

The State of the Estate

[Study of and suggestions for enhancing Estate Management in KDS]

One of the important duties of Vigilance Department is to proactively study areas of organizational functioning that are vulnerable to abuse or leakage and suggest remedial measures to remove the same. In the context of Ports, discussions with CVC, Ministry & Port Officials have revealed one such area -“Management of Estate”- to be deserving particular attention, especially by those Ports who manage extensive areas of land.

Keeping the above in view when Vigilance department of KoPT first started studying this area in 2017, it was soon realized that the area was not only important from vigilance point of view but also from a management standpoints in case it could be a great source of revenue-regeneration for a cash-strapped port like KoPT. After all, the two Estate Divisions of KoPT (in KDS and HDC) having just 1% of Port's Manpower earned 13%of KoPT's total Operational Income in 2016-17 amounting to Rs 253.68 Crore. Another important feature of this stream of revenue is its lack of dependence on proportionate capital expenditure making it an ideal focus-segment for any one aiming to turn around KoPT's financial fortune. The fact that KoPT manages a total of nearly 11000 Acres of estate including huge tracts of land in prime localities of Kolkata and the Industrial Town of Haldia has other important cross-sectoral and socio-economic implications. The case studies narrated below aim to illustrate certain aspects of Estate Management in KDS which generated 23 % of KDS's total estate earning last year. Incidentally, this earning exceeded income earned from of all vessel related charges.

1st Case Study: In spite of obvious significance of estate functions, the first system study by Vigilance came across glaring vulnerabilities that have serious legal, administrative and financial implications for KoPT. For instance under a system of land allotment known as “monthly licensing” prevalent for decades many short-term licenses granted in prime localities of Kolkata had assumed the characteristics of an almost “perpetual contract”. The reason was traced to an utter lack of site-monitoring and consequent non-enforcement of a peculiar clause within the agreement that puts such short-term licenses into an auto-extension mode enabling such licensees enjoy prime land for years together escaping the competitive bidding mechanism prescribed for getting a long-term lease.

Further it is noticed in several cases, short term monthly licenses (typically of 11 month duration) - both within and outside custom bonded area – are continued for years by a method of granting repeated extension and terming each extensions as a “fresh license”. This practice is in contravention to both the letter and spirit of provision 10.1 & 11.1 of Land Policy Guideline 2014 issued by Ministry. An earlier query made by Vigilance on the nature of such licensing-made 6 month ago (Vig/Sys.Impv/2016/517 dated 18.5.2017) still awaits reply from concerned Port authorities.

A recent Vigilance Investigation shows how, in many cases, even basic information about the license/lease and its holder may not be readily available on Estate records. In this case Estate Division was found to be religiously raising bill for years together (but not receiving any amount) against a short-term licensee who had expired years ago. Not only the licensee but even his son had expired. The relevant file, which first became untraceable but later retrieved by Estate Officials after persistent query from Vigilance, revealed that the land had been first allotted 53 Years ago! As the licensed plot was in a residential area of Kolkata Vigilance tried to find out how the same could have gone

unnoticed for such a long time. On being queried, the concerned inspecting official explained that he was in charge of nearly 350 "plates/tenancies" spreading across huge area and did not have adequate time to even open files of many tenancies to see **whether there is even a valid license/lease agreement or not**. In several cases the original license / lease deed is not available and hence nothing is known about the terms of the lease. By his estimate, if he were to inspect a single location once in six months, it would take him years to just cover all plates under his jurisdiction and ascertain variation between the ground status and office records (if available). Discussion with other estate officials indicated absence of any proactive / system-driven approach to identify such cases.

What is even more peculiar is that while in the above case at least a bill was being sent every month in the name of a "dead man", there are many cases where not even a bill is being sent as nothing is known about the real occupant of the plot. This happens because no periodic inspection is conducted for years together after the lease/license got issued. As a result, possibility of many such licensees subletting their plots located in prime office /residential/industrial areas of Kolkata like Strand Road Posta, Chetla, Taratola to others illegally cannot be ruled out.

It is common knowledge that when a government authority licenses / leases any of its property, the most basic thing required is a detailed agreement with a set of governing terms and conditions. This is the first document that would be required in case of any dispute rights and obligation of each party. For instance, if a licensee is found by law enforcement agency to be storing prohibited material in a licensed site, KoPT would not be able to forsake their responsibility without producing a copy of the "Lease/License" Agreement where such storage might have been specifically prohibited. The legal ramification of a missing or non-existent agreement can be extremely dangerous for KoPT in a court of law and at times even to prove the ownership of the disputed land. Such a situation did manifest itself recently when a huge fire broke out due to storage of inflammable material in an unmonitored plot very near to HQ office making media headlines.

2nd Case Study: Well before detection of a "**dead man being billed**" there was another case of illustrative value. In an office complex owned by KoPT situated a few hundred meters away from Estate Division and where Vigilance Department is located some companies had been allotted godown space through such short-term licenses years ago. Gradually they had encroached the entire thoroughfare around the complex and converted it to their own private storage yard stacking steel material worth crores of rupees without paying a single rupee as rent for the encroached space. The situation persisted for years without any change. When a search was made by Vigilance to ascertain the identity of these unauthorized encroachers, details were difficult to come by from estate division. One of the licensees who appeared to have permanently locked down ago was not even known to anyone in estate department as his file had gone missing. Available records indicated that these entities have been occupying these premises since decades even after ejection notice had been served upon them. When the Port authorities tried to hold this licensee responsible for encroachment after the company took Kolkata Port to Court with the resulting legal dispute continuing till date. Thankfully, the company removed their inventory and abandoned the encroached space.

Conflict and Litigation Management of Estate Cases by KoPT:

Apart from the infirmities noticed in the contractual environment of leases and licenses and their worsening state due to lack of monitoring as evident from the above two case studies, there is another area that evokes grave concern requiring immediate attention from apex management. **This is the quasi-judicial and judicial matrix in which hundreds of disputed cases currently operate.** A closer look at some of these disputes how easily the lease holders have been able to retain their occupancy many years beyond the expiry of their lease through a range of tactical legal maneuvers helped in no small measure by an inexplicable indifference on the part of KoPT to meet the challenge. **It appears as if all that a lease holder needs to do to enjoy a lease beyond expiry without commensurate payment is to kick start some dispute and create a quasi judicial / judicial statement.** No authentic data is readily available regarding how many cases are stuck up in litigations, at what stage and with what revenue implication.

One estimate made in 2017 by Dy. Chairman puts the number of **cases embroiled in such litigation at 1265 with a locked up rental-claim of around Rs. 632 crores.** These are cases where presumably compensation bills are being raised against the litigant but without desired realization. Analysis of such cases indicates the following to be main causes behind the apparent legal impasse which invariably works in the favour of the non-paying litigant:

1. Failure in identification of breaches in lease/license and their resolution in right time and issuance of immediate ejection notice in case conflict resolution fails
2. Lack of proper documentation on evidence collection on breach/violation by lessee.
3. Severe delay in filing a proper plaint before Estate Office for eviction under PP Act.
4. Protracted proceedings before PP Act Court without proper monitoring, in many cases running for decades without conclusion. Many cases get rejected by Estate officer several years after filing of plaint because of lack of basic evidence on breach caused by lackadaisical site inspection and improper determination of dues.
5. Absence of vigorous legal defense when PP Court Order in favour of KoPT gets subsequently challenged by litigant lessees in Court of law.
6. Missing lease agreement /papers weakening primary defense of KoPT in court.
7. **No effective step taken for eviction even when there are no restrictive orders from Courts as a result of which lessee neither vacates the premises nor pays any rent.**

In addition to cases under litigation, there are others where no bills are being sent or bills sent never realized. Latest data from "estate bill module" **puts the outstanding amount at a level of nearly 1100 crores - a sum as much as twice the entire non-estate revenue of KDS in 2016-17.** Even a fraction of this, if realized, can improve KDS's bottom-line significantly.

Understandably, the first step to solve a problem of such magnitude is to collect authentic and latest information on these leases, consolidate the same and thoroughly examine top 5 or 10 leases (in terms of locked-up revenue). Port Management was requested to provide such basic information in a proper format (enclosed) pertaining to each tenancy officer once for all for conducting further analysis.

PRESCRIBED TABULAR FORMAT FOR PROVIDING FOLLOWING INFORMATION
(TO BE GIVEN LOCATION & SECTION WISE WITH THE NAME OF THE
CONCERNED OFFICER (CLASS – I))

SECTION , NAME & DESIGNATION OF OFFICER :				
LOCATION : {(For Example – Say , Strand Road (from.....to.....) OR Say , Taratala Road (from....to....))}				
Serial Number	Plate Number with cc exact location & address of the Plate	Name & address of the Tenant (Lessee / Licensee)	Type of Tenancy (Lease or Licensee) with period & dates	Litigation Details: - 1. PP Act Case Date(s) of the following: - (a) Ejectment Notice (b) Filing Plaintiff, (c) Eviction Order, (d) Appointing Authorised Officer (e) If pending, numbers of hearings held 2. If any Appeal against PP Act order filed, then dates & status of the said Court Case with specifying Stay Order, if any, with date of stay order & its present status 3. Any case is pending in Hon'ble High Court / & Hon'ble Supreme Court, its dates and status 4. Current Dues
1.	Plate No. XXXX			
2.	Plate No. YYYY			

That the above basic data, sought by Vigilance, could not be made available till date, i.e., even after lapse of more than 6 months, goes on to show how much revamping the existing estate management information system needs.
