

Capturing the Value of Public Land for Urban Infrastructure

Centrally Controlled Landholdings

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Abstract

Government entities in India hold large amounts of public land. Their landholdings include some of the most valuable property in the country. Parts of this patrimony lie vacant or underutilized. Public sector bodies also own large blocs of land that sometimes stand in the way of efficient completion of urban infrastructure networks. At the same time, urban India is deficient in basic infrastructure—both network infrastructure needed to support economic growth and urban service infrastructure needed to meet basic household needs like water supply, waste removal, and transportation. This condition raises fundamental questions. Are some of government landholdings “surplus” or not needed

for service provision? If so, can their economic value be captured to help finance infrastructure investment? This report aims to document evolving government policies toward public land management. It examines how active public entities are in identifying “surplus” lands and attempting to monetize them. Public bodies in India have proved reluctant to surrender landholdings. The report therefore considers practical alternatives that have emerged, such as land trading among public institutions. Land exchange can clear the way for completion of important urban infrastructure projects, without requiring public landowners to declare their property “surplus” and suitable for market disposition.

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**CAPTURING THE VALUE OF PUBLIC LAND
FOR URBAN INFRASTRUCTURE:
CENTRALLY CONTROLLED LANDHOLDINGS**

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TABLE OF CONTENTS

I. INTRODUCTION

**Objectives of Report
Approach and Organization**

II. CABINET-LEVEL LAND POLICY

**2011 Cabinet Freeze
Prime Minister's 2012 Intervention
Current Proposals
Who Are the Largest Central-Level Landowners?**

III. INDIAN RAILWAYS

**Strategy for Commercial Land Development
and Monetization
Implementation of RLDA Strategy
Providing Railway Land for Local Urban Infrastructure**

IV. MINISTRY OF DEFENCE

**Organization of Defence Lands
Does Defence Have Surplus Land?
Reforms in Defence Land Management
Land Exchange to Facilitate Local Infrastructure Projects**

V. MAJOR PORT TRUSTS: A CLOSER LOOK

**Organization of the Port Sector
Landholdings and Land Planning
Case Study: Cochin Port Trust
Case Study: Mumbai Port Trust
Case Study: Kandla Port Trust**

VI. CONCLUSIONS AND WAY FORWARD

UNITS OF MEASUREMENT AND ACRONYMS

1 hectare = 10,000 sq meters = 2.471 acres

1 sq. km. = 100 hectares = 247.1 acres

US \$1.00 = Rs 55 (approx.)

AAI: Airports Authority of India

BMRC: Bangalore Metro Rail Corporation

CAG: Comptroller and Auditor General

CoPT: Cochin Port Trust

CBI: Central Bureau of Investigation

DGDE: Directorate General of Defence Estates

JNPT: Jawaharlal Nehru Port Trust

KPT: Kandla Port Trust

MoD: Ministry of Defence

MMRDA: Mumbai Metropolitan Region Development Authority

NOC: No Objection Certificate (for land development)

PIL: Public Interest Litigation

PPP: Public-Private Partnership

RLDA: Rail Land Development Authority

TAMP: Tariff Authority for Major Ports

I. INTRODUCTION

Government entities in India hold large amounts of public land. Their landholdings include some of the most valuable property in the country. Parts of this patrimony lie vacant or underutilized. Public sector bodies also own large blocs of land that sometimes stand in the way of efficient completion of urban infrastructure networks.

At the same time, urban India is deficient in basic infrastructure—both network infrastructure needed to support economic growth and urban service infrastructure needed to meet basic household needs like water supply, waste removal, and transportation.

This condition raises fundamental questions. Are some of government landholdings “surplus” or not needed for service provision? If so, can their economic value be captured to help finance infrastructure investment? That is, can surplus land assets be “monetized” and converted into badly needed infrastructure? Even in cases where there is no surplus public land, is it possible to rearrange landholdings so that blocs of public land do not stand in the way of efficient operation of infrastructure systems? That is, can land parcels be traded among public entities and others, in ways that support more efficient urban development?

Objectives of the Report

This report aims to document evolving government policies toward public land management. It examines how active public entities are in identifying “surplus” lands and attempting to monetize them. Public bodies in India have proved reluctant to surrender landholdings. The report therefore considers practical alternatives that have emerged, such as land trading among public institutions. Land exchange can clear the way for completion of important urban infrastructure projects, without requiring public landowners to declare their property “surplus” and suitable for market disposition.

The report focuses on centrally controlled landholdings. Central institutions are the largest owners of public land. They hold extensive and valuable parcels in major urban areas. Central government policy in managing these lands will be critical in building the next generation of urban infrastructure. The policies that central institutions establish will set precedents for public land management at all other levels of government.

Approach and Organization of the Report

The next section of the report identifies the principal institutions at the central level holding substantial amounts of urban land. It summarizes recent changes in cabinet-level policy affecting the “alienation” of all centrally controlled lands. The policy shifts reveal a tension between delegating land management decisions to the local or sectoral (e.g., railway) level and centralizing all such decisions at cabinet level. Corrupt allocations of land by local branches of central government agencies have driven land decisions toward centralization. The massive delays involved in obtaining cabinet approval for local land transfers have delayed key infrastructure projects and driven policy in the opposite direction, toward de-centralization.

Parts III and IV look at the specific landholdings, “surplus” land, institutional policies, and critical issues involving land and infrastructure investment for the two largest holders of centrally-controlled lands: Indian Railways and Ministry of Defence. Their history reveals ambivalence about identifying and commercializing excess landholdings. Railways created a special institution for commercializing excess lands. It set high targets for revenue realization, but most of the land development projects have been abandoned or postponed.

At one time the Ministry of Defence required the military services to conduct an annual land audit, whose purpose was to identify permanently surplus land. National policy was to sell or lease such land at auction. A 2011 report by the Comptroller and Auditor General found large amounts of Defence land to be “surplus” by the standard that it was not in military use or formally planned for military use. In recent decades, however, the Ministry of Defence (MoD) has taken the position that there is no surplus land. It has instructed the services not to designate land as surplus. Source: Circular No. 11015/2/86, Ministry of Defense

More progress has been made in trading land parcels to facilitate construction of infrastructure projects. Both Railways and Defence have entered into such trades with local authorities.

Part V of the report examines in more detail the port sector. It includes case studies of three Major Port Trusts: those in Cochin (Kochi), Mumbai, and Kandla. The case studies demonstrate the linkage between land-use rationalization and market-based land leasing. Kandla Port Trust, for example, increased its annual rent roll from land leasing by 15,000% (sic!) when it re-valued its lands at market value, as ordered by courts and the Land Policy for Major Ports. The case studies reveal the specific institutional and policy obstacles that have prevented ports from using public commercial lands more efficiently.

The final section of the report assesses choices about the way forward in public land management and infrastructure finance, based on findings of the report.

II. CABINET-LEVEL LAND POLICY

Central-government land policy has marched back and forth in recent years. Prior to 2011, land-use decisions regarding centrally controlled lands were mostly delegated to the individual landowning institutions and local management—subject always to the de facto right of Cabinet ministers to intervene if the stakes were high enough. Indian Railways created the Rail Lands Development Authority (RLDA) as a statutory body charged with commercial development/lease of excess railway property. Some 106,000 acres of railway lands were turned over to RLDA for commercial exploitation.

Decisions about land use on Defence properties were made by local military commanders in coordination with local officers of the Directorate General of Defence Estates. They could grant No Objection Certificates (NOCs) for development on military property. The local governing boards of Major Port Trusts could lease lands to commercial interests for up to 30 years on their own initiative. Although central policy guidelines said the Port Trusts “normally” should follow competitive procedures and use market values for land leases, the local Trust Board Chairman was allowed to allocate land by nomination at below-market values, as long as this was noted in writing. The Airports Authority of India, as a Class 1 Public Enterprise, was allowed to make financial decisions up to 500 crore (USD 91 million) without higher-level review.

2011 Cabinet “Freeze”

Decentralized decision making about land use came to an abrupt end in March 2011. The Cabinet secretary circulated an order requiring all decisions about “alienation” of public lands to be referred to Cabinet for approval. The order covered land sale, long-term leases, contributions of land to public-private partnerships, and contributions of land to infrastructure concessionaires. Only transfers from one central government department to another were accepted. The immediate causes behind this order were a series of highly publicized land scams, in which local officials and private parties corruptly conspired to capture the value of public lands.¹

¹ Three cases are illustrative of the high-profile scams involving public land. The Adarsh Cooperative Housing Society case began as a proposal to build a 6-storey building in the Colaba quarter of Mumbai for war veterans and widows of the Kargil War. It morphed into construction of a lavish 31-storey condominium building, occupied by the wealthy and by politicians, bureaucrats, and military officers who acquired their property extra-legally. The residential tower was built on Defence land, after a convoluted series of No Objection Certificates were issued by local Defence authorities. Among those arrested in

At the time the Cabinet freeze was imposed, it was announced that the Department of Economic Affairs would soon be issuing a comprehensive policy governing all land transactions by centrally controlled public institutions. Meanwhile, no land transactions of significant scale were approved by Cabinet. Land transfer was suspended even in cases where the contract with the private developer had been signed and down payment made.

Prime Minister's 2012 Intervention

In August 2012, the Prime Minister intervened to unlock the land stalemate. The official statement noted that the Prime Minister was acting to speed up implementation of infrastructure projects. However, the order is narrowly crafted. It authorizes ministries or governmental departments to transfer land to Public Sector Units and to companies developing infrastructure projects (i.e., licensees or concessionaires), as long as government procedures and norms are followed.

Public land therefore can be contributed directly for the furtherance of infrastructure projects without case-by-case Cabinet approval. The biggest beneficiary of the policy change should be infrastructure PPPs. The order does not apply to land sales or long-term land leasing unconnected to infrastructure projects. These still require Cabinet approval. As a practical matter, potentially controversial land transactions will continue to be referred to the relevant Ministry and, where necessary, to the Cabinet.

Current Policy Proposals

Better utilization and management of public lands has received significant attention over the past 18 months.

The Chawla Committee report in May 2011 on Allocation of Natural Resources discussed the matter of public lands amongst others. The report points out that the Union Government departments and organizations are the largest landowners in the country. Much of these lands were allocated when the areas were underdeveloped and not needed for development activities, In contrast, many of these land parcels now command a significant premium and deserve a

the case were two former Army major generals, the Commanding General Officer of Maharashtra, IAS officials, Adarsh promoters, and the former Chief Minister of Maharashtra. (The state of Maharashtra is now disputing whether title to the land belonged to the Defence Ministry.) In the Srinagar land scam, No Objection Certificates were granted to civilians to build on 12 acres of prime Defence land near Srinagar Airport in Kashmir. The land in question was valued at 200 (USD 26 million) crore. The scandal involving Kandla Port Trust is described in Part V of this report.

transparent and objective framework of management and utilization. Amongst various recommendations made is the need for a union repository of land records, avoiding alienation of land via inefficient long term leases, clarity in policies and action plans to utilize the funds generated.

The recent report (September 2012) by the Kelkar Committee on Roadmap for Fiscal Consolidation states that the country's fiscal deficit is estimated at a 6.1 percent of GDP which is 1 percent higher than previously estimated. In fact, the fiscal deficit which had seen a decline since FY 2002-2003 has been rising steadily from a low 4 percent post FY 2007-08. Against this background, the Kelkar Committee report urges immediate policy actions and reforms. Amongst other measures is disinvestment of underutilized lands of government institutions like PSU's, railways and port trusts to meet expenditures towards capital assets.

The most recent proposal for public land management comes from the Department of Economic Affairs (DEA). DEA prepared a Cabinet note on land alienation policy for the inter-ministerial consultation in October 2012. The Note proposes that revenue proceeds (sale and lease) from non-performing land assets should be used to repay debt or create assets which will generate revenue. The draft policy also outlines procedures for sale of land assessed over Rs 50 crore (USD 9 million) and proposes measures on land lease to reflect market rates better. Over and above, it recommends the creation of a Public Sector Land Management Committee comprising of secretaries to put together a database with updated land records. The records should reflect their market value based on factors like floor area ratio, facility of utility services, development potentials and presence of minerals. It also suggests improving the land's market values by various measures of value creation. These recommendations reflect that the Government of India is beginning to look at its land assets comprehensively and how can these be best utilized to meet the country's growing need for capital infrastructure imperative for economic growth.

However, it must also be noted that many of the Central institutions and agencies have their own legislations on land use. How these will interact with the proposed Land Alienation Policy as noted above remains to be seen.

Who Are the Largest Central-Level Landowners?

Many central government ministries, enterprises, and centrally supervised service providers own public lands. Some of these organizations are well along in the process of monetizing property. The National Textile Corporation, for example, has been auctioning mill lands—initially to pay for pension obligations and other liabilities.

Four central institutions stand out for their land ownership: the Ministry of Defence, which is the country's largest landowner; Indian Railways, which has identified 43,000 hectares of its massive landholdings as unnecessary for railway service; Airports Authority of India, which controls 20,400 hectares of high-value land surrounding major airports; and the 13 Major Port Trusts, which hold around 100,000 hectares of land in all, a significant part of which is located in key urban areas and presently underutilized.

III. INDIAN RAILWAYS

Indian Railways is a public enterprise owned by central government and administered through the Ministry of Railways.

By its own tally, India Railways owns 423,000 hectares of land (roughly 1,045,000 acres). Of this total, 378,000 hectares are used, or planned for use, for railway operations, 43,000 hectares are vacant, and 2,240 hectares are encroached.

Strategy for Commercial Development and Land Monetization

Indian Railways was the first central organization to develop an institutional strategy for land monetization. A prime motivation behind the strategy was Railways' large operating deficit and the prospect that demands for central budget support could be reduced if surplus land assets generated competitive economic returns.

In 2006, the Railway Land Development Authority (RLDA) was established as a separate statutory body. The plan was to gradually hand over excess land with commercial potential to RLDA for development, sale, or lease. Newspaper accounts at the time estimated (optimistically) that more than US\$100 billion eventually could be realized from monetization of surplus rail lands.

In the first wave of transfer, Indian Railways transferred 138 land parcels covering 1,500 hectares to RLDA. In a typical project, consultants would be retained to identify the value-optimizing land use and appropriate form of ownership. Then a competitive auction would be held to elicit bids.

Implementation of RLDA Strategy

Actual monetization of RLDA properties has lagged badly. As of July 2012 (RLDA website) only one land development project was described as completed, and that project was embroiled in a controversy with Bangalore regarding metro construction (see below). In fact, of the 138 parcels originally transferred to RLDA, 52 have been de-entrusted or proposed for de-entrustment, on the grounds that commercial use is not viable. Planning for another 32 parcels had been suspended, either because of the Cabinet-level freeze or project-level difficulties. Most of the remaining parcels were in some stage of consultancy or proposed for consultancy to identify commercial potential.

One reason for the performance shortfall is market timing. RLDA was created near the top of the urban land market boom. Projections of developer

demand made at that time proved overly optimistic. However, the specific circumstances surrounding RLDA's two most highly valued land parcels shed light on the difficulties of translating plans for public sector land monetization into reality.

Sarai Rohilla, Delhi. RLDA's flagship project involved development surrounding Sarai Rohilla railway station in Delhi. The station is 4 kilometers from prestigious Connaught Place. The project called for commercial and residential development of vacant land around the station. In all, 16.5 hectares of land were to be developed, 11 hectares by the developer and the remaining 5.5 hectares by Railways. A competitive auction for a 90-year land lease was held in 2010. The winning development group, Parsvnath Developers, bid 1,651 crore (USD 300 million). It paid 334 crore (USD 60 million) as an upfront down payment.

Then came the Cabinet freeze on public land transfers. The developers were unable to take possession of the land, and still had not done so by summer 2012. They were demanding cancellation of the contract and return of their down payment. Other RLDA projects were likewise caught in the freeze. The precedent set has discouraged interest in RLDA land leases.

RLDA has not revived land lease efforts in the wake of the Prime Minister's relaxation of the rules requiring case-by-case Cabinet approval. Instead, Railways has proposed forming a new corporation that would partner with private sector developers to build Multi Functional Complexes (railway stations with restaurants and enhanced commercial services). Revenue targets for this initiative have been drastically lowered.

Bandra (East) Mumbai. This valuable 4.5 hectare parcel, near the Bandra (East) railway station, has been proposed for commercial development since 2006. Auction reserve prices have been set between Rs 3,700 crore and 4,200 crore (around US\$ 670 and 760 million) at different times. However, the property has failed to attract acceptable bids at six successive auctions.

At the height of the land market in Mumbai, Railways issued bid terms that would have required the developer to build two identical office towers, one to be given to Railways for offices free-of-charge, the other to be available for commercial market leasing. The restrictions squeezed profit out of land development. No bids were received.

Subsequently, the dual-tower conditions were dropped. Auction management was turned over to RLDA. Indian Railways worked with the State of Maharashtra to reach agreement that the Floor Space Index (FSI) for the site would be increased from 2 to 4, in order to maximize land value. In return, Railways agreed to allocate two-thirds of land lease proceeds to investment in the suburban

rail plan for Greater Mumbai. However, at the last minute a private citizen brought claim in court that the property belonged to the State of Maharashtra, not to Railways. Maharashtra joined the plaintiff in the case, first at the level of revenue collector, later at the level of Minister of Revenue. Attempts to auction the property attracted no bids, as long as title was disputed.

As of this writing (October 2012) it appears that Maharashtra will withdraw its claim to title, so that auction can go forward. The state's position reflects both court findings in the interim in favor of Railways' title to ownership and the reality that investment in the suburban rail system will not be fully funded unless the land lease goes through. Market demand for the property, even with clear title, is unknown.

Bandra's experience illustrates the hazards of relying on land sales or land leasing to finance a particular capital budget. The timing of successful land transactions is difficult to predict. Transaction values are dependent upon rapidly changing market conditions and subject to unforeseen risks.

The Bandra case also carries a positive precedent. Land values often can be enhanced by favorable FSI adjustments. FSI regulations lie within the province of state government. Earmarking the proceeds of central-level land sales for metropolitan infrastructure investment is a step forward for the state in urban infrastructure finance. Tying the two actions together, as in the Bandra case, is a positive step that can be replicated elsewhere—hopefully, in more timely fashion.

Providing Railway Land for Local Urban Infrastructure

Given Indian Railways' massive landholdings, it is common for local infrastructure projects to desire to incorporate Railway property in their design, or to seek access to Railway rights-of-way. Construction of the Bangalore Metro Rail system, for example, has repeatedly bumped up against constraints imposed by Railway land ownership.

In one of these disputes, Bangalore Metro Rail Corporation (BMRC) sought to build an underground station and portions of the Namma Metro corridor on Railway property. Disagreements concerning compensation significantly delayed construction. At issue was the question whether BMRC was acquiring a lease for the entire property or, on part of it, only a right-of-way. The parties also disputed whether the land should be valued at industrial or commercial/residential rates. The property at the time was in industrial use, but would be converted to commercial, residential and station use.

Railways held out for compensation of 219 crore (USD 40 million), while BMRC offered and paid 94 crore (USD 17 million). Negotiations continued for

more than a year. At one point Railways called on the Railway Protective Force to evict BMRC men and machinery working on the property. The whole matter eventually had to be forwarded to the central government for resolution, with interventions by the Urban Development Ministry and a special Empowered Committee.

IV. MINISTRY OF DEFENCE

The Ministry of Defence is India's largest landowner. It holds a total of 1,754,000 acres. Of these about 1.6 million acres are out of cantonments. Proposals to rationalize the use of Defence lands are highly sensitive. Most policy discussions treat Defence property as "off limits" when it comes to identifying surplus landholdings.

This view is prudent in the short-run. Identifying surplus property in other central-government institutions is likely to be less controversial and meet with less powerful resistance. However, over the longer term, the perspective changes. Defence holds the largest blocs of urban land. Some of this land is inefficiently located for Defence purposes. Some is now used for non-Defence activities.

Other countries have included Defence property in their assessments of efficient public land use. In fact, Australia, Canada, United Kingdom, United States, and the Philippines all have found that more than 90% of total public land identified as "surplus" and monetized has come from outdated military bases (Peterson 2012). In many cases de-commissioned military bases have become the anchor sites for large-scale, successful urban re-development. India at one time audited Defence lands to identify parcels that were permanently surplus for military use. It therefore is useful, in assessing centrally-controlled lands, to take into account Defence property.

Defence landholdings sometimes stand in the way of completing urban infrastructure networks. Even if Defence property is not to be monetized, it makes sense to explore whether landholdings can be exchanged with other institutions, or other ways can be found to make Defence lands available so that urban infrastructure projects can be completed without compromising Defence capabilities.

Organization of Defence Lands

Legal title to all Defence lands in India is held by the Directorate General of Defence Estates (DCGE). Part of this land—158,000 acres—is contained in 62 military cantonments. Cantonments are separate areas formed around military bases, under military control. Cantonments often have significant civilian populations. They have elements of local self-governance. Civic administration is the responsibility of a Cantonment Board. However, the local military commander traditionally has made important decisions, including those involving land uses.

Private parties and state government can own property within a cantonment. The size of cantonments gives them a significant role in urban development. Delhi cantonment, for example, occupies 43 square kilometers in the heart of the metropolitan region. In 2001, time of the last census, Delhi cantonment had a population of 124,000. Eleven hotels are located within the cantonment, as well as a variety of commercial establishments and upscale housing. Secunderabad cantonment, at the heart of the Hyderabad urban region, covers 40.2 square kilometers (about 10,000 acres); it had a population of 206,000 at the time of the 2001 census.

Secunderabad cantonment illustrates the complexities of cantonment geography. The cantonment does not form a compact bloc. It sprawls over the inner part of the urban region. The cantonment is connected to, and interrupts, water and wastewater networks, roads, rail lines, and other network infrastructure operated by state, metropolitan and urban local bodies. The cantonment has its own master plan. It is not subject to metropolitan land-use planning. Within Secunderabad cantonment, 27.5% of total land area is leased to private parties or government. Some of the land has been encroached.

Defence lands not part of cantonments are administered separately. They cover 1,596,000 acres. By branch of service, total Defence lands are allocated as follows:

- Army: 79.7%
- Air Force: 8.7%
- Navy: 2.1%
- Ordnance Factory: 2.9%
- Other: 6.6%

Although land title in each instance is held by the Directorate General of Defence Estates, decisions about land use are made by the respective military branches and, when necessary, the Ministry of Defence.

Does Defence Have “Surplus” Land?

Whether Defence has surplus land is a longstanding and controversial issue. A report of the Comptroller and Auditor General (“Performance Audit of Defence Estate Management 2011) concludes that more than 81,000 acres of Defence lands are “surplus” in the sense that they are not used, and are not presently planned for future use, as Defence activities. The bulk of this land (52,000 acres) is vacant and unutilized. However, some of the urban land is allocated to uses that in the view of the Comptroller and Auditor General (CAG) are unauthorized.

For example, Defence has 97 golf courses covering 8,076 acres of mostly urban land. Golf courses are not authorized uses on A-1 Defence lands. To avoid the charge of having surplus “recreational” land, the Army in 2004 re-labeled its

golf courses as “Army environmental parks and training areas.” The CAG report dryly notes that there is no evidence that the re-labeled golf courses are designed for “maintaining ecological balance.”

Some Defence lands are allocated to favored parties under legacy leases at far below market rates. The Agra (Golf) Club occupies 17.68 acres for which it has paid annual rent of Rs 58.92 (USD 1.07) per year since 1992. The racetrack in Pune Cantonment has been leased to Royal Western India Turf Club since 1902. The lease is for 65.15 acres, but over time the Club has expanded onto an additional 24.1 acres of Defence land without sanction.

Other lease arrangements have been the subject of recent scandal. The Adarsh Society scam and the Srinagar Airport scam are two examples of alleged collusion between local military officials, bureaucrats, politicians, and developers. Through a series of maneuvers, Defence land was re-classified as civilian land. No Objection Certificates then were issued to private developers to authorize construction of luxury high-rise buildings.

In response to these and other controversies regarding land allocation, the Ministry of Defence in 2012 cancelled the authority of local military commanders to make land nominations or issue No Objection Certificates to private parties on their own. All such arrangements now must be submitted to the Ministry of Defense for approval.

History of Defence Land Audits. The formal position of the Ministry of Defence (MoD) is that it has no surplus land. In July 2012 testimony before the Parliamentary Standing Committee on Defence, Ministry officials re-iterated that Defence “has no surplus land.” Far from having excess land to share, the officials stated that each of the military branches, as well as the Ministry, would require additional land in the near future. The 52,000 acres of vacant land were described as being kept vacant for “operational reasons” and future use.

MoD’s stance that there is no surplus Defence land has evolved over time. Between 1977 and 1986, Defence lands were subject to annual audit to identify surplus properties that should be disposed. The Undersecretary to the Government in 1977 notified the service Chiefs of Staff and the Director of Military Lands and Cantonments that once per year all land holdings were to be reviewed by Service Headquarters “with a view to determining which are permanently surplus to Defence requirements and which should be disposed of.” (Ministry of Defence 1977). The memo went on to state that the general practice for land disposal should be by auction with a market-based reserve price.

In 1986, MoD issued a “Modification of Policy.” It stated that “No Defence land shall be declared surplus. If at all any land is given up, it should be only on

the basis of exchange.” (Ministry of Defence 1986) The Prime Minister’s Office Order dated August 22, 1997 states that there will be no alienation of Defence land without Cabinet approval. An amendment was issued in 2000 which permitted use of Defence land by government sector departments and organizations on short term lease provided there was to be no alienation. The issue of surplus property thus ceased to be an empirical question of whether land was being used or would be used in the future for Defence purposes. It became instead a blanket statement of principle that the Ministry of Defence would not surrender land, except possibly by way of exchange. By definition, no land could be “surplus.”

Reforms in Defence Land Management

The CAG report made a series of recommendations to improve management of Defence Estates. In a word, it may be said that MoD has adopted those recommendations that help it identify and retain landholdings. It has rejected recommendations that would identify surplus lands and support their disposition.

To sharpen the focus on economic use of land, the CAG report recommended establishment of an independent Defence Land Management Authority preferably headed by the Minister of Defence. The Authority would prepare a land management plan that included identification of surplus properties and a strategy for capturing the economic value of such properties. No land-use planning across services now exists. Even within each service, master plans exist only at the level of individual cantonments. MoD has not acted on these recommendations.

By contrast, MoD has acted swiftly to improve its record keeping and protect its landholdings. In April 2011, the Director General Defence Estates (DGDE) issued an order that revived the Land Audit.

Considering the importance of land as a national resource, it has been decided that conduct of the land audit will be resumed. The land audit will be conducted by DGDE covering the following areas:

- (i) Updating of land records
- (ii) Survey and demarcation and protection of Defence lands by way of erection of boundary pillars
- (iii) Computerization (digitalization) of land records
- (iv) Efficient usage on Defence lands and effectiveness of encroachment removal actions
- (v) Verification of the usage of Defence lands as per lease to institutions.

In its testimony before Parliament, MoD estimated that some 12,000 acres of its lands are encroached. Disputes over the boundaries of Defence properties are common. Land title sometimes is questioned, given that a number of Defence properties sit on land previously donated to Defence by a state government. Digitalization of land records should help reduce title and boundary conflicts.

Land Exchange to Facilitate Local Infrastructure Projects

MoD has signaled its willingness in principle to “trade” land parcels when its lands stand in the way of completing local infrastructure projects. In-kind exchanges of this type may offer the best opportunity to tap the urban development value of MoD land. However, current procedures for consummating land trades are complicated and time-consuming.

Hyderabad-Secunderabad Metro. Andhra-Pradesh was able to secure two acres of Defence land from the Secunderabad Cantonment to fill out the metro system as designed. Secunderabad Cantonment and Defence Estates cleared the land exchange after an eight-month delay. A letter from the AP Chief Secretary to the Defence Secretary was necessary to finalize the exchange. Two acres of Defence land being used for a riding school and parking were exchanged for 25 acres of state land in the Ranga Reddy district, which could be used as a firing range.

An earlier proposal to widen eight regional roads running through the cantonment was denied on the grounds that it would be a disturbance to military training.

Coimbatore Airport. Coimbatore airport is in the process of being expanded to serve as an international airport. Lengthy negotiations between the Airports Authority of India and the Air Force and Navy had appeared to clear the way for a land exchange that would allow the airport to incorporate 122 acres of vacant Air Force land and 6.4 acres of vacant Navy land.

However, in July 2012 both services announced that they would not transfer land to the airport. The Air Force stated that a Flying Unit would be “coming” in the future. The Navy stated that it needed airport access in case of an emergency. Alternate land sites could not duplicate the advantages of airport access. Navy went so far as to build a six-foot wall around its vacant property to prevent airport use.

This conflict, too, has been referred to the central government for potential resolution.

V. MAJOR PORT TRUSTS—A CLOSER LOOK

This section examines another set of public agencies holding significant amounts of centrally controlled public land—Major Port Trusts. Although Major Port Trusts hold less land than Defence or Railways, their land holdings often are located in or near major urban centers. Some of this land is clearly “surplus,” in the sense that it is not being used, nor being prepared for use, in port-related activities. Following a discussion of the port sector as a whole, we look at three case studies that shed light on the specifics of how greater economic value can be extracted from centrally controlled public lands.

Organization of the Port Sector

Major Ports. India has 13 Major Ports. Twelve are organized under the Major Ports Trust Act (1963). The 13th Major Port—Ennore—operates as a public limited company fully owned by Central Government. Two of the Major Ports—Kolkata and Haldia—are managed by a single Port Trust. Major Port Trusts report to the central Ministry of Shipping, but are organized so as to be quasi-independent in their operations. Each Port Trust is managed by a Board of Trustees. The amount of discretion that local Boards have, particularly with respect to land use and land leasing, has been the subject of frequent controversy. Until 2012, Board Chairmen had the authority to allocate land to lessees by nomination.

In addition to the Major Ports, there are some 200 state-government and private ports. The Major Ports are no longer necessarily the largest ports. Both the private port sector and minor ports are growing faster.

Condition of Major Ports. Many of the Major Ports are legacy ports having a long history of operation. The Bombay Port Trust was established in 1873; the Calcutta Port Trust was established in 1890. The old ports in many respects are poorly suited for today’s international competition. They are over-staffed by such measures as worker-days per container ship handled or worker-days per 100 tons of bulk cargo (Rajasekar and Deo, 2011). Dock facilities often are mis-matched with today’s mix of cargo, with berths specialized for handling cargo that figured more prominently in shipping decades ago.

Several of the Major Ports are struggling financially. They face steep pension obligations from retired workers,² as well as competition both from more

² Kolkata Port Trust, for example, has more than 30,000 pensioners, and a pension fund deficit of 3,000 crore.

modern ports in South Asia (such as Colombo and Singapore) and private ports in India. Many of the ports also appear to have excess land. Their landholdings were determined long ago, without reference to current efficient shipping operations or planned port development.

Landholdings and Land Policy

Landholdings. In total, the Major Ports hold more than 250,000 acres of public land. The largest part of the total consists of tidal land at Kandla Port. Table 1 shows the breakdown of landholdings by Major Port.

**Table 1
Major Port Landholdings**

Major Port	Acres	Major Port	Acres
Paradip	534	New Mangalore	2,928
Visakhapatnam	587	Mormugao	6,382
Ennore	1,047	Jawaharlal Nehru	7,576
Mumbai	1,859	Kolkata	3,000
Chennai	2,035	Haldia (Part of Kolkata Port Trust)	7,000
Tuticorin	2,132	Kandla	220,416
Cochin	2,353	Total (approx.)	257,000

Source: Individual Port Trusts and Ministry of Shipping

Land Use and Leasing Policy. Policy regarding Major Ports land use and land leasing is established through the Land Policy for Major Ports, 2010, developed by a high-powered inter-ministerial committee and administered by the Shipping Ministry. The 2010 Policy amends the Major Ports Land Policy first established in 2004. The 2010 policy was shaped in part by Supreme Court rulings regarding leasing rates for commercial land leased by Major Ports. As of July 2012 the Policy was further modified by central government instruction to limit local Port Trust Boards' discretion in land allocation.

The principal features of the 2010 Land Policy are: (i) Each Port Trust should inventory its landholdings by current and planned use and by valuation. For valuation purposes, it can use recent comparable sales if available (escalated 2% per year); Ready Reckoner values as established by the appropriate state authority; competitive auction values for comparable land leased or sold by the Trust; or values assigned by a recognized appraiser. (ii) Each Port Trust can enter into lease agreements for up to 30 years on its own. Longer-term leases, up to 99 years, require central government approval. For long-term leases, the market value of land should be re-assessed every five years. (iii) Land rents, per court order, should be set at 6% of market capital value per year with 2% escalation.

Long-term land leases paid through upfront premium should be set at the capital equivalent of this rental stream, applying a 6% per annum discount rate.

In addition, each Port Trust is required (iv) to develop a Land Use Plan, approved by the Trust Board and forwarded to the central government. The plan shows how land will be used for different purposes, including lands not required for port activities. The Land Use Policy states that (v) normally, land used for other than port purposes should be leased through a competitive process at market rates, although the Chairman of the Port Trust Board can make non-competitive land allocations, at lower rates, with written notification. Finally, (vi), renewals of leases should be conducted on the same basis as new leases (i.e., no presumption in favor of existing leaseholders at favored rates).

In practice, a Major Port Trust Board should lease/rent land in one of two ways. It can call for tender-cum auction. This is usually done for parcels of significant value where up-front premium is paid.

Alternatively, a Port Trust can lease land in return for annual rental payments. In this case, the Port Trust prepares its proposed land valuations and rental rates for different types of land, and forwards the proposed rent schedule to the central Tariff Authority for Major Ports (TAMP) for approval. TAMP holds hearings, where objections from current lessees and business interests can be heard. It stipulates further information that must be provided by the Trust Board before its rate schedule can be approved. In the past, the approval procedure has been a time-consuming affair, sometimes requiring as much as a decade for TAMP to be satisfied that appropriate information has been provided in the appropriate format. However, the TAMP review process has been speeded up recently, with TAMP handing down several final orders over the period 2010-2012.

Apart from stipulation on leases and related rentals, the Land Policy for Major Ports, 2010 also directs the preparation of land use plans and computerization of all port land inventory via GIS mapping. All ports have completed these activities. However, the Ministry of Shipping is not actively involved in either the review of the land use plan or the consolidation and management of all major port land inventory as all major ports are governed by respective Port Trust Boards and are semi-autonomous bodies. Thus, though significant data is collected, it is doubtful that is analyzed and managed as a whole for the Ministry.

A Draft Policy Directives for Land Policy by Major Ports, 2012 has been prepared after the Cabinet order of March 2011. Subsequent to the order, a meeting was held by the Committee of Secretaries on alienation of Government land. At this meeting it was decided that the Ministry of Shipping could frame regulations on lease/licenses and these regulations would be put up for Cabinet

approval. The Policy Directives, 2012 was a result and re-looked at some of the features of the Land Policy-2010, the key being: (i) license for land in custom bound area would be issued by inviting tenders; (ii) land should be leased through a tender cum auction competitive bidding and the reserve price of such plots shall be the updated SOR; (iii) land can be leased up to a maximum cumulative period of 30 years, over which an approval from the Ministry is required and (iv) other reforms include computerization of entire land management into a GIS based system and publishing of market values assessed on port websites.

The land lease scam of the Kandla Port Trust (see below) could have also been a major driver in the revision of the Land Policy- 2010. The Port Trust is discussed in the case study section. The 2012 Policy thus emphasizes on competitive bidding in every lease case to know the market value. However, it must be noted that Port Trust Boards are empowered to reduce rates below ceiling, allot lands to government departments or private parties on nomination basis and even issue fresh leases to existing lessees without public auction or tender in some cases.

Major Issues. Although the 2010 Land Policy represents a significant step forward in port land management, it has shortcomings that have led to a series of disputes. The Policy laid out what Port Trusts “normally” or “usually” should do. However, it allowed local Boards to deviate from these standards, particularly as regards competitive pricing and land allocation. The Chairman of a local Board was authorized to allocate land by nomination at favorable rates, as long as this was noted in writing. No policy justification was required. The previous (2004) Land Policy allowed even greater local discretion. The case studies reveal several examples of favoritism in land allocation, which, though abusive, were found to be within the letter of then-existing regulations.

This discretionary “hole” in regulations was supposed to be filled by July 2012 instructions from the central government modifying Major Ports Land Policy. The new policy requires competitive auctioning for long-term land leases and market-based land rentals in all cases except where national authorities specifically authorize below-market pricing. Local Boards and Board Chairmen no longer have the right to make below-market allocations of land on their own nomination. However, at the time of this paper being written, the blanket ban on all land leases and sales by the Prime Minister in March 2011 was still in operation. Hence, apart from sale, all land leases cases of over 11 months were being reviewed at the Center greatly hampering decisions related to port activities. Most lease agreements at present are being renewed on license basis to avoid disruption of port activities.

A second issue has concerned the amount of power that should be given to local Port Trust Boards for long-term “alienation” of public land, either through

long-term lease or sale. The 2010 regulations allow Major Port Trust Boards to enter into 30-year land leases on their own. After considerable discussion, this authority has been upheld in the new regulations, as long as the auction route is followed. Longer-term leases, fee simple sales, and other forms of land alienation must be approved by the Cabinet. Local Boards are to make proposals. An empowered committee at the central government level, including the Permanent Secretary, Shipping, then recommends the proposal (as suitably modified) to Cabinet for authorization. This partial re-centralization of decision making about land leasing is consistent with the steps taken in other sectors, such as the Ministry of Defence's suspension of the authority of local military commanders.

A third area of dispute involves application of the new land pricing rules to existing lease contracts. In the case of Kandla Port Trust (see below), the Delhi High Court ruled that the newly approved land rent schedule applied retroactively to 2008-2009 and to then-existing lease agreements, not merely to new leases. In the case of Mumbai Port Trust (also below), the Trust and its lessees disagreed as to whether the new rental policy should be applied to existing leases. So far, the land rents built into legacy leases have not been modified.

The net effect of the evolution in Land Policy for Major Ports remains to be seen. On the surface, it appears that Major Port Trust Boards have been given a clearer mandate to plan for future land use and development of port activities. At the same time, many decisions about identifying and monetizing surplus lands must be referred to the central government. Actual implementation of policy—at both the local level and the central government—sometimes appears to deviate from written rules.

CASE STUDY: COCHIN PORT TRUST

Cochin (Kochi) Port is one of the smallest Major Ports. In 2010, it handled the lowest tonnage of any of the Major Ports. It serves an urban region that is relatively small by Indian standards. The city of Kochi has a population of roughly 600,000; the urban agglomeration of which it is the center has a population of some 2.4 million. Port Trust land values are correspondingly modest relative to a Port Trust like Mumbai. Nonetheless, Kochi is the commercial center of Kerala.

Cochin Port Trust was one of the first of the Major Port Trusts to complete the Land Use Planning exercise at the heart of the new Major Port regulations. It issued a draft comprehensive Land Use Plan in March 2012. Earlier, in May 2010 it received final approval from TAMP for a revision of its land rent schedule. Cochin Port Trust (CoPT) therefore provides a good illustration of how the new land-use and land-leasing rules work in practice.

Land Use Plan: Inventory. CoPT started with an inventory of current land use, joined with an assessment of the special challenges/opportunities associated with that land use. The Land Use Plan of the port states that it aims to use the land resource to maximize cargo handling. Principal findings are summarized in Table 2.

**Table 2: Cochin Port Trust Land Inventory and Notes
(Baseline = 2007)**

Baseline Land Use	Hectares	Notes
Used for Port Activities	157.1	Port activities are scattered all over Willingdon Island. Incompatible activities are located next to each other, while complementary activities are separated. There is a mis-match between dock infrastructure and today's cargo mix.
Leased to Other Parties	305.0	Many leased parcels near the active port are not used for port-related business. Land rental rates have not been adjusted since 1996. In all, 250 land parcels are leased to third parties for other than port purposes.
Reserved for Expansion	466.5	Key proposed projects are logistics park (44.8 ha), ship repair yard (18 ha) and Free Trade Warehousing Zone (41.3 ha) in Willingdon Island. A special economic zone is being developed in an area of 285.8 ha. Puthuvypeen.
Surplus	4.05	
TOTAL	932.9	Includes 386 hectares on Willingdon Island plus land in Vallarpadam, Ernakulam Foreshore, Fort Kochi etc.

Source: Cochin Port Trust Draft Land Use Plan (March 2012) and press reports.

Table: The development of the SEZ will be co-developed by M/s. BPCL-KR, Petronet LNG and IOCL. M/s BPCL have been commissioned for the project. A land area of 33.4 ha has been allocated to Petronet for setting up a re-gasification plant which will also consist of a jetty for LNG vessels. IOCL is intended to be commissioned for an LPG import terminal. It will also provide storage facilities of LPG and birthing facilities for LPG ships.

Several aspects of the inventory deserve emphasis. First, the importance of commercial land leasing is apparent, given that the amount of land leased to third parties is almost double the amount devoted to port uses. In its assessment of the leased land, CoPT noted that a large number of the lessees occupying parcels

located near the port did not transact port business. They were legacy holders of leases on favorable, historical terms. The Land Use Plan proposed to rationalize land use by re-assigning parcels close to the port to lessees that would help generate port activity. The port proposes to reassign/relocate these activities as leases expire. This is proposed and not done yet.

Second, CoPT found that port activities were scattered all over Willingdon Island, making for inefficient interaction. At the same time, some activities were jumbled together in ways that made the port significantly less efficient than if the activities were separated. In 2007, when the baseline was established, container ships, cruise liners, and bulk cargo ships were all handled at the same basic location. Berths were specialized for handling bulk cargoes that no longer were received in commensurate volumes. As a result, the Land Use Plan became a vehicle for efficiently separating incompatible shipping activity, while combining complementary activities.

Third, it is noteworthy how small a portion of CoPT land was identified as “surplus.” The 5.8 hectares of “vacant” land is little over 0.5% of COPT’s total land holdings. More than 450 hectares of CoPT’s land was essentially vacant but reserved for future expansion. In part, this illustrates the reluctance of the Port, like other public landowners, to identify “excess” land that it could surrender. On the other hand, the inventory of unused land has spurred proposals to make economic use of the vacant parcels. CoPT has developed various plans like economic zones, warehousing facilities and others. It must be noted that most of these uses are proposed with the view to increase the throughput of the port.

Land Use Planning and Strategy. The Land Use Plan attempts to rationalize CoPT’s land allocation. The first action, initiated before preparation of the formal Land Use Plan, was to move container ship operations to a new, specialized location. Over 110 hectares of Port Trust Land at Vallarpadam (included in the table) were dedicated for a special economic zone. The container port is to be built in phases and is being operated under a 30-year lease by Dubai Port World. It went into operation in 2011.³ The old container port on Willingdon Island is to be converted to automated bulk handling.

³ Infrastructure and land are not the only constraints on efficient port operation. The new container port at Vallarpadam was designed as the country’s first international trans-shipment port, with support from the central government. However, cabotage restrictions (that prohibit foreign vessels from transporting cargo between ports in India), as well as antiquated customs procedures have so far kept the port from meeting its initial target of 1 million TEUs (twenty foot equivalent container units) per annum (Kerala State Industrial Development Corporation, 2012).

The land use plan also calls for sharpening the focus on other port activity. In the new land-use plan only 56.7 hectares on Willingdon Island are targeted for port operations. 44.8 hectares are designated as a logistics park to support port activity; an eventual 104 hectares are set aside for a free trade warehousing zone; and 18 hectares for a ship repair yard. In preparation for this re-focusing of land use, CoPT deliberately allowed leases for parcels near the port being used for non-port-related activities to expire. Presently, the Port does not have plans to evict these lessees which shall continue to operate on a license basis after their leases expire. These parties will be moved as alternate lessees for port related activities are identified. The Port has prepared a phased plan for the development of the various proposals in Willingdon Island with commencement of operations from 2013 to 2017.

By 2015, leases of about 25 hectares of land in Willingdon are expected to expire. This constitutes about 45 percent of the port trust's land ownership at the northern end. Current lessees are proposed to be replaced by parties that guaranteed a minimum level of port throughput or minimum level of revenue from port-related business. Parties carrying out unrelated business were to be offered parcels in a new business center to be built in the middle of Willingdon Island, envisioned as a convention center site with office buildings and modern hotels. An airstrip used by the Navy is also located on Willingdon Island. Thus, a significant portion of the south area of the area falls under flying funnel and height restrictions including the Logistics Park. The Port has identified and demarcated different height restrictions for different areas.

Contracts for the warehousing zone will be handled as tenders-cum-auction. The new container trans-shipment port was bid as an international tender-cum-auction. The winner, Dubai Port World, committed to 1,600 crore (USD 291 million) of capital investment plus a 33.3% share of vessel handling revenue paid to CoPT. CoPT recently innovatively auctioned a plot for cement bagging facility at the port. CoPT had initially auctioned a 6 acre plot with condition of 1 MGT of throughput to the port. Due to the large size of throughput required there were few bidders and a premium of Rs 1 crore (USD 180,000) was received. CoPT scrapped the bid and floated a revised tender. The Port now allowed firms to bid for a throughput of 1 MT using a combination of actual throughput (which could be less than 1 MT) and monetized value of the balance. This allowed firms which could not earlier guarantee a throughput of 1 MT to bid and increased the pool of firms competing for the plot. It resulted in a bid by another firm with a premium of Rs 50 crore (USD 9 million). The firm is a cement firm which does not have immediate plans to export 1 MT of goods but plans to do so incrementally over 30 years by building a cement bagging plant of the required capacity.

In a land exchange that supported key infrastructure development, CoPT in 2004 completed the building of the three Goshree bridges connecting the mainland Ernakulam with the islands of Bolgatty, Vallarpadam and Puthuvypeen. The state government transferred 110 hectares of land in Puthuvypeen to CoPT in exchange of the right to reclaim a land area of 25 hectares along the Ernakulam's waterfront which was owned by CoPT. The proceeds generated from sale of the reclaimed land in Ernakulam was used to build the Goshree bridges and for the development of the area. A portion of the money generated went to the state exchequer. CoPT was able to fund the construction of the bridges and obtain land in Puthuvypeen through this exchange. Moreover, the connectivity enabled CoPT to utilize the land in Vallarpadam to build a container terminal and that in Puthuvypeen to build the LNG terminal and other port infrastructure. The exchange took place via a tripartite agreement between the State Government, Ministry of Shipping and the Cochin Port Trust.

All in all, the Land Use Plan regulations have served to prod re-thinking of Cochin's port operations and land allocation. Old land leases are being allowed to expire, so that the businesses occupying leased land would better support port development and activity. Competition has been introduced into all aspects of Port land leasing.

In the end, full implementation of the Land Use Plan will depend on market conditions. Whether the more ambitious elements of CoPT's plan—including development of a business center in the middle of Willingdon Island and expensive housing and resort development at the southern end of the island—will become reality will depend on developer demand. The first tender-cum-auction for a site in the planned business center—targeted as a “multi-user office center”—attracted no bids over the summer of 2012.

Land Rental Adjustments. Running with CoPT's development of a Land Use Plan was its proposal to the Tariff Authority for Major Ports (TAMP) to adjust existing land rental rates. The old land rent schedule was established in 1996. CoPT submitted a proposal for new rates in 2002. TAMP formally responded in 2006 that the information submitted was not sufficient for TAMP approval. CoPT re-submitted a proposal in 2007. In the meantime, adoption at the national level of the Land Policy for Major Ports clarified guidelines for land leasing, the standard for setting land rents, and the procedures to be followed. In June 2010, TAMP approved the new land rent schedule (TAMP, 2010).

CoPT did not have a record of comparable land sales or leases. Kerala did not have Ready Reckoner values for the land in question. Therefore CoPT retained an approved appraiser to estimate land values. Following the guidelines established in the national Land Policy for Major Ports, annual rental rates were

set at 6% of estimated capital value, with 2% per annum escalation. Lease agreements call for re-estimating base land values every five years.

CoPT had two sets of lease rates under operation in parallel before TAMP approved rates of 2010- lease rates of applicable to all lease agreements prior to January 1, 1996 and those after. The latter pay the lease rates approved by TAMP in June 2010. Thus, CoPT presently still has two rates under operation - lease rates applicable to all lease agreements prior to January 1, 1996 and that approved by TAMP in 2010.

The previous (Till to 1995 and after 1996) lease rates were applied only on the basis of land use – commercial, industrial and residential with no differential for location. The revised rates of 2010 allocates lease rates based both on land use and land location. Table 3 shows the application of the approved increases in land rents. It compares rents for certain classes and locations of land parcels (Willingdon Island and the SEZ Area in Vallarpadam), as well as the total rent roll, before and after adjustment. The increases are large, typically between 7 and 11 times replaced rental levels. They illustrate the returns to be garnered from active land management. However, it is estimated that almost half of the total lease agreements are those falling under the 1995 slab and shall continue to do so till they expire.

Table 3: CoPT Land Rent Adjustments, In Rupees per acre

Class/Location of Parcel	Lease rates applicable prior to 31.12.1995 wef 1.1.1996 (under operation)	Lease rates applicable for agreements and renewals on and post 1.1.1996 (replaced)	Approved by TAMP in June 2010 (under operation)
1. Willingdon Island			
- Commercial	109,800	340,000	2,223,000
- Industrial/warehouse	**163,000	250,000	1,778,400
- Residential	46,000	170,000	1,667,250
2. Vallarpadam			
- Commercial		340,000	3,579,030
- Industrial/warehouse		250,000	28,63,224
- Residential		170,000	-

* 1996 lease rates; ** Average estimated land lease

Source: TAMP (2010). "Lease Rent for Renewal of existing lease and allotment of land on or after 1.1.1996", CoPT

Port Financials: Of the Rs 628.0 crores (USD 114 million) worth assets of the CoPT's capital asset register in March 2012, land amounted to Rs 26.5 crores (USD 4.8 million). The value of the land however is calculated on the basis of the

amount spent by the Port for reclamation, up-gradation or expenses incurred towards acquisition of land etc. Thus, the actual (market) value land assets of CoPT would be far higher. Carrying land for book purposes at historical cost far below market value is a common practice for public entities. It can obscure the importance of land as a capital asset and the contribution that commercially oriented land management can make to addressing financial deficits. Cochin Port Trust's net operating income stood at negative Rs 83 crores (USD 15 million) in March 2012. Of the total operating income of Rs 307.1 crores (USD 55 million), over 20% was contributed by estate rentals.

Transparency and Accountability. CoPT was one of the first Major Ports to complete a Land Use Plan under the new regulations. It seized the initiative to obtain TAMP approval of new land rental rates.

CoPT's record on transparency, however, is mixed. The Land Use Plan was available for public scrutiny for a time at CoPT's website. It has since been withdrawn. The Land Use Plan for Cochin Port Trust (May 2012) details various planned uses of large tracts of presently vacant land. CoPT does not make publicly available its schedule of actual land-lease agreements. Thus, it is impossible to determine how much of the TAMP-authorized rent roll is actually collected and how much is being collected at the historical rates of 1995. It is unclear where evicted lessees will be re-located, given that the proposed business center has yet to get off the ground. As mentioned before, the full implementation of the Land Use Plan will depend on market conditions, developer demand and the manner in which expired lessees are dealt with.

CASE STUDY: MUMBAI PORT TRUST

Mumbai Port Trust owns some of the most valuable land in India. Its 808.92 hectares which form about one sixth of the total island city have both great financial value and great urban development potential. The Port Trust owns most of the land along the eastern waterfront of Mumbai, as well as real estate spread from Churchgate to Virar, and up to Titwala, a village 60 km from Mumbai Port.

As a port, Mumbai has been in steady, relative decline for 30 years. In the 1980s, it was India's most active port by volume of cargo handled. It has now slipped to 6th or 7th place among Major Ports. Its capacity for modern shipping is constrained by age-old Lock Gates, which limit the size of vessels that can be accommodated, by low draft, and by antiquated dock infrastructure. The port posted a net deficit of Rs 438 crores (USD 80 million) in the financial year 2010-11, equivalent to negative 39 percent of its operating income.

Three basic choices confront the Port and its landholdings. The status quo can be maintained, with existing land lessees, modest changes to existing rent and lease rates, and some updating of port infrastructure. Or, the port can be expanded onto under-utilized lands, and large investments made in new facilities, in an attempt to revive the port's historic importance to shipping. Or, some of the port's land can be opened to re-development, in a way that creates access to the waterfront, monetizes part of the Port's landholdings, and modernizes land use. This third option would acknowledge that it is impractical to try to restore Mumbai Port to shipping pre-eminence. The modern facilities at Jawaharlal Nehru Port (JNPT) give it a competitive edge.

In fact, JNPT was established to decongest the Mumbai Port. While considering the proposals for the establishment of JNPT, a directive from the Prime Minister's Office (August 8, 1980) said "the feasibility report should provide for the release of land and dock areas in existing Bombay Port area for parks, etc". Further, the Ministry of Environment and Forests (MoEF) in its clearance to JNPT in August 1988 noted that "With the operation of Nhava Sheva port as a measure of decongestion of Bombay Port, the traffic in Bombay Port must be gradually reduced by steps to be taken by the Ministry of Surface Transport, Bombay Port Trust and Nhava Sheva Port Trust so that the total general cargo, inclusive of container cargo handled by Bombay Port, comes down within three years to 6.5 MT." Neither of these directions have been heeded.

Land Use Planning: Inventory. Table 4 shows the allocation of Mumbai Port Trust landholdings as of 2008. It is noteworthy that, in the Port's view, less than 0.5% of its land could be deemed "surplus" and available for disposition.

Table 4
Allocation of Landholdings, Mumbai Port Trust

Land Use	Hectares	Notes
Ports activities	423.91	Area includes custom docks, land at Butcher Island, Land used for roads and railway networks and other infrastructure. Also includes operational area encroached by slums.
Estate lettings	276.82	Includes petroleum and oil sectors (2.8%), Defence (1%), FCI/PSU/Government agencies (4.8%) and other commercial and residential users (91.4%).

Estate let out plots vacated including 31H	79.80	
Vacant land at Titwala	28.39	
Total	808.92	

Source: Mumbai Port Trust, December 2012

The Port's land leases range from the iconic Taj Mahal Hotel and Royal Bombay Yacht Club to abandoned textile mills and half-empty warehouses of Cotton Green. The whole of Ballard Estate is a Mumbai Port Trust (MbPT) landholding, as are large tracts of vacant land at Sewri.

The only land specifically identified as available for disposition in 2008 by MbPT consisted of 87 small, miscellaneous plots (averaging just over 4,000 square feet per plot) scattered all over Mumbai and the surrounding area. Although MbPT at the time considered these plots suitable for sale, it appears that central government approval was not granted for disposition, and sales did not actually take place.

Land Lease by Mumbai Port Trust. MbPT had over 2900 leases across 2466 tenants⁴ as of August 1, 2011. Of the large number of lessees, more than a quarter have leases of areas less than 100 square meters as many of these constitute small shops in various markets or individual rooms in buildings owned by MbPT.

The sum total of the recorded lease area is around 273 hectares; an underestimation as about 130 records had no details on lease area. All records can be classified in three broad categories- monthly or fifteen monthly leases, 99 year or long leases and expired leases. The lessees are central governments, state government and private parties. The table below shows lease details of the 273 hectares for which records are available.

Table 5
Lease classification of MbPT (hectares)

	Central Govt.	State Govt.	Private Parties	Total
Expired Lease	79.8	3.0	73.5	156.3
Monthly and fifteen monthly	30.8	1.1	45.4	77.4
Long leases	20.4	0.6	19.0	40.0
Total	131.0	4.7	138.0	273.7

⁴ Source: List of Tenants, website Mumbai Port Trust as of August 1, 2011

Source: Website, Mumbai Port Trust

Income from estate: The operating income for estate activity (including rent from land) of the MbPT, one of the richest landowners in the country stood at Rs 107 crores (USD 19.4 million) in 2010-11. It is estimated that MPBT is able to collect about 30 percent of its billed rent. After accounting for operating and other costs the net surplus from estate activity amounted to Rs 18.25 crores (USD 3.3 million) in 2010-11.

Many of the leases of MbPT were created years ago, a number being over a century. The lease rents were revised intermediately in an ad-hoc manner. In 1962, the World Bank had advised MbPT to reassess its lease rates. Further in 1979-80, the Comptroller and Auditor General of India pointed the need to revise its lease rates to be able to secure reasonable revenue. The Board of Trustees of MbPT engaged Kirloskar Consultants Ltd. for the task of estimating market value of the Mumbai Port Trust Lands and advising on a formula to guide the Trust in arriving at a market value in the future. They were assisted by government approved valuers M/s M.N Dange & Associates. The final report was submitted by Kirloskar in December 1980 and was accepted by the Board of Trustees in August 1982. Consequently, the Port Trust issued notices to several lessees terminating the tenancies with the option of continuing subject to the agreement to pay the revised rent in accordance with the reports.

Data on proposed lease rents for areas is not available. However, a court order⁵ cites that the increase in rent proposed by the BPT was “exorbitant. For example, the rate of rent which was Rs.66.44 (USD 1.2) in the year 1948 and which gradually increased to Rs.317.11 (USD 5.7) in the year 1981, was proposed to be revised at Rs.4515.86 (USD 82).” Some of the lessees filed writ petitions against the increase. The petitions were disposed by a single Judge in 1990. As per the ruling, the Port was entitled to increase revenue but it could not “afford to behave like a private landlord indulging into rack-renting by co-relating the rates of rent with market rates.” The ruling thus struck down the proposed increased rent bringing to naught the efforts of the Port Trust.

Following this, the MBPT filed an intra-court appeal. A Division Bench directed MBPT to arrive at an alternative set of rate. The new and lower rates proposed by the MBPT have been termed as “compromise proposal” and were accepted by Bench. Over 480 lessees took advantage of the compromise proposal and accordingly began to pay revised rents. However, a few others (notably Jamshed Hormusji Wadia) challenged the compromise proposal, its fairness and validity. The lessee also filed for reduced rent on the land it rents from MBPT on

⁵ Civil Appeal NO. 5559 of 2001. Jamshed Hormusji Wadia vs Board of Trustees, Port of Mumbai

the basis an underground storm water drain which limits the use of the given land. The Supreme Court Judgment (January 13, 2004) accepted that the Port had correctly undertaken the land valuation exercise and as a landlord could rightly increase its rents. However, the Judgment also noted that the MBPT being an instrument of the state within Articles 12 and 14 of the Constitution was bound to be fair with its lessees and could not indulge in rack-renting for profiteering. The Judgment directed the setting up of an Adjudicator for resolving appeals for decreased rents.

There are two key fallouts of the 2004 Supreme Court Judgement. One, many of the lessees which had accepted and begun to pay revised rents as per the compromise proposal stopped doing so. Many of these cases are under sub-adjudication for further decrease in rents due to various exceptions cited. Second, it poses a dilemma for ports to charge leases of 6 percent of market or ready reckoner as directed by the Major Ports Trusts Land Policy 2010 and on the other hand abide by the Supreme Court's directive of not increasing rents exorbitantly and acting like a private profiteer.

It is evident that large amounts were being appropriated by the practice of sub-tenancy and collection of premiums. It must also be noted that the Mumbai Port Trusts faces large number of litigations regarding tenancy. As on September end 2002, there were 1,900 cases pending in various courts on the same. Many of the leases which have expired have not been renewed. In many cases, MBPT receives no rent.

Land Use Planning: Strategy. Mumbai Port Trust has not prepared or publicly discussed a Land Use Plan as required by the 2004 and 2010 Land Policy for Major Ports. Instead, choices concerning future development of MbPT lands have tended to escalate directly to Cabinet and state government level. Political and inter-governmental disputes over MbPT landholdings date back more than 30 years.

The modern era of land-use debates can be traced to 1980 when Indira Gandhi approved construction of Jawaharlal Nehru Port (JNPT) at Nhava Sheva, subject to the condition that public land at MbPT would be opened up for park space and other public amenities, once JNPT commenced operations. Part of the rationale for building JNPT was that a new, modern, efficiently designed port in the region would divert traffic from MbPT and help de-congest Mumbai. The commitment to open up portions of the Mumbai Port Trust land area as green space was made in response to sustained campaigning by the Bombay Environmental Action Group to preserve the green belt at Nhava Sheva.⁶

⁶ This history was re-called by the Union Environmental Minister in an April 2010 note to the Shipping Ministry regarding construction of a new container terminal by MbPT. See

Recently, Mumbai First has advanced a variant of plans for re-development of Port lands. (Hindustan Times 2012). It has argued that because of the more efficient operations of JNPT, shipping demand does not justify investment in a new container terminal by MbPT. Investment resources would be more productive if used to develop an International Finance Centre on Port lands, complemented by public open space.

The State of Maharashtra has advanced other plans. It negotiated with MbPT to use part of its land for re-settlement of up to 100,000 slum dwellers. This proposal was decisively rejected by the Ministry of Shipping.

The net effect of decades of back and forth over use of MbPT lands has been de facto adoption of Option 1 outlined above—continuance of the status quo in Port Trust land allocations, coupled with some expansion of Port operations. No Port Trust land has been designated for re-development in commercial or residential use. No land has been allocated for sale or long-term lease to new types of users. No plans for public access to the waterfront or open green space have been adopted. All proposals to date for major changes in land use have been rebuffed by MbPT.

Metropolitan Infrastructure Investment. There is one possible exception to the rule of no change in Port land use. The Mumbai Metropolitan Region Development Authority (MMRDA) is pressing forward with its plan to build the Mumbai Trans Harbour Link as a PPP project. The project would link the island city of Mumbai to the mainland on the East. It requires construction of a 22 km bridge, 16.5 km of which would be over open water.

MMRDA has stated that it is critical to this project to have a 10-20 hectare casting yard at the Sewri end of the bridge. Land there is owned by Mumbai Port Trust. MbPT and the Shipping Ministry have indicated that they would at least be open to possible discussion about leasing land to MMRDA for temporary use for infrastructure construction. However, MbPT has also maintained that the land in question may be essential for container stacking in support of its new container terminal.

It is indicative of the political sensitivities surrounding MbPT land use that, although MMRDA's need for a casting yard at Sewri have been mooted in the press for years, this parcel of land is one of the last pieces to be assembled by MMRDA for the Trans Harbour Link. According to MMRDA, formal discussions over use of the land as a casting yard have not even commenced. In fact, it is unclear who the

Times of India (2011). See also the 2002 plan for regeneration of MbPT lands prepared by the Urban Design Research Institute and the Kamla Raheja Institute of Architecture.

appropriate partner for such discussions would be—Mumbai Port Trust, Shipping Ministry, Prime Minister, or a combination of these offices.

Land Rents for Commercial and Other Use. MbPT has made clear that, at present, it will not promote commercial redevelopment of its land. It intends to continue leases with long-term tenants. The question then is: What rental rates should tenants pay for land occupancy?

Until the 1970s, MbPT entered into 99-year leases with lessees. As a result, land rental rates are far below market. As an example, the Taj Mahal Hotel (subsidiary of Tata) pays a land rental of 13 lakh (USD 23,600) rupees per month for all of the land it occupies. Other legacy lessees enjoy comparable discounts to current market values.

A Supreme Court judgment in 2006 held that the land rents of all MbPT commercial properties, which were not being used for port purposes, with paid-up capital of more than one crore (USD 181,000), had to be increased to 6% of land value effective from 2004. The standard fixing land rents at 6% of land value per annum was later incorporated into the Land Policy for Major Ports. The land rent standard applies to all land rentals for other than port purposes. In other cases, courts have held that the new rate schedule increase should apply to all lessees, including those operating under old leases that prescribed lower rates.

MbPT initially took the position that 6% of land value per annum translated into a monthly land rent for Taj Mahal Hotel of 2 crore (USD 363,000) rather than 13 lakh (USD 23,600) - an increase of approximately 1500 percent. Taj Mahal Hotel declined to pay more than 13 lakh, arguing that was the amount required under its existing lease. After some initial public confrontation, the issue fell out of public notice. MbPT refused to respond to inquiries as to how land rental negotiations had been resolved.

However, a Public Interest Litigation (PIL) complaint lodged with the Central Information Commission forced Mumbai Port Trust to reveal in 2011 that it had not increased Taj Mahal land rent at all (Central Information Commission 2011). Moreover, the Port Trust acknowledged that it was not pursuing increases in land rents for any tenants under existing lease agreements. The result is that Mumbai's largest landowner, the Port Trust, is holding land that cannot be re-developed and is earning far below market value when leased to commercial tenants or other organizations for non-port purposes.

Mumbai Port's Land Patrimony. It is not the purpose of this report to judge how Mumbai Port Trust land should be used, nor how land rental rates should be set. However, a long-run Land Use Plan should at least take into account the market value, and potential for development, of Port Trust land. The

landholdings represent a valuable asset—a patrimony—that should be managed for the long-term benefit of the Mumbai region and the country.

To place this patrimony in perspective: If only 200 hectares of MbPT's 752.7 hectares of landholdings could, in the long run, be managed for their economic value, the proceeds could help finance an important part of Mumbai's needed infrastructure. A land allocation of this size would allow for retention, at far below market rates, of iconic sites that are a critical part of Mumbai's history and architecture.

However, assume that 200 hectares can be managed, over the long run, according to economic and urban development principles. Given recent land pricing in Mumbai, this patrimony would have a value of roughly 125,000 crore, or in the range of US\$25 billion.⁷ The financial value of Port land need not dictate decisions about land use. It *does* justify managing Port land as a coherent estate, where genuinely surplus land is identified, and land values can be converted from time to time into critical infrastructure investments.

Transparency. Mumbai Port Trust's land operations are non-transparent. The Port Trust has not prepared a Land Use Plan as required by national policy. At one time the Port Trust posted a schedule of its land leases on its website. This has since been removed. MbPT has resisted public requests for information about its land leasing policy and lease rates. Lease arrangements for Taj Mahal Hotel were released only in response to a PIL demand. In response to the PIL, MbPT declared that it had a "fiduciary duty" to the lessee not to release financial information. The Central Information Commission dismissed this argument.

CASE STUDY: KANDLA PORT TRUST

Kandla Port is the largest port in India, both in land area (more than 220,000 acres) and in volume of cargo handled. The land originally was given to the port free of cost by the Maharao of Kutch. Of the 220,000 acres, the majority is tidal land.

⁷ Land value estimates are based on (i) the August 2012 sale of 17.5 acres of NTC mill lands to Lodha Group and (ii) Railways' reserve price for 45,000 sq meters of land at East Bandra. The Lodha transaction equated to 387.5 crore (USD 70 million) per hectare. The East Bandra reserve price equates to 880 crore (USD 160 million) per hectare. It goes without saying that applying the average of these values to Mumbai Port Trust land represents a very broad approximation.

The significance of Kandla Port Trust (KPT) as a case study lies in its transition from land allocation to favored parties through nomination by the local Board Chairman to competitive land leasing based on market value. The courts, the Tariff Authority for Major Ports (TAMP), the Chief Vigilance Officer for KPT, as well as the Centre for Public Interest Litigation all played a role in this transition.

Salt Pan Lands. About 10% of KPT’s landholdings, or 22,000 acres, have been designated as saltpan lands usable for the manufacture of salt. Historically, 16,000 acres of this total had been leased by KPT, primarily to a small group of manufacturers tied together through family connections and the Gandhidham Chamber of Commerce and Industry. Land leases had been routinely renewed when they expired, with very modest adjustments in rent levels. Use of the land for salt manufacture was consistent with a 1956 land use plan.

By 2010, land lease arrangements had become “irregular” in several respects. Leases expiring in 2004-05 had been rolled over for another five-year period on a nomination basis, without competition and without adjustment in rates to conform to the Major Ports Land Policy. National policy called for annual rental rates on lands not used for port activities to be adjusted to 6% of market value. Leases expiring in 2009-10 were renewed to 2011 on the same nomination basis.

Land rentals by this time were a small fraction of competitive rates. The majority of saltpan land was leased by KPT at Rs 144 (USD 2.6) per acre per annum. Moreover, the schedule of rental rates called for land to be leased to large manufacturers at one-third the rate charged to small manufacturers (See Table 6). This arrangement obviously favored the largest manufacturers, one of whom leased 9,166 acres from KPT. Not only were land rents far below market, and skewed toward large manufacturers, but lessees proceeded to mortgage their leased land at much higher values. In one transaction, 3,981 leased acres (nominally leased for only a 5-year period) were mortgaged by the lessee for just under 50 crore (USD 9 million).

Table 6
Schedule of Kandla Port Trust Land Rental Rates, 2005-2010
Rs. Per Annum per Acre, by Amount of Land Leased

Up to 10 Acres	Above 10, Up to 100	More than 100 Acres
445	272	144

Source: As cited in Delhi High Court decision

Revamping the Land Rent Schedule. The Chief Vigilance Officer of Kandla Port Trust issued a scathing report alleging multiple violations of national policy

and law in land allocation (Kandla Port Trust Chief Vigilance Officer, 2009). The report asserted that, contrary to the Major Port Trusts Land Policy, leases to favored parties had been rolled over without competition and without new valuation of the leased land parcels. Land rents were far below market rates. The Chairman of the Port Trust and the Shipping Ministry were accused of conspiring with the families holding legacy leases to keep land rents artificially low. The allegations were picked up by the Centre for Public Interest Litigation, which brought a case against KPT before the Delhi High Court.

As this process was moving forward, a new Chairman was named to the Board of Kandla Port Trust. A recognized appraiser was appointed to re-value the saltpan lands. As there were no comparable transactions or Ready Reckoner values on which to base appraisal, it was decided to lease additional, unused saltpan parcels via competitive auction, so as to establish market value. Leases for ten sample plots, 5 of 50 acres and 5 of 100 acres, were auctioned in 2010 on the basis of upfront premium.

The Delhi High Court decided that this sample was insufficient. It ordered auctioning of an additional 15 parcels, located nearer villages and rail lines. Thirteen of these sample plots in the end were auctioned in 2012, again on the basis of upfront premium for 30-year leases.

The average upfront lease premium for the 2010 and 2012 auctions (the latter adjusted downward to establish 2010 equivalent) was Rs 261,739 (USD 4745) per acre. The court calculated that this translated into a baseline (2010) annual rent of Rs 23,249 (USD 418) per acre.⁸ The court also ordered that all saltpan parcels, regardless of size or location, be assessed rent at the same rate. The Tariff Authority for Major Ports (TAMP 2012) subsequently incorporated the court-ordered land rents into its approved rent schedule. Table 7 summarizes the changes in rents per acre for those leases that were adjusted and for the entire saltpan rent roll.

Table 7
Increase in Salt Lands Rent, Kandla Port Trust

⁸ The Land Policy for Major Ports stipulates that annual land rents should be set at 6% of capital value, with 2% per annum escalation. It further prescribes use of an 8% discount rate over time. The court calculated that a 30-year rental stream, starting at Rs 23,249 per year and escalated 2% per year, was financially equivalent, with 8% per annum discounting, to an upfront premium of Rs 261,739 for the same 30 year lease. Note that under the Land Policy, lease agreements are subject to revaluation of the capital base every five years. Note, too, that the court's procedure calculated the rental stream equivalent to an auction-value 30-year lease, not the fee simple capital value.

Before and After Court and TAMP Orders

Item	Before Adjustment (2010)	After Adjustment (2010)
Average Rent per Acre, per Annum	Rs 169 (USD 3)	Rs 23,249 (USD 420)
Increase, Rent per Acre		11,970%
Rent Roll	27.06 lakh (approx. USD 50,000)	2,186.26 lakh (approx.. USD 380,000)

Source: Delhi High Court (2011), TAMP (2012)

The court ordered that the new land rents be applied retroactively to 2010. They were to be applied to all land leases then in effect regardless of any lease provisions to the contrary. Moreover, the court ordered Kandla Port Trust to evict 42 salt manufacturers whose leases expired in 2011, and to re-lease the land under the new rent schedule. If some of the land with expired leases was needed to establish an SEZ, it could be re-directed to that purpose.

Further Consequences of the Kandla Port Trust Experience. The Delhi High Court’s decision has not ended the Kandla dispute. The affected salt manufacturers took their case to a Gujarat district court, the Gujarat High Court, and other legal venues. The Gujarat High Court upheld the Delhi High Court decision.

Criminal charges were investigated by CBI against various parties for collusion in Kandla Port Trust’s rent setting. In the end, the criminal charges were dropped or dismissed. The Land Policy for Major Port Trusts of 2010 stated that “normally” and “generally” land leased by Major Ports for non-port-related activities should be leased at market rates, based on capital valuation, and should be re-adjusted every five years without favoritism to existing lessees when their leases expire. However, the Policy also stated that the Chairman could deviate from this policy, including allocating land by nomination at below-market rates, by written notification.

This loophole in market-based rental policy now has been closed. The central government instructions of July 2012 removed the Chairman’s power to make non-competitive land nominations. Either the “general” procedures must be followed, or rentals/leases must be referred to the central government for determination. This removal of Major Port Trust Chairmen’s local discretion over land use parallels the actions taken to restrict military commanders’ discretion over land use and land leasing in cantonments.

Transparency. For most of the land-leasing dispute, Kandla Port Trust refused to release information regarding its leases. Even the Chief Vigilance

Officer, who also was Deputy Chairman of the KPT Board, could not obtain basic information, such as rental rates or lease terms for land parcels. The Delhi High Court had to order KPT to put on record (i) the names of parcel occupants, (ii) the particulars of leases, (iii) rent being paid, (iv) renewal clauses, and (v) an explanation of why the KPT Board had not followed the leasing rules established by the 2004 Land Policy for Major Ports (Delhi High Court 2009).

KPT never did offer a public policy rationale to explain its deviation from the national Land Policy standards. It argued only that a clause in the Land Policy for Major Ports gave discretion to Port Board Chairmen to grant new leases on a nomination basis without competition.

Although Kandla Port Trust recently has moved to comply with High Court and TAMP orders, reality on the ground is hard to determine and not reported by KPT. As of summer 2012, salt manufacturers continued to occupy “their” parcels, despite eviction notices. No information is available as to what percentage of the court-ordered rent roll is now being collected.

VI. CONCLUSIONS AND WAY FORWARD

1. Centrally-controlled institutions rarely volunteer that they have surplus land. They do not sell land. They are slow to enter into long-term leasing agreements that would capture the economic value of land, while retaining institutional ownership.

Cabinet-level policy now is designed primarily to prevent corrupt or hastily contrived land disposition. Safeguards of this type are needed, in view of the record of abuses in public land management.

However, central-level policy should give equal weight to the economic loss caused by having valuable land assets sit vacant or underutilized for decades. Central-level service providers are not property companies. They should not be property speculators.

Three initiatives would help balance central-level land management.

- A clear statement by Cabinet that urban land is a scarce and valuable resource; that central landholding institutions are expected to identify land required for their present and future service provision; that remaining land is to be classified as “surplus”; and that institutions are expected to prepare and implement plans for monetizing surplus land.
- Creation of a central Land Audit. The Land Audit would monitor institutions’ identification of land needed for service delivery and land that is surplus. The Land Audit would require institutions to justify why vacant land, or land that has been identified as underutilized in reports by the Comptroller and Auditor General, should not be classified as “surplus,” available for sale, long-term commercial leasing, or contribution to PPP. The Land Audit would be an annual process. Australia’s Land Audit could serve as a model for implementation.
- Incorporation of proceeds from land disposition in five-year capital financing plans. Before receiving central government subsidies for capital investment or subsidies to help finance under-funded pension plans, institutions should be required to estimate proceeds from land disposition and include these as a revenue source that reduces the need for budget subsidy.

2. Procedures have begun to be put in place to facilitate provision of public land needed to complete local urban infrastructure projects. These procedures should be strengthened. The time for review should be shortened.

Specifically:

- Land “trades” have emerged as a practical way to solve local authorities’ need for land parcels that stand in the way of completing metro lines, widening roads, or extending water supply networks. However, negotiations over land trades require months or years to finalize. Local disputes almost always are referred to the central government for resolution. The central government should be better prepared for this process. Empowered Committees should be established in each Ministry that review and authorize proposed land trades.
- The policy announced by the Prime Minister’s office in August 2012 aims to unlock centrally controlled land for infrastructure projects. The policy authorizes central institutions to transfer land to other departments of government, to sub-national governmental units, and to public-private partnerships when the land will be used for infrastructure projects. This “authorization” needs to be backed up by incentives. In practice the Cabinet freeze on public land disposition remains in effect. All land use commitments to third parties for periods exceeding 11 months must be approved by Cabinet. Cabinet has become the centralized choke point holding back public land-use decisions and critical infrastructure projects.

3. Land portfolios are poorly managed. All central landholding institutions have legacy portfolios of land rental/land leasing. Land rental rates typically are far below market rates. Land parcels often still are allocated by nomination or automatic renewal of previous leases rather than by auction or other forms of competition.

This situation is gradually changing. In the port sector, courts and the Tariff Authority for Major Ports have taken the lead in prescribing that, for non-port activities, annual land rental rates should be set at 6% of land’s capital value as determined by auction, Ready Reckoner valuations, or values assigned by authorized appraisers. The capital value base for setting rents should be re-evaluated every five years. Implementation of these standards has resulted in rent rolls that should increase by 10 times or more.

The same standards should be applied outside the port sector, for all centrally controlled landholdings that are leased for commercial purposes.

4. Market conditions dictate the timing and price of land sales and long-term land leasing. Land disposition needs to be managed over the real estate cycle. Revenue from upfront land leases cannot be counted on to materialize in a specific year.

This reality has several implications. Major infrastructure projects are several years in gestation. Plans for realizing revenues from land monetization, or contributing public land to infrastructure PPPs, should have a similar timetable. This allows all parties to establish “mid-cycle” land valuations.

Preparations for competitive land auctions need to be completed well in advance. Such critical matters as establishing clear land title, negotiating FSI limits, defining responsibilities for re-settlement of encroached properties all need to be resolved before land sale or upfront land lease. As obvious as these conditions may seem, attempts to capture the economic value of public lands in India have repeatedly run afoul of these pre-conditions.

5. Public land management is profoundly hindered by a lack of transparency regarding land occupancy, land leases, and land planning.

The single step that could most help rationalize management of public lands is greater transparency and accountability. At present, public land management is shrouded in mystery. The lack of publicly available information permits corrupt land dealings to occur, and hampers efforts to realize the economic value of public land assets.

The websites of public landowners should, but do not, provide all basic information on land operations. At present, such information can be obtained only through Public Interest Litigation and court orders. If anything, voluntary transparency seems to have declined in response to public interest in land operations. Major Port Trusts that formerly had land rental schedules and land use plans posted on their websites, have now removed them.

Central government should mandate transparent reporting. At a minimum, this should include website posting of:

- Draft Land Use Plans, for public comment

- Final Land Use Plans as approved for implementation
- All information on land leases and land rentals, including
 - party holding each land lease
 - location and area of leased parcel
 - economic use of leased parcel
 - length of lease, and date of next renewal
 - rental rate in lease agreement
 - most recently appraised capital value of land parcel
 - source of land valuation (auction, comparables, appraisal etc.)
 - actual rent collection, most recent year, and past-due amounts

All except the last item in this list represent information that Major Port Trusts are required to submit to the Tariff Authority for Major Ports in seeking approval of their land rent schedules.

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