

Chapter VIII

Eviction of Encroachment of Government land

Encroachment of Government land adversely affects the inventory and reduces the availability, disposal and equity in distribution of land resource. The KLR Act/Rules prescribe summary eviction of encroachment of Government land.

Was there an Action Plan to deal with encroachment?

A Joint Legislative Committee submitted its Report on the issue of Encroachment in July 2007, based on which the Government directed (2013) the DCs to prepare an Action Plan for eviction of encroachment of Government lands.

The DCs were required to report progress on eviction in the prescribed formats to Karnataka Public Land Corporation (KPLC), which would in turn submit a monthly consolidated report to the Government.

8.1 Working of Karnataka Public Land Corporation

KPLC was incorporated in December 2008 with the main objective of being the primary agency for all transactions of land. Besides this main objective, KPLC was entrusted with collection and maintenance of data about Government lands, valuation of Government lands, devising methods for prevention of encroachment, allotment of lands recovered after eviction of encroachment to different Government Departments, etc.

Limitations of KPLC

The objective of KPLC was to manage and ensure optimum usage of Government lands but it had not formulated a road map for the same. The activities of KPLC were restricted to monitoring submission of progress reports by the DCs concerned on the Action Plan for eviction of encroachments and reporting the same to the Government. KPLC released Government grants received by it to DCs concerned for protection of Government land. KPLC had instituted a mechanism of public complaints regarding encroachment of Government land and forwarded the complaints received to the DCs concerned for necessary action.

In reply, KPLC stated (August 2017) that proposals were sent in June 2015 to the Government regarding strengthening of KPLC and to project KPLC as a nodal agency for allotment of Government land for various purposes to Government/Public Sector Enterprises.

Government in the Exit Conference stated that KPLC was a small organization with skeleton staff and would not be in a position to handle the eviction of encroachments, as it also lacked eviction powers. Audit is of the opinion that KPLC should be strengthened/empowered to play a proactive role in the identification and eviction of encroachment of Government land.

8.2 Identification, accounting and eviction of encroachments

Progress of eviction

As per the progress report of KPLC for the month of March 2017, out of 4,48,615 acres identified as encroached in the State, 2,61,174 acres (57 per cent) was reported to be evicted leaving a balance of 1,87,441 acres (42 per cent). The encroachments identified excluded cases pending in various Courts and applications pending under the Scheme for Regularisation under Section 94 A, 94 B and 94 C of the KLR Act.

In respect of the 11 test-checked Districts, the encroachment stated to be evicted was 1,29,576 acres out of 2,05,221 acres of encroachments identified in the respective Action Plans. While Bengaluru Rural achieved 100 per cent eviction, Chikkamagaluru and Kalburgi with 14 per cent eviction were the least in progress of eviction as of March 2017.

8.2.1 Deficiencies in the process of identification, accounting and eviction of encroachments

Audit analysed the process of identification, accounting and eviction of encroachments existing in the Department and noticed the following deficiencies:

Issues of identification

The Action Plan did not contain any plans to identify new encroachments and no new encroachments were listed after August 2013 except in Bengaluru Urban District.

On introduction (July 2013 - rural areas and January 2015-urban areas) of the scheme for regularisation of unauthorised occupation of Government land for dwelling house, 1,16,904 applications involving 1397-08 A-G were received by March/June 2017. However, none of them were reckoned by the Department as encroachment of Government land in the Action Plan of the Department.

Issues of accounting

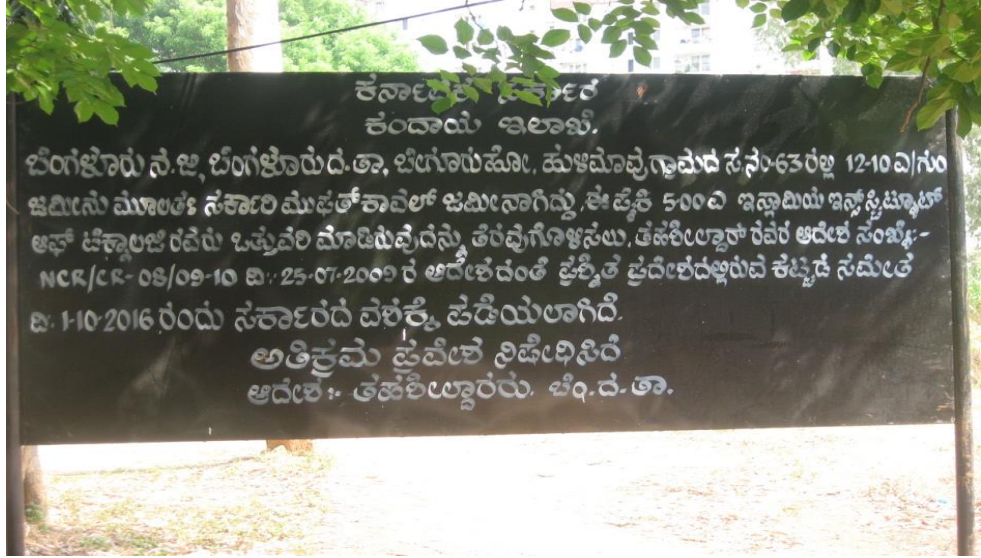
Encroachment of 40-11 A-G by 14 individuals and two Government institutions (*Annexure X*) was recorded (between 2003 and 2014) in the files of eight Offices of DC/Tahsildar. However, the same was not accounted for under the total encroached area maintained either by the Department or KPLC.

Applications rejected under regularisation for agricultural purposes were not accounted for under encroachment. There were 1,81,167 such applications covering an extent of 4,62,637 A-G.

Joint Inspection with the Department

Audit conducted Joint Inspection with the personnel from the Revenue Department to verify the stated eviction of encroachments. In 43 cases of encroachments stated to be evicted, 22 cases involving 219-14 A-G continued to be under encroachment. Details in *Annexure XI*.

Illustration of a case which continued under encroachment is pictured below:



12-10 A-G of land in Survey Number 63 of Hulimavu village, Begur Hobli, Bangalore South Taluk, Bangalore Urban district is basically a *Mufthkaval* (grazing) land. An extent of 5-0 A-G out of this encroached by Islamia Institute of Technology, was to be evicted as per order No.NCR/CR-08/09-10 dated 27 July 2009 of the Tahsildar. As per the board displayed above, it has to be taken possession of along with the building on 1 October 2016.



Date of Joint Inspection – 20 April 2017

5 Acres (Sy.No.63, Hulimavu village, Bengaluru South) encroached by Islamia Institute of Technology was found not evicted during joint inspection with the Department though an eviction board as shown above had been put up at the spot.

Recommendation 7 – The Government may consider:

- i) Updating the existing Action Plan by addition of new encroachments reported/identified subsequent to preparation of the Action Plan; and**
- ii) Including time-bound eviction procedures in the Action Plan in respect of Government lands in the possession of the applicants whose applications under the scheme for regularisation were rejected.**

In reply, the Government agreed to ensure updating of all encroachments and to account lands involved in applications rejected under the scheme for regularisation as encroachment.

8.3 Disposal of public complaints on encroachment

KPLC instituted (2009) a system for receipt of public complaints and compiled a database of all complaints and forwarded the same to the DC Offices concerned for disposal. The procedure for disposal of a public complaint involves a field verification report and issue of notice to the encroacher before eviction is initiated.

How good was the complaints redressal mechanism?

Creating awareness among the public and encouraging reporting of encroachment is a method of monitoring encroachment of Government land. Hence, a mechanism for receipt of complaints from the public will have considerable effect in the timely detection and eviction of encroachment, if acted upon prudently.

Out of 2,608 State-wide complaints received and sent by KPLC to the DCs/Tahsildars between 2009 and 2017, only 753 complaints were disposed of, leaving a balance of 1,856 cases pending disposal. Pending cases included 1,271 complaints which were more than five years old. Besides, no time-frames were prescribed for field verification of complaints and reporting at various levels. Details in *Annexure-XII*.

No database was maintained for public complaints received in the field offices of the Department, viz. the Tahsildar and DC Offices and the complaints were not compiled either at the DC or the Tahsildars Offices. Information called for in this regard from the DCs were not furnished.

In effect, the Department did not have an established mechanism for follow-up on complaints. The action against established encroachments was not time-bound and systematic, and was ineffective in identifying further encroachments and timely eviction of the same.

Recommendation 8 – The Government may consider:

- i) Fixing time-frames for field verification and confirmation of cases of complaints regarding encroachment to make the redressal mechanism effective; and**
- ii) Constitution of Enforcement Cell for each District on the lines of Bengaluru (Urban) District.**

The Government accepted the audit recommendations and agreed to constitute an Enforcement Cell in a few Districts.

8.4 Grant of land to the Encroachers

As per Section 39 and 94 of KLR Act, 1964, any person who has unauthorisedly occupied any Government land shall be summarily evicted by the jurisdictional DC, besides being liable to be levied penalty⁵⁸. No Acts and Rules made thereunder empower the Government to regularise the encroachment, except encroachment for agriculture purpose⁵⁹ and for dwelling house.

From the above, it is imperative that all encroachments should be dealt with strictly in accordance with law and evicted to deter future encroachments.

Whether eviction of encroachment strictly complied with extant Rules?

Audit noticed instances where the Government granted the encroached land to the encroachers. In the test-checked cases, Government granted land involving 89-31 A-G encroached by 11 individuals in four Districts⁶⁰ for non-agricultural purposes, such as construction of church/school, golf village and resort.

Two illustrations in this regard are as below:

Illustration-1: Grant of land contrary to DC recommendation

Two Acres of Kaveri River shore, Mysuru District, un-authorisedly occupied by M/s.Talakadu Jaladama Resorts.

The occupant constructed a building and a road. However, on request from the encroacher, instead of eviction and contrary to the recommendation of the DC, the Government accorded permission in June 2014 to utilise the said land though the Act/Rules did not permit it.

⁵⁸ Penalty of twice the land revenue for the land and also liable, at the discretion of the DC, to a fine not exceeding ₹ 500 per acre per year (for agricultural purposes) and not exceeding ₹ 1,000 per acre per year (for non-agricultural purposes).

⁵⁹ By individual of insufficient land holding.

⁶⁰ Ballari, Bengaluru (Urban), Mysuru and Ramanagara.

Illustration-2: Mis-interpretation of Court direction

77-19 A-G in Ramanagara District encroached for Golf Club Village by a private builder⁶¹.

The Hon'ble High Court of Karnataka dismissed the plea of the encroacher for grant. On appeal, the Hon'ble Supreme Court directed (2009) the Government to grant the said land if the relevant provision of the Rules permitted to do so after collecting price of the land determined by the Government. Though the Rules did not provide for grant of the land, the Government agreed to grant the land, misconstruing the Court direction as direction for grant.

The value of the land assessed by the Department was ₹ 982.07 crore and the Department issued notice in September 2016 for collection of the amount.

During the Exit Conference (September 2017), the Government informed that the encroacher had not paid the amount as of September 2017. However, no further action was taken by the Government and the land remained under the illegal occupation of the encroacher.

The injudicious action of the Government in granting the encroached land would only encourage grabbing of Government land by unscrupulous means/individuals.

8.5 Non-levy of penalty for encroachment of Government land

As per Section 94 of the KLR Act, 1964, encroachment of Government land shall be evicted on levy of penalty at two times of land revenue and also be liable, at the discretion of the Deputy Commissioner, to a fine not exceeding ₹ 500 per acre per year (for agricultural purposes) and not exceeding ₹ 1,000 per acre per year (for non-agricultural purposes). However, it was noticed that such fine was not levied in any of the test-checked Districts. The fine involved in respect of evicted lands in the test-checked Districts worked out to ₹ 32.96 crore⁶² covering an extent of 1,31,831 acres of Government land.

8.6 Protection of evicted lands

KPLC releases grants received from the Government, to the DCs to meet the expenditure towards protection of Government land viz., removal of encroachment, fencing of evicted land, etc. The amount was released based on the requirements of the DC.

⁶¹ M/s. Chamundi Build Infotech.

⁶² Computed at ₹ 500 per acre for the extent of evicted lands.

As of July 2017, out of ₹ 17.46 crore released between 2012-13 and 2016-17 towards protection of previously encroached lands to all 30 Districts, Utilisation Certificates were received for only ₹ 10.39 crore. KPLC needs to monitor usage of the balance amount of ₹ 7.07 crore.

Whether measures taken for protection of evicted land were adequate?

Out of the total 2,62,293 acres of land recovered after eviction of encroachment, only 18,273.74 acres were stated to be protected by way of fencing, digging trench and putting name plates.

In Bengaluru District, out of 31,050 acres⁶³ of land recovered after eviction of encroachment, only 482.69 acres (*i.e.* 1.55 per cent) was stated to be protected as of March 2017, though the land in and around Bengaluru is very valuable⁶⁴.

An illustration showing re-encroachment of evicted land is given below:



Date of Joint Inspection – 28 May 2017

Encroachment evicted area (Sy.No. 70, Banavadi village, Magadi Taluk) found to be re-encroached during joint physical inspection with Department.

8.7 Disposal of dispute cases of Government land

Mechanism for resolution of land disputes

As per the KLR Act/Rules, dispute resolution takes place both through the Revenue Courts, Revenue Appellate Tribunals and the Civil Courts. In the Revenue Court system, the Tahsildar, who heads the Revenue Department at the Taluk level, is identified as the first level dispute resolution officer. The Revenue Officers heading the sub-divisions, districts and division also have dispute resolution powers. The civil litigation system mainly comprises the High Court, District Courts and Courts of Civil Judge.

⁶³ Bengaluru Urban - 18441 acres and Bengaluru Rural District -12609 acres.

⁶⁴ Present day GV of land in Bengaluru ranges from 14.00 lakh to 12.00 crore per acre.

As per the information furnished by KPLC, there were 1200 cases pending before various Courts as of March 2017. Audit noticed that the Government lost 17-11 A-G of land in five instances due to improper/delayed/un-timely representation on the part of the Department in various Courts of law. All these cases were decreed in favour of the beneficiaries/encroachers due to delay in action in registering cases or filing Government remarks or in-action by the Department (*Annexure-XIII*).

Constitution of Special Court and its effectiveness

In order to ensure speedy disposal of disputes relating to encroachment or otherwise of Government land, the Government constituted (March 2016) a Special Court under Section 7 of the Karnataka Land Grabbing (Prohibition) Act, 2011. Further, Section 20 of the Act provided for transfer of all land related cases pending before various Courts on 'as is where is' basis to the Special Court constituted.

Despite a reference from KPLC to all the DCs/Tahsildars, only 69 cases were transferred as of August 2017 to the Special Court for speedy disposal leaving a balance of 1,131 cases yet to be transferred. Delay in transferring the cases to the Special Court defeated the very objective of setting up the Special Court for speedy disposal of cases. Consequently, the land under these cases continued to be under encroachment.

Protection of Government land from encroachment is a continuous process and requires active and timely action in identification and eviction procedures. Though the District Offices had identified encroachments and formulated an Action Plan for eviction, it was noticed that there was no system of periodic inspections and identification of new encroachments. Instances of non-eviction of encroachments reported as evicted by the District Offices to Government were also noticed during joint inspections. Grant of land by Government to encroachers⁶⁵ would encourage land grabbing. The Department had not levied penalty in any of the encroachment cases. KPLC could only monitor the progress of eviction and disposal of complaints on encroachments reported by District Offices in the absence of powers under the KLR Act for any executive action. Though the Government set up (March 2016) Special Courts for speedy disposal of disputes relating to Government land, it was noticed that 94 *per cent* of the cases pending in various Courts were yet to be transferred (June 2017).

The Government accepted the audit recommendations.

⁶⁵ Encroached for purposes other than agriculture and dwelling houses.