

DEADMAN BILLING

*R.Minima Basu
Asst. Vigilance Officer
Kolkata Port trust*

A ninety five year old man, barely able to walk, entered through the doors of Vigilance Department one rainy afternoon. With a letter in hand and accompanied by a young girl he appeared distraught and angry. Opening the letter and handing over the same, he started to speak about his problem without even being asked to take a chair.

He said that he lives in a small house located in a prime residential area of Kolkata on a piece of land leased to him by KoPT, a year before Indo-China war. Like any law abiding citizen, he has been paying rent for the land leased to him by KoPT all through these years. But recently one of his neighbors residing in an adjacent plot, also leased by KoPT, started building a high rise wall, completely blocking sunlight and air to his house. This, according to the complainant, was affecting his health at such old age. The obstruction of natural air and sun light had choked his house and was undermining his already frail health condition which brought him to the doorstep of Vigilance.

On the to top of it all, he said that he was sure that this neighbour had never paid his dues to KoPT and was an unauthorized encroacher of Government land. The neighbour constructing a multi-storied complex was a further travesty of Government Authority.

When asked, why he had not approached the concerned Port authorities, the old man's agitation seemed to spill over to the table. "*I have made enough representations but nothing ever came out of it. Do you think that illegal construction by an unauthorized occupant is happening for such a long time without the knowledge of any authority?*", he shot back.

A preliminary investigation into the allegations made by this old man opened a can of worms that holds serious lessons for the need of implementation of an appropriate system in our prevailing Estate Management function, which generates a sizeable slice of KoPT's annual revenue to the tune of more than 200 crores.

This is how the case unfolded so far :

Since the complainant had divulged the exact Plate Number (a unique alphanumeric identification number ascribed to each Plate / Plot of land by Estate Division), where the said unauthorized construction was supposedly in progress. A Vigilance Inspector was deputed to verify the same. On reaching the site he found 3 occupants operating in the premise - a two-storied car selling unit, a locked godown and a residential dwelling. The occupants did know that the land belongs to KoPT, but said they were living there since 2002 permitted by one Ram Rahim Singh (name changed) to whom they used to pay rent regularly till 2010. **They had no knowledge whether or not this Ram Rahim Singh paid anything to KoPT towards lease/license charges.** When Ram Rahim died in 2010, his son Krishna used to collect rent from them till he too expired in 2013. After Krishna's death, the three occupants did not know what to do and as per their version, frantically tried contacting "Port's Estate Officials" but in vain. **As no one from Port was willing to take rent from them, they are living there absolutely free !**

To find more detail about the plot and its *bonafide* owner, the next stop for vigilance was the Estate Division. It is the division which maintains files against each Plate/Tenancy containing details, such as Original lease/license agreement between the lessor/licensor and lessee/licensee, correspondence between lessee/licensee and Estate Department, reports of periodic inspections by designated estate official, payment/breach details, legal disputes, if any, purpose of use, etc.

On being queried that when was the lease/license granted by KoPT and if so, what were the governing terms and conditions for such lease, **Estate Department informed that such details could not be provided as the file was "missing" and hence no detail could be provided to Vigilance.**

However, what the division confirmed about this plot was very interesting and needs to be narrated below:

- *The plot in question had indeed been leased (or licensed ?) to one Ram Rahim Singh. There was no information with them as to whether he is dead or alive!*
- *Although, they did not know when the lease/license was first awarded by KoPT, their department has been sending bills to Ram Rahim Singh which has been pending since 1984 i.e for 33 Years.*

The accumulated unpaid bill amount against Ram Rahim Singh (dead or alive) stands today at Rs 8.73 Lakhs of rupees or a little more.

- *There is no record of any official inspection of the site to verify, if not anything, at least whether the lessee/licensee is dead or alive.*

When the estate official was asked that whether Ram Rahim Singh or any one on his behalf were paying the bills raised against him and were being sent at his address, he said that bill has not been paid since 1984. Does it mean that KoPT has been religiously preparing bill for last 33 Years to this lessee, spending time, energy and expense for bill preparation and not even once has the lessee Ram Rahim Singh paid? “Yes” said the official “*not just this one, there may be hundreds of such cases*”, he added.

But surely, as easily verified by Vigilance, not just Ram Rahim is dead since last seven years, but his son is also dead since last 4 years. Does it mean that we could be sending bills to a “dead man” since seven years? He said “*Yes, it could very well be.*” A look at the “bills” raised by KoPT revealed that KoPT even pays “Service Tax” on the billed amount. **So, not only we have been incurring expenses in generating and despatching bills against a dead man without getting a single rupee, but we are probably paying even service tax on the billed amount as reflected on the bill!**

At this juncture, one may ask whether these unpaid bills being despatched to the lessee were ever returned back undelivered? Well, not really, since these bills are sent out to the addresses through ordinary post and do not return back to KoPT undelivered.

Asked as to how, he has never inspected the location even though the same was within his jurisdiction, the concerned official

explained that he was in charge of nearly 350 “plates”, means Tenancies, spreading across huge area and has to deal with all paperwork associated with each such “plate / tenancy” including litigations. He has not even opened the file of many of these plates to see whether even there is a valid lease agreement for the plates in the file. If he is to inspect a particular location even once in six months, it will take him many years to complete the entire area under his jurisdiction to gather authentic details verified with physical records. He said, he had minimal and almost no effective supporting staff at his disposal to complete such inspections, data compilation and verification. Hence he is completely unaware of what is happening on the ground in many such locations. He also asserted that the onus of informing KoPT about the death of the lessee lies on the lessee, his / her near and dear ones and there is no proactive / system driven approach from KoPT to verify why the rent is not received from a Lessee / Licensee for such a long period.

So would that mean that there are many other such cases of “dead men being billed by KoPT?” Many such cases where billing is going on religiously but no lessee pays anything in return?

“Oh yes, certainly” came the reply. “There are many such plots, operating under the curious system of ‘Monthly License’ where no effective inspection has been carried out since long. In such sites, the possibility that the original lessee might have been dead or has sublet his plot to others, illegally, cannot be ruled out. There certainly are considerable numbers of cases where a lessee is not paying anything to Kolkata Port Trust but have rented the entire premises to others who might have sublet

the same to others with no revenue coming to KoPT from anyone.”

Interaction with the said official revealed even more astonishing aspects. For instance, he said out of all the “Plates” under his jurisdiction, there are lots of “Plates” with no valid “lease or license agreement”, duly signed by “lessor” and “lessee”. He has knowledge of few of these plates but he has never seen all the files of the plates under his jurisdiction. As everyone knows, when a government authority licenses/leases any of its property, the most basic thing required is a detailed agreement with various terms and conditions. This is the first document that would be required in case of any dispute for establishing the rights and obligations of each of the party. For instance, if the licensee is found by law enforcement agency to be storing prohibited material in a licensed site, how could KoPT forsake their responsibility for this criminal act without producing a copy of the “Lease/License” Agreement where such storage is specifically prohibited? The legal ramification of a missing or non-existent agreement can be extremely dangerous for KoPT in a court of law.

The official mentioned that among the plates under his jurisdiction, only for very few plates, there is a properly signed license / lease agreement available. Curiously, in some other cases there is a “draft” agreement in the file without anyone’s signature -neither that of the lessee nor of anybody belonging to KoPT.

It is pertinent to mention here that the aforesaid situations may not be stand alone examples for a particular section under Estate management function of KDS, but in all probabilities, similar situations exist amongst majority of the more than 2500 odd tenancies under KDS. This is more so

vindicated, going by the fact that, there exist identifiable litigations to the tune of more than 1200 in numbers.

Lease or License?

What is a license and what is a lease? What is the difference between the two? A lease or a license is nothing but an "Agreement" between two parties regarding enjoyment of certain rights over a property. Under Indian Contract Act, 1872, a "contract" is an "agreement" which is valid in the eyes of law. To be valid; such agreements need not be "registered" with any government authority except in certain situation where such "Agreement" concerns transfer of property /land by way of "lease" or "sale" to another party. In such cases, the "agreement" between the parties needs to be "registered" with a designated government authority on payment of certain fee like "registration fees/stamp duty". An agreement specifying for enjoyment of certain type of property rights of one party by the other for a longer period (typically more than 11 months), is termed as "lease agreement" and is manifested in the form of a "lease deed". For such "lease deed" to be a legally valid contract, it needs to be signed by both parties and registered with the designated authority of State Government with payment of appropriate amount of registration fee/stamp duty. However, if such an agreement is for enjoyment of property rights only for a very short period (less than 12 months) then there would be no need for registering the agreement for bestowing legal validity to it and both parties would be free from payment of registration fee for the sake of being legally valid.

As per Para 10.1 of Amended Land Policy guidelines issued by Ministry, "land inside custom bond area which are required on an immediate basis shall be given on license and no lease is permitted". It is further stated therein that "license may be granted up to a maximum period of 11 months... ". As for giving land outside custom bond area, the Para 11.1 states that "normally, land outside custom-bonded area shall be

given on lease basis only. However, in specific cases, for reasons to be recorded in writing, land can be given on license basis only for port - related activities.” As per Para 11.2 , the Board of Trustees of a Port can award lease of land maximum up to 30 years which can be extended up to a maximum cumulative period of 99 years with renewals beyond 30 years being granted by Central Government through an Empowered Committee mechanism. Land Policy Guidelines Clause 9.4 states “Port will formulate the guidelines for Licence of land within or outside the Custom Bonded area in accordance with the land use plan of the port and the spirit of the Land Policy Guidelines and get them approved at the Board level. The Ministry of Shipping should be kept informed about the guidelines.”

From the above three aspects, it becomes very clear that as a Policy Guideline:

- Licenses have been visualized, basically as “short term instruments” required for immediate use of Port Users whose duration can be upto a maximum period of 11 months and that too inside custom-bonded dock area.
- It’s use outside port area is strongly discouraged (where the predominant instrument for land management is “long term lease” based on various modes of competition).
- In general, there is no provision whatsoever in Land Policy for making “renewal” of a short-term license once its original currency expires. However, Board is to formulate the guidelines for license in accordance with Land Use Plan, which is understandably yet to be approved.

The case of Ram Rahim Singh was a case of short-term “monthly license” running since 1964, as per the land file subsequently retrieved from archive. There was a continuous billing for the said plate. The question arose as to how a short-term license given for a “month” could

be running for nearly 53 years! It is then, that several serious systemic deficiency in the area of the so called “monthly licenses system” were observed. Some of which are:

1. Although the land policy normally prohibits issue of short-term licences outside custom bonded area, the existence of such monthly licenses outside custom bonded area appear to be the norm rather than an exception.
2. Many of such short term monthly licenses are continuing for years together without renewal. When the duration of a “license” is allowed to run for years together, it effectively assumes the character of a “lease” without qualifying the conditionality laid down in the Land Policy for issuance of a “lease”. For instance, in a case like Ram Rahim Singh, KoPT’s property has been given away for 50 plus years. Under Land Policy stipulation, even a long term lease of 30 years would require the beneficiary to face competitive tendering / auction procedure.
3. It was a mystery, to find out how a license awarded initially for a few months, can be continued for 30/40/50 years. It was then the following peculiar abnormality was found :

Converting “Short Term Monthly License” to “License -in-perpetuity” :

As has been narrated earlier a monthly license is only for a very short term. Unless renewed, it should come to expire. However, an interesting condition embedded in the license document, can effectively convert a short-term license to a lease-in-perpetuity. This condition quoted below is indeed found in many of the license letters issued by Estate Division.

“The tenancy will be on a month-to-month basis terminated by 15 days notice on either side expiring with the end of an English calendar month”.

While it is obvious that such a license can be cancelled by either party by giving a 15 day notice what is not obvious is, what would happen if either party remains silent? Will the contract expire or will it continue further. The answer is that the contract will continue indefinitely, if no one sends a termination-notice to the other. Such a clause serves as a kind of an automatic-extension-generator and the license agreement which contains such a clause has the potential of being an “eternal license” or “license-in-perpetuity”.

In a situation where there are several plates / plots with no proper “license agreement” available, while in many plates / plots, the files / relevant records might be missing, payment details are not proper, etc., the question of monitoring such “monthly licenses” does not simply arise without a robust, real-time, authentic and alert-generating computerised online database for all tenants (active / inactive). The estate official said, he inherited a responsibility where around 60% of his Plates do not even have “any agreement” in the respective file. In absence of the original agreement, nobody would know the latest status of the plot and the question of terminating the same would hardly arise. **In Estate Management, where each file is a register of each premise / plot / tenancy, situations, where the Plate / Tenancy file is altogether missing&/all relevant real time information are not readily available in the file at a glance, the question of monitoring such a continuing lease / license does not arise at all!**

In fact before detection of this case of a dead man being billed was noticed, there was another case, right in the premises where Vigilance Office and CDLB office are located. It was found that in the same premises, some licensees had encroached upon the open space belonging to KoPT converting it to some sort of private godown since years. When a search was made, as to who these unauthorized occupants were and since when they had resorted to such encroachment, details were difficult to come by. Here too estate details

of one of the licensee, who had locked up his godown could not be found, as the file had apparently gone missing. When the Port authorities tried to hold one licensee accountable for such encroachment, he took Kolkata Port to Court. Vigilance has also come across cases where ejectment notices were issued to lessees after many years of due expiry of the lease as the premises were never inspected and files of the plates never looked into. Moreover, PP Act proceedings have also been initiated long after expiry of licenses/leases and such proceedings have continued for decades. Legal cases in civil courts are also continuing years after years with dates after dates or no dates.

The case of these seemingly short-term monthly-licenses metamorphosing gradually into longer than a long term lease is not only injurious to KoPT from a revenue point of view but also from a legal standpoint. Non availability of valid license agreement and non maintenance of documents / information for ready and easy retrieval would compromise the winnability of KoPT in case of any legal dispute. It is also a negation of Land Policy guidelines issued by Ministry.

To **conclude**, it is evident that Estate Management of KDS, KoPT, which is accountable for hundreds of crores of revenue for KoPT's survival, is not only vulnerable to financial, legal and vigilance scrutiny / audit, but also having acute deficiencies of appropriate manpower, information flow to manage such a vast **national** property of around 4500 acres spread across different districts of West Bengal, in particular, at Kolkata, and Howrah. Hence a thorough **System Improvement**, manpower and infrastructure **augmentation** of Estate Functions of KDS, KoPT is a call for the day.
