

Chapter V

Lands prohibited for grant/lease under the KLR Rules

Are there lands which are prohibited from disposal?

The public land, on which people have rights collectively, include lands such as *Phut 'B' Kharab*²⁹, *Gomala*³⁰, *Gunduthopu*³¹, *Sendivan*³², etc., apart from roads, pathways, lanes and streets.

Section 68 of the KLR Act empowers Government to extinguish public rights over roads, streets, paths and lanes which are no longer required for public use. Thereafter, the lands *ibid* become available to Government for disposal.

There is no provision in the KLR Act to either extinguish or prohibit extinguishing of public rights over public lands such as *Phut 'B' Kharab*, *Gunduthopu*, tank bed, burial ground, etc.

However, Rule 108 I³³ of the KLR Rules specifically prohibits grant of *Phut 'B' Kharab*, *Gunduthopu*, etc. which in the opinion of the Government are required for public use. Further, the KLR Rules also prohibit grant/lease of lands situated within the municipal limits of a city/town for private purpose.

Besides, the Hon'ble High Court of Karnataka in its judgement³⁴ of 2002 has held that types of lands prohibited from grant/lease under Rule 108-I could not be granted at all.

Hence, though the KLR Act is silent about the grant of *Phut 'B' Kharab*, *Gunduthopu*, etc., KLR Rules and the judgement of Hon'ble High Court of the State prohibits grant of such lands.

²⁹ Unassessed land reserved for public purpose, occupied by road, burial ground and water bodies, etc.

³⁰ *Gomala* is Government land reserved for pasture of the animals.

³¹ Land reserved as Village Forest.

³² *Sendivan*: Toddy Palm Grove.

³³ Rule 108-I: Certain lands not to be granted: (1) Notwithstanding anything contained in this chapter, lands assigned for special purposes under Section 71 of the Act, and lands described in revenue records, as *Devarakadu*, *Urduve*, *Gunduthopu*, tank bed, *Phut Kharab*, *Halla Kharab*, burial grounds and such lands, which in the opinion of the Government is required for public purpose, shall not be granted:

Provided that the provisions of this rule shall not apply to lands set-apart for free pasturage under Section 71 of Karnataka Land Revenue Act, which will be governed by Rule 97.

(2) No Government land within the limits of a city or town, shall not be granted to any individual or a private institution. All such lands shall be reserved for public or Government purposes to provide for public needs of a growing city or town.

Provided that the lands, which have not lost the characteristics for which they were reserved shall not be declassified and granted or leased for any other purposes.

³⁴ The St. Annes Education Society and Anr. Vs State of Karnataka and Ors.

Power of the Government to relax provisions of the KLG Rules

Rule 27 of the KLG Rules empowers the Government to, *suo motu*, or on the recommendation of the RC/DC, relax any of the provisions of the KLG Rules in appropriate cases with reasons suitably recorded, and subject to the conditions specified in the orders passed in this regard.

Item 12 of the Karnataka Government (Transaction of Business) Rules, 1977 as amended in the year 2000 provided for submission of all proposals which are not in accordance with the KLR Act and allied Rules to the Cabinet.

5.1 Lands prohibited for grant/lease under the KLR Rules

Whether lands prohibited under KLR Rules were granted?

Audit noticed that due to specific prohibition under the KLR Rules in respect of certain types of lands such as *Gunduthopu*, tank bed etc, proposals for grant/lease of such lands were referred to the Cabinet under Item 12 of the Schedule I of the Karnataka Government (Transaction of Business) (ToB) Rules³⁵, 1977.

Out of the 320 cases of grants/leases approved during 2012-17, 86³⁶ cases of grants/leases involved 487-30 A-G of lands specifically prohibited by the KLR Rules. Of the 86 cases, 79 cases were approved by the Cabinet under the ToB Rules³⁷ and the remaining 7 cases were orders of lease issued by the Deputy Commissioner concerned. Details in *Annexure-IV*.

Whether extinction of public rights over certain lands were made in contravention to extant Rules?

Audit noticed that of the above 86 cases, Government issued orders in 14 cases under Section 68 of the KLR Act for extinguishing public rights over water stream, *Gunduthopu*, B *Kharab*, *Halla Kharab*, etc., involving 13-37 A-G even though Section 68 of the KLR Act empowers Government to extinguish public rights only in respect of street, road, land or path.

Out of 79 cases approved under the ToB Rules, Government Orders in respect of 50 cases were made available to Audit. It was noticed that powers under Rule 27 of the KLG Rules was found to have been exercised in eight cases without recording specific reasons as required. Audit pointed out that Rule 27 of the KLG Rules could be exercised to relax only the provisions of the KLG Rules and not provisions of the KLR Rules. In the remaining 42 cases, no reference of any provisions for grant of prohibited land was made.

³⁵ Government of Karnataka (Transaction of Business) Rules, 1977, were framed for guidance of the administrative Departments for smooth functioning of the Government.

³⁶ Includes three cases of grant of land to Government Departments which is outside the scope of Audit.

³⁷ In addition, there were 10 cases of *Gomala* land (169-16 A-G), the grant of which was prohibited under various judgements of Hon'ble High Court, were also approved under ToB Rules.

Audit concludes that the amendment of ToB Rules which read that '**proposals not in accordance with the Land Revenue Act and Rules or any general scheme of the Government**' resulted in submission of all proposals of grant/lease *contrary* to the KLR Rules to the Cabinet. In effect, the amendment of ToB, which was an instrument framed to ease and streamline the conduct of business of the Government, had the unintended outcome of amending the Karnataka Land Act/Rules. Consequent grant of public lands such as *Phut 'B' Kharab, Gunduthopu*, tank bed, burial ground etc., led to loss of Government lands marked for public purposes and environmentally sensitive areas.

Recommendation 3 – The Government may re-consider grant of public lands not provided under the KLR Act and prohibited under KLR Rules through the Karnataka Government (Transaction of Business) Rules, 1977.

The Government agreed to review the amendment to the Karnataka Government (ToB) Rules, 1977, in consultation with the Department of Parliamentary Affairs.

5.2 Inconsistencies in disposal of *Gomala* land

Whether Gomala land could be disposed ?

Rule 97(1) of the KLR Rules stipulates for earmarking 30 acres of land per 100 headcount of cattle as *Gomala* land. Rule 97(4)³⁸ of the said Rules empowers the DC to reduce *Gomala* land limit below the prescribed limit subject to prior approval of RC.

However, the Hon'ble High Court of Karnataka, vide various judgements³⁹ directed the State Government not to grant *Gomala* land, which would reduce the *Gomala* land below the prescribed limit. Consequently, the Government in acceptance of the Court judgments issued Circulars in 2007⁴⁰ and 2009⁴¹, which clearly prohibited grant of *Gomala* land to private bodies/institutions.

Further, as per Rule 97(5)⁴² of KLR Rules, *Gomala* land situated within the city limits and within specified distance from city limit may be granted with the General Order of the Government.

³⁸ As per Rule 97(4) of the KLR Rules, the Deputy Commissioner can reduce the extent of *Gomala* below the prescribed limit of 12 hectares per 100 head count of cattle, if he considers the area so set apart is much larger than what is really required. However, the DC should do so only after obtaining the prior approval of the Regional Commissioner.

³⁹ Writ Appeal No. 1353/06(KLR-RES), Writ Application nos. 3315/05 (KLR-RES) and 21225/05 (KLR-LG) dated 18.11.2006.

⁴⁰ No. RD 83 LGP 2006 dated 05.01.2007.

⁴¹ No. RD 57 LGP 2008 dated 20.08.2009.

⁴² Amendment inserted vide notification dated 25.1.2008 with effect from 6 February 2008.

Audit noticed that the Government did not frame any General Orders in respect of Gomala land within city limits (September 2017). In spite of the Circulars issued for not granting Gomala land, the Government had granted Gomala land.

Whether Gomala lands were disposed off in a consistent manner after fair evaluation?

Government processed grants on Gomala land in violation of its own Circular. Even in grant of Gomala land, there was inconsistency in decision to grant or otherwise. Cases were decided without recording reasons for disbursing Gomala land even in places where shortage of Gomala land was reported.

Audit brings out three case studies to point out the discrepancies noticed in the processing of grants of Gomala land as below:

**Case Study No.01
Inconsistent decision making**

(i) In four ⁴³ cases, (three grants and one lease) 88-00 A-G of Gomala land were granted/leased between 2011 and 2016.	Granted Gomala land despite reports of the DC on shortage of grazing land.
(ii) In two ⁴⁴ cases, proposals were made for grant of 112-21 A-G of land in 2011/2016.	Proposals were rejected on the ground of shortage of Gomala land.

**Case Study No.02
No evaluation before disposal**

The Government granted 10-09 ⁴⁵ A-G of Gomala land out of 203-07 A-G in the three survey numbers of the villages in Bengaluru Urban District between August 2012 and November 2013.	However, the remaining 192-38 A-G of Gomala land (i.e. 203-07 A-G minus 10-09 A-G) in the said three survey numbers were already granted/leased to various other entities. Thus, with the grant of 10-09 A-G of Gomala land, the Gomala land in these three survey numbers was completely exhausted. The grants were processed without ascertaining the cattle count and minimum land required/available in these villages concerned for grazing purpose.
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⁴³ Bengaluru (Rural), Belgaum, Ramanagaram, Tumakuru.

⁴⁴ Bengaluru (Urban), Koppal.

⁴⁵ Survey No. 64, Doddabidakallu, Bengaluru North taluk, Survey No. 57 and 15, Chikkabanavara and Chikkasandra, Bengaluru North taluk, Survey No. 30, Kumbalagodu, Bengaluru South Taluk.

Case Study No.03
Grant of land without setting modalities for grant

10⁴⁶ cases (seven grants and three leases), of 117-21 A-G of *Gomala* land situated within the city limit (i.e. with 25 km) between January 2012 and September 2015.

Land was granted, notwithstanding the absence of a General Order of the Government to prescribe modalities for disposal of the *Gomala* land within city limits.

These case studies show that the provisions of the Act/Rules/Circular instructions were not applied uniformly under similar circumstances by allowing grants in some cases while rejecting in other cases.

⁴⁶ Bengaluru (Urban) (eight cases), Chickmagaluru (one case), Gulbarga (one case).