is pertinent to mention here that under similar circumstances in the case of M/s Vidhyavihar Containers (M/s Nathani Steel) the Government (2005) had ordered the lessee to pay fifty *per cent* provisional unearned income. The same treatment in the instant case, would have fetched a revenue of ₹ 199.14 crore to the Government.

In the exit conference it was stated by the Department that the land was resumed by the Government. However, detailed reply from the Department/Government has not been received (March 2013).

**4.2.15** Government in April 1974 allotted 10,206 sq m of land at Kurla-Kirol, Mumbai, for industrial purpose on lease basis to M/s Sahani Kirkwood Pvt.

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<sup>1</sup> commercial, industrial and residential.

Ltd. for 90 years and fixed an annual lease rent of ₹ 15,934 in September 1974.

We noticed that

- The lessee had not utilised the land upto 2006 i.e., even after a lapse of 32 years for the purpose for which it was allotted.
- The lessee in 2006 cited encroachment in the approach road to the plot as the reason for non-utilisation. However, it was noticed from the records that encroachment took place in the year 1984-85.
- Notwithstanding the non-applicability of the GR of November 1957 to leased lands, it was noticed in 2006, that the Collector granted permission for change of use of land from industrial to residential and commercial, by levying unearned income of ₹ 2.99 crore on land area of 8,443.79 sq m, the area as stated in the property card. The Revenue Minister in a suo motu review order issued on 26 October 2007 under Section 258 of the MLR Code directed the Collector to rectify the area in lessee's possession as 10,206 sq m in the property card instead of 8,443.79 sq m. Thus, the adjoining piece of land was also granted to the same lessee. However, the Collector did not revise the unearned income accordingly. This resulted in short levy of unearned income of ₹ 61.89 lakh.

It is not clear as to how the lessee had found the very land with encroachment as fit enough for residential and commercial purpose and not for industrial use. It is also not clear as to how this was accepted by the Department and change in land use allowed instead of resumption of the land.

**4.2.16** Land admeasuring 42 acres and 15 *gunthas* (1,71,485.54 sq m) CTS No. 5 and 8 of village Malvani, Taluka Borivali, Mumbai was granted on lease to an individual in 1936 for a period of 999 years. As per sanctions of lease, half of the land was to be reclaimed within first 10 years and the remaining land in another 10 years i.e. by 1956. Among other conditions, whole or part of land was not to be leased till it was reclaimed, lessee could not assign, bequeath, alienate the land without prior sanction from the Collector, the lessee was to pay concessional lease rent fixed for 30 years and thereafter pay rent as per the prevailing rate and in case of breach of conditions the lessor could re-enter the land.

During scrutiny of the individual case file, we noticed that in October 1974, the lessee had transferred the land to M/s Baf-Hira Builder Pvt. Ltd. (BBPL) for a consideration of ₹ 2.38 lakh. The builder also started construction of buildings and applied to the Sub Divisional Officer for non-agricultural use. On 20 January 1976, the Collector requested the Municipal Commissioner for stopping the construction (obviously indicating that the go ahead for the construction work and approval was granted by the municipal authority, as a result of which work was stopped). The builder filed a writ petition before the High Court against the order of stoppage of work. However, a compromise was reached where by the letter dated 20 January 1976 was withdrawn and the court ordered that action in accordance with the MLR code was to be taken. Accordingly, a notice was served upon the builder for breach of condition on 15 April 1981 and proceedings were initiated but were not taken to logical

conclusion. Twenty years later, in September 2001 another notice was served upon the builder. In April 2002, the Collector came to know that the builder had transferred 34,990 sq m of the land in his possession to Daryanani Construction (DC) for a consideration of ₹ 44.75 lakh. The Collector served notice on BBPL for recovery of unearned income of ₹ 35.35 lakh on the consideration received by him. This order was challenged by BBPL in the Mumbai High Court who granted interim relief to the builder vide its orders of December 2002 and April 2003 and dissuaded the Department from taking any coercive steps against the petitioner. Final decision in the matter is pending.

As per the order passed by the Collector in October 2002 the following breach of conditions were committed by the original lessee as well as the builder.

- As per the *panchnama* and report of the Tahsildar only six acres out of the total land given on lease was reclaimed till 1976 and three of which was only utilised for agricultural activity, in fact the reclamation of land and agricultural activity should have started from 1956 itself.
- The land was illegally transferred by a legal heir of the lessee in October 1974 to BBPL without obtaining prior permission from the Collector.
- Though the lessee was required to pay lease rent at the prescribed rates from 1966, no lease rent is being paid till date (October 2002).
- Out of the total land given on lease, 22 acres were found to be barren and in the remaining 20 acres building were constructed, in respect of 22 acres of barren land, direction was issued to the Tahsildar, Borivali to resume the land.
- Utilisation of an agricultural land for non-agricultural purpose was contrary to the provisions of Section 63 of the Bombay Tenants and Agricultural Land Act (BTAL).
- The names of the builders, BBPL and DC were entered in the 7/12 extract but the name of DC was deleted as the transfer of land was illegal.

From the above facts it is clear that there were several instances of breach of conditions right from 1956 itself, however, except for issuing some routine notices effective action for resumption of land was not taken by the Collectorate allowing the lessee as well as builders to make use of the land as per their own will alongwith third party interest created on the property resulting in litigation. The Government remained a spectator to the irregularities committed on the leased property Thus ineffective monitoring of land given on lease resulted in interest of the Government not being safeguarded.

### **4.3 Encroachment on land**

**4.3.1** The Government (April 1952), granted land admeasuring 1,86,028 sq m at Juhu, Koliwada, Mumbai to Juhutara Koli Samaj for the purpose of drying nets, curing fish, etc. on lease basis for a period of 30 years with an annual lease rent of ₹ one. From April 1982, the Government assigned the

land to the Koli Samaj for promotion of fishing activities vide memorandum of December 1985.

We noticed that the Tahsildar, Andheri reported to the Collector in August 2011 that the above leased land was under encroachment. The date from which it was under encroachment was not available, however, it was stated by the Tahsildar that the land was under encroachment prior to December 2010. It was further stated that most of the land continued to be occupied by unauthorised garages, shops and hutments. The Collector stated that failure to erect a compound wall by the Samaj resulted in the encroachment. However, the records revealed that Samaj had lodged several complaints from time to time against the encroachers with the district and police authorities.

Thus, the land granted 60 years back for fulfilling the social objective of facilitating the fishing activities of the Koli Samaj remained largely unfulfilled due to large scale encroachments, lack of monitoring and apathy towards the complaints of the Samaj.

After this was pointed out, the Collector stated (October 2012) that a proposal to lease the land to the Koli Samaj had been forwarded to the Government.

**4.3.2** The Collector (June 1959) granted 418.06 sq m of land at Danda Khar, Taluka Andheri, Mumbai, on lease basis for a period of seven years to a lessee for being utilised as a Dhobi Ghat by the lessee and by others at an annual lease rent of ₹ 100. Details of the lease agreement were not on record.

We noticed that on instructions of the Additional Collector (July 1987), the Tahsildar, Andheri in August 1993, *i.e.* five years later, informed that the plot had been encroached upon and that slums had sprung up on the land. There was nothing on records to indicate that the encroachment had been removed.

#### **4.4.1 Non-revision of premium for utilisation of TDR**

Transferable Development Rights (TDR) may be made available to the owner of a plot of a land which is reserved for a public purpose in the development plan in the form of Floor Space Index (FSI) subject to certain conditions. Such award will entitle the owner of the land to FSI in the form of a Development Rights Certificate (DRC) which he may either use himself or transfer to any other person.

The Government (June 1969) granted land admeasuring 4,515 sq m to M/s Maharashtra Theatre Pvt. Ltd. at Bandra, Mumbai on lease basis for commercial purpose for a period of 99 years.

The Collector issued (April 2004) after approval from the R&FD, an order permitting the use of TDR by charging provisional premium of ₹ 42,293 *i.e.*, @ 3 *per cent* of the market value of the land (₹ 327 per sq m) applicable for the year 1969, with a condition that the lessee would pay the difference between the provisional premium and final premium determined on the basis of a fresh policy. In September 2010, the Government framed the revised policy for charging premium at the rate of 2.5 to 5 *per cent* (depending on the utilisation of TDR) to be charged on the market value of land at the time of sanction of TDR. However, we noticed that the Department had not determined the final premium to be paid by the lessee in accordance with the

revised policy of the Government till date. As per the Ready Reckoner for the year 2004, the rate of land was ₹ 21,500 per sq m and the final premium works out to ₹ 48.53 lakh. Thus, premium amounting to ₹ 48.11 lakh remained to be recovered from the lessee.

After we pointed out the case, the Collector, MSD, Mumbai stated that notice would be issued to the lessee for the recovery of the premium of ₹ 48.11 lakh.

**The Government may direct the Department to review cases wherein provisional premium had been levied and take necessary action to levy final premium and recover the difference.**

In the exit conference the Additional Chief Secretary accepted the recommendation.

#### **4.4.2 Short levy of premium (unearned income)**

(i) One Shri P.Y. Pawar informed the Collector in 1991 that land admeasuring 40,468.56 sq m (ten acres) at Malvani, Taluka Borivali was granted to his forefathers for a period of 999 years on lease for agricultural purpose. In support of his claim he produced a photocopy of letter dated 19 December 1936 from the Pranth Officer (currently Sub Divisional Officer) and requested grant of development permission on the said land. The contention of the individual was rejected by the Collector. The individual took up the matter before the Revenue Minister in August 1992 who accepted the contention of the individual in February 1993. Accordingly, the Collector granted development permission to the lessee in February 2004.

An examination of the records revealed as under:

- A lease agreement was executed between the lessee and the Collector in June 2004 and the Collector levied an unearned income of ₹ 7.31 crore instead of ₹ 8.09 crore for change of use of land. The unearned income was determined short due to allowing deductions on account of expenses towards the cost of land yet to be developed and security cost for protecting the land. These deductions from the market value of land were not permissible as per the GR of September 1983.

After we pointed out the case the Collector, MSD, Mumbai stated (October 2012) that the computation was correct. The contention of the Collector is not acceptable as it is not as per the GR of September 1983 as mentioned above.

(ii) The lessee immediately on receipt of permission in February 2004 from the Collector for development of the land, disclosed on 8 April 2004 that an additional area of 6,070.28 sq m (one acre 20 *gunthas*) which was in his possession may also be granted on lease basis on the same terms and conditions on which the earlier land had been given. The Collector, in May 2006, transferred the additional land to the lessee by recovering an unearned income of ₹ 1.35 crore.

- The land claimed by the lessee to be in his possession was not in his property card and a separate CTS<sup>2</sup> number was generated on the orders of Collector in May 2006. Therefore, there is a reason to believe that

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<sup>2</sup> Chain and Tringulation Survey.

the lessee was in unauthorised possession of this land and had not brought the fact of possession of this land to the notice of the Collector earlier. Under these circumstances the land should be taken back by the Government under the MLR code.

- The unearned income recoverable from the lessee was ₹ 2.92 crore as per the latest Ready Reckoner rate for 2005. This resulted in short levy of unearned income of ₹ 1.57 crore. The value was wrongly computed by incorrect application of rates of 1998 instead of 2005.

The reply from the Department is awaited (March 2013).

(iii) The lessee mentioned above entered into an agreement in June 2004 with M/s Ami Corporation for development of land. The developer requested the Collector for permission to use TDR of 22,445.5 sq m, 3,784.34 sq m and 3,056.60 sq m in November 2004, June 2005 and June 2006 respectively. Permission was granted by the Collector in November 2004, July 2005 and June 2006 by charging premium of ₹ 15.71 lakh, ₹ 2.65 lakh and ₹ 2.14 lakh respectively as per the market value of the land of 1998 instead of the market value as prevailing in 2004, 2005 and 2006. The short levy of premium works out to ₹ 31.87 lakh as shown in the following table:

Year	Quantum of TDR in sq m	Market rate/sq m as per R.R. ₹	Market rate/sq m for the year 1998 ₹	Amount of premium to be charged (Col.2 x 3) (₹ in lakh)	Amount of premium charged as per rate of 1998 (Col. 2 x 4) (₹ in lakh)	Short amount of premium charged (Col. 5-6) (₹ in lakh)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2004	22,445.10	7,000	2,800	39.28	15.71	23.57
2005	3,784.38	7,650	2,800	7.24	2.65	4.59
2006	3,056.60	7,650 <sup>3</sup>	2,800	5.85	2.14	3.71
<b>Total</b>				<b>52.37</b>	<b>20.50</b>	<b>31.87</b>

After we pointed out the case, the Collector, MSD, Mumbai stated (October 2012) that the Revenue Minister in his order dated November 2003 had directed that the market value of 1998 be taken for calculation and the same had, therefore, been adopted. However, this is not correct as the market values as prevailing in 2004-06 should have been adopted.

In the exit conference the Department stated that a reply would be furnished after examining the case in detail.

#### 4.4.3 Recovery of licence fee for functions organised in Gymkhana-regarding

The Government granted permission to various Gymkhanas & Sports Institutions to use halls and open spaces for marriage, reception functions, exhibition, etc., on payment of the applicable licence fee. Prior permission of the Collector was required to be taken in organisation of every such non-sports activity. Licence fee was required to be charged at double the rate if any such

<sup>3</sup> Rate of 2005.

non-sports activity was conducted without the prior permission of the Collector.

The Government (August 1975) allotted land admeasuring 12,180.7 sq m of land at village Chembur, Taluka Kurla, Mumbai, on lease basis to Chembur Gymkhana for 30 years and fixed an annual lease rent of ₹ 201 and revised it in February 2005 to ₹ 2,98,501.

During test check of the records, we noticed that the Chembur Gymkhana had been allowing the use of their grounds for marriage/social functions for rent from 1994 onwards, without the permission of the Collector.

The residents living nearby filed a petition against the sound pollution created at the Gymkhana in the High Court. In response to the petition, the High Court directed (January 1999) Chembur Gymkhana that the club could not hold more than 36 functions in a year and not more than six functions in a month during the marriage season.

A notice was issued by the Collector in December 2007 for not taking prior permission of the Collector for having held these functions and non-payment of licence fee in advance. However, no licence fee has been recovered till date (October 2012).

No mechanism was found available to monitor these activities in respect of the gymkhanas and clubs as no records/registers were being maintained by the Department to monitor such social functions organised by the lessee and details of the amount paid in advance.

After we pointed out the case, the Collector replied that the information regarding the number of such activities conducted by the lessee had been sought for and on receipt of the same, further action would be taken.

#### **4.4.4 Non-fixation of lease rent**

The Government in September 1999 allotted a land admeasuring 1,720 sq m at Amboli, Taluka Andheri, Mumbai to Mukti Foundation on a provisional lease rent of ₹ 11,296.27 per annum for a lease period of 30 years. The leased property was to be used for the purpose of construction of a cultural centre. The final lease rent was to be fixed based on the valuation by the Town Planning and Valuation Department.

During scrutiny of records, we noticed that the lessee was paying lease rent at provisional rate till date as the Department had not fixed the final lease rent till date.

After we brought the facts to the notice of the Department, the Collector, MSD, Mumbai stated (October 2012) that the final rent would be fixed after receipt of the same from the Town Planning and Valuation Department. The fact remains that no action has been taken for fixing the final lease rent for the last 13 years.