

Chapter 2

Guidelines/Policies for Land Management

The functioning of ports in India is governed by the Indian Ports (IP) Act, 1908 and Major Port Trusts (MPT) Act, 1963. As no specific provisions were available in the IP Act and MPT Act in relation to the management of land under the custody of ports, GOI issued, from time to time, guidelines to regulate land management by individual ports. Though certain guidelines were issued in 1983, 1986 and 1993, detailed guidelines covering various aspects of land management were issued in 1995 in consultation with the Chairmen of various major port trusts. The Ministry, with the objective of formulating a simple, clear, unambiguous and easy to implement guidelines, introduced (March 2004) Land Policy for Major Ports 2004 primarily for dealing with issues relating to allotment of land. Subsequently, the Ministry introduced (January 2011) Land Policy for Major Ports 2010 as a result of an exercise of reviewing the extant policies and to suggest mid-term corrections in various policies governing the major ports to sustain and improve their efficiency. The Policy of 2010 was issued in supersession of the earlier Policy of 2004. Later, a draft policy for land management was prepared (2012) by the Ministry and based on the inputs received in a consultative exercise, Policy Guidelines for Land Management by Major Ports, 2014 were issued in January 2014.

2.1 Comparative analysis of Guidelines/Policies:

In the background of multiple guidelines and policies that were in place for dealing with matters relating to land management, a comparative analysis of the policy guidelines was necessary to examine how the major elements of land management were dealt with by these guidelines and policies. Considering that the audit scope covered the period from 2008-09 to 2012-13, the analysis was essentially restricted to the policy guidelines of 1995, 2004 and 2010. Details of the analysis are depicted in **Annexure-I**.

It could be noticed that though the guidelines issued in 1995 were reviewed and revised policies were issued in 2004, in 2010 and in 2014, the revisions were restricted only to certain issues, and a comprehensive revision of guidelines of 1995 was not made. There was ambiguity and absence of clear direction to the ports and some critical issues were not proactively dealt with in the policy guidelines, *namely*, (i) 'unauthorized occupancy' was not clearly defined; (ii) in cases where approval for renewal of leases after its expiry were pending with the Ministry, the policy guidelines did not indicate how the period of lease after expiry would be treated till the approval is obtained; (iii) policy guidelines did not insist on standardized format for lease to ensure uniformity and satisfy that all essential terms and conditions were factored in the agreement; (iv) policy guidelines did not stipulate whether execution of lease agreement was essential in all cases to ensure legal enforceability of port's rights, (v) the policy guidelines of 2004 did not indicate whether it superseded the guidelines of 1995 and (vi) the Ministry did

not indicate the period within which the policy guidelines would be reviewed. A revised policy guideline was issued in January 2014 elaborating the procedures relating to allotment of land, but it did not specify whether it superseded 2010 policy or not.

The Ministry clarified (June 2015) that covering letter sent to the ports along with the policy guidelines clearly mentioned that new guidelines superseded the earlier ones, and in future this would be covered in the preamble of new guidelines. It was further stated that the objective of land policy guidelines was not to achieve uniformity across the ports, but to ensure that common principles of transparency, financial prudence and other procedures were followed in the interest of the ports and Government. As such, Ministry was of the opinion that there was no need to prescribe standardized formats of lease agreements, if all essential terms and conditions were incorporated in the lease agreement. However, Ministry would examine circulating a model document for lease.

While Ministry agreed to circulate a model document for lease and include a clause relating to supersession of earlier policies in the preamble of new ones, the reply is silent on the issues relating to defining unauthorized occupancy and treatment of period after expiry of lease till approval of Ministry is obtained.

A few illustrative instances of ambiguity in the policy guidelines and their impact are discussed in the subsequent paragraphs.

2.2. Methodology to regulate allotment involving construction of permanent structures

Land inside custom bond is the area that is used for activities directly related to the port operations or for those not directly related but which would aid such activities and sea trade. Audit observed that the guidelines of 1995 were silent on the allotment of land inside custom-bond area and therefore ports allotted land inside custom-bond area for long duration (up to 30 years with approval of Board and beyond 30 years with approval from the Ministry). On the other hand, the policy guidelines issued in 2004 stipulated that land inside custom bond area could be allotted on license basis only for a maximum period of 11 months and such allotment should be made only for activities directly related to port operations. The policy guidelines issued in 2010 made further provision that Chairman of a port trust could allot land inside custom bond area on medium term lease basis up to a period of 10 years, but without construction of any permanent structures.

Audit observed that Chennai Port Trust (ChPT) allotted between 1962 and 1995 land admeasuring 19.53 acres inside custom bond area under 13 licenses. These allotments were made for a period of 30 years in 11 cases, 25 years in one case and 22 years in one case for the purpose of constructing storage tank facilities. The original lease period had ended in 11 cases and the port authorities were extending the lease from time to time. Meanwhile, ChPT sought

approval of the Ministry for extension of lease period in seven cases where it had already exceeded 30 years. Though ChPT took up (August 2001) the matter with the Ministry, no approval was received.

ChPT stated (May 2014) that as regards the methodology to regulate allotment involving permanent structure like tank farms inside the custom bond area, specific guidelines were not available in the existing policy guidelines. It was also stated that matter would be pursued for obtaining approval from the Ministry. In this regard, Ministry stated (June 2015) that the land policy guidelines clearly stated that permanent structures should not be given inside custom bonded areas. In case of old cases, these structures were required for port operations and contributed to the cargo throughput, ports were dealing with them in accordance with the new land policy guidelines 2014.

The policy guidelines of 2014 gave clarifications for renewal of the existing lease agreements involved constructed permanent structures having /not having automatic renewal clause. The ports were advised to resort to tender-cum-auction method for allotment of land on expiry of existing lease period with the first right of refusal to the existing lessee. When the existing lessee refuses to match with H-1 bid, and if the existing lessee had constructed the permanent structures, the same would be valued by a mutually agreed valuer and the successful bidder would remit the value so fixed, which would be passed on to the existing lessee. Audit is, thus, not convinced about the efficiency of the mechanism spelt out in the policy of 2014 especially with regard to old cases, as ports may end up with disputes and litigations while finding a mutually agreed valuer and fixation of value acceptable to all parties concerned. It is, therefore, likely that it may not only defeat the very objective of the mechanism but may also constrain the ports to move forward in old cases.

2.3. Absence of defining 'end use' of land

The policy guidelines issued in 2004 and 2010 stipulated that Scale of Rates (SoR) should be fixed in accordance with the use of the land and different rates should be fixed considering the purpose for which land was allotted. The guidelines further stipulated that all such rates should be submitted to the regulator, TAMP for approval and required to be revised every five years. The rates should be determined by considering six *per cent* of market value to be escalated at two *per cent* every year. Land policy 2014 did not link end use of the land for fixing the market value of the land. Audit examination revealed that there was no uniformity among the ports in identifying land according to their use and suggest tariff accordingly so as to optimize their revenue streams.

Audit observed that Visakhapatnam Port Trust (VPT) sought (September 2007) fresh valuation from the District Revenue Authorities (DRA) for the land coming under their control (in 16 zones and 15 sub-zones) for fixing lease rent for the next five years, i.e., from April 2008

to March 2013. VPT intimated that developments like road and rail infrastructure facilities had come up in their lands and valuation was to be fixed based on development in the particular zone. Accordingly, DRA intimated (April 2010) valuation for all zones, fixing the basic values as on April 2008 between ₹ 2000/- per square yard in Zone IV-A and ₹ 5400 per square yard in Zone X-B. However, VPT, instead of submitting tariff proposal to TAMP for consideration and approval for fixing lease rent for the ensuing period, obtained (July 2011) from DRA another valuation of land per acre. Thereafter, proposal was submitted (November 2011) to TAMP which was approved (June 2012) on acre basis; for example, the base rate to be applied for tariff fixation was reduced from ₹5940 per square yard (as per first valuation) to ₹ 2492 per square yard and further reduced to ₹2393.32 (as per second valuation) in respect of Zone I-A. Similar reduction was done for all zones.

It is pertinent to note that the act of VPT in applying similar base for all zones irrespective of 'end use' of land was in contravention of the extant policies/ guidelines of 2004 and 2010 and therefore irregular. The port authorities did not identify the end use of land based on the land use plan and past experience, and fixed tariff for each zone so that the legitimate financial benefit was derived from allotment of land and the interest of port was protected. On the other hand, it applied similar rate for all zones indiscriminately thus extending undue benefit to the lessees at its cost. In common parlance, industrial activities require large area of land entailing huge investment where return from investment takes long periods whereas commercial activities require smaller area of land with comparatively lesser investments. Similarly, it is common knowledge that the lease rentals for industrial areas would usually be on a lower side compared to the same levied for commercial areas. Such being the case, failure of VPT in identifying end use of land was not justifiable. This situation could have been avoided if the extant guidelines had defined clearly the 'end use' of land for which allotment could be made. As a result, ports could use their discretion to decide and fix lease rentals arbitrarily ignoring the actual use of land. Incidentally, Audit noticed V.O. Chidambaranar Port Trust (VOCPT), while furnishing their proposal to TAMP had specifically mentioned separate rates for lands identified for commercial/ industrial use.

VPT stated (May 2014) that in order to maximize revenue from cargo handling agencies, market value of land was fixed on acreage basis under industrial category, and had it been fixed on commercial basis, it would not have got indirect benefit accruing from cargo handling activities. The fact remains that VPT had violated the guidelines of 2004 and 2010, which stipulated that ports should identify the exact 'end use' of land and fix rentals appropriately for 'end use' of land. The Ministry stated (June 2015) that now VPT has envisaged to take up the valuation of land based on usage, i.e., industrial, residential, commercial and cargo stacking purpose and to fix tariff accordingly.

2.4. Extension of lease beyond 30 years

The policy guidelines issued by the Ministry provided that a lease could be allotted for 30 years by a port and beyond that period, renewal of lease required approval from the Ministry. Audit examination revealed that once the period of 30 years had expired, ports had taken up the matter with the Ministry for further extension, and pending decision from the Ministry, the ports issued temporary extensions for a period of 11 months, i.e. on license basis. Similar instances noticed during audit examination are indicated in Table 5 under Para 3.3.1. In this connection, it is pertinent to note that the extant policy guidelines did not provide clear direction on how to deal with similar cases, more specifically on treating the period beyond 30 years either under lease or license. As the ports were not authorized to extend lease beyond 30 years, further extensions were granted on license basis. An illustrative case in this regard is discussed below.

VOCPT allotted (October 1979) 32.73 acres of land to M/s. Tuticorin Alkali Chemicals Ltd. (TAC) on lease basis for 30 years up to 22 October 2009. On expiry of the lease period and at the request of TAC, VOCPT Board decided (May 2010) to allot the same land to TAC on license basis for 11 months from 23 October 2009 to 22 September 2010. Subsequently, based on the request (November 2010) of TAC, the Board again decided (March 2011) to extend the license period for further period of 11 months from September 2010 to August 2011 and seek approval of Ministry for renewal of license. Accordingly, VOCPT took up (May 2011) the matter with the Ministry. In response, Ministry opined (July 2011) that extension of lease beyond 30 years could be done only with their approval. No such approval was taken by the port while extending the lease from 23 October 2009 to 22 September 2010. Extension beyond 30 years should have been considered for the lease as the original allotment was on lease basis.

In this regard, Audit observed that there is no clear provision available in the policy guidelines (including those of 2014) issued by the Ministry regarding how to treat the period beyond 30 years, i.e., whether it would be treated as license or lease. As per the policy, a port has the competency to grant lease only up to 30 years and beyond that period it cannot extend unless approval is received from the Ministry. On the other hand, port has the competence to give license for a period of 11 months, and such license can be given any number of times as per the approval procedure stipulated in the policy guidelines. Thus, there is a need to incorporate suitable provisions in the policy guidelines so as to provide ports with clear guidance to deal with similar situations.

The Ministry stated (June 2015) that the port was advised (January 2014) to re-examine the case in the light of land policy 2014, and VOCPT decided (January 2015) to extend the license up to 30 June 2015 and to go for e-tender cum auction after completing the pending court case. However, the reply is silent on the fact that whether extension beyond 30 years and further extension of license was approved by the Ministry.

Recommendations:

- 1. The Ministry should review the existing guidelines and policies to formulate a comprehensive policy to deal with all issues relating to land management to avoid multiplicity of guidelines/policies and ambiguity in the extant guidelines/policies, taking into account the provisions of MPT Act, 1963.*
- 2. Guideline issued in 2014 policy to deal with constructed permanent structures inside custom bond area in relation to allotments made in previous periods may be revisited so that inherent constraints in the proposed mechanism are removed.*
- 3. All critical terms and phrases in relation to land allotment and allied activities may be clearly defined to avoid inconsistent treatment by individual ports.*
- 4. An arrangement may be evolved for minimizing the time required to resolve issues where Ministry's approval was required by delegating certain powers to the ports.*