

Chapter 7

Management of Nazul-I Lands

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7

Chapter

7.1 Introduction

Management of Nazul-I land is the responsibility of Land Management and Land Disposal Wings of DDA. Land Management (LM) Wing looks after issues relating to eviction of squatters from Government land, recovery of damages, maintenance of land records and mutation of properties. Land Disposal Wing looks after issues related to conversion of specified categories⁴⁴ of leases from leasehold to freehold, recovery of lease charges, ground rent etc.

Audit examined the records maintained in DDA relating to management of Nazul-I lands. Audit findings are discussed in succeeding paragraphs.

7.2 Database/records of Nazul-I Land

Audit observed that DDA had no consolidated information/database in respect of Nazul-I land transferred from erstwhile Delhi Improvement Trust (DIT), Land & Development Office as well as Gaon Sabha Land of urbanised villages. DDA informed that there were around 17000 (approximately) leases administered by DDA, out of which 5970 had been converted into freehold till 31 January 2016 since 1992.

Scrutiny of 57 lease files (out of 118⁴⁵ files requisitioned by Audit) as well as ground rent ledgers of Karol Bagh, Naiwala and Paharganj estates revealed the following:

7.3 Lease Administration of Nazul-I Land

There are two types of leases as per Guidelines on Land Management, namely Durated (20 years) and Perpetual (90 years) lease. Nazul-I lease was to be renewed on the specified period mentioned in the lease as first renewal, second renewal and third renewal for maximum period of 90 years, before it lapsed. At the end of 90 years, land would lapse to DDA or could be made freehold by the lessee. It was observed from the records that Old Scheme Branch (OSB) administers the leases and processes the cases for conversion from leasehold to freehold in two categories i.e. Residential Leases and Mixed Land Use⁴⁶ leases in respect of Nazul-I properties. As per the existing leases, the lessee cannot sub-divide or sell the property without prior consent of DDA (lessor).

⁴⁴ Residential Leases and Mixed Land Use

⁴⁵ 60 Lease files and 58 cases of conversion from Leasehold to Freehold

⁴⁶ Mixed Land Use refers to Shop-cum-Residential Lease

7.3.1 Renewal of Leases

A. Perpetual lease of 90 years was required to be renewed after specific intervals. However, it was noticed that there was no mechanism in DDA to watch and monitor the renewal of leases, as some leases were renewed up to second renewal, while others were not renewed at all. The third renewal was not done in any of the test checked cases.

DDA in its reply stated (June/October 2016) that the term lease executed by the erstwhile DIT, is renewed after second, third spell i.e. after expiry of 20 years, 30 years, 40 years or 90 years. As per policy of allowing conversion in cases of expired lease, no renewal is mandatory provided the applicant has applied on or before 31 December 2015. Hence, the conversion has been allowed as per policy. There is no deviation from the policy and the same is governed as per the policy stated above.

Reply of DDA is not acceptable as the renewal of leases i.e. second/third renewal was the condition of lease deed in order to validate the lease. The fact remains that the third renewal as per lease terms was not done in any case.

B. As per the existing rules/instructions of DDA, property registers showing complete details of plots/ lands estate wise, full name and complete address of the persons who have been allotted land, details of taking over and handing over of possessions etc. are required to be maintained. Further, ground rent due and receipt thereof is being watched through the ledgers. Examination of records revealed that:

- Property registers were not maintained, in the absence of which total number of leases and their details could not be verified in audit.
- In case of ledger of Karol Bagh II, 112 leases out of 144 leases had expired upto 2013. Further, 53 leases could not be examined due to badly mutilated condition of records.
- In case of ledger of Naiwala, 22 leases out of total 178 leases were not readable and remaining 156 leases had expired during the period from 2004 to 2009.
- In case of ledger of Paharganj, 26 leases out of total 190 leases were not readable and out of the remaining 164 leases, 149 leases had expired upto 2010.

Audit also noticed that DDA had neither levied nor recovered damage charges from the allottees who had become unauthorised occupants after expiry of leases.

7.3.2 Sale of Property

As already stated in Para 7.3, Nazul-I land cannot be sold/sub-divided by the lessee without prior consent of DDA. Further, unearned increase on sale was to be given to DDA. Examination of records at DDA, however, revealed that:

- In 16 cases of sale of property (*Annexure XI*), the prior consent of DDA was not obtained by the lessees.
- In two cases⁴⁷, unearned increase in case of sale was not charged on the basis of market rates fixed by Government from time to time.

⁴⁷ (i) File No.S-6(17)1956/OSB/Pt.1, No.S/6(17)56/OSB, S/4(12)/48, S/2(153)59Pt. (ii) S-6(10)67/OSB, S/6(11)67

7.3.3 Conversion from Leasehold to Freehold

Policy of conversion from leasehold to freehold was formulated by MoUD in 1992 on the basis of which DDA introduced the scheme of conversion from lease hold to freehold, which was modified from time to time. Audit noticed deficiencies in processing of cases with respect to requirement/criteria stipulated in the scheme as given in the next page:

Table 12 : Cases of non compliance noticed in respect of residential properties

Sl. No.	Criteria prescribed for conversion	Deficiencies noticed in Audit
1.	Conversion would be allowed only when the completion certificate form 'D' for the residential building has been obtained. In absence of form 'D', the lessee was required to furnish either the affidavit that the sanctioned building plan was not available or a copy of the building plan from a registered architect in conformity with the building bye-laws.	In nine cases (<i>Annexure XII-A</i>), copy of neither the completion certificate form 'D' nor alternate documents were submitted.
2.	Proof of possession of the property i.e. house tax assessment order or grant of permanent connection from the concerned electricity authority as collateral evidence of construction of building.	In nine cases (<i>Annexure XII-B</i>), the proof of possession of the property for which conversion was sought was either not given or was inadequate.
3.	In case, original lease deed was lost, the lessee/applicant must issue notice in a prominent newspaper having circulation in the area where the property is situated and also execute an affidavit before the first class Magistrate indicating therein how the original lease deed was lost. A copy of the public notice published in the newspaper and the original affidavit must be submitted at least 10 days before the date of execution of the conveyance deed.	In five cases ⁴⁸ an affidavit executed before the first class Magistrate indicating how the original lease deed was lost, was not submitted.
4.	Where there was successive power of attorneys, conversion to be allowed after verifying the factum of possession provided that the linkage of original lessee/sub-lessee/ allottee with the last power of attorney is established and attested copies of power of attorneys are submitted. In such cases, a surcharge of 33.33 per cent on the conversion fee would be payable over and above the normal conversion charges applicable for a regular lessee (No unearned increase would be recoverable).	In six cases ⁴⁹ factum of possession from original lessee/sub-lessee/allottee to the last power of attorney was not ascertained by DDA. In these cases, instead of charging surcharge of 33.33 per cent on the conversion charges, 40 per cent rebate on conversion charges was allowed.

⁴⁸ File numbers: (1) S/1(04)2015/OSB/NSK (ii) 17(271)40 (iii) S-5(16) 76/Pt (iv) S-11(41)87-OSB (v) S&S file No. 20(55) 2014/ASO-I Property No. 56/6, WEA, Desh Bandhu Gupta Road, Karol Bagh (2) File No. S-6 (17) 1956/OSB/ Pt.I, No. S/6(17)56/OSB, S/4(12)/48, S/2(153)59 Pt. (3) (i)S/1 (191) 2012/ OSB (ii) S / 19 (238)44, 2622 sq. yards Christian, Karol Bagh, Delhi (4) (i) S/1(175)2014/OSB (ii) S/20 (573) 62 / OSB/ KBH Khasra No. 29, Block P, Naiwala, Karol Bagh (5) File No. S/1 (149) 2010 / OSB and 8/5(482)/51 pertaining to Plot No. 34, Block P, Naiwala, Karol Bagh. Area 222 square yards.

⁴⁹ File Nos. (1) File No. S/1(149)2010/OSB Plot No 34 Block P, Naiwala, Karol Bagh (2) File No. S/1(140)2010/OSB and lease file No S/5(433)51 pertaining to the Plot No. 62/15 Khasra No. 687/19 WEA Karol Bagh 1302.3 sq yards (3) File no. S/1(64)2011/OSB and File no. S/2(176)/62 Plot No. 87 of Dariyaganj Janoobi) plot measuring 142 Sq yards 118.71 sq. metres (Khata No. 40, Khasra No. 176/110 (4) File No. S/1(99)2014/OS/DDA, S/12(09)46 and S&S-I No. 20(46) /2014/ASOI , Khasra No. 348 Block M, Naiwala Estate (5) File No.S1(244) /OSB, Plot No. 3, Kadam Sharif, Paharganj (6) File No. S/1(212)2012/OSB, S/7(20)46/OSB and TN 4(187)08 pertaining to Khasra No. 1185/67 plot No. 67/8720, D.B. Gupta Road, Pahar Ganj, New Delhi.

5.	Conversion was to be applicable only for the properties for which the land use prescribed in the lease deed/sub lease deed/allotment letter is commercial/ residential or mixed as the case may be.	In one case ⁵⁰ the land use in the lease deed was mentioned as 'residential' but conversion was allowed for the mix land use.
6.	In case of any legal dispute relating to the title of the property, conversion shall not be allowed until the legal dispute is settled.	Though the property viz. Plot No. 56/6 WEA, Desh Bandhu Gupta Road, Karol Bagh was under legal dispute and case was pending at High Court Delhi, the conversion was allowed.

In one case (Jhandewalan Estate), conversion of property with Floor Area Ratio (FAR) of 300 was allowed violating the prescribed FAR of 150.

DDA stated (June/October 2016) that the conversions from leasehold to freehold has been allowed as per the policy on the subject.

Reply of DDA is not acceptable as violation of procedure had taken in all the cases cited above.

7.4 Nazul-I Receipts

The receipts from Nazul-I land comprise of ground rent for leased properties, lease conversion charges, damage/misuse charges and other miscellaneous receipts. Results of audit scrutiny of these receipts are as under:

7.4.1 Failure to raise and recover Ground Rent

As per terms and conditions stipulated in lease deeds, the ground rent was payable in advance, either in two half yearly installments or annually. As per lease terms, ground rent was recoverable at the rate of 2 *per cent* to 2.5 *per cent* per annum of the premium determined by Government, in respect of Nazul-I properties. Scrutiny of Demand and Collection ledgers of Paharganj, Naiwala, Karol Bagh and Daryaganj (South) revealed that:

- In 633 test checked cases, yearly/half yearly demands were not raised.
- In 633 cases, cumulative demand from 1980 to 2007 was raised, against which recovery of ground rent was effected upto 1987 only.

Thus, demand of ground rent was not raised regularly and was also not monitored effectively.

7.4.2 Drawbacks in raising and collection of Damage Charges

Where any person was, or had at any time been, in unauthorised occupation of DDA's property (public premises), the Estate Officer, having regard to principles of assessment of damages as prescribed in The Public Premises (Eviction of Unauthorised Occupants) Act, 1971, would have to assess the damages at the Zonal rates fixed by DDA from time to time separately for residential and commercial use of the public premises. Damages were also to be levied on the ex-lessees or the occupants, as the case may be, in the case of expired and cancelled leases in accordance with the procedure prescribed for assessment and recovery of damages for unauthorised occupation of public premises. For collection of damage charges, Show Cause Notices were to be issued regularly on the basis of suggested rates and the work

⁵⁰ File No. S(186)2014/OBS/NSK, S-16(21)41 and /3(7)76-OSB pertaining to property No. 63, Block 'L', Daryaganj. Area: 590.1 Sq. yards.

relating to issue of notices for the period up to 31 March last ended was required to be completed up to 30th September in case of all encroachers. Examination of relevant records revealed the following:-

- No survey regarding unauthorised occupation of DDA's properties has been conducted since 1959. There were approximately 20,000 cases of unauthorised occupation on the Nazul Estates based on a survey carried out by DDA in 1959 including 6000 cases assessed later.
- There was discrepancy between the figures of damages demanded, recovered and outstanding as provided by Damages Section and that shown in the annual accounts of DDA for the period 2010-11 to 2014-15. It was further noticed that as per Damages Section, damage charges amounting to ₹ 69.84 crore were outstanding as on March 2015 whereas as per annual accounts only ₹ 18.49 crore were shown as outstanding. No efforts were made by DDA to reconcile the discrepancy in the figures of outstanding damages charges.
- Scrutiny of 12 cases of damage charges demanded by DDA from unauthorized occupants (out of 21 cases requisitioned by Audit) revealed delay up to 32 years in raising the demand of damage charges on the unauthorized occupants. (*Annexure XIII*).
- For collection of damage charges, Show Cause Notices are to be issued for the period up to 31 March last ended and the issue was required to be completed up to 30th September in the case of all encroachers. However, only 79 notices demanding the damage charges were issued by DDA instead of 477 notices to be issued in these twelve cases (*Annexure XIII*).

Interest amount accrued on the outstanding damage charges could not be quantified because in none of the 12 cases, all details were available.

It was also noticed in audit that:

- Notices were served only when the unauthorised occupants requested DDA to get their unauthorised occupancy transferred/mutated in their name or for No Objection Certificates.
- DDA also allowed the substitution of unauthorized occupants other than legal heirs on the basis of Affidavit/General Power of Attorney/Agreement to Sale etc.

Thus, there was no system either for regular identification of unauthorised occupants, or for raising and collection of demands.

DDA stated (June/October 2016) that a conscious decision was taken to stop door to door collection of damage charges and to stop issuing notice for demand, and it was left for unauthorised occupant to make payments on their own.

The reply of DDA needs to be seen against the fact that though the decision for not sending the notices was taken in July 2008, it was revoked in March 2012. Further, the basis for the above decision of 2008 was the direction of LG that policy paper for giving ownership rights

to the unauthorised occupants of old Nazul Properties should be immediately brought before DDA which has not been done (October 2016).

Further, the delay in sending the notices had been occurring since 1952 whereas the decision for not sending the notices was operative only during the period from July 2008 to March 2012.

Case study: Non eviction of unauthorized occupants from properties required for planned development of Delhi

Two properties measuring 500 Sq. Yard and 1000 Sq. Yard falling in Khasra No. 407 of village Malikpur Chhawani Revenue Estate situated at G.T. Karnal Road, Delhi were acquired by DDA under Section 22(1) of DDA Act in 1963 but were occupied by the unauthorized occupants. In this connection, Audit noticed that:

As per the Master Plan of Delhi-2001, the said land was earmarked for development of Facility Center No. 2 in the Zonal Development plan of Zone-C. Accordingly, eviction orders were passed by Estate Officer and served in June 2006. On 17 July, 2006, the Estate Officer, DDA issued letter to Deputy Director North Zone/Land to take over the physical possession of the said land by use of such force as may be necessary. However, Audit did not find any records relating to the efforts made for eviction. The unauthorized occupants filed a petition in the Hon'ble District Court, Delhi against the orders of the Estate Officer.

The Hon'ble District Court in December 2006 remanded both the cases to the Estate Officer with the directions to pass the order within two months after duly hearing both the parties and also considering the appellants' submissions with respect to their claims that their case was covered by Government's Regularization scheme. The Estate Officer heard both the parties on 18 March 2013 and passed the order for assessment of damages.

Audit further noticed that the damage charges against the unauthorized occupant of property measuring 1000 Sq. Yard and 500 Sq. Yard were ₹ 1.35 crore (31 December 2012) and ₹ 0.38 crore (30 November 2011) respectively. No evidence of payment was available in the file.

DDA replied (June/October 2016) that after hearing the parties in pursuance of the directions of the court, the Estate Officer has passed the order on 18 March 2013.

The reply of DDA was not acceptable as the order of the Estate Officer, referred to by DDA, did not deliberate on the fact whether the cases were covered under Government's Regularization Scheme, as directed by the Hon'ble District Court, Delhi and passed order for assessment of damage charges only.

7.5 Improper use of DDA Lands

It was noticed that there was variation in the purpose of use of land in lease records *vis-a-vis* physical verification report by the field officers/officials of DDA. To ascertain factual

position joint inspection of 14 properties⁵¹ was conducted (January/February 2016) by Audit alongwith officials of DDA. It was noticed that commercial activities were undertaken in the vacant land of the L&DO, which was transferred to DDA for care and maintenance. Further, commercial activities were also being carried on, on the vacant land of DDA and land leased out by DDA for residential purposes.

I. Status of land lying with the L&DO	
<p>Karol Bagh, Khasra No. 437/31 (796 Sq yards)</p> <p>(As per DDA records, the vacant land was shown in possession of Land & Development Office (L&DO))</p>	
II Status of vacant land lying with DDA	
<p>Paharganj</p> <p>Khasra No. 895/865(Plot Area 333 sq yards)</p> <p>(As per records of DDA, the property was in possession of DDA)</p>	
III Status of land allotted to individuals	
<p>Paharganj</p> <p>Khasra No. 911/714-715 (333 sq yards)</p> <p>(As per records of DDA, the land was leased out for residential purposes.)</p>	

DDA in its reply stated (June/October 2016) that Mixed Land Use (Special Zone) is permitted on the land under reference transferred to DDA.

⁵¹ **Mauja Karol Bagh** (6): Khasra No.s (i) 133/33-36-37 (ii) 437/31 (iii) 725/508 (iv) 266/35-36-39 (v) 687/19 (vi) 730/508; **Naiwala** (3): Khasra No.s (i) 845 (ii) 5 & 6 (iii) 2020/1258 ; **Paharganj** (5): (i) 759/218 (ii) 895/865 (iii) 863/73 (iv) 718/214-16 (v) 911/714-715

The reply is not acceptable since as per land records, status of these lands was vacant/leased for residential purpose, whereas in actual the land was being used for commercial purposes for which permission was not taken from DDA.

Conclusion:

- DDA did not have complete information on total area of Nazul-I land in possession of DDA, number of leases it had entered into, number of leases which had lapsed, leases where land use had been changed and whether land was in the control of original lessees or it had changed hands.
- There was no proper system of raising demand for ground rent and ascertaining the amount realisable towards ground rent, transfer of lease, change of land use, unearned income etc. at any point of time.

Recommendations:

- DDA should ensure that a comprehensive database and record of all types of leases administered by it is prepared. This should also be regularly updated to reflect the current changes viz. titles, periodic renewals etc. Additionally, these records should also be integrated with land database.
- DDA should develop a comprehensive policy for effectively dealing with the expired leases in Nazul-I land. This policy should aim at balancing all the interests like those of planned development of these areas, revenue interests of the DDA and interests of the existing lessees.