

**INDUSTRIES DEPARTMENT AND REVENUE & DISASTER
MANAGEMENT DEPARTMENT**

**2.1 Acquisition and allotment of land for industrial purpose by Odisha
Industrial Infrastructure Development Corporation (IDCO)**

Executive Summary

To ensure rapid industrialisation and orderly establishment of industries in the State, the Government set up Odisha Industrial Infrastructure Development Corporation (IDCO) in 1981. The State Government issued Industrial Policy Resolutions (IPRs) from time to time allowing various concessions including allotment of Government land at concessional rates to attract promoters to set up industries. Also, Orissa Industries (Facilitation), Act 2004 was enacted to make the approval process for industrial projects simpler and faster through single window clearance mechanism.

To meet the objective of rapid industrialization and orderly establishment of industries, IDCO establishes Industrial Estates at different strategic locations and provide infrastructure therein. Further, IDCO is also a nodal agency of Government for providing land to large projects which cannot come up in the Industrial Estate.

During 2001-12, IDCO allotted 29769.482 acre of private land and 16963.412 acre of Government land for 52 out of 89 MoU industries and for 54 out of 113 Non MoU industries. In 86 Industrial Estates (IEs), 4426.380 acre land was allotted to small industries up to March 2012. While 1914.921 acre land were kept reserved for common utilities in the IEs, 1894.571 acre remained unallotted as of March 2012.

Performance Audit of 'Acquisition and allotment of land for industrial purpose by Odisha Industrial Infrastructure Development Corporation (IDCO)' for the period 2001-12 revealed several systemic deficiencies such as incorrect application of public purpose clause, emergency provision for acquisition of land, assessment of compensation etc. Instances were also noticed where land was acquired on locations identified by the promoters of industries without considering the impact on agriculture, irrigation and environment.

The objective of implementation of the Land Bank Scheme to facilitate identification and transfer of land for industries remained largely unfulfilled. Absence of Regulations and criteria in allotment of land reflected lack of transparency in allotment of land /shed under Industrial Estates. Allotment of land was delayed even up to 430 days despite stipulation in Odisha Industries (Facilitation) Rules 2005 to provide assurance for allotment of land within 30 days of application. Irregularities were also noticed in mutual transfer of land by one industry to another.

Cases of short assessment due to incorrect application of prescribed rates and realisation of incidental charges, ground rent and cess on concessional rates instead of market value of land were also noticed.

Monitoring of end use of land was poor as instances of non-utilisation as well as diversion of land by small and medium industries for purposes other than intended were noticed. No action was taken to resume the unutilized land for over three years despite stipulation in the OIIDC Act. Enforcement mechanism to resume the allotted land in case of violation of conditions of lease deed was also ineffective.

2.1.1 Introduction

To develop industrial infrastructure, secure orderly establishment of industries in industrial estates/ areas of the State and assist in organisation thereof, Orissa Industrial Infrastructure Development Corporation (IDCO) was set up (March 1981) under the Orissa Industrial Infrastructure Development Corporation (OIIDC) Act, 1980. All existing Industrial Estates/ areas established at various locations in the State were placed under the management and control of IDCO upon its creation. IDCO establishes Industrial Estates at different strategic locations and provides infrastructure therein. Further, IDCO is also the nodal agency of Government for providing land to large projects which cannot come up in the Industrial Estate. As of March 2012, 86 Industrial Estates (IEs) with 8235.872 acre land were under the management and control of IDCO. In order to attract promoters to set up industries in the State, the Government in Industries Department issued Industrial Policy Resolutions (IPR) in 1992, 1996, 2001 and 2007 which, inter alia, prescribed various concessions¹.

To facilitate quick clearances for setting up of industries, the State enacted (December 2004) the 'Orissa Industries (Facilitation) Act 2004' and set up single window clearance authorities at the State and District levels to examine and approve/ reject project proposals of promoters. Categories of industries and process of allotment for these industries are described below:

- Small Scale Industries (SSIs) with proposed investment of less than ₹ 50 crore apply for allotment of land to the District Industries Centre (DIC), functioning as the Secretariat to the District Level Single Window Clearance Authority (DLSWCA), headed by the Collector. SSIs are allotted land by IDCO within its Industrial Estates on the recommendation of DLSWCA.
- Large/ mega/ heavy industries, known as MoU² and Non-MoU industries apply for allotment of land, along with proposals to set up industries, to Industrial Promotion and Investment Corporation of Orissa Limited (IPICOL), which functions as the Secretariat for both the State Level Single Window Clearance Authority (SLSWCA)³ (headed by the Chief Secretary), and High Level Clearance Authority (HLCA)⁴ (headed by the Chief Minister). The proposals for industries with investment between ₹ 50 crore to ₹ 1000 crore are considered by SLSWCA and investment of more than ₹1000 crore by the HLCA. On approval of the proposal by the above authorities, the IPICOL assesses the requirement of land for the industries and recommends the extent of land required to IDCO, which acts as requisitioning authority.

¹ Concessions such as allotment of Government land at concessional rates, exemption from stamp duty, interest subsidy, Value Added Tax/ Central Sales Tax/ entry tax exemptions etc.

² The industries who signed Memorandums of Understanding (MoU) with the Government.

³ With members such as Principal Secretaries of Agriculture, Commerce & Transport, Energy, Finance, Forest & Environment, Industry, Law, Labour & Employment, Steel & Mines, Revenue, Water Resources and Works Departments and CMDs of IDCO, GRIDCO, IPICOL and Secretary, Pollution Control Board etc.

⁴ Members being Ministers of Industry, Finance, Steel & Mines, Energy and Labour & Employment Departments/Ministries and Chief Secretary, Development Commissioner, Secretaries of Finance, Steel & Mines, Forest & Environment, Industry, Energy and Law Departments etc.

- IDCO files requisition for alienation of Government land and acquisition of private land with the Revenue and Disaster Management (RDM) Department (Tahasildars and Land Acquisition Officers/ Collectors) and with General Administration (GA) Department for land under Bhubaneswar Municipal Corporation area.
- IDCO receives the acquisition cost/ land premium at concessional IPR rate from the promoters of industries, deposits the same with the LAOs/ Tahasildars, takes possession of land on execution of lease deed with Collector and hands over the same to the promoters concerned on lease basis for tenure of 90 years under the provisions of OIIDC Act. Thus, the promoter of industry is a sub-lessee, with RDM/ General Administration (GA) Department as the main lessor.

The position of allotment of land to industries as of March 2012 is given below:

Table 2.1.1 Position of land allotted by IDCO for industrial purpose as of March 2012

(Area in acre)

	Government land	Acquired private land	Total
Land transferred by Government to IDCO for IEs	8235.872	0.000	8235.872
Alienation/ acquisition of land for MoU based industries	10104.363	20795.814	30900.177
Alienation/ acquisition of land for Non-MoU based industries	6859.049	8973.668	15832.717
Total	25199.284	29769.482	54968.766
Handed over:			
MoU based industries	10104.363	20795.814	30900.177
Non MoU Based industries	6859.049	8973.668	15832.717
In IEs to small and medium industries	4426.380	0.000	4426.380
Total handed over	21389.792	29769.482	51159.274
Reserved for future common facilities	1914.921	0.000	1914.921
Un-allotted in IEs	1894.571	0.000	1894.571

(Source: Records of IDCO)

As seen from above IDCO allotted 30900.177 acre and 15832.717 acre land to 52 out of 89 MoU and 54 out of 113 Non-MoU based industries respectively and also 4426.380 acre land to 3653 small industries in the Industrial Estates (IEs).

2.1.2 Organisational structure

The RDM Department, headed by the Secretary, is vested with the powers to issue notifications under various provisions of Land Acquisition (LA) Act, 1894 for acquisition of private land and alienation of Government land through Collectors.

IDCO which requisitions land for industrial purpose, is headed by the Chairman cum Managing Director (CMD) and assisted by Chief General Managers (CGM), Deputy General Managers (DGM) and Managers in the Corporate Office. Besides, Divisional Heads (20) function at the field level for management of 86 IEs, spread over 30 districts of the State. General superintendence, direction, management of the affairs and the business of the Corporation is vested with a Board of Directors (BoD) consisting of fifteen Directors under the chairmanship of the CMD of the Corporation.

2.1.3 Audit Objectives

Performance Audit was conducted with a view to assess whether:

- acquisition of land was as per provisions and procedures laid down in Act/Rules;
- process of allotment of land to industries was transparent and fair;
- rules for fixation of price of land for industries were in place, prices fixed were in conformity to such rules and accordingly charged from industries;
- appropriate mechanism existed for ensuring and enforcing utilisation of land for the intended purpose and was effective.

2.1.4 Audit criteria

Criteria adopted for evaluating the system of acquisition and allotment of land for industrial purpose were sourced from the following documents:

- The Orissa Industrial Infrastructure Development Corporation Act, 1980 and Rules 1981;
- The Orissa Industries (Facilitation) Act, 2004 and Rule 2005;
- Industrial Policy Resolutions 2001 and 2007;
- Land Acquisition (LA) Act, 1894 and Land Acquisition (Amendment) Act, 1984;
- Land Acquisition (Companies) Rule, 1963;
- Executive instructions and circulars issued by the State Government;
- Orissa Government Land Settlement (OGLS) Act, 1962 and Orissa Government Land Settlement Rules, 1983;
- Orissa Prevention of Land Encroachment (OPLE) Act, 1972 and OPLE Rules, 1985;
- Forest (Conservation) Act, 1980 and Environment (Protection) Rules, 1986;
- Orissa Public Premises (Eviction) Act, 1972;

2.1.5 Scope of Audit

Performance Audit was conducted during March to October 2012 covering the period 2001-12⁵ with review of land acquired and allotted to 167 small and medium industries⁶ (9 *per cent*), 28 non-MoU based (50 *per cent*) selected using Stratified Random Sampling method and all 89 MoU based industries (100 *per cent*). As the MoU based industries provided with land were scattered in 13 districts of which nine districts had already been covered in Audit during last two years, remaining four⁷ districts (total nine MoUs) were selected to examine the assessment and payment of compensation in case of private land and premium in case of Government land. Audit test checked the records of Departments like RDM, Steel & Mines, Energy, Industries and Forest & Environment and also of IPICOL, IDCO as well as eight of 12 Infrastructure Development (ID) Divisions of IDCO.

2.1.6 Audit methodology

Audit objectives, criteria, scope and methodology were discussed in Entry Conference with the Chief General Manager (Finance) and Chief General Manager (Infrastructure

⁵ Audit period was considered since major allotments for industries were made after introduction of IPR 2001 and all MoUs signed during 2002 onwards

⁶ Out of total 1890 units located in the industrial estates of IDCO.

⁷ Bolangir, Cuttack, Koraput and Rayagada since nine districts covered under Paragraph 2.2.3 of Audit Report (Civil) for the year ended March 2010, Paragraph 2.1.1.5 of Audit Report (Civil) for the year ended March 2011.

Development) of IDCO on 12 March 2012 and with the Additional Secretary, RDM Department on 25 April 2012. Since inspections by IDCO and other authorities on the status of end use of land by industries was an area of concern, joint inspections of land along with officials of IDCO and Revenue Authorities were conducted.

Audit findings were discussed with the Principal Secretary, Industries Department on 4 March 2013 and with the Principal Secretary, RDM Department in the presence of Chairman-cum-Managing Directors, IPICOL, IDCO and representatives of Departments like Steel and Mines, Energy, Industries and Forest and Environment in an Exit Conference held on 20 April 2013. Responses of the Government, wherever received, have been incorporated at appropriate places.

Audit findings

2.1.7 Acquisition of land for industrial purpose

Land acquisitions made by the Government under the Land Acquisition (LA) Act, 1894, fall distinctly under two categories, *viz.* acquisition for public purpose and other purposes. During 2002-12, Government acquired 29769.482 acre private land and provided to 52 MoU based industries (20795.814 acre) and 54 non-MoU industries (8973.668 acre). Audit examined the process of acquisition of land, assessment and payment of compensation etc. with reference to the provisions of Acts, Rules and instructions and observed the following deficiencies.

2.1.7.1 *Acquisition of land for non Government Companies under provision for ‘public purpose’*

Section 3(f) of Land Acquisition (LA) Act defines ‘public purpose’ as provision for land, *inter-alia*, for planned development in pursuance of any Scheme or policy of the Government, improvement of existing village site, town or rural planning, provision of dwelling units to poor or land less or to persons affected by natural calamities, carrying out any educational, housing, health or slum clearance Scheme, land for a Corporation owned or controlled by the State etc, but does not include acquisition of land for Companies. Further, for non-Government companies, acquisition of land was permissible only under Section 40 and 44 B (Part VII) of LA Act, 1894 read with Land Acquisition (Companies) Rules, 1963.

Land Acquisition (Companies) Rules provide constitution of Land Acquisition Committee to advise the Government on matters relating to acquisition of land (Rule 3); acquisition to be made after company’s effort to purchase land directly from the land owners on payment of reasonable price (Rule 4); acquisition of agricultural land in case of non availability of suitable alternative site subject to consultation with senior Agricultural Officer {Rule 4(2)(i)}; execution of agreement by companies with the Government not to use the land for any other purpose without approval of Government (Rule 5 ii) and resumption of land in case of misuse, non-use and partial use etc. (Rule 5 iv).

Besides, Section 6(1) (ii) of LA Act (declaration that land is required for public purpose) provide that no declaration was to be made unless the compensation to be awarded for such property is to be paid wholly or partly out of public revenues or some fund controlled or managed by a local authority.

Audit, however, noticed that in 190 LA (MoU based industries) cases test checked, RDM Department approved acquisition of 14296.56 acre private land for 33 industries (non-Government Companies) at ₹ 912.45 crore during 2002-12 under

‘public purpose’ clause, even though the circumstances did not permit the land to be acquired under public purpose as discussed below:

- Administrative approval for land acquisition was given in the name of private companies in all these cases.
- In 110 out of 190 LA cases involving 23 industries, name of the companies were mentioned in the preliminary notifications indicating that land was acquired for companies.
- In all these cases, the cost of compensation was wholly borne by the said industries and not by IDCO and the same was confirmed (January 2012) by CMD, IDCO. This indicated that the acquisitions were for industries and, therefore, the land was to be acquired under Part VII of LA Act.

Thus, provisions of the LA Act were violated resulting in bypassing the safeguards available in the LA Act, 1894 and LA (Companies) Rule, 1963 to protect the interests of land owners.

RDM Department, however, stated (April 2013) that IDCO was acquiring private land for industrial purpose, which is very much a public purpose under section 31(1) of OIINDC Act 1980. It was also stated that in the above acquisition, the public purpose clause as defined in LA Act has been fulfilled, as the cost of acquisition was fully borne by IDCO, which is a Corporation owned and controlled by the State.

The reply is not acceptable since IDCO was acquiring land for private promoters and the entire cost of acquisition was borne by the promoter concerned. Thus, land for these industries should have been acquired under Part VII of LA Act but was acquired under ‘public purpose’ to by-pass the legal provisions and procedures prescribed under part VII of LA Act and LA (Companies) Rule, 1963.

2.1.7.2 Acquisition under emergency provision

Section 17 (4) of the Land Acquisition Act and the Executive Instructions (September 1985) relating to emergency provisions, authorise the Government to dispense with the procedures laid down in Section 5 of LA Act for giving opportunity to land owners of being heard, under emergency grounds such as the public purpose for which the land was to be acquired should be achieved within a period of six months from the date of notification under section 4 (1), funds available for the public purpose were to lapse, if not spent within the prescribed time etc.

Audit noticed that in respect of 92 out of 225 test checked LA cases (190 for MoU and 35 for non-MoU) relating to 20 companies, 7025.535 acre private land was acquired at ₹ 205.65 crore during 1995-2008 (***Appendix 2.1.1***) by invoking emergency provision though none of the above grounds was fulfilled. Further examination of these LA cases by Audit revealed that:

- in all 92 cases, IDCO recommended application of emergency provisions by citing a generic reason that the projects would be executed on priority basis.
- in respect of acquisition of 4370.330 acre land in 58 LA cases, RDM Department took six to 34 months for issue of order for acquisition under Section 7 of LA Act, indicating that there was actually no necessity for invoking the emergency provision and the public purpose to be achieved within six months was not complied with.

- in 36 LA cases involving acquisition of 2845.38 acre land for 10 projects, emergency provision was approved by the Under Secretary even though such power was only vested with the Deputy Secretary and above rank Officers. Thus, approval of competent authority was not obtained in these cases though it had far reaching impact on land owners.
- in case of acquisition of 1241.070 acre land for two industries, the entire land remained unutilised/ vacant (as of March 2013) even after four to five years of handing over (July 2008 to March 2009), diluting the necessity for invoking emergency provision.



land provided to Aditya Alluminum, Rayagada remained unutilised as of March 2013

Thus, emergency provision was arbitrarily applied, contrary to the provisions of LA Act and the land owners were deprived of the rights to contest the land acquisition and protect their property due to inappropriate application of emergency provision.

The RDM Department stated (April 2013) that emergency provision was applied in all these cases based on the recommendation of the Collectors of districts concerned. The reply is not acceptable, as the RDM Department was the competent authority to examine the recommendations made by the Collectors for invoking emergency provision.

Further, Section 4 of the LA Act provides that besides the preliminary notification being published in official gazette and news paper, public notice of the substance of such notification should also be given at convenient places in the locality. Audit noticed that in seven LA cases of acquisition of 1041.13 acre land for five industries, although Government in RDM Department had not applied emergency provision, three Collectors concerned (Sundargarh, Jajpur and Jharsuguda) while serving preliminary notices under Section 4(1) in the locality mentioned that land was acquired under emergency provision and that the provisions of section 5(A) of LA Act shall not apply for the acquisition.

The Department confirmed (May 2013) that the emergency provision was applied erroneously, but stated that the right of the land owners to file objections was not taken away as two other modes of publication of notification under section 4(1) were available i.e. publication in gazette and news paper. The reply is not tenable as the public notice which was served in the locality, should not have errors in it as it was more accessible mode of communication of notification.

2.1.7.3 Acquisition of private land without providing opportunity to land owners to file objections

Section 5A of LA Act, 1894 extends right to owners of land to file any objection to the proposed acquisition of their land within 30 days from the date of publication of preliminary notification for acquisition of land under Section 4(1) of the Act. A copy of the 4(1) notification was to be served in the locality and acknowledgement of land owners/ villagers concerned were to be obtained and kept on record. The concerned Collector was to submit a report containing recommendations and record of proceedings regarding such objections to the Government for consideration. Individual notices were also to be issued to the land owners intimating the proposed

land acquisition and inviting objections to the said acquisition, as required. The Secretary of RDM department was competent to consider and dispose of objections filed by the land owners based on information furnished by the Collector concerned.

It was, however, observed that in 132 out of 190 test checked LA cases involving acquisition of 9926.23 acre private land (LA Cost ₹ 751.02 crore) for 30 industries, copy of the Section 4(1) notification which was served in the locality, did not mention any clause/ provision inviting objections under Section 5(A) of LA Act from the land owners. Reason for such omission was not found on record. Besides, individual notices were also not issued to the affected land owners, as required under Executive Instructions of the Department.

Audit examination in respect of 55 LA cases test checked relating to all the nine MoU revealed that:

- in 10 out of 15 LA cases relating to four⁸ MoU based industries, the RDM Department received Collectors' reports citing objections like existence of fertile land, inadequate compensation, lack of provision of employment, etc. from land owners. But, these reports were not considered by the Secretary and declaration to the effect that the land is required for a public purpose under Section 6 of LA Act was issued.
- in seven LA cases relating to Sahara India Power Corporation Limited, 718 objections filed by the land owners were disposed of by the Collector, Bolangir though the Secretary, RDM Department was competent to consider and dispose of the objection filed by land owners.

Thus, land owners were not given reasonable opportunity to file objections under Section 5(A) of the LA Act and were deprived of their statutory right by the Collectors/ RDM Department. Further objections, wherever received, were also not considered by the Department.

On this being pointed out, Government replied (July 2013) that all Collectors were instructed (June 2013) to strictly adhere to the provisions of Section 5A of LA Act and directed that the public notice served in the locality under Section 4(1) of LA Act must contain provision for calling of objections within 30 days. The reply does not elaborate any action which would be taken in cases cited above by Audit.

2.1.7.4 Identification of locations for setting up of industries

Industrial Policy Resolution 2007 provided for framing a comprehensive land use policy to address issues concerning identification of land for industrial and allied purposes. It also provided for creation of Land Bank identifying suitable tracts of Government land for orderly industrial growth. However, in the absence of a Land Bank for industrial use, identification of location of industries was left to the promoters of industries themselves. Such selection of locations by the industries led to delays in the acquisition process.

Out of 89 MoUs signed with different industries during 2001-12, Government agreed to specific locations as suggested by the industries themselves in 70 of them. However, no document could be produced to Audit to indicate whether the Government carried out any survey/ assessment with regard to the availability of

⁸ Tata Power Limited:4, RSB Transmission Limited: 1, KVK Nilachala Power Private Limited; 4, Visa Power Limited: 1

Government land and willingness of the private land owners to part with land at the locations suggested by the industries. The potential impact on agriculture, irrigation and environment due to selection and allotment of land for industrial purpose at these locations was also not assessed.

As the selection of site was left to the industries, there were changes of locations in case of six⁹ MoU industries. This further aggravated the delay in acquisition of land due to re-initiation of Land Acquisition proceedings for changed locations with consequential delay in setting up of the industries.

Industries Department stated (February 2013) that before the project is approved by Competent Authority, views of different Departments/ agencies dealing with raw material linkages, land, infrastructure linkages etc were sought. The reply is not tenable as RDM Department, which is nodal agency for land acquisition, stated (April 2013) that it was not associated with assessment of land and identification of sites as these are pre-acquisition exercises. This is indicative of the fact that RDM department was not consulted regarding availability of required land in the particular location/ villages identified by the industries.

2.1.7.5 Acquisition of excess land

As per Rule 4 of Land Acquisition (Companies) Rule 1963, acquisition of private land for companies was to be allowed only after the company had made its best endeavor to find land in the locality suitable for the purpose of acquisition and made all reasonable efforts to purchase such land by negotiation with the person interested therein on payment of reasonable price and such efforts have failed. The Collector holds an enquiry under Rule 4(2) and submits a report on the above to the Government for consideration.

Audit noticed that though IDCO/ IPICOL was aware that, three out of 89 industries (MGM Steels Limited, Monnet Power Limited and Monnet Ispat and Energy Limited) had directly purchased 327.81 acre land from the land owners, yet the same was not reduced from the land requirement finally assessed (1295 acre) for these industries by IPICOL.

Moreover, in the remaining 86 test checked cases, even the extent of land acquired directly by these industries was not available with IPICOL as well as IDCO. There was no mechanism either in IPICOL/ IDCO/ Industries Department to collect such information from RDM Department. A joint inspection was conducted with RDM Department and IDCO officials during which seven¹⁰ such industries intimated that they had purchased 1324.343 acre land directly from the land owners. This indicated that the Administrative and RDM Departments did not have adequate oversight over self acquired land by industries. This resulted in avoidable excess acquisition of land of farmers, mostly engaged in agriculture. RDM Department stated (April 2013) that after the matter was pointed out in Audit, the Department had taken steps to detect such cases and has initiated action thereon.

⁹ Adhunik Power and Natural Resources Limited, KVK Nilachal Power Private Limited, Sterlite Iron and Steel Company Limited, Scaw Industries Private Limited, Vijaya Ferro and Power Private Limited and Jindal Stainless Limited.

¹⁰ Ind-barath Energy (Utkal) Limited: 466 acre, Lanco Group Limited: 589.578 acre, Shiva Cement Limited: 45.16 acre, Surendra Mining (Private) Limited: 88.60 acre, Shyam Metaliks and Energy Limited: 29.02 acre, Aryan Ispat and Power Limited: 31.11 acre, ESSAR Steels Limited: 74.875 acre (Keonjhar: 47.875 acre, Paradip: 27 acre)

2.1.7.6 Acquisition of land in a piece-meal manner

MoUs for setting up industries in the State contain commitments from both the parties viz the promoters of industries and the State Government. The commitments made by the State Government, besides other concessions, include allotment of Government land at concessional rate. IPICOL was authorised to assess the land required by the industries and recommend to IDCO the quantum of land for allotment.

Audit, however, noticed that IPICOL did not make a comprehensive assessment of the land required for different components of each industry such as main plant, railway line, approach road, water pipeline, township etc and instead assessed the land requirement for each component in a piecemeal manner, as and when applied by the industry concerned. As a result, in case of five industries, though the land for main plant had been handed over, the process for land acquisition/ alienation for the other components was not initiated/ initiated with inordinate delay, resulting in over all delay in setting up of industry, as indicated in the table below:

Table 2.1.2 Submission of land acquisition proposal in piecemeal manner

Sl No.	Name of Industry	Land allotted (acre)	Period of allotment	Components for which land assessed in a piecemeal manner
1	MGM Steels Limited, Dhenkanal	62.860	November 2008 to August 2010	Main plant: 116 acre (May 2007) Water pipeline : 10 acre (June 2010)
2	Rungta Mines Limited, Dhenkanal	600.695	July 2006 to July 2008	Main plant: 600.695 acre (July 2006) Approach road 23.083 acre and Water pipe line: 18.082 acre proposal pending (March 2013). Railway siding: proposal pending for Administrative approval 78.00 acre.
3	Aditya Aluminium Limited Rayagada & Koraput	1750.08	December 2007 to March 2009	Main plant: 1750.08 acre (December 2007 to March 2009) Connecting land for Red mud pond and Ash Pond: Land not applied (March 2013)
4	GMR Energy Limited, Dhenkanal	836.410	January 2009 to April 2010	Main plant: 836.410 acre : land was allotted (April 2010) Approach road and Raw water pipe line: Under acquisition (March 2013)
5	Lanco Group Limited, Dhenkanal	6.280	March 2012	Main plant: 829.769 acre Ash pond: 381.09 acre: administrative approval not received Ash pond: 35.03 acre (January 2013). This land was applied for by the promoters belatedly.

(Source: *Joint inspection of projects and information furnished by IDCO*)

Out of the above five industries, while MGM Steels Limited had started partial production, two industries (GMR Energy Limited and Lanco Group Limited) had started construction of main plant (January 2013). However, ash pond, raw water pipeline, red mud pond, approach road, railway siding which are crucial for commercial operation of industries, was not constructed (March 2013) as these were still awaiting additional allotment of land. In case of remaining two industries, construction of main plant was not commenced.

This is indicative of lack of due diligence by IPICOL in making comprehensive assessment of land requirement. The assessment made in a piecemeal manner led to

delays in acquisition as well as delays in utilisation of land already allotted for industrial purpose. No reply was received from IPICOL or the Department on this issue (September 2013).

2.1.7.7 Acquisition of agricultural land for industries

Mention was made in Audit Report on Agriculture Department (Agriculture Wing) for the year ended March 2011 regarding acquisition of agricultural land for industries. In all cases of acquisition of agricultural land for non-Government companies, Land Acquisition (Companies) Rule, 1963 required consultation with the District Agriculture Officer.

Audit, however, noticed that in case of acquisition of 29769.482 acre private land for 37 MoU based and 54 non-MoU based industries, the District Agriculture Officers concerned were not consulted before land acquisition process was initiated, though required. Check of 47 land acquisition cases in four sampled districts revealed that out of 4210.419 acre land acquired, 3816.223 acre (91per cent), land acquired was agricultural land.

In reply RDM Department stated (July 2013) they have instructed (June 2013) all district Collectors to obtain clearance from Agriculture Department where irrigated cultivatable land is proposed to be acquired for industries.

2.1.7.8 Acquisition of irrigated land in command area of irrigation projects

As per paragraph 9.11 of IPR 2007, industries would be eligible to apply for Government/ IDCO land. In case any private land was to be acquired, all efforts were to be made to avoid acquisition of double cropped irrigated land.

Test check in Audit revealed that acquisition of 2000.695 acre irrigated land lying in command area/ ayacut of irrigation projects in case of following three MoU based industries resulted in loss of 2304.84 acre of irrigation potential, as assessed by Water Resources Department.

Table 2.1.3 Position of loss of Irrigation potential due to acquisition of ayacut area of irrigation projects

Sl. No.	Name of the Company	Private land applied by IDCO (in acre)	Private land allotted by IDCO (in acre)	Loss of irrigation potential as assessed by WR Department (Ayacut area in acre)
1	GMR Energy Limited	863.21	831.630	1136.644
2	KVK Nilachal Power Private Limited	548.021	388.981	628.196
3	Tata Power Company Limited	788.412	780.084	540.00
Total		2199.643	2000.695	2304.84

(Source: Records of IDCO and loss assessed by the WR Department available in IDCO records)

Thus, there was significant loss of irrigation potential due to acquisition of irrigated land situated in the ayacut of irrigation projects.

Audit also noticed that while acquiring land for GMR Energy Limited in Rengali Irrigation Project, the Chief Engineer concerned viewed that diversion of irrigated land for industrial purpose would not be in the interest of the State. This was, however, disregarded by Water Resources Department, who agreed for such

acquisition in all these cases subject to payment of cost of installation of Lift Irrigation projects (LIPs) for creation of equal irrigation potential.

Audit noticed that in case of GMR Energy Limited, though ₹ 3.02 crore was deposited, no irrigation potential was created and in case of KVK Nilachal Power Private Limited, no amount was demanded. In case of Tata Power Company Limited, 17 LIPs were installed out of 20 LIPs stipulated (August 2013).

On this being pointed out, RDM Department, instructed (June 2013) all district Collectors to obtain clearance from WR Department where irrigated cultivatable land is proposed to be acquired for industries.

2.1.7.9 *Acquisition of residential land of Cuttack Development Authority for industrial purpose*

Housing & Urban Development Department notified (June 2003) inclusion of 37 villages of Cuttack District in the Cuttack Development Plan Area (CDPA). Audit noticed that Tata Power Company Limited (TPCL), who signed an MoU with the State Government in September 2006 was allotted (May 2010 to August 2011) 871.427 acre land by RDM Department in four out of above 37 villages even though the area was notified to be included in the CDPA much earlier (June 2003). Besides, there was no industrial zone in the said four villages in the Comprehensive Development Plan 2012 of CDPA and most of the land was in the residential zone. Thus, land notified for residential purposes by the Development Authority for planned development of Cuttack city was irregularly allotted to an industry without consulting Cuttack Development Authority.

On this being pointed out, RDM Department stated (June 2013) that clearance from H&UD Department would be taken for acquisition of land for industrial purpose in urban areas in future. However, the Department did not initiate any action to reclaim the above 871.427 acre land which cannot be used for industrial purpose.

2.1.7.10 *Delay in completion of Land Acquisition proceedings*

Section 6(1) of Land Acquisition Act required passing of award for compensation within two years from the date of publication of declaration regarding requirement of land for public purpose, failing which the LA proceeding would automatically lapse and were to be started afresh. This would ensure that the land owners receive a higher compensation because latest market value of land on the date of publication of notification is considered for calculation of compensation. But the Government (RDM Department) prescribed (July 1959, July 1989 and February 2000) a time schedule of one year for completion of land acquisition proceedings to ensure speedy disposal of LA cases. Test check of 55 LA cases in four districts revealed that;

- In 47 LA cases (85 *per cent*) involving seven industries, the LA proceedings spilled over the stipulated period of one year and the LAOs took one to eight years to finalise the LA proceedings in contravention to Government orders. The effect of delay occurring at various stages not only delayed the commissioning of the industries but also deprived the land owners and the public of the intended benefits.
- In respect of 8 LA cases involving acquisition of 16.80 acre land for Aditya Aluminium Limited, the LAO was required to issue notice under Section 9 of LA Act to persons interested for claiming compensation. The notice was

issued in June 2012, however, the Government claimed that award was passed during May 2012, i.e, prior to notice under Section 9 which is not permissible.

The Collector stated (May 2013) that the award was passed in May 2012 when no person turned up during Award Enquiry under Section 9 of LA Act. The reply is not convincing as the LAO admitted (January 2013) that award cannot be passed without complying the provision of Section 9 of LA Act. This is, thus, a clear case of passing of the award on a back date, which is violative of the LA Act and resulted in extension of undue favour to the promoter of industries.

2.1.7.11 Acquisition of land after expiry of validity of MoUs

MoUs signed by Government with industries included provision for extension of the validity period of MoUs, subject to the condition that the industry made substantial progress in implementation of the project. Out of 89 MoUs examined, Audit noticed that no validity period was indicated in one case (Pallavi Power and Mines Limited) whereas in 71¹¹ cases where validity period was indicated, it had already expired as of March 2012.

Audit scrutiny of these 71 cases revealed that in case of TATA Power Company Limited, where validity of MoU expired, the Energy Department instructed (March 2010) Collector, Cuttack for halting the land acquisition process until renewal of the MoU. However no such action was taken in 10¹² industries and 2162.417 acre land was also allotted after expiry of MoUs.

On being pointed out by Audit (December 2012), the Steel and Mines Department and Energy Department stated that detailed guidelines have been framed (January and March 2013) for extension of validity period of MoUs indicating, *inter-alia*, to examine whether the investors fulfilled their commitments as per the MoUs.

2.1.7.12 Assessment of compensation

Section 23 of LA Act read with Government instructions (8 December 1971 and 16 April 1980) required that for assessing the market value of land to be acquired for payment of compensation, the LAOs were to consider highest market value of similar land in the village concerned or nearby village on the date or nearby date of publication of notification under Section 4 (1) of LA Act, unless there are strong circumstances justifying a different basis of assessment. Besides, as per the Executive Instruction 72 of RDM Department, sales, leases, previous acquisitions etc. were to be considered for fixation of market value. Further, as per Government orders of January 2008, benchmark valuation was to be considered as minimum (a floor) for fixation of market value of land. The Revenue Department (Board of Revenue), Odisha clarified (August 2010) that market value should not be less than the concessional IPR rate for calculation of ground rent and cess.

In case of seven MoU based industries, 4210.419 acre private land were acquired between May 2003 and March 2012 at ₹ 159.22 crore. Verification of records of Sub-

¹¹ Steel: 47, Power: 19, Aluminium :1, Cement; 1, Others:3.

¹² Action Ispat and Power Private Limited, Brahmani River Pellet Limited, Brand Alloys Limited, Crackers India Alloys Limited, Konark Ispat Limited, Sahara India Power Corporation Limited, Sterlite Energy Private Limited, Tata Power Company Limited, Vedanta Aluminium Limited and Visa Industries Limited.

Registrars concerned revealed that LAOs under-assessed compensation of ₹ 55.05 crore in 33 out of 55 test checked LA cases in acquisition of 2546.249 acre private land, in respect of six industries¹³(***Appendix 2.1.2***). This was due to fixation of market value of land at a rate lower than the highest sale value registered with the Sub-Registrar concerned, as discussed below:

- in six LA cases relating to Aditya Aluminium Limited, Joint Secretary, RDM department instructed the Collector to consider the market value of land of Sambalpur district (₹ 35.69 crore) for acquisition of land at Rayagada and Koraput districts even though the Collector, Koraput viewed the same as impracticable and unrealistic. As per the highest sales statistics of concerned/ adjoining villages in these two districts available with the Sub-Registrars Office concerned, the value of land works out to ₹ 49.63 crore.
- in 13 LA cases relating to two industries viz Tata Power Limited and Sahara India Power Corporation Limited, the LAOs considered bench mark value of ₹ 11.07 crore instead of ₹ 36.10 crore due to non consideration of the highest sales statistics of concerned/ adjoining villages which were available with the Sub-Registrars' Office concerned.
- in 14 LA cases relating to three industries viz Visa Power Limited, KVK Nilachal Power Private Limited, RSB Transmission Limited, the LAOs assessed compensation at ₹ 7.54 crore which was significantly lower than the amount payable (₹ 23.62 crore) as per the concessional rate prescribed in the IPR.

Besides, establishment charges applicable in the above 33 LA cases under Section 50(1) of LA Act amounting to ₹ 5.50 crore being 10 *per cent* of under-assessed compensation, could not be recovered.

RDM Department replied (July 2013) that instructions were issued (June 2013) to all district Collectors to take utmost care to consider the highest sales statistics and avoid under assessment of compensation. Collector, Rayagada also raised (February 2013) additional demand of ₹ 1.38 crore on IDCO for such under-assessed compensation. Further action from IDCO was awaited (August 2013).

2.1.7.13 Short assessment of additional compensation

Under Section 23 (1A) of the Land Acquisition Act, additional compensation at 12 *per cent per annum* on the market value of land is to be paid to land owners from the date of publication of notification under Section 4(1) to the date of award of compensation under section 11 of LA Act or the date of taking of possession of the land, whichever is earlier.

Audit test checked 55 LA cases and it was noticed that in 15 cases for acquisition of land for three industries, additional compensation, though, payable for a period ranging between 14 and 30 months (considering first date of award in each LA case),

¹³ Aditya Aluminium Limited, Koraput/ Rayagada: ₹ 13.94 crore , KVK Nilachal Power Private Limited: ₹ 7.29 crore, RSB Transmission Private Limited Limited: ₹3.48 crore, Sahara India Power Corporation Limited: ₹ 21.74 crore, Tata Power Company Limited : ₹3.29 crore and Visa Power Limited: ₹5.31 crore

was incorrectly paid for 12 months by the LAOs resulting in short payment of additional compensation ₹ 11.26 crore¹⁴ to land owners.

In reply, the Collectors of Rayagada and Koraput confirmed (November 2012) the short assessment of additional compensation and Collector Rayagada raised (February 2013) a demand of ₹ 5 crore on IDCO for payment of the same to land owners. The Collector, Cuttack assured that the matter would be examined. Further action by IDCO was awaited (August 2013).

2.1.7.14 *Forfeiture of administrative/ establishment charges*

As per the instructions (June 1999) of RDM Department and decision (October 2005) of IDCO, in case of withdrawal of LA proceeding and lease proposal at the request of promoters due to change of site or other reason, prescribed *percentage* of establishment cost of RDM Department/ administrative charges of IDCO ranging from zero to 100 *per cent* was to be retained by IDCO and Government, depending on the stages of withdrawal. Besides, in case of invalidation of LA proceeding due to reasons not attributable to the requisitioning authority (IDCO), a part ranging from 10 *per cent* to 20 *per cent* of the establishment cost/ administrative charges were also required to be forfeited by LAO/ IDCO.

Audit noticed that at the request of promoters, IDCO withdrew acquisition/ allotment proposal for 3565.585 acre land in respect of five¹⁵ promoters due to change of location, proposed land coming under ayacut area of irrigation projects etc. However, administrative charges of IDCO and establishment charges of Government amounting to ₹ 16.09 crore was not retained/ forfeited by IDCO, resulting in undue favour to the promoters concerned to the same extent.

In reply, IDCO stated that the administrative charges deposited by the promoters were available with IDCO and the same would be forfeited soon. Action in this regard was awaited (March 2013).

2.1.8 Allotment of land

The State Government in Industries Department formulated the Industrial Policy Resolution (IPR) 2001 as revised in IPR 2007 with the objectives to create a business climate conducive to accelerate investment in industry by making provision of land under '**Land Bank Scheme**' and allotting Government land for industrial purpose at substantially concessional rate. Section 59 of the OIIDC Act, 1980 stipulates that IDCO may, with the previous approval of the State Government, make Regulations consistent with the Act and the rules made thereunder to carry out the purposes of the Act under which IDCO may dispose of land and buildings.

As of March 2012, IDCO allotted 46732.894 acre land to 106 industries (MoU: 52 and non-MoU: 54) which included 16963.412 acre¹⁶ Government land. IDCO also allotted 4426.380 acre land in IEs to 3653 Small Scale Industries. However, IDCO was acquiring land and allotting it without framing any Regulations even after lapse of

¹⁴ Tata Power Limited, Cuttack: 4 cases (₹ 6.83 crore), Visa Power Limited, Cuttack: 3 cases (₹ 0.35 crore), Aditya Aluminium, Koraput/ Rayagada: 8 cases: (₹ 4.08 crore).

¹⁵ MGM Steels Limited: ₹ 0.02 crore, Sterlite Iron and Steel Company Limited: ₹ 15.77 crore, Tata Power Company Limited: ₹ 0.09 crore, Patnaik Steel and Alloys Limited: ₹ 0.03 crore, Mahanadi Aban Power Limited: ₹ 0.18 crore.

¹⁶ MoU: 10104.363 acre and non-MoU: 6859.049 acre.

33 years. On this being pointed out, IDCO stated (October 2013) that a draft Regulation was under process for approval of the Government.

In the absence of detailed Regulations, Audit noticed certain irregularities in the allotment process by IDCO as discussed in succeeding paragraphs:

2.1.8.1 Assessment and commitment of land

During 2001-12, Government committed to provide 86732.68 acre land to 89 MoU based industries. However, as of March 2012, 100 *per cent* committed land was provided to only two industries, more than 50 *per cent* to 22 industries and less than 50 *per cent* to 28 industries. Further, 37 industries were not given any land. This shortfall was due to change of location, delays in land acquisition, forest clearance, public resistance, court cases etc. While two industries commenced production, 27 industries started partial production as of March 2013. Thus, the objective of achieving industrial development by providing land for the purpose was not fulfilled.

2.1.8.2 Non implementation of the Land Bank Scheme

Industrial Policy Resolution 2007 provides that IDCO along with Revenue Department shall vigorously implement the 'Land Bank' Scheme announced in IPR 2001 to ensure orderly industrial growth. Under the scheme, tracts of Government land were to be identified to ensure minimum acquisition of agricultural land and earmark those exclusively for allotment and would be transferred to IDCO for industrial and infrastructure projects.

Audit, however, noticed that during 2010-13, 4.34 lakh acre Government land was identified by RDM Department in 29 out of 30 Districts, of which only 182.71 acre (0.04 *per cent*) land was transferred to IDCO during 2010-13.

This indicated that Land Bank Scheme was not functional under RDM Department/IDCO. Further, RDM Department acquires land from private owners for industries, against requisitions made by the promoters of such industries through IDCO and the respective Administrative Departments. Due to this, considerable time was taken for land acquisition in each case and thus, only two out of 89 MoU based industries were allotted land to the extent required (March 2012).

The Principal Secretary, Industries Department stated (April 2013) that the Land Bank Scheme involves three stages *viz* identification of Government land, its transfer to IDCO and its development. It was stated that transfer of identified land to IDCO had been initiated. The reply is not tenable since the Land Bank Scheme could not be operational even after six years of the notification of IPR.

2.1.8.3 Arbitrariness in allotment of land

Wherever multiple industries applied for land in the same location, due diligence was to be exercised while selecting the industry to which the said land was to be allotted.

Audit noticed that three industrial projects, i.e., KVK Nilachal Power Private Limited, GMR Energy Limited and a joint venture project of Odisha Hydro Power Corporation applied for setting up their power projects at Kamalanga village in Dhenkanal District. The HLCA instructed (May 2006) finalisation of the site by the Secretary, Energy Department and IDCO. The Secretary, after physical inspection along with authorities of Central Electricity Authority etc., proposed for allotment of this site to

the joint venture company of Odisha Hydro Power Corporation Limited, due to its excellent suitability for the project. The proposal was, however, not approved by the State Government which stated that the land was already committed to GMR Energy Limited. This was incorrect as the land at Kamalanga was not committed to GMR Energy Limited as revealed from the MoU signed with the Government on 9 June 2006. However, the site was allotted (January 2007) to GMR Energy Limited which was indicative of arbitrariness in allotment and extension of undue favour to GMR Energy Limited by accommodating the interest of private industries, compared to that of a Public Sector Undertaking.

Energy Department stated (March 2013) that Kamalanga Site was allotted to GMR Energy Limited as their application for the project was cleared by the SLSWCA first considering their project preparedness. The reply is not acceptable as HLCA, while approving the proposal of GMR, authorised the Secretary, Energy Department to finalise the exact location. The Government, while approving the site at Kamalanga in favour of GMR, did not assign any reason.

2.1.8.4 Irregular allotment of land without adherence to environmental norms

As per orders (May 1998) of Forest and Environment Department, stone crusher units should not be allowed within one kilometer proximity of habitation. This was also reiterated (February 2007) by the State Pollution Control Board.

Audit noticed that out of 100 acre land at Chhatabar IE of Khurda district, IDCO allotted 74.574 acre to 23 crusher units during 2000-02 despite the area being in close proximity to human habitation. As the allotment faced stiff resistance from the local inhabitants/ villagers due to potential air pollution and associated health hazards, stone crusher units were proposed to be moved to an alternate site and the site at Chhatabar remained vacant and unutilized (August 2013).

The Industries Department stated (April 2013) that IDCO had acquired the land with the consent of Odisha State Pollution Control Board (OSPCB) and Forest and Environment Department. Further, there was no village or habitation within one kilometer of the site and land remained unutilised as the matter relating to allotment/ cancellation of crusher units is sub-judice in the Hon'ble High Court.

Even though the department stated that there was no village or habitation within one kilometer of the site, it is evident from the correspondence of OSPCB with Forest and Environment Department that it was situated within 300-400 meters from the proposed crusher units when allotted.

2.1.8.5 Allotment of forest land without approval of Central Government

As per Section 2 of the Forest Conservation Act, 1980, no State Government or other Authority shall make, except with prior approval of Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose.

Audit scrutiny revealed that in two IEs (Chandaka and Mahisapat), out of 267.620 acre¹⁷ land valued at ₹ 1304.29 crore (at benchmark valuation) belonging to forest category, 259.471 acre land valued ₹ 1297.35 crore was allotted to 139 industrial units as of March 2012 without obtaining requisite clearance from the Ministry of

¹⁷ Chandaka IE: 260.620 acre and Mahisapat IE: 7 acre

Forest and Environment. Thus, forest land was irregularly allotted to industries without the approval of GoI.

IDCO replied (August 2013) that it has submitted forest diversion proposal for forest land in Chandaka IE to the Principal Chief Conservator of Forest, Odisha. In respect of forest land in Mahisapat, the Divisional Head, Angul stated (August 2012) that the Revenue Divisional Commissioner had been requested to change the Record of Rights (RoR) from forest to industrial.

However, the fact remained that the forest land was used for non-forest purposes without de-notification by the Union Government.

2.1.8.6 Allotment of land to small industries in Industrial Estates

Section 59 of the OIIDC Act stipulates that IDCO may, with the previous approval of the State Government, make Regulations specifying the terms and conditions for disposal of land and buildings and the additional terms and conditions subject to which such land and buildings in industrial estates and industrial areas may be held or used. It was however, observed that no such Regulations have been framed by IDCO.

Audit further noticed that IDCO formed (January 2004) a four member committee *i.e.*, Land Allotment Committee (LAC) under the chairmanship of CGM (Infrastructure Development) which was subsequently reconstituted (2008/ 2010) to a six/ eight¹⁸ member team under the chairmanship of Director of Industries/ Chief Secretary to deal with approvals related to allotment of all land and to accord approval for post allotment procedures such as change of constitution, mutual transfer, land use etc.

During 2001-12, LAC considered 2210 applications for allotment of land/ shed in IEs. Audit noticed that there were no criteria for consideration of applications for allotment of land due to non framing of Regulations leading to absence of transparency in such allotment as discussed under:

- LAC recommended allotment in 1245 cases while in another 714 cases, rejected the same citing reasons like routine activities, non-permissible activities, etc. with no details. Some instances are given below.
 - While land measuring 1.00 acre was provided (November 2009) in Food Processing Park (FPP), Khurda to Sujata Corporation for milk product and ice-cream manufacturing unit, in the same meeting, the application of Sriram Products for 15000 sft land for fruit drink manufacturing was rejected citing it a routine activity.
 - Whereas the application of Priyanka Enterprises for 0.345 acre land in FPP, Khurda for manufacturing of jam, jelly, sauce, and pickle was approved by the LAC in its 16 and 25 February 2008 meeting, yet the application of Bhagaban Agro Foods for 0.345 acre land in same IE for same purpose was rejected (16 and 25 February 2008) by the LAC.

¹⁸ Secretaries of Industries Department, Housing & Urban Development Department, Revenue & Disaster Management Department and Special Secretary to Government, General Administration Department, Vice-Chairman, Bhubaneswar Development Authority, Commissioner, Bhubaneswar Municipal Corporation, CMD, IPICOL and CMD, IDCO.

- 72 cases were dropped/ deferred without assigning any reason.
- Out of 2210 applications received, 158 applications were rejected during 2001-12 on grounds of non-availability of land, which was not factually correct as 196.126 acre land were available for allotment against the requirement of 232.895 acre (*Appendix 2.1.3*) in these IEs. Thus, land was not allotted to 158 prospective small industries despite availability.
- During 2001-12, in 18 cases, applications were rejected by the LAC citing the activities to be routine in nature, and hence not permissible, though another 18 cases were recommended for the same activities (such as rice mill, offset printing, fruit juice, manufacturing of corrugated box, fabrication, repairing of vehicles etc.) during the same period which indicated lack of transparency in recommendation of LAC to provide land in IEs.
- In seven out of 2210 cases, the proposals of seven allottees for 8.148 acre additional land valued ₹ 6.09 crore at IDCO rate (*Appendix 2.1.4*) were considered and approved directly by LAC without obtaining the recommendation of the DIC/ DLSWCA, which was the competent body to examine and assess the additional requirement of land by the industrial unit.

Thus, in the absence of any evaluation process, assurance on the correct application of criteria could not be derived by Audit.

The Industries Department stated (April 2013) that IDCO allotted land on the recommendation of DLSWCA and High Level Allotment Committee and that while decisions of an individual may be arbitrary, those taken by a Committee cannot be arbitrary. It also stated that additional land was allotted on the recommendation of LAC and on receipt of appropriate dues. The reply is not acceptable as the decisions by Committee were not supported by any documentation on application of any criteria/ recorded reason. Further, additional land was allotted without the approval of competent authorities *viz* DIC/ DLSWCA.

2.1.8.7 *Delay in allotment of land*

Sub-clause-5 of Rule 5 read with Schedule VI of the Odisha Industries (Facilitation) Rule, 2005 states that assurance for allotment of land should be given within 30 days of filing application with IDCO.

Audit noticed that applications of 657 entrepreneurs for allotment of land/ sheds in IEs were considered by LAC after 30 days and the resultant delay in allotment ranged between 15 and 30 days in 93 cases and 31 and 430 days in 564 cases. The delay was mainly due to irregular holding of LAC meetings.

Though there was no stipulation in OIIDC Act regarding periodicity of holding LAC meetings, it was quite evident that the meeting should have been conducted every 30 days since OIFA Act provides that IDCO should assure allotment of land within 30 days. But IDCO conducted only 18 LAC meetings during February 2007 to February 2011, with the highest gap of nine months between two LAC meetings between February 2009 and November 2009.

The Industries Department accepted (April 2013) the facts above and assured that LAC meetings will be held regularly in future.

2.1.8.8 Allotment by Mutual transfer of land

Land is allotted to IDCO on lease at concessional rates by RDM and GA Departments for further allotment by way of sub-lease to industries under the enabling provisions of Section 31 and 32 of OIIDC Act. During 2001-12, IDCO permitted 449 transfers from one industry to another on the basis of mutual transfer, involving 390.307 acre land by executing a tri-partite lease deed executed with both transferor and transferee industries (***Appendix 2.1.5***). Audit test checked 40 such mutual transfer cases and following deficiencies were noticed:

- The process as prescribed in OIFA for scrutiny and evaluation of the industry proposed to be set up by the transferee, was to be carried out by the concerned DLSWCA and LAC. However, this was not done in case of mutual transfer. The choice of transferee industry was made by the transferor industry, rather than IDCO in all 40 test checked mutual transfer cases (***Appendix 2.1.6***). No evaluation was carried out regarding the industry to be set up by transferee.
- Availability of land which was under consideration to be transferred and the list of industries which were to be considered for allotment of such land was not known to all entrepreneurs, thereby, diluting transparency in the process of allotment of land through transfer by IDCO.
- In 38 test checked cases, even the class of industry of the transferor and transferee were not the same, despite the fact that allotted land was to be used only for that particular class of industry (***Appendix 2.1.6***). This resulted in change of end use of land, in violation of the original lease deed.
- In view of the fact that the land was initially allotted at substantially concessional rates, there was a significant risk that the allotment through mutual transfers resulted in transferee industries paying higher land premium than the concessional rate, which accrued to transferor industries rather than to IDCO.
- In cases where land was lying unutilised, rather than resuming the land under the provision of Section 34 of OIIDC Act which could be allotted to another industry after due evaluation by LAC, IDCO permitted mutual transfers to transferee industries chosen by the transferor industries.

Thus, IDCO did not exercise adequate due diligence to ensure that the land proposed to be transferred by an industry was first resumed and then re-allotted by following evaluation criteria and to the extent possible, to the same type of industry at the prevailing concessional rate.

The Industries Department stated (April 2013) that IDCO permitted mutual transfers in view of the provisions of Sections 4, 15 and 33(3) of the OIIDC Act. It also stated that the process of resumption of land was very cumbersome and hence IDCO saves a lot of paperwork by permitting such mutual transfers.

No specific reply on the issues of transparency in allotment procedure pointed out by Audit was provided especially in view of the fact that IDCO has not framed detailed Regulation for its functioning as required under Section 59 of the Act, as detailed in ***Paragraph 2.1.8***.

A few instances of irregularities noticed in the mutual transfer process are discussed below.

- Santoshi Modern Rice Mill was allotted (October 2003) 1.496 acre land for establishment of a modern rice mill who applied (June 2007) IDCO for change of constitution from proprietorship to a partnership firm having four partners including the original proprietor, which was approved (June 2007). Subsequently, the Managing Partner intimated (January 2008) IDCO that the original proprietor retired from the partnership firm and requested for a change of land use from rice mill to software development under the name of Total Infrastructure Pvt. Limited, which was also approved (March 2008) by IDCO. This led to a mutual transfer of land on the plea of change from proprietorship to partnership firm. Audit further noticed that the land continued to remain unutilised (December 2012).

The Industries Department admitted the above facts and stated (April 2013) that since the land had not been utilised by the original lessee for the purpose intended, the allotment would be cancelled soon.

- SK Industries (SKI) was allotted (February 2003) 0.184 acre land for establishment of a paddy processing unit. Land was lying unutilised as of January 2009, when IDCO issued a show cause notice to the industry. However, on request of SKI (July 2011), land was permitted to be transferred (November 2011) to Kalinga Roofing Solution Pvt. Limited by IDCO. Thus, instead of taking proactive steps to resume land lying unutilised for more than eight years, IDCO permitted transfer of the land to another industry chosen by the transferor, whose nature of industrial activity was completely different from the purpose for which land had initially been allotted.

No reply was received from the Industries Department (August 2013).

2.1.8.9 *Shortfall in realisation of transfer fee on mutual transfer*

IDCO charges a transfer fee from the transferor industry, fixed as a percentage of the prevailing rate of land, before effecting such mutual transfers as decided by the BoD¹⁹ from time to time. Although two other entities which allot land on lease basis i.e., Cuttack Development Authority and GA Department charge 50 *per cent* of the unearned increase and 75 to 100 *per cent* of the prevailing premium respectively for industrial land allotted through transfer, IDCO permitted such transfers with only 10 *per cent* of prevailing land premium as transfer fee.

¹⁹ Full differential cost up to August 2003; 10 *per cent* of land cost at the time of application: BoD meeting dated 17 April 2006; 40 *per cent* of land cost at the time of disposal: BoD meeting dated 23 September 2009

Audit noticed the following irregularities in collection of transfer fees in such mutual transfers.

- Rawmet Ferrous Industries Private Limited (RFIPL) transferred (January 2007) 143.500 acre allotted Government land to Tata Steel Limited (TSL) by way of sale of 100 *per cent* shares to TSL on a total consideration of ₹ 43.42 crore. As per the shares sale and purchase agreement (January 2007), this included land valued at ₹ 7.91 crore at the time of transfer to TSL, against the land cost of ₹ 83.59 lakh paid by RFIPL to IDCO at the time of taking over possession (February 2005) of the land. Thus, IDCO should have charged ₹ 70.70 lakh being the transfer fee at 10 *per cent* of differential land cost at the time of transfer, which was, however, not charged.

The Industries Department admitted the above fact and stated (April 2013) that the mutual transfer fee was not realised inadvertently and assured to realise the same.

- Seven industries, allotted with land measuring 14.008 acre in Chandaka IE applied (August 2003 –December 2009) to IDCO for permission for mutual transfer in favour of Kalinga Institute of Industrial Technology (KIIT). The Sub-Committee of High Level Land Allotment Committee considered (May 2010) six²⁰ out of above seven applications and permitted the proposals for mutual transfer in principle, pending finalisation of the land rate as per the benchmark valuation fixed by the RDM Department, which was to be used to determine the transfer fee. Subsequently, CMD, IDCO permitted mutual transfer of land of seven²¹ allottees during October 2010 to December 2011 at the concessional rate prevailing in the IEs at the time of application for mutual transfer by recovering the differential land cost (₹ 3.79 crore) instead of recovering the same at the benchmark value (₹ 70.04 crore) of land though decided by HLAC. Thus, undue benefit of ₹ 66.25 crore was extended to KIIT (**Appendix 2.1.7**) due to the arbitrary decision of the CMD, IDCO. In addition, the purpose for which the industrial land was to be used was also permitted to be changed by IDCO, in violation of the original lease deeds signed with transferor industries.

The Industries Department stated (April 2013) that the cost of land as approved by its BoD was realised. The reply is not convincing as the IDCO completely ignored the decision of HLAC to charge transfer fee to be calculated on bench mark valuation without any justification.

2.1.8.10 Reservation of adjacent plots for future allotment

There is no provision in the OIIC Act, 1980 or any rule/ guidelines regarding reservation of land for future requirement of specific allottees.

²⁰ B. Engineers & Builders Ltd., Kalinga Software (P) Ltd, Mangalchand Telecom Pvt. Ltd., PGL Plastic, Package India, Utkal Tubes.

²¹ Six and another (New Life Healthcare) approved in August 2011.

Audit scrutiny revealed that in two²² out of 167 test checked units, IDCO irregularly retained pieces of land (5.480 acre) adjacent to two industrial units reserved and subsequently allotted to the same entrepreneurs in February 2006 and between March to December 2010. It was observed during joint inspection (July 2012) that both the plots were vacant and unutilised. Thus, not only was land kept reserved irregularly, thereby denying availability to other industries, but the utilisation of the land was also not ensured.

Industries Department stated (April 2013) that while allotment of one allottee (Shreenidhi Mineral Private Limited) has already been cancelled (January 2013), in the other case (Khandagiri Pulp), the said allotment was made with the approval of the LAC. The reply is not acceptable as before allotting further land, utilisation of earlier land should have been ensured which was not done. Besides, land remaining unused for more than three years should have been resumed in terms of provisions of the OIIDC Act.

2.1.8.11 Irregular allotment of land on permissive possession

As per notification (October 1991) of the Revenue and Excise Department, permissive possession can be given for communal and sarvasadharan²³ land where lease can not be given. Audit scrutiny, however, revealed that during 2001-12, IDCO gave permissive possession of 37.562 acre land to five allottees²⁴ in Chandaka IE (37.5 acre) and Mancheswar IE (0.062 acre) although entire land so allotted was categorised in revenue records as jungle, hills and did not fall under communal/ sarvasadharan category. Further examination revealed that all these irregular permissive possession were given in these five cases for purposes such as greenery (three), bus parking (one) and golf club (one), with the approval of CMD, IDCO. One such case is discussed below:

- Out of above land, 35.535 acre in Infocity, specially developed as an IT city, was given (August 2001 and November 2010) on permissive possession by IDCO to Bhubaneswar Golf Club (BGC) for developing a golf course. A Memorandum of Agreement (MoA) was signed (September 2001) with stipulation not to construct any permanent structure thereon since the land was to be provided to software companies as and when demand arose. Audit noticed that though the land was not coming under communal or sarvasadharan category, IDCO had allotted the land on permissive possession. It was further noticed that though nine applications (May-August 2009) for allotment of 19.230 acre land were received with recommendation of DLSWCA for allotment of five acre land to set up IT industries, these units were denied (November 2009) allotment of land on the plea of non-availability of



Bhubaneswar Golf Club

²² (i)Khandagiri Pulp: 0.460 acre since March 2003 and allotted in February 2006 (ii) Shreenidhi Mineral Private Limited: 5.02 acre in August 2009 and allotted in March to December 2010.

²³ When land is classified as *nala, mahara, adi, jalasaya, tank, road, danda* but excluding *gochar land*

²⁴ Bhubaneswar Golf Club: 35.535 acre, Bhubanewar Puri Transport Services Limited: 1 (one) acre, Central Institute of Plastic Engineering and Technology: 0.758 acre, SP Refrigeration: 0.062 acre, Trident Academy of Creative Technology: 0.207 acre

land. Due to such irregular permissive possession, IT companies were deprived of land in Bhubaneswar.

Industries Department, while admitting the fact (April 2013) stated that through permissive possession, IDCO is realising rent. But the fact remains that permissive possession was only given as a transient arrangement and the land was to be vacated and allotted to IT companies when demand increases.

2.1.8.12 Irregular allotment of land in Industrial Estates

As per guideline framed and circulated by IDCO (January 2004) for allotment of land to institutions, 20 per cent area in each IE was to be earmarked for educational and professional institutions. Land was to be allotted as per guidelines prescribed by concerned Council/ Board/ University. The fact of availability of land in each IE and its reserve price was to be advertised in news papers for wide publicity and two stage bidding process was to be followed for identification of allottees of land. The reserve price of land for institutional use was to be fixed at 1.5 times of the concessional industrial rate in the IE concerned.

At the request (April 2005) of IDCO, the Collector allotted (February 2007) 34.783 acre land to IDCO in Ramachandrapur village for establishment of industries. However, IDCO allotted (July-August 2007) the entire land to one educational institution viz Centurion School of Rural Enterprise Management (CSREM) in July 2007 in Ramachdrapur of Khurda district. Audit observed that:

- Though the guidelines prescribe that open bidding was to be resorted to for allotment of land, no such steps were undertaken by IDCO before allotting land to CSREM.
- IDCO paid (March 2007) land premium of ₹ 1.04 crore (at ₹ 3 lakh per acre) to the Tahasildar concerned and in turn charged ₹ 1.21 crore as land premium from CSREM. Even the land premium rate as per IPR 2007 was ₹ 1.74 crore (at ₹ five lakh per acre). Thus, IDCO suffered substantial loss of revenue by not only failing to auction the land as required by its own Guideline but by also failing to even realise the prescribed rate of land as per IPR 2007.

In reply, IDCO stated (June 2012) that as the land was sanctioned before the effective date of IPR 2007 and clarification given by Industries Department, the land cost was fixed at ₹ 3 lakh per acre.

Reply is not tenable as the allotment was made during July 2007 and IPR 2007 was effective from March 2007. Hence, IPR 2007 rates should have been applied.

2.1.9 Pricing of land

Land is a scarce and finite natural resource. It is, therefore, essential that land acquired from private individuals or Government land alienated for use by industries, is priced in a manner reflecting its realistic economic value. IPR 2007 provided that Government land would be provided to industries at concessional rates. Audit examined the method for price fixation and charging the same from industries and observed the following deficiencies:

2.1.9.1 Non fixation of IPR rates for urban areas

Industrial Policy Resolution 2007 (Paragraph 16.2) required that the concessional rate of land in urban areas (zone A) of Bhubaneswar, Cuttack, Rourkela, Sambalpur and Paradip was to be fixed by Revenue/ GA Department in consultation with the Industries Department. As there was wide variation between the IPR rates and Bench Mark valuation, it was required to be fixed at the earliest. However, no such rates were fixed by the Revenue/ GA Department except in case of Bhubaneswar.

2.1.9.2 Non-revision of concessional price of land at Kalinganagar Industrial Complex (KNIC)

The Government, through IDCO, set up (1993-94) Kalinganagar Industrial Complex (KNIC) over 12796.228 acre (Government land: 6210.847 acre and acquired private land: 6585.381 acre) land incurring an expenditure of ₹ 127.12 crore. Audit noticed that the Industrial Infrastructure Advisory Committee (IIAC) in its 21st meeting (September 2004) approved the price of land at KNIC as ₹ 3 lakh per acre. During the period from 2005 to 2012, there was no revision of land price, as IDCO's proposal to revise land price to ₹ 7.06 lakh per acre was not accepted (December 2006) by the Government. In the meanwhile, an area of 4084.298 acre was allotted to five²⁵ MoU based industries.

Out of the above 4084.298 acre, 1029.268 acre land were allotted to four²⁶ industries with the condition that additional price of land, if any, fixed by IDCO, would be paid before handing over possession. However, possession of land was handed over (March 2007 to May 2011) without fixing the additional price. Thus, due to non revision of rate of land in KNIC for eight years (2005-2012), undue favour to the extent of ₹ 21.40 crore was extended to five industries²⁷, calculated at 10 per cent appreciation per annum over the rate approved by IIAC in 2004, as per the instructions (2003) of RDM Department regarding fixation of market value of land in case of non-availability of sales statistics.

IDCO stated (November 2012) that the issue of revision of the land rate had not been accepted by Government. Industries Department, however, did not furnish any reply (August 2013).

2.1.9.3 Short assessment of premium

In respect of lease of Government land to industries under the provisions of IPR, premium was to be paid at concessional rates prescribed in prevailing IPR.

Audit noticed that in case of alienation (September 2007) of 443.58 acre, Government land in favour of IDCO for Aditya Aluminium Limited (AAL), Koraput, IPR rate of earlier period (2001) was considered which was lower than the prevailing (2007) IPR rate applicable on the date of sanction of lease.

²⁵ Brahmani River Pellets Limited, Jindal Stainless Limited, Tata Iron and Steels Limited, VISA Steels Limited, Maithan Ispat Limited

²⁶ Brahmani River Pellets Limited, Jindal Stainless Limited, Maithan Ispat Limited, TATA Iron and Steels Limited

²⁷ Brahmani River Pellet Limited, Jindal Stainless Limited, Maithan Ispat Limited, TATA Iron and Steel Limited and VISA Steel Limited

RDM Department stated that premium was charged at ₹ 25000 per acre (IPR 2001) on the basis of the recommendations of the lease cases by the concerned Tahasildars as per circular issued (November 2007) of RDM Department.

The reply is not acceptable since sanction of lease was completed in September 2007 well before the circular issued in November 2007 and also the rate of IPR 2007 were effective from March 2007, hence, IPR 2007 rate should have been applied.

2.1.9.4 Levy, assessment and realisation of dues

In addition to land premium for allotted land, as per provisions of the OIIDC Act, Clause C under Para 4 (II) of the IDCO Manual, 1997 and the conditions of lease deeds executed by IDCO with industries, IDCO also collects incidental charges, ground rent, cess and damage rent in case of occupation of land after cancellation of allotment. Also, as per Section 57 of the OIIDC Act, the dues payable to IDCO was to be recovered as a public demand.

Audit noticed the following irregularities in assessment, levy, realisation and remittance of dues by IDCO.

- IDCO allotted (May 2006 and February 2007) 224.10 acre land to Monnet Ispat Limited (MIL). The land was not utilised and surrendered (September 2011) by the industry to IDCO, which subsequently was allotted (February 2012) to Monnet Power Company Limited (MPCL), without realising the applicable land premium of ₹ 6.00 crore and only realised ₹ 47.76 lakh towards administrative charges, thereby extending an undue benefit of ₹ 5.52 crore to MPCL.

IDCO assured (January 2013) to raise appropriate demand on the industry which was re-allotted the land. Action in this regard is awaited (June 2013).

- Test check of allotment of 1771.433 acre of Government land leased to eight MoU based industries revealed non-levy of incidental charges of ₹ 4.81 crore and short assessment of ground rent (₹ 32.55 lakh *per annum*) and cess (₹ 24.36 lakh *per annum*) as indicated in ***Appendix 2.1.8***. This resulted in recurring loss of ₹ 56.91 lakh *per annum* to Government towards ground rent and cess.

In reply, the Collector, Cuttack instructed (October 2012) the concerned Tahasildars to realise the short-assessed dues, while the Collectors of Rayagada, Koraput and Bolangir assured that the matter would be examined.

Paragraph C 4(iv) of Departmental Quality Procedure Manual of IDCO required that in the event of failure of the allottee to transfer possession of land/ plots to IDCO even after issue of cancellation order, proceedings under Odisha Public Land Encroachment (OPLE) Act was to be initiated and the occupier was to be summarily evicted. As per Clause-17 of the lease deed, damage charges @ ₹ 500 per day was to be levied for unauthorised use of land after cancellation of lease deed.

Audit noticed that in the eight sampled Divisions of IDCO, allotments of land to 258 small scale industries were cancelled during 2001-2012. Out of these 258 cases, 52 industries were functional while in the remaining 206 cases, the allotted land remained vacant. The applicable damage charges of ₹ 4.35 crore

as per clause 17 of the lease deed were not recovered from the 52 industries which continued to function despite cancellation of allotment. Further, IDCO had neither taken steps to evict the functional industries under the OPLE Act nor resumed the land in the remaining 206 cases under the OIIDC Act. Thus, failure to evict unauthorised occupiers and resume vacant land also deprived other fresh applicants from getting land in the IEs, as 158 applications were rejected on grounds of non-availability of land during 2001-12.

The Department stated (April 2013) that when the allotment of land is cancelled, lease deed between IDCO and the industry becomes inoperative and hence, realisation of damage dues as per the lease deed does not arise. The reply is not tenable as the lease deed specifically provides for levy of damage after cancellation of the lease.

- In seven out of eight sampled Divisions of IDCO, ground rent, cess and infrastructure maintenance charge of ₹ 5.54 crore remained outstanding against 2288 industries as of 31 March 2012. The periodicity of outstanding dues was more than ten years in case of 216 industries, as detailed in **Appendix 2.1.9**. In Kalinga Nagar Industrial Complex, ground rent/ cess of ₹ 2.11 crore was not realised from two²⁸ industries.

The Industries Department admitted (April 2013) the fact and stated that suitable instructions had already been issued to concerned Divisions of IDCO to file Odisha Public Demand Recovery cases for realisation of outstanding dues.

- IDCO realised (March 2004 to March 2012) ₹ 10.54 crore towards ground rent, ₹ 7.91 crore towards cess and ₹ 0.80 crore towards interest from seven²⁹ MoU based industries in Kalinga Nagar Industrial Complex (KNIC). Though as per Subsidiary Rule 6 of Orissa Treasury Code Vol-1 read with Rule 4 of Orissa General Financial Rules revenues received on behalf of Government are required to be deposited into the Public Account of the State, only ₹ 4.62 crore were deposited in violation of codal provisions resulting in short remittance of ₹ 14.63 crore. The RDM Department admitted (January 2013) the above fact.

The above deficiencies clearly highlight the absence of effective internal controls to ensure correct assessment, levy and prompt realisation of dues by IDCO. Adequate diligence in ensuring that Government dues were remitted to the Treasuries promptly, was also not exercised by IDCO.

2.1.10 Utilisation of land

Private land was acquired for use by industries at locations chosen by industries themselves. Land has also been allotted to industries at concessional rates, despite high demand from industries. As per the terms and conditions of lease deeds executed, the allotted land was to be used only for the purpose intended at the time of allotment. Further, Clause-III under para-4 of the IDCO Manual 1997 required

²⁸ Maharashtra Seamless Limited (₹ 26 lakh) and Uttam Galva Steels Limited (₹ 1.85 crore) for 2006-07.

²⁹ Brahmani River Pellet Limited, Jindal Steels Limited, Maharashtra Seamless Limited, Maithan Ispat Limited, Tata Steel, Uttam Galva Steels Limited, Visa Steel.

Divisional Offices to keep regular watch over the utilisation of allotted sheds and plots etc. by the allottee units, payment of dues and observance of other terms and conditions of allotment by them. Wherever deviations or defaults were detected, suitable notices were to be served on such defaulting units under intimation to IDCO and appropriate action was to be initiated. Therefore, effective and adequate monitoring was vital to ensure that the end use of land was actually for the industrial purpose envisaged, in order to achieve the goals of rapid industrialisation in the State.

Audit examined the monitoring mechanism with regard to process of end utilisation of land by industries and noticed the following deficiencies:

2.1.10.1 Monitoring of utilisation of land

In the MoUs signed with promoters of industries, the State Government extended tangible and substantial concessions to industries in terms of commitment of land. The promoters in turn committed to establish the industry and commence production within agreed timelines. However, Audit noticed that end utilisation of allotted land was inadequately monitored by IPICOL, IDCO and the Departments concerned.

Out of 89 MoUs signed with industries during 2001-12, 30900.177 acre land was provided to 52 of the above industries as of March 2012. Out of these 52, in case of 24 industries, more than 50 *per cent* of their land requirement had already been provided. However, in 10 out of these 24 industries, even documents related to financial closure were not submitted by the promoters as of March 2012. Financial closure was essential to establish the industry and begin utilisation of the allotted land. Only two industries had started production as of March 2013 out of the above 52 industries. The industries, thus, failed to utilise the land allotted at concessional rates within the timelines agreed to in the MoUs.

Similarly, out of 28 test checked non MoU industries which had been allotted 10664.803 acre land, only 10 industries commenced production. Progress of implementation of industries was reviewed by Industries Department, the Development Commissioner, Chief Secretary and the Minister concerned a few times³⁰ during 2007-13. However, the number of review meetings declined from 2011-12. This indicated that the monitoring of end use of land by these industries was inadequate.

Besides, provisions of IDCO Manual, 1997 required its Divisional Offices to keep regular watch over the utilisation of allotted sheds, plots in IEs, payment of dues and compliance with the terms and conditions of allotment.

The Divisional staff did not conduct any physical inspection of industrial units in the IEs during 2001-12 to ascertain the status of land use at regular intervals.

The Industries Department stated (April 2013) that exhaustive exercise has been undertaken by forming squads and follow up action will be taken.

2.1.10.2 Non-utilisation of allotted land

Section 34 of OIIDC Act provides for resumption of land by IDCO in case of non-utilisation of land. Further, the allotment orders and the lease deeds executed by IDCO required utilisation of allotted land within the period prescribed therein as well as to commence civil construction on the allotted property within six months and start

³⁰ 2006-07:2, 2007-08: 0, 2008-09: 4, 2009-10:5, 2010-11:6, 2011-12: 4 and 2012-13:2

commercial production within two/ three years from the date of possession. In the event of the breach of the above conditions, besides others, the allotment was to be cancelled and the entrepreneur would be evicted from the said premises under the provisions of OIIDC Act and the land was to be resumed.

Audit noticed that divisional staff of IDCO did not conduct regular physical inspection of industrial units to ascertain the status of land use at regular intervals leading to non-utilisation of allotted land/ sheds remaining undetected for years together. Audit further noticed that 16828.103 acre³¹ of land allotted to 1120 industrial promoters remained unutilised as of March 2012.

- In the absence of regular inspections by IDCO or the Government to ensure the end utilisation of land, Audit conducted joint inspection (July 2012/ November 2012/ January 2013) of land use by all 52 MoU based companies provided with land which revealed that 11447.449 acre land provided to 24³² MoU based industries remained unutilised and commercial production was not started by the industrial units. Thus, 8803.331 acre land allotted to 15 industries remained unutilised for more than three years. But no steps were taken by IDCO to resume the land.
- In 16 out of 28 test checked non-MoU large industries, 4694.673 acre of allotted land was left unutilised for periods ranging between two to five years.
- 685.951 acre land allotted to 1080 small industries in IEs of IDCO remained vacant for three to 30 years as of March 2013 and the land were not resumed, though required.
- As per conditions imposed (December 2003) by Land Allotment Committee of IDCO read with conditions of lease deed executed with allottees, interest at 12 *per cent per annum* was to be charged on the total land cost, if the allottee failed to implement the project within three years. In case the allottee fails to commence commercial production within two to four years of allotment of land, the allotment would be automatically cancelled and the amount deposited by the company would be forfeited.



600.695 acre land allotted to Rungta Mines Ltd. during July 2006 and September 2009 remained unutilised

³¹ MoU based: 24 (11447.449 acre), Non-MoU based: 16 (4694.673 acre), small and medium industries in IEs of IDCO: 1080 (685.981 acre).

³² Aditya Aluminium Limited, Rayagda/Koraput, Beekay Steel and Power Limited (Keonjhar), Brahmani River Pellets Limited, Brand Alloys Limited (Keonjhar), Bhusan Energy Limited, Cracker India Private Limited (Keonjhar), Essar Steel Odisha Limited Keonjhar, Jindal India Thermal Power Limited, Angul, GMR Energy Limited (Dhenkanal), Konark Ispat and Steel Limited (Jharsuguda), KVK Nilachal Power (P) Limited, Mahanadi Aban power Limited (Angul), Monnet Ispat and Energy Limited (Angul) (Power), Monnet Ispat and Energy Limited (Angul) (Steel), POSCO (India) Limited Jagatsinghpur, RSB Metaltech Private Limited, Rungta Mines Limited, Jajpur and Keonjhar, Sahara India Power Corporation Limited (Bolangir), Shiva Cement Limited (Sundergarh), Tata Power Limited (Cuttack), Tata Steel Limited, Ultra Tech Cement Limited (Cuttack), Uttam Galva Steels Limited (Keonjhar)/ Uttam Galva Steels Limited (Jajpur) and Visa Power Limited (Cuttack).

Audit noticed that three³³ out of six industries allotted (September 2005, July 2006 and July 2007) 2422.153 acre land in KNIC, though failed to implement the project/ first phase of the projects within the timeline fixed³⁴ in the lease deed, yet interest of ₹ 28.10 crore due up to September 2012 was not realised as of March 2013, though the same was recoverable as per the terms of lease deeds/ allotment orders.

Thus, due to absence of monitoring mechanism to detect cases of non utilisation, enforcement mechanism to ensure compliance to the terms and conditions of the lease deeds and provisions of the OIIDC Act for resumption of the land was lacking.

The Department while accepting (April 2013) the above facts stated that show cause notices have been served to industries which have not utilised the land as intended. But, no reply was offered as to why appropriate enforcement action such as resumption of land was not carried out as required under Section 34 of OIIDC Act.

2.1.10.3 Mis-utilisation of land

Clause-III under para-4 of the IDCO Manual 1997 required Divisions to keep regular watch over the utilisation of allotted sheds and plots etc. by the allottee units, payment of dues and observance of other terms and conditions of allotment by them. Wherever deviations or defaults were detected, suitable notices were to be served on such defaulting units by Divisions under intimation to IDCO Head office and appropriate action was to be initiated.

Audit, however, noticed that the divisional staff did not conduct regular physical inspection of industrial units to ascertain the status of land use at regular intervals leading to mis-utilisation of allotted land/ sheds remaining unnoticed for eight to thirty years in 521 cases as discussed below:

- Information furnished by IDCO revealed that 521 industrial units allotted with 219.732 acre land valued at ₹ 127.55 crore at IDCO rate in the IEs of IDCO were utilising the land for purposes other than those for which they were allotted such as hostel (20), hotel (4), godown (188), sub-letting to others (144) etc. However, IDCO did not take any steps for cancellation of the said allotment and resumption of the above land.
- Since adequate number of inspections were not conducted by IDCO, Audit conducted joint inspection (June – October 2012) of 224 small industries in Industrial Estates of IDCO to verify the end utilisation of land for the purpose of allotment and noticed that in 12 cases, the land was utilised for other purposes such as hostel and residential



Plot allotted to Blackberry Infrastructure being used as Ford Show room

³³ Brahmani River Pellets Limited (BRPL) 81.250 acre in July 2007, Tata Steel Limited: 1970.903 acre in September 2005, Uttam Galva Steels Limited (UGSL): 370.000 acre in July 2006.

³⁴ Tata Steel Limited: 4 years up to September 2009 as per lease deed to Brahmani River Pellets Limited (BRPL): three years up to July 2007 as per lease deed, Uttam Galva Steels Limited (UGSL): 370 acre: two years up to July 2008 mentioned in allotment order.

accommodation. Besides, in ten cases land allotted for different industrial purposes such as vehicle servicing and repairing, quality testing laboratory, fabrication unit etc were sub-let to other non-allottees at a consideration amount not known to IDCO.

Thus, absence of adequate inspections to monitor the end utilisation of land and deterrent enforcement action such as resumption of allotted land in case of non compliance of the same as provided in OIIDC Act and IDCO manual resulted in mis-utilisation of the allotted land by the industries concerned. The Industries Department accepted (April 2013) the facts and stated that action had been initiated against the defaulter industrial units to resume the land.

2.1.10.4 Irregular grant of right to mortgage land and issue of ‘No Objection Certificate’ to promoters

Government land is sanctioned in favour of IDCO for different industries under the provisions of OGLS Act read with Section 32 of OIIDC Act. The acquired land and Government land is leased to IDCO under Sections 31 and 32 of the OIIDC Act, 1980. IDCO, then sub leases the land to concerned industries. As Government is the primary lessor and IDCO is itself a lessee, permission of the primary lessor was to be obtained in order to confer mortgage rights to the sub lessee, i.e., the industries in order to raise loans for their industrial projects on the basis of the land allotted to them.

Audit however, noticed that:

- IDCO irregularly conferred mortgage rights in the lease deeds executed with 52 MoU based and 54 non-MoU industries while handing over of possession of 46732.894 acre land, even though such power was not vested with IDCO by the State Government.
- Besides, IDCO irregularly issued ‘No Objection Certificates’ (NOC) to 26 MoU based industries for mortgaging 13846.238 acre land allotted in order to raise loans from financial institutions, even though it was not authorised to do so. Audit further noticed that on the basis of NOCs issued by IDCO, loans of ₹ 52423.50 crore was sanctioned by financial institutions in case of 12 promoters of MoU based industries, for mortgage of 8489.828 acre of allotted land. As per information collected from these financial institutions, five out of above 12 industries have been released loan of ₹ 8625.89 crore. In case of remaining 14 industries, quantum of actual loan sanctioned/ availed on mortgage of land was not made available by IDCO to Audit.
- However, from the audited annual accounts of seven out of these 14 industries to whom NOC was given by IDCO, Audit noticed that the land was mortgaged with the financial institutions along with other fixed assets to avail a total loan of ₹ 28214.45 crore. In 32 Industrial Estates, IDCO also irregularly issued NOC to 736 small and medium industrial units allowing mortgaging land allotted to them during 2001-12.

Thus, IDCO unauthorisedly issued such NOCs, thereby enabling industries to raise loans on the basis of land allotted for industrial purpose, without adequate safeguards to ensure that such capital would actually be used in the industrial projects concerned.

RDM Department stated (April 2013) that as IDCO had not been conferred with the power for grant of such permission to industries/ promoter companies, the matter was examined in consultation with Law Department and IDCO has been advised to move the Industries Department to bring enabling provision in OIIDC Act/ Rules for the purpose. The Department also instructed IDCO to submit necessary proposal with detailed justification for examination on case to case basis.

2.1.10.5 Encroachment of land by industries

Rule 3 of Orissa Prevention of Land Encroachment (OPLE) Rules 1985 stipulate that the Revenue Inspectors (RIs) were to report cases of unauthorised occupation/ encroachment of Government land to Tahasildars and within 15 days of commencement of each financial year, was required to send a certificate that there were no further encroachment in the area under its jurisdiction except the encroachments already reported. Besides, Rule 5 of OGLS Rules 1983 required that the Tahasildar, on receipt of lease application should ascertain through verification if the land applied for is free from any encroachment. As per Section 4 of the OPLE Act 1972, in case of detection of encroachment of Government land, encroachment case is to be booked against the persons unauthorisedly occupying Government land and they are to be summarily evicted under Section 7 of the said Act.

Audit noticed that in five cases, Government land of 101.03 acre with present value approximate of ₹ 7.37 crore was encroached by four MoU and one non-MoU based industries. RDM Department stated (April 2013) that encroachment cases have been instituted, penalty realised and eviction proceedings were under process.

Similarly, Audit noticed that in 696 cases in different IEs of IDCO, 109.918 acre land valued at ₹ 56 crore at the IDCO rate, remained under encroachment by different industries/ persons other than allottee, as revealed from records of IDCO Divisions.

Some of such cases are discussed below:

- As of March 2013, 16.923 acre land remained under encroachment of KIIT. The value of such encroached land worked out to ₹ 12.69 crore³⁵ at IDCO rate. Despite being aware of such encroachment, IDCO did not take any action to evict the encroachments even after the same was pointed out in Audit. This jeopardised the opportunity for allotment of this land to other entrepreneurs, whose proposals for allotment were dropped (2005-12) in the LACs due to non-availability of land.
- Bishnu Enterprises (Kalunga Industrial Estate, Rourkela Division) was allotted one acre land in April 1984. Divisional Head, Rourkela of IDCO noticed (December 1985) that the Company encroached the adjacent 0.93 acre land and erected illegal constructions. IDCO issued notice (December 1985) to vacate the encroached land by removing all constructions within seven days. IDCO repeatedly issued show cause notices without actually taking any follow up action with the result that the land still remained under encroachment.
- After acquisition of land for setting up industrial estates, layout plans were to be prepared by IDCO, with well-designed plotting arrangements for allotment of plots to different industrial units, along with provision for roads, drains,

³⁵ ₹ 75 lakh X 16.923 acre

open spaces etc. Audit noticed that in nine out of 167 cases covering three industrial estates (Chandaka, Mancheswar and Bhagbanpur), nine plots with 12.702 acre land valued at ₹ 3.03 crore (as per IDCO rate) were locked on all sides and could not be allotted mainly due to defective preparation of layout plans like small/ narrow patch, passing of High Voltage line etc. These were found to have been encroached upon. Out of these nine units, while the encroached plots of six units were regularised during November 2009 by way of allotment in favour of the encroachers, no action was taken on the remaining three units.

Thus, absence of appropriate detection and enforcement mechanism at IDCO led to encroachment of IDCO land/ Government land by industries.

Regarding encroached land the Industries Department admitted (April 2013) the facts and stated that action will be taken to evict the encroachers and resume the land. On the issue of encroachment through land locked plots, the Department stated (April 2013) that some plots were left land locked due to mistakes committed during layout planning. It also stated that these encroachments were regularised with penalty as there was no other option. But, the fact remains that due to absence of proper reporting as well as enforcement mechanism, land was being encroached upon by industries.

2.1.10.6 Regularisation of encroachments

As per OPLE Act 1972 and Rules framed there under (Rule 7), land under encroachment cannot be regularised unless the encroacher is a landless person. Besides, the Chief Secretary, Odisha instructed (June 2010) not to regularise encroachment of land by outsiders/ trespassers and the Government in Revenue and Disaster Management Department ordered (November 2010) that the land occupied without the approval of competent authority should be treated as encroachment and was liable for eviction. Further, no Act/ Rule empower IDCO to regularise any encroachment of Government land made by promoters/ industries.

However, IDCO instructed (September 2004) its field offices to regularise encroachment of adjoining plots of IDCO by lawful tenants, if the encroached area would not affect overall planning. Further, the BoD of IDCO also decided in February 2008, February 2009 and November 2010 to regularise encroachment, though no such power were vested with the BoD.

Audit also noticed that, in eight test checked Divisions of IDCO, out of 5488.243 acre land in IEs, 36.910 acre land valued at ₹ 25.20 crore (at IDCO rate) which were encroached upon by 25 allottees were subsequently regularised contrary to the provisions of OPLE Rules and thus the same was irregular.

Two such instances are discussed below.

- 16.397 acre land valued at ₹ 12.30 crore encroached by KIIT were regularised in two phases (9.809 acre in April 2005 and 6.588 acre in July 2009) even though the same was not permissible under OPLE Act and was irregular.
- Venkateswar English Medium School (Infocity, Chandaka), a non-allottee unauthorisedly encroached upon and constructed a massive structure on IDCO land measuring 1.734 acre prior to 2006. The Sub-Committee of High Level Land Allotment Committee for Bhubaneswar Master Plan Region (BMPR) approved (August 2010) the regularisation of the encroachment deviating from

the decision (June 2010) of the Chief Secretary, Odisha as well as the decision dated 2 February 2008 of the BoD of IDCO, which decided not to regularise encroachment made by outsiders under any circumstances and was, thus, irregular.

The Industries Department stated (April 2013) that the regularisation of encroachment was made as per the decision of the BoD as per Sections 4, 14 and 15 of the OIIDC Act and no loss has occurred since IDCO is realising twice the prevailing land cost and admissible occupational charges. It also stated that area under occupation of the entrepreneur cannot be treated as encroachment but un-authorised occupation and it was regularised by levying occupation charges and land cost.

The reply is not tenable as encroached land is to be resumed after evicting the encroachers and there is no rule/provision for regularisation of encroachment. Also, such regularisation provided incentive to encroach land first and subsequently get it regularised and was thus adverse.

2.1.10.7 Eviction of encroached land

KIIT, a deemed University, applied (April 2010) for additional land of 14 acre in Chandaka IE contiguous to the land under its occupation, which were under encroachment and offered to get the same vacated from the encroachers at its risk and cost, in case the said land would be allotted to that Institute. The LAC of IDCO agreed to the same and decided (April 2010) to allot 14 acre of such encroached land to KIIT. An in-principle allotment order was also issued (October 2010) to KIIT with the stipulation to formally allot the land after eviction of the encroachers. This was despite the fact that, the BoD of IDCO in 65th meeting, *inter-alia*, decided (April 2004) not to entertain any further applications of KIIT for regularisation of any encroachment in Chandaka IE.

Similarly, IDCO allowed six entrepreneurs/ allottees³⁶ to remove encroachment from 17.838 acre land in three IEs and allotted land to two (Lexus Paint Utkal and Shree Mahaveer Ferro Alloys Private Limited) out of the above six entrepreneurs after successful removal of encroachment. Internal mechanism to evict encroachers was, thus, absent.

2.1.10.8 Utilisation of land without obtaining environmental clearance and forest diversion

Government of India in Ministry of Environment and Forests made (September 2006) environmental clearance mandatory for new projects as well as expansion and modernisation of existing industrial projects or activities like mining industry, thermal power plants, coal washery, metallurgical (ferrous and non-ferrous), cement, industrial estates, Special Economic Zones etc. Besides, provisions of paragraph 4.4 of GoI guidelines on Forest Conservation Act, 1980 required that wherever industrial projects involved use of both forest and non-forest land, no work should commence on non-forest land till the approval of the Central Government was received for release of forest land. The objective of this provision was to prevent industrial projects from commencing work on the non forest land and then seeking approval for the forest land, thus reducing the situation to a *fait accompli*.

³⁶ Kalinga Hatchery, Lexus Paint Utkal, Sairindri Enterprises, Shree Mahaveer Ferro Alloys Private Limited, Summa Real Media(P) Limited, Sai Curewell Hospital

Audit, however, noticed non-compliance with these provisions by several industries as well as absence of adequate mechanism at IDCO/ IPICOL level to watch against such non-compliance as indicated below:

- 10 MoU industries³⁷ engaged in above activities had not obtained environmental clearance from the Ministry of Environment and Forests. Audit further noticed that out of these 10 companies, while one (OCL India Limited, Jajpur) already started production, two others (Shyam Metalics and Energy Limited, Sambalpur and Deepak Steel and Power Limited, Keonjhar) started partial production (December 2012). Thus, these industries commenced production and operations without the requisite environment clearance rendering the mandatory pre-construction clearance redundant resulting in irregular diversion of forest land for industrial purpose.
- In order to verify the status of other industrial projects involving both forest and non forest land, Audit conducted Joint Inspection (July 2012 to January 2013) of land use by 52 MoU based industries and noticed that eight industries as indicated in *Appendix 2.1.10* had already commenced construction/ constructed the projects on the non-forest component of land. Approval of diversion of 533.939 acre forest land for industrial purpose had not been obtained by the above eight MoU based industries as of August 2012. Forest and Environment Department as well as IDCO had not taken any action to stop such construction.
- Audit also noticed that though F&E Department has a monitoring and enforcement mechanism for detection of construction in non-forest land, the above non-compliances to the provisions of the Forest Conservation Act were neither monitored nor followed up by the Department to stop such construction or report to MoEF for appropriate punitive action against these industries.
- Audit further noticed that in case of another industry (ESSAR Steels Orissa Limited, Keonjhar), construction activity such as laying slurry pipeline had commenced on non-forest component of land, pending approval of GoI for diversion of 84.144 ha. of forest land for the industrial project. The concerned Divisional Forest Officer (DFO), Keonjhar as well as Forest and Environment Department instructed (September/ December 2010, August 2011 and November 2011) the industry to stop construction on non-forest land and withdrew the forest land diversion proposal for entire forest land component. Despite IDCO having a Chief General Manager (Environment), such non-compliance to the provisions of Forest Conservation Act was not followed up. Thus, due to inadequate monitoring, production was also started without obtaining environment clearance and forest diversion approval.

The Forest and Environment Department confirmed that no activity relating to any industry including civil construction except fencing is permissible even in the non-forest area for industrial projects involving both forest and non forest land. However, no reason was furnished as to why the above industries started construction and commenced production without obtaining any environment clearance. The Department also did not indicate why no action was taken by the Department and

³⁷ Amtek Metal and Mining Limited, Titanium Products Private Limited, Bhusan Energy Limited, Chambal Infrastructure Ventures Limited, NSL, ASO Cement Limited, OCL India Limited, Shyam Metalics and Energy Limited, Deepak Steel and Power Limited, Crackers India (Alloys) Limited

Collectors of respective districts to stop any further construction and production activity. The Forest and Environment Department assured (May 2013) to report such violations to the MoEF for consideration and imposition of penalty. Action in this regard is awaited (August 2013).

2.1.10.9 Provision of adequate green belt

As per the environmental clearance issued by the Ministry of Environment and Forest for industries concerned, 33 *per cent* of land was to be provided for creation of green belt. Besides, IPICOL, while assessing land requirement for industries and recommending the same to IDCO for acquisition/ alienation, included 33 *per cent* land for creation of green belt. Therefore creation of adequate green belt was to be monitored by both IPICOL and IDCO.

Audit, however, noticed that both IPICOL and IDCO had no mechanism to monitor the creation of green belt in the land allotted specifically for this purpose. Out of 52 MoU based industries provided with land up to March 2012, full land was given to only two MoU based industries and partly to 50 MoU based industries of which more than 50 *per cent* of land required was handed over in 22 cases. Audit noticed that, as of March 2012, 29 industries started full/ partial production, of which adequate green belt was created by two industries (Jindal Steel and Power, Angul and Eastern Steel and Power Limited, Jharsuguda) while in respect of remaining 27 industries (**Appendix 2.1.11**) green belts were created over nil (six) and insignificant area (21)³⁸ as noticed during Joint Inspection with Revenue as well as IDCO officials. Thus, creation of green belt in the land allotted by IDCO remained unmonitored.

In reply, Forest and Environment Department stated (May 2013) that they have issued necessary instructions to the Principal Chief Conservator of Forest, Director, Environment/ Member Secretary, State Pollution Control Board to supervise/ watch development of green belt by the industries and furnish periodic report thereon.

2.1.11 Conclusion

Audit noticed several systemic deficiencies such as incorrect application of public purpose clause, emergency provision for acquisition of land, under assessment of compensation etc. Instances were also noticed where land was acquired on the locations identified by the promoters of industries without considering the impact on agriculture, irrigation and environment.

The objective of implementation of the Land Bank Scheme to facilitate identification and transfer of land for industries remained virtually unfulfilled. Absence of Regulations and criteria in allotment of land reflected lack of transparency in allotment of land /shed under industrial estates. Allotment of land was delayed even up to 430 days despite stipulation in Odisha Industries (Facilitation) Rules 2005 to provide assurance for allotment of land within 30 days of application. Irregularities were also noticed in mutual transfer of land by one industry to another.

Cases of short assessment due to incorrect application of prescribed rates and realisation of incidental charges, ground rent and cess on concessional rates instead of market value of land were also noticed.

³⁸ During JPI by Audit along with Amin/ Revenue Inspector and IDCO officials, while no green belt was found in six cases, the team on eye estimation found the plantation over few areas of 2.50 acre to 5 acre in 4 cases and in scattered plantation over few patches in 17 cases

Monitoring of end use of land was poor as instances of non-utilisation as well as diversion of land by small and medium industries for purposes other than intended were noticed. No action was taken to resume the unutilised land for over three years despite stipulation in the OIIDC Act. Enforcement mechanism to resume the allotted land in case of violation of conditions of lease deed was also ineffective.

2.1.12 Recommendations

Based on above findings, Audit recommends that Government may take steps as under:

- A comprehensive procedure for identification, acquisition, allotment and usage of land for industrial promoters as well as specific guidelines and criteria for signing MoUs with promoters may be formulated;
- Compliance to provisions of Land Acquisition Act, Land Acquisition (Companies) Rule 1963 and other Act during acquisition of land for non-Government companies may be ensured;
- Realisation of under assessed compensation/ Government dues from promoters may be ensured and paid to the land owners;
- Compliance with environment norms should be ensured in acquisition and utilisation of land;
- All cases of irregularities in allotment, misutilisation and non-resumption of land remaining unused beyond MoU/ lease period may be reviewed and resumption done wherever necessary within a definite time frame.