

Streamlining Estate Inspection

A. Analysis of existing practice:

During multiple interactions with Estate officials, it has been noticed by Vigilance that there has been no system of scheduled/periodic inspection of leased/licensed premises, by the Land Inspectors or their Tenancy Officers, to detect possible breach of lease terms. Physical inspection of plates is one of the most basic Estate management functions, without which a lessee or licensee making encroachment/unauthorized construction at a site or parting his possession to rank outsiders can never be detected. The very job description of Land Inspectors in an Estate Department entails this function. Yet, several Land Inspectors are on record stating that there is no such inspection schedule with defined periodicity specified for them, and whatever inspection they undertake happens on a case-to-case basis, when their "superior" orders such site-inspection for specific plate(s) or if such inspection is directed by any legal/quasi-legal authority. That is the reason why today, no certain information is available on such simple things as to how many of the tenants, against whom KoPT had awarded lease/license, are currently in physical existence, and how many have vanished, having parted possession to rank outsiders. Similarly, no one knows that in exactly how many plates a licensee/lessee has committed the breach of unauthorized construction/encroachment.

In KoPT, there are scores of licenses, which had been granted in prime areas years ago, initially for short term duration of a few months and subject to notice of termination by either side. Many of these licenses are continuing for decades, after expiry of original license duration, as no one either terminated or specifically renewed the license, but sanctified them by the conduct of sending rental bills periodically and accepting payment against the same. Today, a large number of such licensees are neither paying the meagre monthly license fee nor the compensation demanded by KoPT, while occupying land in prime localities of Howrah and Kolkata, as the premises continue to remain under never ending litigation/court proceedings for breach of unauthorized construction/using the premises for purposes other than what the license stipulated/encroachment and not paying any rent. Needless to say that such breaches could have been detected much earlier and termination notice served, had there been a proper system of periodical inspection.



Vigilance has come across plates, located not in some far off place but literally at stone's throw distance from Estate Division, where the licence has been continued for decades while the licensee resorted to encroachment of huge areas, without undergoing a proper site inspection for years together. There are cases where the license entity does not simply exist, but the premise is found locked up by some unknown entity since years. Let alone timely detection of breaches, through scheduled/periodic inspection by Land Inspectors/Tenancy Officers, today the situation is such that they are not even aware whether the monthly rental/compensation bills of Crores of Rupees are actually reaching the tenant by Post or returning from Post undelivered, back to their own Division, as no tenant exists in the designated address [Ref.: Earlier Case Study and System Improvement by Vigilance on the subject of "Undelivered Bills and Missing Tenants"].

Even in the few cases where inspection has been conducted by a Land Inspector, more often than not, the structure and quality of the "inspection" has been found to be invariably wanting. For instance, inspection reports alleging unauthorised construction or encroachment by a licensee/lessee are not accompanied by any photographic evidence or proper measurement. In some report, even an elaborate description of the breach is found missing. When such inspection reports form the basis of eviction, it becomes easy for the tenant to challenge the same during PP Court proceeding, leading to the Estate Officer ordering another round of inspection to determine the nature and extent of breach. However, this creates an evidentiary uncertainty, especially if the breach involves encroachment, since a second (and later) round of inspection, even if done properly under order of EO, can neither establish nor negate an encroachment alleged to have been committed prior to the instituted proceeding. Such multiple rounds of inspection also end up in delaying the PP Court proceeding – a situation that helps a non-paying unauthorized occupant. In many other cases, neither the offer of license nor the lease deed is available to ascertain the stipulated "use" of the land and hence, allegation on that count can easily be denied by a defaulting tenant. In a case of a well known riverside plate of land, licensed for operating a floating luxury hotel, one of the allegations made by Estate authorities as grounds for eviction was that the licensee had encroached upon 5 (five) feet of land. However, the same could not be proven even in 13 (thirteen) years, as the sketch available with Port was not sufficient.



It is seen that although there was an administrative directive in 2013 to conduct inspection of plates and file reports, no precise responsibility was laid down as to who should ensure the same. The Land Inspectors, with whom Vigilance interacted, stated that they had tremendous day-to-day workload and it was not feasible for them to go around for inspection on a regular basis. In fact, one Inspector even stated that let alone inspection, he even did not know whether the license/lease agreement existed in a significant number of plates under his jurisdiction. Therefore, the directive for inspection issued in 2013 has merely been a policy on paper, without any semblance of ground level implementation.

Surprise field inspection by Vigilance, Estate and Legal Team: While interacting with P.P Court officials, where nearly 400 litigation cases are currently in progress, Vigilance came across a peculiar case dragging for last 5 (five) years, only because the Port authorities were not able to ascertain whether a litigated plot of land (plate) licensed to a tenant was 6.69 m² or 66.9 m². The location of the licensed plate was in the centre of the city and very near to the Port HQ. It was, therefore, surprising that such a simple matter could not be verified for so many years and so much time and manpower was being spent in PP Court without any result.

Therefore, Vigilance decided to conduct a physical verification of the licensed plate, accompanied by the Surveyor of the Port, 2 (two) Land Inspectors and a Resolution Officer. Incidentally, that particular location had a cluster of 27 (twenty-seven) other tenanted plates. To gather legally enforceable evidence, which could be helpful in any litigation, the entire inspection - lasting about 2.5 hours - was videotaped by a Videographer.

Strange facts surfaced from this field inspection, as narrated below:

- a) In the instant case, dispute was for an area of 6.69 m² area, for which the tenant was not paying to Port for 15 (fifteen) years. However, this plate was found to be part of a larger area divided into two parts: one with area of 6.69 m² while the other was 66.9 m². In fact, the area which was disputed was an extension of the adjacent area of 66.9 m². There was no physical separation between these two areas over which a double storeyed building stood. Two families had been staying on rent in these two parts. While KoPT was sending bills for the plate of 6.69 m² area, the other larger part had completely vanished from Estate database. No bill was being generated or sent for this other larger plate.



From the Estate file, it was found that license had been awarded for construction of a Hindu Hotel, but the original licensee had converted it into a double storeyed residential building long back. Right now, the licensee and his son were reported dead, while some rank outsider had rented it out to two outsiders. It was, therefore, surprising as to who was conducting the litigation process in PP Court, when the tenant was long dead.

- b) After inspecting the single disputed case, the team turned their attention to the cluster of 27 (twenty-seven) other plates located in the same area. Here again, it was found that licenses for these plates had been awarded to tenants, under short term licenses for few months, most of whom have vanished from the site long back parting possession or illegally selling the plate to someone else. At least 18 (eighteen) of these 27 (twenty-seven) plates were found to be in the possession of rank outsiders. When information on these plates were called for from the concerned Estate Officials, they could not provide any information at all – neither billing details nor litigation details – for about 5 (five) plates.
- c) But, the most interesting part of the case is that although the original licensee had long vanished from the site, with whereabouts unknown to the Port, and rank outsiders are in occupation, litigation on behalf of many such non-existent licenses/lessees are currently in progress in P.P Court. It is not understood when the licensee has either died or vanished from the plates, which entity was involved in the ongoing litigation against KoPT. The list of these 27 (twenty-seven) plates, with their current litigation status obtained from the concerned Land Inspectors, is enclosed as **Annexure - I**.
- d) It is pertinent to note here that successful conclusion of litigation in P.P Court involves not only eviction but also recovery of pending dues from the original licensee. Eviction of a non-existent/dead/long-vanished tenant is evidently meaningless. As far as recovery is concerned, it can only be done from the original licensee/lessee, but not from any rank outsider. In fact, Section-11 of P.P Court classifies a rank outsider (who never had any licence or lease to begin with, but had come to occupy the site as trespasser) is criminally culpable under provision of Section-11 of PP Act, 1971. When the Port is not aware of the whereabouts of the original tenant, who had taken the land years ago, the question of conducting proceedings to recover anything from him simply does not arise.



Further, to make ultimate recovery of any pending dues, not only one must exactly know the identity and location of the original tenant, but must also provide list of assets of either the evicted tenant or his legal heirs, so that the same can be attached by the recovery-enforcement authority.

B. Suggested System Improvements:

There should be a clear policy for conducting Estate inspection, with due regard to the following aspects:

- 1.0 **Responsibility for inspection:** Which exact authority/authorities in Estate Division are to be involved in inspection must first be stipulated.
- 2.0 **Structure and content of Inspection Report:** The structure of the Inspection Report must be spelt out in a standardized format.
- 3.0 **Periodicity/Frequency of inspection:** A programme for periodic inspection by respective Land Inspectors must be drawn up in the beginning of each year by the Tenancy Officer, duly approved by the Estate Manager. Apart from such scheduled/programmed inspection, there should be a scheme for conducting certain random inspection, by a different Inspector, in pre-determined interval. In a few cases, the Tenancy Officer must also be directed to make random checks.
- 4.0 **Inspection Register:** Before going out for inspection, the concerned Land Inspector must make entries in a specific central Register, detailing the plates/area which he proposes to visit. On return, the visited plate codes should be recorded in the same Register, duly affixing the visiting Inspector's signature. No inspection should be conducted without informing the respective Tenancy Officer(s).
- 5.0 **Quality of inspection and breach-evidence:** The format for conducting inspection should be structured and standardised. Every breach noticed at site must be elaborately and unambiguously described in the Report. If site measurement is needed for a particular type of breach, then the same should be recorded, by engaging the Port Surveyor immediately.

Collecting audio, photographic and video evidence of breach must invariably be employed by the inspecting authority, so as to be able to substantiate breach, if denied later by the licensee/lessee. If licensee is available at site, then he should be asked to jointly sign the Inspection Report. In case of tenant's non-availability on inspection day or refusal to sign a report, a copy of the Report should immediately be sent to the tenant by Registered Post. Whenever new licence/lease is awarded, detailed photograph of the site should be taken and kept in file. This will help in making comparison with photographs taken in later inspections, to determine encroachment/unauthorised construction by a tenant.

- 6.0 **Integration of inspection data with Estate Module**: The structured Site Inspection Report must also be uploaded, along with photographic/video evidence, to the Computer database. It is pertinent to note here that in the age of Mobile telephony, it is extremely easy to record audio/video images of any location and to transfer the same to a database, in a format suitable for easy storage and retrieval.
- 7.0 Videographed inspection of all tenanted plates under KDS must immediately be conducted, in a targeted time bound manner. The minimum benefit that can accrue from such an exercise is a quick end to any litigation pending before P.P Court or in any other judicial forum, with the help of Section 11 of PP Act.
- 8.0 Another important point that emerged from this field inspection is the need to verify the identity of the person/persons who are supposedly carrying out litigation on behalf of these vanished tenants in P.P Court. After all, at least 18 (eighteen) out of the 27 (twenty-seven) cases have been found to be rank outsiders, in which the original licensees have long gone, parting possession or even effecting fraudulent sale of the plates. The KYC of the legal defendants of these cases in PP Court must, therefore, be immediately verified.

Encl.: The study refers to 1 (one) Annexure, which is enclosed.


