

## Public Land as a Resource to Finance Urban Infrastructure

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### Abstract

*The potentials of public land as a resource to finance the proposed urban infrastructure in India is yet to be explored and the efficiency of the municipalities with public land as fiscal resource is inherently linked to the surplus public land available, its value, and the regulatory bindings on public leasehold system. To assess the potentials of urban public lands for financing urban infrastructure, it is essential to understand the control parameters, such as the legal provisions related public land with reference to ownership rights, development rights, lease rights, taxes and administrative aspects. In this connection this paper draws some of the important inferential discussions on the review of historical perspectives, legal provisions and progress of municipalities in using public land as a resource. Further, a detailed assessment of the regulations of government of public leasehold system for Andhra Pradesh is presented. Overall, the outcomes of this research signify that public land has been a resource to municipalities and there is a need for optimizing the revenues from public lease hold system.*

**Keywords:** Public Land, Municipal Finance, Revenues, Master Plans

### INTRODUCTION:

Urbanisation played a critical role in the overall economic development of India and share of urban Gross Domestic Product (GDP) has significantly increased from 45.7 percent in 1993-94 to 62 percent in 2009-10 (as per the mid-term appraisal of the Eleventh Five Year Plan, Planning Commission of India). India's urban population is projected to be 50 percent of the total population by 2050, and given to this strategic importance, Urban Local Bodies (ULBs) continue to play a major role in the economic development and influence the welfare of public through provision of infrastructure services (P.K.Mohanty, 2007). Therefore, financing urban infrastructure and financial sustainability of ULBs in India are the important components within the framework of urban development policy. Within the overall fiscal framework of ULBs, land and public assets have become an important source of financing urban infrastructure in developing and developed countries (George E, Peterson, 2007). Urban land is a scarce resource, which needs to be optimally used and efficiency of public land as a resource for financing urban infrastructure in municipalities is inherently linked to the surplus public land available and its value, amount of marketable land that can be exchanged for infrastructure services at a given point of time. Here marketable lands refer to those lands that are in excess and not directly required for delivery of services. Spatial parameters such as location of the public land, size, shape, land use controls, demand and supply for such land parcels are some of other factors that influence the value of the land parcels, and magnitude of revenues that can be raised. Most of the land in municipal areas are owned by private and as per the 74th CAA, responsibilities of planning for economic and social development, water supply, public health, urban poverty alleviation, public amenities and facilities are entrusted to municipalities, provision of such facilities and services in urban areas demand land and investments. So, it can be understood that public land is a valuable and multidimensional resource to municipalities and land-based financing is one among them. Thus, in order

to assess the potentials of urban public lands for financing urban infrastructure, it is essential to understand the legal provisions related to land, especially on public land with reference to ownership rights, development rights, taxes and administrative aspects that influence municipal strategies. In this connection, this research paper outlines the constitutional provisions on land and rights on land, policy objectives that support public land ownership in urban areas, and a review of terms and limitations set by higher level governments on using of public land as a fiscal resource to municipalities through relevant government orders in Andhra Pradesh. Here municipalities refer to the urban areas constituted by the State of Andhra Pradesh, Municipal Corporations, Municipalities and Nagar Panchayats. There are few bodies enacted by the State from time to time with special powers on land including acquisition, transfer and sale for specific project, which is not covered as a part of this study and limitation. Further, this study also draws some inferences from the benchmarking studies on public leasehold system for Indian cities.

## **A HISTORICAL PERSPECTIVE OF LAND RIGHT, REVENUES AND POLICIES IN INDIA**

### **Land rights and tenure system**

Land rights describes the relationship between the man and land in terms of ownership, use, control and transfer of rights from one person to another. Before the British rule in India, land was divided into Jagirs and allotted to Jagirdars. These allotted lands were further sub-divided and allotted to peasants through zamindars, intermediaries with land rights on cultivation. In return the peasants were required to pay tax from their revenues and this forms the basis of land-based revenue under the king's ruler ship in India. Here, the fixation of taxes was majorly dependent upon the productivity of land and it can be inferred that marginal lands might have higher revenues as compared to sub-marginal lands.

Before Independence, During the British rulership (1750 AD – 1947 AD) in India, Permanent Settlement system was introduced, which played a key role in establishing the land records and rights. There were three types of land tenure systems prevalent in India, Zamindari System, Ryotwari System and Mahalwari System (Mukherjee & R E Frykenber, 1979). Earl Cornwallis had introduced Zamindari system (1793) in the provinces of Bengal, Bihar, Orissa, part of Tamil Nadu and Varanasi. In this system, Zamindars were treated as the owner of the lands (intermediaries) and used to collect rent from peasants, which was shared with East India Company. The rents were fixed based on the type of crops cultivated by the peasants and this system is also known as Zabt. Later, Thomas Munro in 1820 introduced Ryotwari System in few provinces of British India. As compared to the Zamindari system, land ownership rights were completely transferred to peasants without any intermediaries and taxes were directly paid to the government. The revenue rates under this system were approximately 50% for dry lands and 60% in irrigated lands on the total value of the produce. Further, Willam Berntick in 1833 introduced Mahalwari system in the central province of British India. This system had provisions of both Zamindari system and Ryotwari system where the land was divided into Mahals comprising of group of villages having peasant's ownership rights and village committees responsible for collection of land taxes. Under this system land rights were brought from the government and obtained pattas, right to possess the land, enjoy and transfer the land to others (Mukherjee & R E Frykenber, 1979). Overall, the British governance system in India had classified land into three types, i.e., Patta lands, public/government lands and land for communal purposes for the community like forests, cremation grounds, grazing lands, etc. and the main source of income from land was dependent upon the type of agricultural crop and the output value realized by the peasants.

Post-Independence, it was observed that large tracts of land was in the hands of intermediaries during the British time period and became a ground for exploitation. In order to benefit the cultivators and bring

them in direct contact with government, a certain land reforms during the post-independence era had aimed to remove the intermediaries, i.e., Zamindars and Jagirdars (LGAF Team & CGG, 2014). In this transition stage, the Zamindari Act was abolished and land was acquired from intermediaries (EPW, 1949). In order to obtain additional land in government control, a ceiling on landholding size was introduced, i.e., a limit to which an individual/family can own a land in India and surplus land was taken away by the government by paying compensation and redistributed among the land less farmers, co-operative farming societies and villages. Besides, the government had also progressed on the tenancy reforms, which consists of a) Occupancy rights, b) Security of tenure and crop share, c) Regulation of rent. These reforms have aimed at providing the ownership rights to tenants and a regulatory support for security of tenure and rent. There were a set of land reforms implemented on consolidation of land holdings (Philip, 1990) and cooperative farming (M, 1959), which aimed at increasing the productivity of the agricultural produce. Overall, there was higher emphasis given on control over land ownership and to benefit the cultivators in India.

In Andhra Pradesh, the AP Estates (Abolition and Conversion into Ryotwari) Act 1948 and Jagirs Abolition Act were implemented and as a result all the communal and poramboke lands, non royt lands, waste lands, forests areas, water bodies, estates (including the assets of Zamindari estate), etc. were transferred to the governments and for few categories of lands, compensation was paid by governments to estate owners. Besides, there were reforms implemented to safeguard the peasants from unjust eviction, enacted crop loans and insurances (LGAF Team & CGG, 2014) to benefit the cultivators. Based on the above, it is inferred that during the pre-liberalization period, all the land reforms in India were focused on land rights linked to agrarian practices where livelihood of people and agricultural outputs were given high importance and relatively played a minor role from revenue maximization perspective.

During the post-liberalization period, due to the forces of urbanization and economic liberation, public land become a multidimensional and scarce resource in India, especially with local self-governments and market led reforms/approaches have started to play a key role in India. Modernization of land records, security of title, land acquisition for public purposes and economic developments, land use planning and regulation in urban areas, monetization of public lands were some of the major reforms/activities appeared during the post-liberalization period. A summary of the reforms progressed towards the public land ownership and monetization are discussed below.

a) Land Ownership, Article 19(1) f of the original India Constitution had conferred right to property to individuals, 'to acquire, hold and dispose of property', was repealed as a part of 44th CAA and added Article 300(A), to affirm that no person shall be deprived of his property save by authority of law. This summarize that right to property is no more a fundamental right to Indian citizen and its statutory right, and at any time the government can exercise compulsory land acquisition for public purpose by paying compensation. Land in urban areas is owned by both public and private, where public refers to all the land owned by government bodies and private refers to land owned by individuals/private and semi-public organizations. Municipalities constituted by the state play a key role in planning and allocating land resources to various social, economic and housing needs. However, the public land ownership was very limited in urban areas and become a scare resource to municipal governments over time (Ravindra, 1996). Due to the forces of urbanization, land values have increased exponentially and in order to meet the land requirements for the above-mentioned purposes, municipalities/governments had aimed at number of land reforms. These are broadly classified in to two groups, where the first set of reforms from post-independence to 1990s were focused on large scale acquisition of land by paying compensation and partly relied on urban land ceiling act. The second set of reforms have focused on land development models

such as town planning schemes, joint venture development models, land pooling schemes, etc., where alternatives to confiscation of land by public authorities was perceived as the viable option to make land available for development needs and to exercise value capture. The following section outlines the major developments of the two broad groups discussed above.

b) Land for Public Purposes, Infrastructure Development, the rapid increase in urban population and related concerns has triggered the attention of policy makers In India (Planning Commission Five Year Plans). Various committees, commissions and task forces constituted for urban development have indicated the concerns related to limited public land, sky rocketing land values, high cost of urban development, concentration of land in the hands of few individuals, affordable housing, and recommended for a need of comprehensive urban land policy in India to address these concerns. Table 1 shows the objectives and recommendations given by the groups discussed above.

Table 1: Compilation of urban land policies and objectives in India

Sl. No.	Name, Year & Objective	Concerns & Recommendations
1	Committee on Urban Land Policy, appointed by the Government of India in 1965  (Recommendations)  “To examine the problems related to urbanization”	Indicated declining man-land ratio, stated that it is imperative to have a long term urban policy with the following objectives  Optimum social use of urban land  Supply of adequate quantity of land at right time and for reasonable prices to both public and individuals  Encourage community effort for land development and housing  Prevent concentration of land ownership in few hands and safeguard the poor.  Advised governments to take strategies for developed urban land, undeveloped urban land, land within urbanisable limits, land beyond urbanisable limits and the land use of which is frozen.  No escape from large scale public acquisition in the interests of the society as a whole. Advocated this as the best and only way to put an end to speculation of land.
2	Task Force on Housing and Urban Development setup by Planning Commission 1983  “To evolve a long-term perspective on housing and urban development”	Noted the rapid urbanization in the country and forces of urbanization on land supply, especially for housing and for public projects, and restated the objectives of urban policy as  To achieve an optimum social use of urban land  To make land available in adequate quantity, at right time and at reasonable prices to both public authorities and individuals  To encourage co-operative community effort and bona fide individual builders in the field of land development, housing and constructions  To widen the base of land ownership specially to safe-guard the interest of poor and under privileged sections of urban society  To encourage the socially and economically efficient allocation of urban land such that land development is done in a resource conserving manner and that the magnitude of land used is optimal  To promote flexibility in land use in response to changes resulting from a

Sl. No.	Name, Year & Objective	Concerns & Recommendations
		growing city
3	National Housing Policy 1988	Recommended to augment the supply of land to cater the housing demand of EWS. Policy emphasized on eradication of houseless in the country by the turn of the century.
4	National Commission on Urbanization 1988	Commission highlighted the problems related to urban patterns, demand for urban land, and supply of land at affordable housing. Advocated for a realistic policy to overcome the shortage of urban land and raising land values, to view the significance of the urbanized land as a vital resource that needs to be generated in sufficient quantity for appropriate uses.
5	Fifth Five Year Plan	Advocated to use land as a resource for financing urban development by capturing unearned income from private owners

Source: Ravindra (1996)

However, authors indicates that there were no conscious urban land policy formulated in India but the central government and state governments have restored to number of measure supporting the objectives, and they summarizes in to four policy instruments, which are 1) Master Plan including restriction on land use, 2) Land acquisition and disposal, 3) Urban land ceiling, 4) Taxation.

Master Plans, a statutory plan prepared by the municipalities/development authorities in India with an objective to achieve planned and regulated developments in their jurisdiction have aimed to ensure adequate land for public purposes. Approaches of these development plans were indicated for shortcomings on number of aspects, i.e., investments that would be necessitated from master plan proposals had no relationship to the resource capacity of cities (Planning Commission, 1983), land use zoning limited from Indian perspectives (Buch 1987) and restrictions on land use intensities through building norms in growing urban areas. However, it was perceived by the master plans that land acquisition as the key to provide land for various development needs and to serve the needs of the community. The Land Acquisition Act, 1894 enabled the government to take possession of private lands by paying compensation for public purposes. Overall, it was observed that master plans couldn't aim at financing the urban infrastructure by a way of mobilizing public lands but suggested land as the means to serve the needs.

Large Scale Land Acquisition/ Land Banking, it was assumed confiscation of land, i.e., large scale acquisition of land (land banking) as a strategy to a) increase the public land ownership, b) exercise value capture and c) make land available for various purposes (DDA, 1961). Private lands at the urban periphery of an urbanizing area were acquired by governments in order to make land available for public purposes and to control the speculation of land values due to conversion of land use from agriculture to urban. It was assumed that this process would enable the governments not only to achieve planned development but also to share the profits/value appreciation of the lands attributed due to the development process, which couldn't have been possible for governments to earn from private landowners if land was not confiscated.

Delhi was an example, where large scale acquisition of land in the periphery of urban areas was exercised during 1960s. Delhi has observed an increase in land value over 145 percent from 1955 to 1965 and 350 percent over the next ten years (Ravindra, 1996). During this period the government had relied more on

nationalization of urban land at the urban periphery to control the development, to distribute the benefits of urbanization in optimum manner. The process has begun with large scale acquisition of land and after land use plan was prepared for the extended region of Delhi, the redefined plots were made available for housing (EWS), roads, railways, industrial estates and other public uses (Howland, 1975; Jha, 1983; Mishra 1986). In addition to these, some of these plots were sold in the public auction, to raise revenues for financing the investment needs of the region. This is the first large scale project in India where the developed/serviced land development rights were sold for 99 years and the proceeds played a major role in financing the investment needs of urban development. In this public leasehold system, the ground rent (annual) and a conveyance fee (at the time of transfer of the asset) became the two major land-based revenues to the development authority.

This technique of land banking has helped development authorities to take possession of land at a relatively cheaper price and aimed at controlling the speculation of land prices. However, such large-scale land acquisition by government by paying low compensation, variations in development intensities and densities within the region (Rivkin, 1983), legal issues on land acquisition and time delay were some of the other dimensions that were highlighted from such approach. It has also been observed that the Delhi Development Authority could not provide housing for all the low-income people which resulted in large scale jhuggi jhoppadi (slum) colonies and the public auctions of government plots further resulted in artificial increase in land price (Nallathiga, 2009).

CIDCO, Navi Mumbai (1960s) was another example where the government authorities have acquired large-scale land in the peripheries of Mumbai for development purposes and to decongest the city (Land Policy Mumbai). Further the governments have entrusted the City and Industrial Development Corporation of Maharashtra (CIDCO), a planning agency formed under the Indian Companies Act to develop the new city for 344 sq. km of land in Thane and Raigad districts of Maharashtra. Subsequently CIDCO has prepared the land use plan of the urbanisable areas and the serviced land was made available for various uses which include provision of affordable housing, land for commercial and institutional purposes and financed the infrastructure development from proceeds of land sales/leases (Nallathiga, 2009).

However, the planning attempts on land banking/ acquisition couldn't achieve the targets as planned over the time. For example, a study conducted to analyse the efficiency of the implementation of public amenities by a way of land acquisition, as proposed in the development plan of Mumbai reveals that the local government could achieve a maximum of 40 percent and minimum of 5 percent implementation at ward level due to the challenges of land acquisition. These amenities proposed in development plans of Mumbai were initially planned to develop by following land acquisition and development. As the land acquisition process was not very encouraging, implementation of amenity provision through alternative approaches have become important such as accommodation reservation and TDR (Mumbai Development Plan 2034).

Urban Land Ceiling and Regulation Act 1976, the objective of this act was to "prevent concentration of urban land in the hands of a few persons and speculation and profiteering". This act had provided an option for state governments to acquire the land, which is in excess to the ceiling limits specified in the urban agglomeration areas from individual's Successful implementation of this act could have resulted municipalities government in India to control land speculation, limit the concentration of lands in few individual and achieve optimum allocation for land for development purposes. The surplus land would have helped the local governments to raise significant capital for infrastructure investment needs.

However, the act was not successful in operational and could not achieve the said objective due to many shortfalls and revoked further (Ravindra, 1996). Therefore, the success of the land ceiling and regulation in urban areas was limited to very few municipalities in India.

c) Taxation, one of the legitimate land-based revenues of municipalities in India is Property tax. As observed in other countries, the market value of the property and the rental value were taken as the base to levy the annual taxes. These revenues were considered as the general taxes and aimed to finance the development needs of the municipalities. Besides, there were other forms of land based fiscal tools, i.e., vacant land tax, betterment levies and development charges were introduced by municipalities to support the investment needs. However, the empirical evidences by authors on the productivity of property taxes and other forms of land based fiscal tools indicates low levels of efficiencies (Acharaya, 1988 and World Bank 1986). A systemic valuation procedures and low traffic/charges were the main reasons highlighted by the studies. However, it was important to note that there were various forms of land based fiscal tools introduced by municipalities to exercise land value capture towards the investment needs.

Overall, it is clear to note that, problems related to slums, land speculation, urban sprawls, housing backlogs and limited public land have resulted municipal governments to rely on land acquisition and land banking as the major strategies. However, the empirical evidences highlights that these approaches were limited to few cities in India and the scarcity of public land for development needs was yet a concern at the country level. Further, the local governments have begun to capture the windfall gains from private owners through property taxes, development charges and betterment fees.

## **ALTERNATIVE APPROACHES TO PUBLIC LAND OWNERSHIP AND INFRASTRUCTURE DEVELOPMENTS**

Low levels of efficiency, oppositions from public on compulsory acquisition of land for public purposes including housing and infrastructure development, government dissatisfaction towards supply of land for housing at affordable cost (Planning Commission 1983, Land Policy DDA 2013, Mumbai Development Plan 2034) and concerns on compensation paid to the land owners had triggered government authorities to search and rely on alternative approaches to address the scarcity of public lands and to capture the windfall gains through land based fiscal instruments. Following are a few examples collated from the experiences of major cities in India.

Guided Land Development, the Mumbai Metropolitan Regional Development Authority (MMRDA) proposed acquisition of land at Powai for development purposes, the landowners had approached the development authority with an alternative means of developing the area instead of land acquisition. Here the land owners have themselves expressed interest in financing all the infrastructure investments in the notified area and to transfer the requisite share of developed area for various public purposes as proposed in the development plan. Through one-on-one negotiations, the development authority has permitted the land owners to undertake the development and an agreement was signed between the parties on agreed terms and conditions. Through guided development approach, all the infrastructure facilities were developed by owners within the time period specified and transferred to development authority at free of cost. Further the housing supply was regulated and at a pre-defined price, development authorities had got 15% of the total built up area from the owners. Overall, this alternative approach had successfully mobilized the financial resources for the project and a requisite share of public housing has been made available at affordable price in the market.

Accommodation Reservation, as compared to the compulsory acquisition of land for public purposes such as library, schools and other uses, accommodation reservation approach allows the land owner to develop the facility for the purpose specified in the respective spatial plan and transfer the facility to development authority for free of cost. In return, the landowner was granted the development rights equivalent to the full permissible/equivalent value of Floor Space Index(FSI), which can be traded in the receivable zones of the city. Through this approach, the development authorities were able to develop a facility without any financial burden and the developments were realised within the time frame as envisaged in the spatial plans. This approach was recommended for projects such as parks, playgrounds, and others, where the lands were reserved and land acquisition was proposed.

Town Planning Scheme, the land parcels in the peripheral zones of urban areas in India are characterized by irregular and small plots, which had to be brought to serviced category for urban uses by a way of consolidation and readjustment to achieve regulated and planned development. Traditionally it was achieved through land acquisition and development by urban local bodies. Town planning scheme is one of the alternative successful approaches to land acquisition model, which helps in consolidation of the irregular plots of varying sizes and shapes into a serviced (planned layout) land with facilities such as roads, water, sewage, drainage networks and community infrastructure. The overall approach demands the land owners to share a requisite share of land for infrastructure services, to finance the investment needs of the projects and in return serviced land parcels with higher land value are transferred to land owners. States of Gujarat and Maharashtra through Town Planning and Urban Development Acts have successfully implemented town planning schemes for areas up to 800 hectares. The process of TPS schemes starts with cadastral survey, compiling the ownership details and preparation of base map for planning purposes. Further land is earmarked for basic infrastructure facilities for the project area population and capital costs are arrived. To develop these facilities, part of the total land is kept aside for mobilizing financial resources based on the market value of land or betterment levies are collected from the landowners. These being unique as compared to the other approaches, plots with relatively smaller areas at a higher market value is allotted to the original land owners after deducting their share towards the land required for infrastructure and for mobilizing financial resources. As the land value increases due to the proposed infrastructure services and development rights, costs towards the development is collected from the landowners in the form of land bank. Near about 40% of the land is shared with the development agency, municipality/urban development authority (Gandi & Phatak, 2016). Compensation to be to each land owner is assessed based on the difference in the value of the original plot and area, and the plot and its value which is earmarked after the plan is prepared (Ballaney & Patel, 2009). It is important to note that the development authorities were able to increase the marketable public land through town planning schemes, which become a valuable resource to mobilize the financial resources for development needs. This has been achieved after fulfilling the needs of land for physical and social infrastructure services.

Transferable Development Rights, preservation of heritage structures, conservation and development of open spaces, provision of affordable housing, etc. have been the challenging tasks to municipalities/development authorities. Instead of compulsory land acquisition, TDRs have been used as an alternative approach in urban areas. Under this approach, the authorities compensate the landowners for reserving/protecting the land for a specified use through transfer of development rights. States of Maharashtra, Gujarat and Karnataka have enabling laws for TDR, which support the authorities to meet the requirement of public land for various purposes like affordable housing, open spaces, etc. In this tool, government offers additional/equivalent development rights to the project affected landowners, which they can use in the zones permitted for additional FSI. For example, Hyderabad development authority in the state of Telangana has used TDRs for carrying out road widening projects and offered additional FSI

in lieu of land (MOUD, 2017). Mumbai development control regulations (1991) allowed landowners to transfer the development rights in lieu of the land that is reserved for some public purpose and transferred to BMC for free of cost and free of encumbrances. Through this approach the development authorities can take over procession of land required for public purposes without incurring any additional costs.

Impact Fees, these are charges levied for developing infrastructure by local government and collected at the time of development permissions being granted. This is a one-time charge collected for providing infrastructure or public services in their jurisdiction. Impact fees were directly linked to the cost of development and were introduced in Florida in 1970's. When the population growth increased, pressure on local governments to provide infrastructure and local governments couldn't finance it through property tax. This has led to introduce impact fees for financing infrastructure that was required (Burge & Jhlanfeldt) and subsequently it was challenged in the courts for legal validity (Gandi & Phatak, 2016). Further the test of rational nexus has become essential for levy of impact fees, charges linked to the infrastructure provided to the new development. Similarly, Gujarat, Andhra Pradesh and few other states in India have development charges collected from the land owners/developers at the time of permission towards developing infrastructure. However, the revenues that may realize from these tools are linked to the number of developments approved and delay in the process of approvals/layout applications may result in variations in the revenues realized.

Land Pooling Scheme, a few modern cities in India during the 21st century have resorted to land pooling scheme as the means of achieving planned development and to meet the requirement of land for various public and economic infrastructure projects. Amaravati Capital City of Andhra Pradesh, Delhi Development Authority Land Pooling Policy Zone are the examples of recent initiatives in India. In this approach the development authority enacted by the state government pools the land in the defined jurisdiction, prepares the master plan, develop the infrastructure and return a part of developed land to original land owners from the total pooled land based on the proportional share. Through this approach the development authority achieves land in required volume for housing and use part of the developed land as a resource mobilization for financing infrastructure facilities either through joint development models or on PPP basis. However, this approach requires were limited to green filed projects and often requires active political support and public acceptance.

Overall, it becomes evident that public land has been a scare and a number of alternative approaches have helped the municipalities to address the land scarcity. However, these approaches have been limited to selected cities in India and as compared to all of the above, monetization of public land assets appears to be the most flexible and legitimate source of local revenues that municipalities can quickly rely upon. Further, it is important to note that the planning approaches like town planning schemes and TDRs helps the municipalities to increase the status of marketable public lands, which might help in mobilizing financial resources on continuous basis. Therefore, it becomes essential for this research study to assess the status of ownership of public land assets and planning instruments adopted by study area to ascertain the long-term sustainability of these option to finance the investment needs.

## **PROVISIONS FOR MUNICIPALITIES IN ANDHRA PRADESH**

As per the provisions of Andhra Pradesh Municipalities Act 1965 and subsequent amendments, every Municipality constituted by the State shall have

1) Municipal Council, which has the authority over the Municipality,

- 2) Commissioner , executive authority of the municipality
- 3) Chairperson, elected representative and
- 4) Ward Committee(s)

Municipal Council consists of elected members as notified in the AP Gazette, member of Legislative Assembly, persons having special knowledge in municipal administration, members of the house of the people, members of the council of state and the members of the legislative council of the state registered as electors within the municipal area, two persons belonging to minorities and the chairperson of the ward committees. The Commissioner or the Executive Officer for a municipality is appointed by the State Government and heads the executive authority. As per the regulating act, the municipal administration vests with the municipal council.

Taxation, the municipal act empowers the municipal council to levy tax on properties, carriages and carts, animals and “all the properties of the government in municipal jurisdiction vests with the Council”. Every year the council has to submit the annual administration report to government through the District Collector. The Commissioner of the Municipality shall prepare the report and submit to the council, further to the consideration of the report, the council forward it to the Government. On behalf of the Municipal Council, the State Government may undertake the projects/development works related to water supply, drainage or other works, appoint a person to carry out the construction of such works and direct the municipality to pay for such expenses/persons from their municipal fund. In case of emergency the District Collector direct or provide the execution of work that the council is empowered to do by Act and the expense related shall be paid from the municipal fund .

Public Land, as per the Indian Constitution, Land is a State subject and the state has the powers to enact laws relating to land, revenues form land and administration. As per the State list of Entry 18, 45 and 49 of the Indian Constitution, the State enjoys the following powers related to:

“Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization”

“Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenues”

“Taxes on lands and buildings”

Moreover, Certain provisions relating to land are also included in the Concurrent list, where both Central and State governments involve in the subject related to “Transfer of property other than agricultural land; registration of deeds and documents; Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property; Acquisition and requisitioning of property”.

As per the provisions of Article 243-X, the State, i.e., Andhra Pradesh has authorized the urban local bodies to levy, collect and appropriate certain taxes, duties, tolls and fees. All the revenues from property taxes and leasehold revenues are municipal local revenues and they have full discretion on spending. Further, as per the regulating municipal act, all the municipal assets, including the public lands

information is recorded in the immovable asset registers. The data related to date of acquisition of the property, revenue/survey number, area, purpose of acquisition, improvements and value of the asset are maintained in this register. As per the Andhra Pradesh Municipal Accounts Manual, income from public land comes the head of Revenue Income and considered as general revenues.

**Vacant Lands and Acquisition of Land for Public Purpose,** All the vacant lands belonging to the Government in the municipality shall be under the control/possession of the council. The regulating act obligates the council to keep all the vacant lands free from encumbrances and the council is not allowed to construct or permit the construction of any building or other structure, use or permit the land for any permanent purpose and alienate land to third party. However, with the approval of the Government after providing all the information as required by the government on the usefulness of the land for any housing schemes, revenue generation purposes, etc. the council shall use the vacant land for purposes as approved by the Government. The municipal authority is authorized to acquire land for the public purposes, infrastructure development and to finance the infrastructure services (capital) by obtaining the prior approval of the District Collector. The district collector shall determine the value of the property is to be acquired and every acquisition requires the approval of the Government.

Rules relating to fees from Public Lands, the right to collect fees in respect of land used for markets rests with the municipality and the commissioner shall prepare the preliminary notice with the conditions and terms of lease. The competent authority shall further approve the preliminary notice and enter into a contract with the lessee as per the section 43 of AP municipality Act. As per the regulating rules, leases are awarded through auctions and the preliminary notice approved by the authority shall consist of all the terms and conditions, and the other procedural details as follows:

Security Deposit and Solvency Certificate requirements, notification of preliminary notice in local newspapers and other such places recommended by the authority competent

All the leases are executed through public auction after the notification released by authority competent

The commissioner/authorized by him is entrusted to execute the public auction, put forward all the bids received at the auction to the authority competent to approve and offer lease. The authority will select the lease based on the comparative assessment of all the bids and referring to the last three years income from the proposed lease. All the leases awarded by the authority are executed through lease deed and in cases where public auction unsuccessful on at least two occasions owing to want of bidders, the commissioner is required to invite sealed tenders and the same is put forward to the authority for selection. Lease amount has to be deposited upon the confirmation of the lease by the lessee, which is 1/4th of the total lease amount, if the lease is for less than one-year duration and this includes the amount deposited in the form of security deposit and solvency certificate. In case of lease with more than one-year time, 1/3rd of the total lease amount to be deposited within one week from the date of award of lease of market to the lessee. The remaining balance is paid in the subsequent lease months and the amounts deposited are adjusted towards the last three installments of lease amount.

The amounts collected from the lessee shall be mentioned in the miscellaneous demand register. Every lease awarded by the municipality shall be executed through a lease deed, an agreement between the lessor and lessee on the right to use the property subject to the payment of fee/rent, and the agreement consisting the following conditions

- Duration of the lease
- Amount demanded in the form of fees or rent and the date of payment
- Penalty payable in case of delay in installments
- Liability of the lessee on the lease

An express condition, which specify the liability of lessee on ground rent as fixed by collector from time to time All the revenues from buildings, shops or godowns leased by municipality are to be monitored through miscellaneous demand register. However, there is no mention regarding the reservation of these proceeds towards a specific expenditure criterion of municipality.

Lease Duration, It is observed that as per the regulation of receipts and expenditure rules, 1968 and G.O.Ms.No.120, dated 31-03-2011, that the municipality/municipal council has the powers to renew the lease for a period of not exceeding three years at a time and with the approval of state government exceeding three years. However, the municipality can renew the lease not exceeding twenty five years of a particular property without conducting public auction subject to willingness of the lessee for 33 1/3 percent increase in lease value to the earlier rent or the prevailing market value of such shops satiated in the vicinity, whichever is higher. Provided further that the municipality may renew the lease with an increment of not less than 15 percent in special cases with the approval of the state government. As per the G.O.Ms.No.590, dated 21-9-1977 R.S. Part 1 A.P. Gazettee, dated 31-11-1977 P.591, the municipal council or the government may allot the shop(s) for the use of any institution on their request without auction with the approval of the state government. The rents of such shops are fixed not less than the adjacent shops or similar accommodation that usually fetch revenues in public auction.

Vacant Lands, the municipality is allowed to lease the vacant land for not exceeding five years through public auction and in some special cases, with the approval of the state government the municipality may dispense the public auction.

Fixation of Rent, as per the G.O.Ms.No.56 dated 05-02-2011, the amendment to AP Municipalities (regulation of receipts and expenditures) state that the commissioner through preliminary notice setting the terms and conditions subject to which the lease of immovable properties are granted. The following are advised for fixing the upset price of the lease.

Rent at 10% of the current market value of the property per annum (both building and land) market value of land and construction rates of the structures and buildings fixed by registration department

Prevailing rent of such properties situated in the vicinity whichever is higher in case of lease of immovable properties for the first time

Renewal of lease, either by 1 or 2 or rent at 33 1/3 rent above the earlier rent (higher)

Reservation of Shops for SC and ST Members and 50 percent concession, as per the G.O.Ms.No. 253 dated 02-04-1993 and G.O.Ms.No. 178 dated 23.04.2010, the government by order stated that 15 percent of the shops and stalls constructed by the municipalities to be leased out to the members of the SC on payment of market rate or rent paid by the neighboring shops without the public auction. Subsequently, orders were used that the rent of such shops to be fixed at INR. 2.5 per square feet or 50% of the rent paid

by the neighboring shops whichever is less (1988). Followed by the government by order mentioned that 6 percent of the shops reserved for ST on payment basis of INR. 2.5 per square foot or 50% of the fare paid by the neighboring shop rooms whichever is less without public auction. The district social welfare officer in consultation and with the approval of the district collector, the names of the lessee is released (1993).

Reservation of Shops for AP Nayee Brahmana Seva Sangham, G.O.Ms.No. 116 MA dated 01-02-2008 by order stated to reserve 5 percent of shops and stalls constructed by the municipalities and municipal corporations under various schemes including good will auction to be leased out by conducting public auction among the Nayee Brahmin and washer men co-operative societies without the normal channel of public auction under the provisions of AP Municipalities. Rent of such leases is based on the auction among the selected members of the municipality.

Construction of Shopping complexes on public lands, as per the Go.Ms.No.120 MA, dated 18-01-2013, the government with an objective to find out ways and means to improve the receipts of the Municipalities as well to find out resources to take up construction of shopping complexes, to enable Municipalities financially self-sufficient towards infrastructure projects, the following are recommended by order to municipalities with reference to construction of shopping complexes.

Preparation of design by an architect

Approval of the design and estimates by the Directorate of Town and Country Planning

Procedure of fixing of monthly rent through 'Good will amount' (nonrefundable deposit) is collected for construction of shop rooms from the prospective lessees.

It is considered that rent under this scheme has to be collected mainly for the land in question for the reason that cost of construction of shopping complex will be realized from the prospective lessees as Goodwill amount. 10% of the current market value of land as rent

Lease period recommended for five years and can be renewed for 3 years at 33 1/3 excess over the lease, and for another period of 3 years @ 33 1/3 percent excess over lease amount

Fixation of UPSET price, construction of complex. Based on the estimated cost of each shop room, upset price is equal to the estimated cost of each shop room. Paid in four installments (25% after approval of bid, 25% construction start, 25% after roof is laid, 25% at the time of handing over the shop room)

Government lands encroachment by way of dwelling units in Municipalities of AP, Roc.No.10209/2015/J2 dated 01.10.2015, Government of AP, MA&UD has launched a scheme on Regularization of un-objectionable encroachments in government lands by way of dwelling units in urban areas to an extent up to 100 Square Yards to BPL families on free of cost. The cut-off date for this scheme was set as 1st January 2014 and for all the BPL families who had white card, issued by government for PDS system were made eligible. This has helped many of the BPL families located in the municipalities to own a house for free of cost.

## CONCLUSION

It can be understood from the above that the Municipality through its competent authority is empowered by the Acts to take possession of all the vacant lands of the governments located in the jurisdiction of the Municipality. These regulations allow the Municipal authorities to lease the public lands, buildings, shops, godowns and markets on lease and empowers them to acquire land for public purposes and to finance the infrastructure projects through land acquisition Act. However, all the revenues realized from the leases of buildings, lands, godowns, markets, shops and etc. are monitored through miscellaneous register. Unlike the other revenue streams, it can be understood that the revenues realized from monetization of public land and municipal assets are not directly linked to any expenditure responsibilities of public services such as water supply, drainage, solid waste management, etc. Hence the Municipality is not statutorily obligated to raise matching revenues from these sources for the provision of any infrastructure services, especially the operation and maintenance expenditure responsibilities.

As observed in case of Chinese cities, heavy reliance on revenues from land lease and sale of land are highly vulnerable and subject to volatility, municipalities in Andhra Pradesh are considered to be on the safe zone as these revenues are considered as the extra budgetary revenue source to municipality and not directly linked to provision of any services. It is also observed that the regulations recommend Public Auction while offering the public lands for lease, which helps the government to achieve the maximum revenues. Further, the municipality can renew the lease not exceeding twenty-five years of a particular property without conducting public auction subject to willingness of the lessee for 33 1/3 percent increase in lease value to the earlier rent or the prevailing market value of such shops satiated in the vicinity, whichever is higher. Besides, it is also observed that the reforms on regularization of un-objectionable encroachments in government lands by way of dwelling units and reservation of shops for various groups in the society for lease at subsidized rate might result land-based revenues differ from their potential revenues. Unlike other countries, the revenue potentials from public leasehold system is limited to the status of land ownership. Therefore, it's important that municipalities have to optimize the revenues while leasing public lands.

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