

## CHAPTER III

### LAND REVENUE

#### 3.1 Results of Audit

Test check of records of departmental offices conducted during the period from April 2002 to March 2003, revealed non/short levy of local cess and local cess surcharge, non-levy of water cess and betterment contribution, non-levy of penalty and interest, short recovery of value or rent in respect of government lands assigned/alienated or encroached etc., amounting to Rs.1,471.35 crore in 209 cases which broadly fall under the following categories.

(In crore of rupees)

Sl. No	Categories	No. of Cases	Amount
1	Non/short levy of local cess and local cess surcharge	13	1.12
2	Non-levy of water cess and betterment contribution	1	0.08
3	Non-levy of penalty and interest	13	0.58
4	Short recovery of value or rent in respect of government lands assigned/alienated or encroached	117	903.68
5	Review : <b>Encroachments on Government Lands</b>	1	562.25
6	Others	64	3.64
	<b>TOTAL</b>	<b>209</b>	<b>1,471.35</b>

During the course of the year 2002-2003, the Department accepted under assessments of Rs.34.91 lakh in 59 cases of which Rs.0.34 lakh involved in 3 cases were pointed out during the year and the rest in earlier years. Out of the above, a sum of Rs.30.56 lakh involved in 59 cases has been recovered.

A review, **Encroachments on Government Lands**; and few illustrative cases involving a tax effect of Rs.571.77 crore are discussed below.

## **3.2 Review: Encroachments on Government Lands**

### *Highlights*

- **Inadequate levy of penalty in cases of encroachments resulted in Government not being able to earn a revenue of Rs.524.47 crore in 26 taluks.**

*[Paragraph 3.2.6]*

- **Encroachments by commercial entities resulted in Government not being able to earn a revenue of Rs.11.05 crore by way of lease in 5 taluks.**

*[Paragraph 3.2.7]*

- **In one taluk due to prolonged possession of lands and in another taluk sale of encroached land by dividing them into plots resulted in loss of revenue to the tune of Rs.26.73 crore.**

*[Paragraph 3.2.8]*

- **Encroached Government lands valuing Rs.45.23 crore in 10 taluks pertaining to 7 districts were later sold illegally through registered transaction by individuals.**

*[Paragraph 3.2.9]*

### **3.2.1 Introduction**

The Tamil Nadu Land Encroachment Act, 1905, envisages levy of assessment of land revenue besides penalty in cases of encroachment on government lands. The Act also provides for summary eviction, forfeiture of crops or other products raised on the encroached land, levy of assessment and imposition of penalty as a deterrent measure. The encroachments in the lands classified as assessed/unassessed waste and Natham (house site) are unobjectionable and when occupied by landless poor can be assigned/alienated by collection of the market value of the lands subject to certain conditions.

At the time of annual Jamabandhi, the District Collector/nominated Officer is required to check interalia, that all the taluk authorities have followed all the procedure envisaged in the Encroachment Act, particularly for prompt eviction of encroachment of lands or for transfer of lands under unobjectionable encroachment.

Under Section 25 of the Limitations Act, 1963, where the enjoyment rights over government lands is for more than 30 years, the right shall be absolute and indefeasible.

### **3.2.2 Organisational Set-up**

The Department is administered by the Commissioner of Land Administration /Commissioner of Revenue Administration, who is assisted by the Collectors at district level. There are 29 districts, each under the charge of District Collector who is empowered to prevent misuse of government land and contain encroachment. He is assisted at taluk/village level by Tahsildars or Deputy Tahsildars who are empowered to implement the various provisions of the Land Encroachment Act and relevant instructions contained in the Standing Orders. All the functions pertaining to each village, including implementation of the Act, are reviewed every year by the District Collector/nominated Officer at the time of annual Jamabandhi.

### **3.2.3 Audit objectives**

Analysis of records of 22 taluks of 9 districts out of 29 districts and of sub-registrar under the jurisdiction of these taluks, covering the period from 1998-99 to 2002-03 was made with a view to:

- assess the efficacy of detection, eviction and regularisation of encroachments on government lands
- examine whether the penal provisions in the Act, were adequate to dissuade encroachers from encroachments and
- ascertain there was adequate internal control mechanism to check encroachments.

### **3.2.4 Failure to implement the recommendations of Public Accounts Committee**

Mention was made in para 5.2 of the Report of Comptroller and Auditor General of India for the year 1986-87, on Encroachment on Government Lands. The Committee on Public Accounts in their 2<sup>nd</sup> Report placed in Eleventh Assembly on 30 August 1996 felt that existing measures adopted by the Department were not effective in dealing with encroachment of government land and speedy enactment of amendments to the Act was needed with a view to bring encroachments under effective control. But no such enactment has been made so far.

It is also pertinent to mention that in neighbouring State of Kerala, a penalty upto a maximum of Rs.200 is leviable in cases of encroachment and if the contravention continues, penalty of Rs.200 is leviable for every day of such contravention. Thus in Kerala penal provision (extant since 1957) for encroachment is stringent which is not so in Tamil Nadu where the penalty is Rs.10 only. This did not have the desired effect of checking encroachment.

### ***3.2.5 Inadequate levy of penalty in cases of encroachments***

Under Section 3 and 5 of the Tamil Nadu Land Encroachment Act, 1905, any person unauthorisedly occupying government lands shall pay, by way of full assessment and penalty, of a sum not exceeding Rs.5 or when ten times the assessment exceeds Rs.5, a sum not exceeding ten times of such assessment if the land is assessed. If the land is unassessed, a penalty of a sum not exceeding Rs.10, or when twenty times of assessment exceeds Rs.10, a sum not exceeding twenty times of such assessment is leviable.

The assessment was fixed sufficiently heavy at the time of enactment of Act in 1905, to compel the encroacher to surrender the land immediately. Though the penalty fixed at the time of enactment in 1905 was a stringent one, it has become insignificant and hardly acts as an effective deterrent thereby defeating the very purpose of the Act.

### ***3.2.6 Encroachment for non-commercial purposes***

As per Board's Standing Order 24A and as per Government Order issued in June 1998, for legal occupation of government land, a person has to pay a lease rent of seven per cent of market value of land for non-commercial purposes and at double this rate for commercial purposes. But an encroacher, who is an unauthorised occupant, is being levied with a meagre penalty of Rs.10 only.

### **Encroachment by individuals for residential purposes**

It was noticed in 621 villages of 22 taluks, 8583 hectares of government lands were under encroachment and used for residential purposes. The figures taken were as at the end of 1994, since no fresh encroachments were booked thereafter. Had the penalty been fixed at 7 per cent, on par with the rate for lease, the Government could have earned a revenue of Rs.516.84 crore by way of penalty during 1998-99 to 2002-03 as detailed below:

(In crore of rupees)

Sl. No.	Name of the Taluk/ (No.of Villages)	Extent Encroached (in hectares)	Market value of land for the year				
			1998-99	1999-00	2000-01	2001-02	2002-03
1	2	3	4	5	6	7	8
1	Tambaram/(61)	527-33-0	288.25	288.25	317.32	388.18	433.74
2	Chengalpet/(74)	1102-90-5	72.12	72.12	83.88	89.20	95.82
3	Sriperumbudur/ (176)	1062-35-0	29.49	29.49	30.17	31.74	33.64
4	Poonamallee/ (49)	506-32-5	172.43	172.43	192.58	212.13	238.36
5	Ambattur/(76)	674-31-0	193.20	193.20	209.72	228.68	251.86
6	Pollachi and Coimbatore (North & South)/ (22)	85-68-0	56.94	56.94	63.38	67.04	70.87
7	Uthama-palayam/ (4)	359-65-5	8.08	8.08	8.95	9.21	9.46
8	Sivakasi/ (7)	17-94-5	13.88	13.88	15.55	15.55	15.55
9	Madurai (North)/ (36)	251-51-0	29.74	29.74	31.23	33.74	37.39
10	Thirumangalam/ (21)	90-28-5	0.76	0.76	0.84	0.87	0.91
11	Natham/ (3)	324-78-5	1.37	1.37	1.50	1.50	1.50
12	Kodaikanal/ (7)	865-27-5	59.34	59.34	65.93	72.35	79.99
13	Salem and Omalur/ (36)	664-26-5	76.52	76.52	98.95	105.75	115.02
14	Yercaud/ (45)	780-55-0	22.63	22.63	25.91	25.91	25.91
15	Andipatti/ (4)	1175-37-0	12.04	12.04	14.31	14.31	14.31
16	Chennai/ (4 Taluks)	94-32-11	266.52	266.52	275.56	297.87	322.88
<b>Total</b>		<b>8582-86-11</b>	<b>1,303.31</b>	<b>1,303.31</b>	<b>1,435.78</b>	<b>1,594.03</b>	<b>1,747.21</b>
<b>Penalty at rate of 7 per cent</b>			<b>91.23</b>	<b>91.23</b>	<b>100.50</b>	<b>111.58</b>	<b>122.30</b>
<b>Total Penalty</b>			<b>516.84</b>				

Had the Government enhanced the rate of penalty to 7 per cent, it would have acted as a stringent deterrent and would have dissuaded encroachers from occupying government land.

Failure on the part of the Government to revise the rate of penalty for more than nine decades has defeated the very purpose of the Act, and has failed to safeguard the interest of Government.

### Encroachment by Educational Institutions

A test check of records in four taluks, revealed that government lands aggregating 134-18-4 hectares were encroached by 19 private educational institutions including engineering colleges and were paying penalty of just Rs.10 per annum. Had the penalty been fixed at the rate of 7 per cent, government could have earned revenue of Rs.7.63 crore during the period from 1998-99 to 2002-03.

#### 3.2.7 Encroachment by commercial establishments

The Special Commissioner and Commissioner of Land Administration (SC & CLA) recommended in July 1988 to Government a 'New Land Policy' which would ensure the preservation of the limited extent of government lands available, and their optimum utilisation. Based on the recommendations of the SC & CLA, the Government by an order in December 1988 issued policy guidelines for grant of Government lands under lease to Central Government Department and undertakings, and in all other cases by way of lease of upto 30 years.

Scrutiny of records in 35 villages in 5 taluks revealed that 49.21 hectares of government lands were under encroachment by 55 commercial establishments and were utilised for commercial activities. Had it been given on lease with proper sanction of the competent authority, Government could have levied and collected a lease rent of 14 per cent on the market value of these lands. Omission to take effective action to lease out the lands resulted in loss of revenue of Rs.11.05 crore from 1998-99 to 2002-03 as detailed below:

(In crore of rupees)

Sl. No.	Name of the Taluk (No .of Commercial Entities involved)	Extent Encroached (in hectares)	Market value of land for the year				
			1998-99	1999-00	2000-01	2001-02	2002-03
1	2	3	4	5	6	7	8
1	Ambattur/ (13)	11-95-6	5.04	5.04	5.49	6.02	6.76
2	Chengalpet/ (22)	24-88-0	5.54	5.54	6.44	6.79	6.94
3	Poonamallee/(9)	4-37-5	0.12	0.12	0.14	0.15	0.17

1	2	3	4	5	6	7	8
4	Sriperumbudur/ (2)	2-08-0	0.01	0.01	0.01	0.01	0.01
5	Tambaram/ (9)	4-45-0	3.06	3.06	3.61	4.19	4.65
	<b>Total</b>	<b>47-74-1</b>	<b>13.77</b>	<b>13.77</b>	<b>15.69</b>	<b>17.16</b>	<b>18.53</b>
	<b>Lease rent at the rate of 14 per cent</b>		<b>1.93</b>	<b>1.93</b>	<b>2.20</b>	<b>2.40</b>	<b>2.59</b>
	<b>Total Lease rent</b>		<b>11.05</b>				

Failure of the Department to implement the government order in respect of the above category resulted not only in potential loss of revenue of Rs.11.05 crore but also defeated the very purpose of the new policy, namely preservation of government lands and ensuring their optimum utilisation by Government.

### **3.2.8 Loss on account of prolonged adverse possession of Government lands.**

According to Section 25 of the Limitations Act, 1963, any person enjoying access or other easement benefits towards an immovable property over a period of 30 years acquires a right of possession over the property. Such prolonged encroachment would result in difficulty in resuming the title of ownership of Government at a later date. The Board of Revenue vide Circular No.Perm 296(E) dated 19 March 1971 directed the Collectors/District Revenue Officers to see that all objectionable encroachments are dealt with effectively, without giving room to the encroachers to claim a right over government lands by adverse possession or title of any prescription.

However, it was noticed in Poonamallee Taluk, that an extent of 84.72 acres of land was encroached upon by Food Corporation of India (a Government of India undertaking) and by M/s.Southern Structurals Limited (a Government of Tamil Nadu undertaking) for over 30 years. However, only a meagre penalty was being levied and paid by these institutions. Failure to evict or lease out the lands rendered the lands valued at Rs.25.10 crore (based at the rates of land, as on 1 April 2002 as approved by Registration Department) inalienable to Government as per the provisions of Limitations Act.

Further, it was noticed in Tambaram, that 7.20 acres of government lands were encroached upon by private builders, converted into plots and sold to several persons, and registered by the Sub-Registrar, Tambaram through eleven documents. In view of this, revenue to the extent of Rs.1.63 crore being the value of the land could not be realised by the Government.

### **3.2.9 *Illegal creation of title over Government lands by individuals***

According to Section 27 and 64 of the Indian Stamp Act, 1899, any suppression of facts in the document registered in respect of a property has to be verified by a registering authority, only with regard to the value of the property and levy of stamp duty and registration fee. However, there is no provision in the Act or Rule that provides for the registering authority to verify the legality of ownership of a property by the person executing a deed over a property.

A scrutiny of records of 29 sub-registries of 10 taluks revealed that in 77 villages, documents of sale, mortgage and settlement, etc., were created over government lands to an extent of 172-57-0 hectares valued at Rs.45.23 crore during the years 1991 to 1999. Though these were construed to be illegal and not recognised by the Revenue Department, such illegal transactions could not be curbed due to absence of specific provisions in the Registration Act for verification of ownership of lands by the Registering Authority. Every such illegal transaction could be nullified only by the execution of documents of cancellation by the parties concerned or through a Court of Law.

As continued occupation of government lands by encroachers would entail claim of ownership by them at a later date, appropriate action would have to be taken now to safeguard government interest as survey number is available with each sub-registry. A cross verification of the survey numbers of lands included in the document with the revenue record, before taking up the deed for registration, could prevent such illegal transactions.

The Government in order to curb such illegal creation of title, introduced an amendment to the Registration Act in September 2000, by a notification, under Section 22 A to the Act. The amendment which declared such documents of conveyance were against public policy, had only prospective effect.

On this being pointed out, most of the Sub-Registrars stated that as per Rule 55 of Registration Rules, there was no need to verify the legality of ownership of the property while registering documents. The Revenue Department stated in February 2002 and April 2003 that issue of 'B' memos notice for encroachment on government land had been discontinued in 1995 for new encroachments, as it was felt that the encroachers would use the penalty tax receipt as an evidence of prolonged possession of land in a Court of Law. It is evident that the Department had failed to initiate action in respect of earlier encroachments to evict him which encouraged encroachers to sell government lands. Further, discontinuance of the levy of penalty by Department, as



envisaged in the Act and not acting in accordance with new policy guidelines, as issued by Government in 1988, defeated its main objective viz., preservation of government land.

### **3.2.10 Other points of interest**

#### ***Encroachment on water courses***

As per Board of Revenue Standing Order, where encroachments are objectionable in nature, the encroachers should be summarily evicted.

However, it was noticed that in five<sup>30</sup> taluks adjoining Chennai city, 1594-78-0 hectares of water courses were under encroachment for over 10 years and the encroachers had constructed huts, terraced houses and other allied structures, which prevented free passage of water to the storages lakes and tanks, thereby reducing the overall storage and distribution of water.

It has been judicially held<sup>31</sup> 'Kanmoi' (Lake) land in Madurai district, under encroachment for over 20 years, and being used by encroachers for dwelling purposes, was kanmoi only in name and not otherwise.

Failure of the Department to summarily evict encroachers and to take suitable action to see that lands were not encroached again would thus also ultimately result in change in character of the land in accordance with the above judgement.

### **3.2.11 Encroachment along sea coast**

As per Board Proceeding 163 dated 12 February 1958, the Tamil Nadu Land Encroachment Act, 1905, can be invoked for dealing with encroachments on lands belonging to Central Government as well.

In 3 villages in Tambaram Taluk, extent of 3.00.4 hectares of government lands along the sea coast were encroached upon by individuals by extending their compound walls. Out of the above, only an extent of 1.84.0 hectares was booked as encroachment. Eventhough, the encroachment was objectionable, the Department had not taken any steps to evict the encroachers till date.

---

<sup>30</sup> Ambattur, Chingelput, Poonamallee, Sriperumbudur and Tambaram.

<sup>31</sup> WP.14579 of 1992 and WMP 20698 of 1992 - High Court of Madras.

### **3.2.12 Internal control mechanism**

Though, guidelines had been issued in the Act as well as in the Board's Standing Order and in subsequent Government Orders, for eviction of encroachers, it was noticed that records showing actual areas of government lands encroached, government lands protected, whether the encroachment was objectionable or unobjectionable and the nature of encroachment were not maintained effectively. Further, no fresh encroachments were booked from 1994-95 onwards, eventhough no such instructions had been issued by Government. Thus, information of the extent of Government lands under encroachment, the period and nature of encroachment were not available with the Department.

A Steering Committee at the district level had been formed in March 2001 to look into issues of eviction of encroachments on government lands. To examine whether any effective action was taken after formation of the Steering committee, reports of the committee were called for from the Head of the Department in March/June 2003; the same were not received.

### **3.2.13 Recommendations**

In view of the observations made in the review, government may like to consider the following suggestions:

The Tamil Nadu Land Encroachment Act may be suitably amended to make the penal provision stringent.

As revenue records have been computerised in all the taluks, a system may be evolved for authorities/public to verify on line whether a particular land is owned by Government or some other private party, as has been done in the Registration Department for guideline values.

On this being pointed out in June/July 2003; the Government replied that repeal of the old Act (1905) and re-enactment of a new Act with necessary provisions to meet the existing contingencies in the eviction of encroachment, like levy of high rate of penalty, punishment for land grabbing, simplifying the procedure for eviction, etc., was under their consideration (August 2003).

### **3.3 Omission to levy special rates for lands under Plantation Crops**

According to Board's Standing Orders 15, special rates of Rs.3 per acre for lands under cultivation of coffee/tea etc., and Rs.5 per acre for cardamom and Rs.2 per acre for other crops shall be payable.

In Andipatti taluk of Theni District, it was noticed, that land revenue was incorrectly levied at normal rates as against the special rates fixed for lands under plantation crops. This resulted in short levy of land revenue amounting to Rs.6.79 lakh for the period 1 July 1992 to 30 June 2000.

On this being pointed out, the Department raised demands in June and September 2002 and an amount of Rs.2.44 lakh was collected in March 2003. Report on recovery of the balance amount has not been received (October 2003).

The case was reported to Government in July 2003 and followed up with reminder in August 2003; their reply has not been received (October 2003).

### **3.4 Non-revision of lease rent**

As per Revenue Standing Order 24A, Government lands can be leased out to any private firm for commercial purposes on payment of lease rent at the rate of 14 per cent per annum of the prevailing market rate of land. Further, the lease rent is to be revised periodically once in five years in accordance with the market value. Besides, additional surcharge at the rate of 13 per cent of the land revenue is to be collected alongwith the land revenue.

During the course of audit of the office of Tahsildar, Madurai South Taluk, it was noticed that an extent of 2.64 lakh sq.ft. of government lands in prime locality in Madurai was leased out to M/s.Pandian Hotels Limited in 1963 and 1979 (in two pieces) for a period of 25 years. The Government by an order revised the lease rent from Rs.4,600 to Rs.16,000 per month with effect from 11 February 1988 with a revision once in every five years. Subsequently, government by another order on 7th June 1991 fixed the lease rent at Rs.16,000 per month till the assignment of land, without any time limit for revision. The Department did neither take any steps to assign the land after June 1991, nor revised the lease rent periodically as envisaged in Board of Revenue Standing Order 24A issued in 1971 which allowed unintended benefit to the lessee.

Thus, failure to fix the lease rent at prevailing rates and to revise the same periodically resulted in short collection of revenue for the period 11 February 1993 to 10 February 2003 which worked out to Rs.9.45 crore.

On this being pointed out, the Department replied in December 2002 that fixation of lease rent was in accordance with the G.O. dated 7 June 1991 and there was no necessity to revise the same, till assignment, as assignment proposals were in process. The reply is not tenable as there was inordinate delay in assignment of land. The lessee being a commercial concern running a star hotel, the lease rent should have been fixed at normal rate of 14 per cent with periodical revision to safeguard revenue.

The matter was reported to the Government in July 2003 and followed up with reminder in August 2003; their reply has not been received (October 2003).