

**IN THE SUPREME COURT OF INDIA**  
(CIVIL ORIGINAL JURISDICTION)  
**Writ Petition (Civil) No 204 of 2014**  
PUBLIC INTEREST LITIGATION

**IN THE MATTER OF:**

1. COMMON CAUSE  
THROUGH ITS DIRECTOR  
5, INSTITUTIONAL AREA  
NELSON MANDELA ROAD  
VASANT KUNJ, NEW DELHI-110070  
... PETITIONER NO. 1
  
  2. CENTRE FOR PUBLIC INTEREST LITIGATION  
THROUGH ITS  
GENERAL SECRETARY  
43, LAWYER'S CHAMBERS,  
SUPREME COURT OF INDIA,  
NEW DELHI-110001  
...PETITIONER NO. 2
- VERSUS**
1. UNION OF INDIA  
MINISTRY OF DEFENCE  
SOUTH BLOCK,NEW DELHI,110011  
.. RESPONDENT NO. 1
  
  2. DIRECTOR GENERAL  
DIRECTORATE GENERAL OF DEFENCE ESTATES,  
RAKSHA SAMPADA BHAWAN  
ULAANBAATAR MARG, DELHI CANTT.  
NEW DELHI- 110010  
.. RESPONDENT NO. 2
  
  3. CENTRAL BUREAU OF INVESTIGATION

THROUGH ITS DIRECTOR  
CGO COMPLEX, LODHI ROAD  
NEW DELHI-110003

.. RESPONDENT NO. 3

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING A COURT-MONITORED CBI INVESTIGATION INTO THE ILLEGALITIES AND IRREGULARITIES IN THE MANAGEMENT OF DEFENCE LANDS, CONSTITUTION OF AN INDEPENDENT TASK FORCE FOR COMPREHENSIVE AUDIT OF DEFENCE LANDS, RECOVERY OF DEFENCE LANDS UNDER ENCROACHMENT AND REPARATION OF LOSSES OCCASIONED TO PUBLIC EXCHEQUER ON ACCOUNT OF THEIR UNAUTHORIZED AND COMMERCIAL USE, APPOINTMENT OF AN EXPERT COMMITTEE FOR RECOMMENDING SYSTEMIC REFORM IN MANAGEMENT OF DEFENCE LANDS AND DIRECTION TO UOI TO TAKE OVER DEFENCE LAND BEING COMMERCIALY EXPLOITED OR UNDER UNAUTHORIZED USE OF PRIVATE PARTIES AND ENSURE THAT THE REVENUE GENERATED FROM SUCH USE IS ACCOUNTED TO THE CONSOLIDATED FUNDS OF INDIA.

To,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS COMPANION  
JUDGES OF THE HON'BLE SUPREME COURT OF INDIA

The Humble Petition of the

Petitioners above-named

MOST RESPECTFULLY SHOWETH: -

1. The Petitioners are filing the instant Writ Petition in public interest under Article 32 of the Constitution of India seeking urgent judicial intervention to remedy the rampant erosion of the national assets constituted by the lands under the charge of the Defence Ministry and to curb the enormous loss to the public exchequer caused by the pervasive malpractices, corruption, irregularities and illegalities in their management. It is submitted that the

Ministry of Defence is the biggest landholder in the country with a holding of 17.31 lakh acres, out of which approximately 1.57 lakh acres are situated within the 62 notified Cantonments and about 15.96 lakh acres are outside these Cantonments. When these Cantonments and military stations were planned, they were usually far removed from the towns. With growing urbanization and consequent pressure on land, much of the Defence holding both inside and outside Cantonments is now prime real estate. The Comptroller and Auditor General of India (CAG) has through a series of reports submitted on the issue pointed out glaring instances of irregularities and illegalities in the management of defence lands, resulting in huge losses to the public exchequer. A Performance Audit was conducted by CAG relating to Ministry of Defence (Report No. 35 of 2010-11) covering a period of five years from 2004-05 to 2008-09. Some of the important findings of the Audit are:

- By applying the Ministry's norms of 1991 to 39 existing stations, Audit found out excess land holding measuring 81,814.82 acres;
- Large scale errors in the land calculation sheets made available by the LMAs (Local Military Authorities) and in the land records of DEOs (Defence Estate Officers) pertaining to A-1 lands;
- Computerization of Defence land records under the project 'Raksha Bhoomi' is far from satisfactory;

- Delay in timely mutation of lands in favour of the Ministry of Defence. The period of acquired land awaiting mutation ranges from 1 year to over 60 years;
- The land audit cell of the office of the DGDE submitted its first report in September 1995 reflecting misutilization and non-utilization of Defence land and buildings. Army HQ, however, suggested to the Ministry to amend the land rules before continuation of land audit. While the Ministry did not formally discontinue land audit and asked DGDE in January 2002 to submit a report on the preliminary audit of Defence land holdings, DGDE allowed the mechanism of land audit to lapse;
- Exploiting Defence land commercially crediting the revenue to Regimental Fund;
- Increase in encroachment of defence land from 6,903 acres in January 1997 to 14,539.38 acres in July 2009 due to failure of DGDE, entrusted with its Management;
- Unauthorized use of Defence land for Golf Courses and revenue generated from them credited to Regimental fund and not to Government account; and
- Dismal state of management of leases as there is no monitoring mechanism for timely renewal of leases.

It is submitted that the abovesaid points highlighted by the CAG indicate that there is complete lack of accountability and transparency in the use and management of the Defence land, occasioning a huge loss to the public exchequer. Despite all such reports divulging serious illegalities and irregularities, very little or nothing has been done to ameliorate the dismal state of affairs,

resulting in pervasive corruption and land scams. It is further submitted that the unchecked mismanagement of defence land amounts to a violation of the doctrine of public trust, Article 14 and Article 21 of the Constitution.

1A. The Petitioner (s) have not made any representation to the authorities/Respondents for the concerned reliefs. However, the issues raised herein have been in public domain through various reports submitted by the CAG and Parliamentary Standing Committees.

## 2. THE PETITIONERS

a) Petitioner No. 1, Common Cause, is a registered society (Reg. No. S/11017). The Society was founded in 1980 by late Shri H. D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before this Hon'ble Court various Constitutional and other important issues and has established its reputation as a bona fide public interest organization fighting for an accountable, transparent and corruption-free system. Shri Kamal Kant Jaswal, Director of Common Cause and a former Secretary to the Government of India, is authorized to file this PIL. The requisite Certificate & Authority Letter are filed along with the vakalatnama.

b) That the petitioner No. 2 is a registered society formed for the purpose of taking up causes of grave public interest and conducting public interest litigation in an organized manner. Its founder President was the late Shri V.M. Tarkunde and

founder members comprise several senior advocates, including S/Shri Fali S. Nariman, Shanti Bhushan, Anil Divan, Rajinder Sachar, Colin Gonsalves, among others. Sushri Kamini Jaiswal is the General Secretary of the petitioner and is authorized to institute the present petition on its behalf. The requisite certificate and authority letter are filed with the Vakalatnama. The petitioner No. 2 has filed several notable PILs in the past in the Hon'ble Supreme Court and in the High Court of Delhi.

3. THE RESPONDENTS:

- a) Respondent No.1 is the Ministry of Defence, Union of India, which is the titular holder of the most of the defence land.
- b) Respondent No.2 is the office of Directorate General, Defence Estates and is responsible for framing of policies and instructions *qua* all defence land matters and also ensures their implementations.
- c) Respondent No. 3 is the Central Bureau of Investigation which derives its powers from the Delhi Special Police Establishment Act, 1946.

THE CASE IN BRIEF

4. The authority responsible for control, custody and management of the Defence land is either the Ministry of Defence, or in case of land in active occupation of the Forces and allied services, the services concerned which hold that land. In the Ministry, the responsibility for management of land

rests with the Directorate General of Defence Estates (hereinafter referred to as DGDE in short), which is an inter-service organization under the Ministry of Defence. The DGDE helps in framing of policies and instructions on all land matters and also ensures their implementations. The following amongst others are the functions and duties of DGDE;

- a. Resumption of certain class of defence lands with or without buildings situated in Cantonments.
- b. Mutation of Old Grant/ Lease-hold properties.
- c. Conversion of Old Grant/ Lease-hold properties situated in Civil area/ Bazar areas of cantonment into freehold.
- d. Transfer/ Disposal of surplus camping Grounds/ Abandoned Air Fields.
- e. Disposal of usufructs on Defence land.
- f. Reclassification of Land.
- g. Renewal of Leases/ Licences.
- h. Grant of Fresh Leases.
- i. Permission for sanction of building plans on lease-hold properties.
- j. Grant of temporary license for organizing exhibition, etc. on vacant defence land.
- k. Prevention, detection and removal of encroachments.
- l. Licensing of sites for advertisement, hoardings on defence lands.

5. That the DGDE has its offices in various parts of the country. These offices are headed by six Principal Directors/ Directors Defence Estates (PDDEs/ DDEs) at six Army Commands. Under the Principal Directors/ Directors Defence Estates, 40 Defence Estates Officers (DEOs)/ Assistant Defence Estate Officers (ADEOs) throughout the country are responsible for maintaining land records and managing such land including mutation of all land both inside and outside Cantonments.

6. The following is the Classification of defence land inside a Cantonment area:

Classification	Land Description	Managed by
A 1	In active occupation of the Forces and allied services.	Local Military Authorities of the Service concerned.
A 2	Vacant land which must not be built upon due to specific military reasons.	Defence Estates Officer.
B 1	Land owned by the Ministry but in occupation of any other Ministry of the Central Government.	The Ministry concerned in occupation of land.
B 2	Land owned by the Ministry but under the control of the State Government.	State Government concerned in occupation of land.
B 3	Land held by private persons under Old Grant terms, leases etc. under which the Central Government reserved or have reserved to themselves the proprietary rights in the land.	Defence Estates Officer.
B 4	Land which does not fall under any other class mentioned above.	Defence Estates Officer.



C	Land vested in a Cantonment Board for Municipal or other public purposes.	Cantonment Board
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7. That time and again various audit reports submitted by the CAG have specifically pointed out misuse, sale and illegal appropriation of the revenue received from Defence land by Defence Estate Officers in collusion with land sharks and other private parties.
8. That the Report No.7 of 2000 (Air Force and Navy) submitted by the Comptroller and Auditor General of India in paragraph 28 noted as under;

*“28. Non-recovery of dues from commercial run club occupying prime Defence land:-*

*The Ordnance Club Calcutta has been running as a lucrative commercial establishment. Ground rent at Rs 33 lakh per annum, worked out by Director of Defence Estates Calcutta, remains unrealised for want of decision by Director General Defence Estates since 1996. Ordnance club has been paying Rs 10 as rent for 1.42 acres land used for commercial purpose.”*

The CAG report further found that the Defence Estate authorities recommended rent at Rs. 23.20 lakh per acre and the arrears of land remained unrealized for want of decision on the part of Directorate General Defence Estates (DGDE). It was also noted that Defence Estates officer (DEO), Calcutta

carried out joint measurement and found that the actual area under occupation of the club was 1.765 acres in place of 1.42 acres, as known earlier.

A true copy of the relevant extracts of Report No.7 of 2000 (Air Force and Navy) submitted by the Comptroller and Auditor General of India is annexed hereto and marked as **ANNEXURE P-1**.

9. That the Report No. 7 of 2001 submitted by the CAG in paragraphs 24, 25, 26 & 27 pointed out specific instances of unauthorized use of defence land by a club at Mumbai for commercial purpose in connivance with the local authorities and without sanction of the Government (Ministry of Defence). The report found that the said club had encroached upon 53.50 acres of land and 21 buildings. Moreover, the Defence Estate Office estimated the annual rent of land as Rs. 2.73 crore whereas the club was paying a meager amount of Rs. 0.36 lakh per annum. The report also pointed out that the Army Head Quarter and lower formation Headquarters have been misusing their delegated powers to extend undue benefits to a private society by way of making defence buildings habitable at a cost of Rs 60 lakh and deputing Army Officers and other personnel for setting up of a dental college. The report revealed the hiring of buildings by Defence Estates Officer from unauthorized parties. In one instance, DEO obtained sanction for enhancement of rent from Ministry of Defence by suppressing facts. Further, grossly misusing

delegated powers, Headquarter, Western Command sanctioned repairs and modifications to surplus buildings to be used by a private society illegally to confer undue benefit on the private society.

A true copy of the relevant extracts of Report No. 7 of 2001 submitted by the Comptroller and Auditor General of India is annexed hereto and marked as **ANNEXURE P-2**.

10. That the Report No. 7 of 2004 submitted by the CAG noted as under;

*“In violation of Government orders, revenue amounting to Rs 1.77 crore realised by certain IAF units during January 2001-March 2003 was not credited to Government account.*

*The Government issued orders in January 2001 on realisation of revenue from shopping complexes on Defence land stipulating, inter alia, that (i) in respect of commercial complexes created by re-appropriation of Government buildings and also those created by using both non-public funds and by re-appropriation of Government buildings (i.e. mixed complexes), 100 per cent of the net revenue realised would be credited to the Government Treasury; (ii) in respect of commercial complexes constructed on Government land using non-public funds, 50 per cent of net revenue would be*

*credited to regimental funds and 50 per cent to the Government Treasury.*

*Audit, however, noticed that contrary to the said Government orders, the entire revenue of Rs 1.88 crore (Units under HQ WAC (Rs 1.57 crore), Units under HQ TC (Rs 0.30 crore), and units under HQ SWAC (Rs 0.01 crore) crore, realised by 19 Indian Air Force (IAF) Units under HQ WAC (during the period from January 2001 to March 2003, was credited to the PSI fund (Unit run President's Service Institute Fund), a non-public fund instead of only Rs 11 lakh, which was required to be credited. Non-compliance of the Government orders by IAF deprived the Government of revenue amounting to Rs 1.77 crore."*

A true copy of the relevant extracts of the Report No. 7 of 2004 submitted by the CAG is annexed hereto and marked as **ANNEXURE P-3.**

11. That the Report No. 6 of 2005 (Defence Services) disclosed as under;

*"3.4 Non-removal of encroachment and non-levy of damages Due to inaction of Defence Estates Officer, Allahabad and Cantonment Executive Officer, Varanasi, three acres of Defence Land valued at Rs 3.72 crore had been encroached upon and is being exploited*

*commercially. The damages to the extent of Rs 97.53 lakh till March 2004 were not levied.*

*Defence Estates Officers (DEOs) are responsible for prevention and removal of encroachment of land under their management. They are also responsible for assessing and levying damages for unauthorised occupation of any public premises and land. A bungalow constructed on defence land covering an area of 6.92 acres at Varanasi Cantonment was held under old grant terms since 1964. The land was under the management of DEO, Allahabad. In November-December 1996, the legal heirs of the bungalow unauthorisedly rented three acres of the adjoining land valued at Rs 3.72 crore to Varanasi Motors for storage and parking of vehicles. In addition, Varanasi Motors also constructed unauthorized structures for residential use. In February, 1997, Cantonment Board issued notice for demolition of the structures under Section 185 of the Cantonment Act 1924. An appeal was filed by the offender against the notice. The Director of Defence Estates, Central Command Lucknow held in October, 1997 that it was a prima-facie case of encroachment on Government land and did not grant the stay sought for.*

*Despite these orders of October 1997, the defence land encroached by Varanasi Motors in 1996 continued to be*

*under their possession and exploited for commercial purposes. The damages from October, 1997 to March, 2004 worked out to be Rs 97.53 lakh which was not levied till date.*

### *3.5 Unauthorised establishment of School:*

*Station Commander, Varanasi, not only re-appropriated two Government buildings in August 2001 for unauthorisedly opening an Army School under the aegis of Army Welfare Education Society but also allowed it to construct a building on A-1 Defence land.*

*Cantonment Land Administrative Rules 1937 provides that Class A(1) land in the Cantonment shall not be used for any purpose other than active military use without the previous sanction of the Central Government. The Ministry of Defence in April 1993 and January 2001 also issued instructions that its prior approval was required for opening of any school in Government land/buildings. Contrary to the Government instructions, the Station Commander, Varanasi, re-appropriated two Government buildings and two rooms in August 2001 for opening of an Army School with effect from 1 April 2001 under the aegis of Army Welfare Education Society (AWES), a private body. The Station Commander also allowed AWES in April 2001 to occupy two acres of A-1 defence land costing Rs 2.48 crore adjacent to the school*

*buildings, on which building costing Rs 27 lakh was constructed.”*

A true copy of the Report No. 6 of 2005 (Defence Services) submitted by the CAG is annexed hereto and marked as **ANNEXURE P-4.**

12. That Report No. 7 of 2005 (Air Force & Navy) submitted by the CAG demonstrated as to how the Indian Navy permitted running of professional institutions in Naval Bases without proper authorisation. Moreover, revenues earned through exploitation of government land and buildings were retained in non-public funds. Naval authorities also levied unduly low rents on these institutions.

A true copy of the relevant extracts of the Report No. 7 of 2005 (Air Force & Navy) submitted by the CAG is annexed hereto and marked as **ANNEXURE P-5.**

13. That the Report bearing CA No. 17 of 2008-09 (Defence Services) submitted by the CAG concluded as follows;

***“3.4 Unauthorized use of A1 Defence land by Army Welfare Education Society:***

*Army Welfare Education Society (AWES), a private society, has been irregularly allowed to construct a Medical College on 25.559 acres of A1 Defence land at Delhi Cantonment without sanction of the Government of India. Further, assessed rent of the land of Rs 27.61*

*crore for the period September 2005 to October 2008 and premium of Rs 43.59 crore aggregating to Rs 71.20 crore was also not recovered from the AWES.*

*Cantonment Land Administration (CLA) Rules 1937 stipulate that class A1 Defence Land shall not be used or occupied for any purpose other than official requirements of the Military authorities without the previous sanction of the Central Government. No alteration in the classification of Defence land shall be made except by the Central Government.*

### ***3.5 Utilization of Government assets for non-governmental purposes***

*There have been repeated instances of misuse of Defence land, buildings and manpower for running the activities of non-governmental organizations, in violation of government instructions.*

#### ***A. Misuse of Defence land and buildings***

*Ministry of Defence had issued instructions to the Army authorities in October 2001 to adhere to the regulations and not to re-appropriate Defence buildings for non-bona fide use without the sanction of the Government. The Ministry also cautioned that disciplinary action would be taken against those flouting the said regulations. Mention was also made in the Reports of the Comptroller & Auditor General of India, Union Government (Defence Services), Army and Ordnance*



*Factories for the year ended March 2006 and 2007 about the misuse of Defence buildings for private purposes by the local Army Commanders. Disregarding the above instructions, Station Commanders of three stations re-appropriated Defence buildings/ land for private use.*

A true copy of the relevant extracts of Report bearing CA No. 17 of 2008-09 (Defence Services) submitted by the CAG is annexed hereto and marked as **ANNEXURE P-6**.

14. That in year, 2010, the review of defence land and the DGDE was carried out by the Controller General Defence Accounts (hereinafter referred to as CGDA in short) at the request of Ministry of Defence with a view to assessing the reasons behind the massive irregularities and large number of disputes concerning the management of defence land. The CGDA, in its report submitted to the Ministry of Defence in May, 2010, indicted the DGDE for widespread irregularities in the department and its failure to manage the huge land bank in possession of the Services.

A true copy of report submitted by the Controller General Defence Accounts to the Ministry of Defence in 2010 is annexed hereto and marked as **ANNEXURE P-7**.

15. In the wake of infamous Sukna and Adarsh Society Land Scams, the Parliamentary Standing Committee in its Ninth Report expressing serious concerns *qua* non-compliance with

its earlier recommendations made in its Sixth report, noted as under;

*“20. The Committee disapproves the way the Ministry has tried to sidetrack one of their important recommendations for having an independent regulator for defence land. Even when various land scams such as, Sukna Land Scam and Adarsh Housing Scam are being reported, the Ministry considers the existing framework as adequate for management of defence land. The Committee strongly emphasize that reporting of such land scams affects the overall image of the armed forces and as such there is an urgent need to look into the issues related to management of defence land. As such, the Committee would like to reiterate their earlier recommendation to have an independent regulator in this regard. An urgent action should be taken and the Committee apprised accordingly.”*

A true copy of the report of Standing Committee on Action Taken by the Government on the recommendations/ observations contained in the Sixth Report on Demands for Grants of the Ministry of Defence for the year 2010-2011 is annexed hereto and marked as **ANNEXURE P-8**.

16. That Report No. 24 of 2010-11 (Defence Services) submitted by the CAG pointed out ***Irregular de-hiring of***

*house constructed on leased land* in Para 3.4 of the Report. It states,

*“Chief of Staff, Southern Command in January 2006 accorded sanction for de-hiring of a house hired prior to March 1976 although the powers for de-hiring in such cases were vested with the Ministry of Defence. This enabled the lessee to transfer the leasehold rights of 1.14 acres of Defence land valuing Rs. 2.77 crore to a private party for possible commercial exploitation of the land without any cost to the private party.....”*

A true copy of the relevant extracts of the Report No. 24 of 2010-11 (Defence Services) submitted by the CAG is annexed hereto and marked as **ANNEXURE P-9**.

17. A performance audit of the Defence Estates Management was undertaken by CAG and was reported in its Performance Audit Report of Defence Estate Management (Report 35 of 2010-2011). The performance audit was to examine whether:

- Projection of requirement of defence land was accurate as per norms and was based on reliable data and utilization of land was prudent and effective;
- Land not required for immediate use was put temporarily to some other constructive use including giving it on lease and leased properties had been managed efficiently and effectively;

- Old Grant Bungalows were managed in accordance with existing orders;
- Management of hiring/ acquisition/ requisition of land was done judiciously and within the ambit of extant provisions;
- The resources available with the DGDE and its subordinate offices to manage such a vast expanse of defence land were adequate and managed efficiently, and monitoring mechanisms aided the higher management in smooth and effective management of defence land; and
- Adequate steps were taken to prevent encroachments and eviction of encroached land.

The Report provided a detailed description of the gross mismanagement of defence land causing huge loss to the public exchequer. It pointed out the following irregularities and illegalities:

**I) Surplus land:**

- a) Lacunae in application of land norms; (*Paragraph 2.2*)  
39 existing stations held excess land admeasuring 81,814.82 acres as per norms of requirement of land laid down by Ministry of Defence in 1972 and 1991.
- b) Non utilization / under utilization of acquired land; (*Paragraph 3.2*): According to the reports obtained by the DGDE at the instance of Parliamentary Standing Committee on Defence, 58,529 acres of acquired land

was lying vacant. Out of this, 49,831 acres of land acquired between 1905 and 1990 was lying vacant since its acquisition. In addition, an area of 5107 acres of land was found as permanently surplus and 1661 acres of land as temporarily surplus in Central and South Western Commands.

c) Lack of action on abandoned land; (*Paragraph 3.5*):

An area of 25,888.81 acres of Abandoned Airfields (AAFs) and Camping Grounds (CGs) in five Commands was lying surplus to the need of the armed forces since 1980. It had neither been disposed of, nor put to any alternative use. 7,499.39 acres had been encroached upon. The encroachment on such land in all the Commands varied between 16.10 *per cent* and 38.96 *per cent*.

II) **Large scale discrepancies in land records maintained by land estates officers (DEOs)** (*Paragraph 2.3*); Land records maintained by the Defence Estates Officers (DEOs) are the basic documents for managing the land. Audit scrutiny indicated large scale discrepancies in the figures of A1 land as mentioned in land calculation sheets prepared by Local Military Authorities (LMAs) for the purpose of local management of land and that in the records of the DEOs who are responsible for keeping land records of A1 land in General Land Register and Military Land Register.

**III) Failure in timely mutation of land in favour of the Ministry of Defence; (Paragraph 2.5):** An analysis of the details of mutation maintained by 20 DEOs showed that a large part of the acquired land was awaiting mutation for periods ranging from 1 year to over 60 years. The analysis also indicated that out of 5.90 lakh acres of land held on the records of 11 DEOs in 6 Commands, 0.79 lakh acres (13.39 per cent) were not mutated in favour of the Ministry.

**IV) Lack of internal management to identify mismanagement of defence land; (Paragraph 3.1):** In order to assess the extent/efficiency of use of Defence land by the User Organisations and to rationalize and maximize the use of existing land holdings for Defence purposes, the Ministry of Defence in December, 1992 instructed the Director General Defence Estates (DGDE) to conduct land audit with primary focus on the existing land use vis-à-vis land holdings and specific requirements. The land audit cell of the office of the DGDE submitted its first report in September, 1995 in respect of selected locations which brought out many irregularities. While the Ministry did not formally discontinue land audit and indeed asked DGDE in January, 2002 to submit a report on the preliminary audit of Defence land holdings, DGDE allowed the system of land audit to fall into disuse. Thus, an important internal mechanism to expose the mismanagement of Defence land was allowed to lapse.

- V) **Commercial exploitation of defence land;** (*Paragraph 3.4*): Instances of exploiting Defence land commercially and allowing shopping complexes, etc. to function on such government land have been reported in various earlier Audit Reports of the CAG. Commercial exploitation of Defence land often turns very opaque as revenue generated by such exercise is credited to non-public funds (Regimental Funds) instead of the public exchequer. The current review by Audit indicated that the practice of allowing Shopping Complexes on Defence land and crediting the revenue to Regimental Funds continues unabated.
- VI) **Encroachment on defence land;** (*Paragraph 3.6*) : No concrete action for preventing encroachment of land had been taken by Army authorities and Defence Estates Organization. The area of encroachment of Defence land had increased from 6,903 acres in January, 1997 to 14,539.38 acres in July, 2009.
- VII) **Unauthorized use of defence land by Golf Courses;** (*Paragraph 3.8.1*): Scales of Accommodation for Defence Services do not include Golf as an authorized activity. Golf grounds and attendant activities cannot be considered as military activities and hence A1 land cannot be used for Golf Courses. However, as of August, 2009, there were 97 such Golf Courses under the Army. The total area of 79 of these Golf Courses was 8,076.94 acres. The Golf Courses were being operated by Army Zone Golf, a private

registered body. The members of the Course were not only service personnel but ex-servicemen, civilians and foreign nationals as well. The membership of golf clubs was granted on payment of the prescribed fee at different rates for individual members and life members. Revenues so generated are not credited to Government account and are presumably credited to non public funds.

**VIII) Use of Parks / Clubs on defence land for commercial purposes;** (*Paragraph 3.8.2*): In four stations (Agra, Lucknow, Pune and Secunderabad) in Central and Southern Commands, 122.58 acres of Defence land had been leased out to various clubs at nominal rates. Land was being utilised for unauthorised commercial purposes like marriages, parties, exhibitions, etc.

**IX) Defence land and building in Commercial use by private parties;** (*Paragraph 3.9*): Seven Defence buildings involving an area of 1.81 acres at Bangalore under the custody, control and management of LMA had been used for non-defence purposes since 1994-95, such as Institute of Hotel Management, Girls and Boys Hostel, etc., without the sanction of the Ministry of Defence.

**X) Dismal state of management of leases;** (*Paragraph 4.1*)  
As of March, 2010, 2500 acres of land with an estimated value of Rs. 11,033 crore was on lease for an annual rent of Rs. 2.13 crore, which is negligible given the present market value of the land. There was no progress in the



renewal of 3780 leases. Requests for renewal were received only in 899 cases. In 1800 cases, where no requests for renewal were received, the cases had not been pursued for the eviction of the lessees. In respect of the remaining 1081 cases, the status was not clearly known.

**XI) Loss due to delay in fixation / non recovery of rent from private parties;** (*Paragraph 4.4*) : Non-revision of rent in accordance with the Government policy from land leased out to construct Hotel Clark Shiraz in Agra Cantonment on 5.68 acres of Defence resulted in loss of Rs. 8.08 crore for the period between 2001-2002 to 2008-2009.

**XII) Irregularities in management of Old Grant Bungalows;** (*Paragraph 5.2*) In contravention of the land policy of 1995 of the Ministry, in five Army Commands involving 29 stations under 16 DEOs, unauthorized construction was carried out in 134 Old Grant Bungalows (OGBs.) As many as 224 OGBs covering an area of 496.98 acres were being used for running educational institutions in an unauthorized manner.

A copy of the CAG's Performance Audit Report on Defence Estate Management (Report 35 of 2010-2011) is annexed herewith as **ANNEXURE P-10**

18. That the report No. 11 of 2011-12 of the Comptroller and Auditor General of India (Defence Services) for the year ended

March, 2011 on Adarsh Co-operative Housing Society scam revealed as to how a group of select officials placed in key posts could subvert the rules and regulations in order to grab prime government (defence) land for personal benefit. The report found that, in the name of welfare of servicemen and their widows and children, top military officials in connivance with the authorities of the Government of Maharashtra resorted to falsification of records, suppression of facts, and flagrant violation of the relevant Acts and Rules. The Report revealed that while on the one hand, the membership of the Co-operative Housing Society kept expanding, on the other hand junior service and civilian officers went out of the Society and many senior service officers and public servants were inducted as members. Thus, in the name of welfare of servicemen and ex-servicemen, it was the select elite belonging to Services and civilian administration, politicians and individuals connected with them who benefited from misappropriation of the public property.

A true copy of the relevant extract of report No. 11 of 2011-12 submitted by the Comptroller and Auditor General of India (Defence Services) for the year ended March, 2011 on Adarsh Co-operative Housing Society is annexed hereto and marked as **ANNEXURE P-11**.

19. That CAG Report CA No. 16 of 2012-13 (Defence Services) submitted before the Parliament on Defence Land Scam on Kalpataru Kandivli Mumbai revealed as to how Army

authorities relinquished the land admeasuring 5166 sq.m. valued at Rs. 5.94 crore, which had been under their active occupation since 1942, to a private company based on an irregular NOC issued by DEO Mumbai. The Central Ordnance Depot, Mumbai failed to get the land transferred in its favour from the State Government authorities. The Army HQ, instead of investigating and defending its case, allowed the company to go ahead with the development work in the vicinity of military establishments, compromising their security (Paragraph 2.2).

A true copy of the relevant extracts of Report CA No. 16 of 2012-13 (Defence Services) submitted before the Parliament on Defence Land Scam on Kalpataru Kandivli Mumbai by the CAG is annexed hereto and marked as **ANNEXURE P-12**.

20. It is submitted that the prevalent mismanagement of defense lands has been the reason of several infamous land scams which have come into light recently, including Sukna land scam, Adarsh Society land Scam, Jammu & Kashmir land scam, Jodhpur land scam, Lohegaon, Pune land scam and Kandivli, Mumbai land scam. In most defence land scams unearthed over the past few years, Defence Estates officials have been found to be hand-in-glove with army officials and private developers. It may not be out of context to mention that four Generals were indicted by an army court of inquiry in December, 2009 for facilitating the transfer of 70 acres of land, valued at Rs 300 crore, adjacent to Sukna military station in

West Bengal to a Siliguri-based businessman. This is indicative of the nexus between high level military officials, private builders and the land mafia.

21. That the Public Accounts Committee, Lok Sabha in its eighty ninth report dated 04.11.2013 on Defence Estates Management, while noting the glaring illegalities, irregularities and lacunae in the management of defence land as pointed out by the CAG in its Performance Audit Report of Defence Estate Management and the explanations rendered by the concerned authorities, made detailed observations and recommendations, which are reproduced below.

*I. Lacunae in Application of Land Norms: The Committee is dismayed to note that despite revising the norms over the years i.e. in 1972, 1991 and 1992, the Ministry repeatedly faltered in applying the norms for proper and judicious management of the lands at its disposal. Further, the Committee is of the considered opinion that for want of effective institutional mechanism and stringent regulatory procedures, precious Defence lands are bound to be encroached upon, come under adverse possession or surreptitious transfer as reported in the Sukhna and Kandivali land transfers. In order to protect the precious Defence lands from the preying eyes of the land mafia and to ensure that the officers are not unwittingly embroiled in such avoidable controversies, the Committee strongly and unreservedly feels that the entire ambit of Defence lands record keeping,*

*mutation, sale, transfer, lease, etc., should be bestowed upon the DGDE so as to ensure accountability, transparency and judicious use of Defence lands.*

*II. Variations in Records of Actual Land Holdings: The Committee are deeply concerned with the large scale discrepancies found between the figures of A-1 lands furnished by the Local Military Authorities (LMAs) and the Defence Estates Officers (DEOs) who keep the records in General Land Register (GLR) and Military Land Register (MLR). The Committee also find that out of 25 stations in four Army Commands, between the LMAs and DEOs, the land area in the records of LMAs in respect of nine stations was higher by 12769.86 acres i.e., 46.9% and in the remaining 16 stations less by 9,427.77 acres i.e., 23.36%. The Committee is unable to accept the explanation furnished by the Ministry that discrepancies between the records of LMAs and DEOs could be due to occupying units move-out & new units move-in without the knowledge of the DEOs and possibly without proper handing/taking over of land records between themselves. The Committee views both DEOs and LMAs responsible for inept handling of valuable land records, failure to conduct regular inspections and reconciliation of land record. The Committee, therefore, recommend that the Ministry take immediate steps to make it mandatory for DEOs to periodically inspect the land records maintained by the LMAs and take swift and stringent corrective measures. Taking serious note of the wide discrepancies ranging up to*

46.9 per cent in land records, the Committee further recommends that the comprehensive survey of all Defence lands be completed within a definite time period and the Committee be apprised of. The Committee also recommends that an effective E-system be also created expeditiously by which the records maintained by LMAs are integrated and the data shared on real-time basis with the DEOs/DGDE/Ministry.

*III. Computerisation of Defence Land Records: The Committee was informed that the computerization of Defence land records under the project "Raksha Bhoomi" has been completed. However, the Committee noticed considerable delay in completing the project and the reasons attributed for the delay are (i) incompatibility of the newly purchased hardware with the operating system, which led to procurement of improvised software, (ii) lack of uniformity in the GLRs maintained by DEOs, (iii) shortage of technical staff, (iv) involvement of staff in disposal of other priority work and (v) inordinate delays in mutation process. The Committee observes that the avoidable delay in implementation of the 'Raksha Bhoomi' project was caused due to lack of effective planning, execution and monitoring, resulting in purchase of inappropriate hardware that was incompatible with the operating system apart from shortage of staff - general and technical, etc. The Committee, therefore, recommends that responsibility be fixed for delay in computerization of Defence lands and stringent action be taken against the responsible for incompatible hardware. Also, finding that General Land*

*Registers maintained by the DEOs differ from one State to another, the Committee recommends that uniformity must be maintained to make entries which should be followed by all the DEOs throughout the country without fail and the Committee apprised.*

*IV. Mutation of Defence Land: The Committee finds that a large area of acquired land awaits mutation for a period ranging from 1 year to 60 years. The Ministry in their written submissions to the Committee highlighted the fact that the mutation is to be carried out by State Government authorities and most of the acquired lands have not been mutated in favour of the Ministry as a result of which considerable Defence lands have been encroached upon by private persons and State Governments. The Committee notes with concern the casual approach of the DEOs to an important issue like mutation of Defence Land. It seems no serious initiatives have been taken to expedite the mutation of land in the Ministry's name in order to ensure their title and ownership of the land.*

*V. Discontinuance of Land Audit by DGDE: The Committee finds that the internal audit mechanism of Land Audit was discontinued by the DGDE after its first audit report, which brought out many irregularities in the management of Defence lands, obviously due to the objections raised by the Army Head Quarter. They also observe that the Quarter Master General (QMG) suggested amendments to the land rules.*

*The QMG also recommended that a land audit authority presided by a Service Officer should be constituted for carrying out the audit.*

*VI. Commercial Use of Land: The Committee observe that the aspect of commercial use of Defence land and their mis-use and non-crediting of income from these lands, and properties into Government account have been repeatedly objected to by Audit but no tangible action has been taken by the Government to rectify the situation. The Committee deplors the inability of the Ministry to check such irregular practices and not directing the LMAs to deposit the proceeds into the Government account. The Committee cannot brook any laxity in the observance of financial rules and financial propriety and therefore recommends that the Government take strict action in this regard to safeguard the Government revenues. The Committee also expects that the new policy for allowing shopping complexes, if implemented transparently, would bring substantial revenue to the public Exchequer. Further, the Directorate of Defence Estates being the nodal agency, should be furnished with complete details of management and revenue generation from all Defence properties by the LMAs which should be computerized and the Committee be apprised of the procedure evolved in this regard for strict compliance.*

*VII. Encroachment on Defence Land: The Committee is deeply dismayed to note the unabated encroachments on Defence land despite the repeated wake up calls given by the*



*constitutional auditor. Worse, non-mutation of land records and non-utilisation of vast tracts of Defence lands only encouraged encroachment of Defence land which have increased from 6,903 acres in January 1997 to 14,539.38 acres in July, 2009. The Committee observe that the existence of multiple authorities like the DGDE and the LMAs that look after management of Defence lands, have only exacerbated the situation for want of clear demarcation of responsibility. The Committee, therefore, recommends creation of a single unified authority, which shall look into management and protection of Defence lands, fast-track the recovery of encroached lands and shall also be responsible for monitoring & supervision of all field offices entrusted with the responsibility to manage Defence lands and property.*

*VIII. Unauthorised Use of Defence Land for Golf and Other Activities: The Committee note that the scales of Accommodation for Defence Services do not include Golf as an authorized activity and therefore, Golf cannot be considered as a military activity. Under the Cantonment land Administration Rules, 1937 the recreation grounds which are not strictly reserved for the use of troops alone can't be used for Golf Courses. The Committee is surprised to note that in 2004, Chief of the Army Staff declared Golf as a sports activity and not only a recreational activity. He directed that Golf Courses would be named as Army Environmental Park and Training Area. Land used for these Army Environmental Park and Training Area shall continue to be A-1 Defence land.*

*He further directed that no commercial activity will be undertaken on the Golf Courses such as sponsoring golf tournaments by corporate entities. The Committee is shocked to find that Defence authorities had been offering membership of the Golf courses to civilians on payment basis so much so that in places like Delhi even foreign diplomats were being given membership and revenue generated from the civilian membership was not being credited to Government account. The Committee deplore the gross misuse of Golf Courses and recommend that the entire policy of the Golf Courses be revisited comprehensively, and appropriate remedial action taken to ensure that the recreational facilities needed for the Armed Forces are not misused/abused in any manner.*

*IX. Unauthorised Use of Defence Land for Parks and Clubs: The Committee note that clubs and parks established for the benefit of Defence personnel and their families are exploited by civilians for organizing parties, marriages, exhibitions, etc. Worse, the proceeds from such events are not being credited to the Government account. There are instances of illegal constructions on such parks. The Committee, would like the Ministry of Defence to setup an enquiry in the matter so that all encroachments and prohibited activities are detected and stringent remedial action taken to prevent misuse/abuse of Defence environmental parks/lands and the Committee be apprised.*

X. Dismal State of Management of Leases: The Committee is concerned to note that as of March 2010, 2500 acres of land valuing ` 11,033 crore was on lease for an annual rent of Rs. 2.13 crore which is a pittance considering the market value of the land. The Committee is shocked to note that no visible efforts had been made to renew 3780 cases of lease renewal, in 1800 cases no requests were received for lease renewal and in 1081 cases the status of leases was unknown. The Committee deplores the reply of the Ministry expressing their inability to fix responsibility due to involvement of multiple authorities.

XI. Irregularity in Management of Old Grant Sites: The Committee notes that the largesse extended by the colonial power has continued even after independence and worse, the Old Grant Bungalow Sites (OGBS) were allowed to be kept with some civilians. The mis-management of such Bungalows has led to loss of Government revenue apart from entanglement of Government in lots of avoidable litigations. The Committee note that the Land Policy of 1982 and the Revised Land Policy of 1995 have provisions for dealing with such sites and resuming/leasing of such OGBS by the Government, and no alteration of any kind are allowed on such sites. However, the Committee finds large number of unauthorized constructions, unauthorized sale/transfer is happening right under the nose of the DEOs concerned. Also, the Committee observes that various educational institutions are being run illegally, thereby flouting all norms relating to the management of OGBs and exposing apparent collusion

*between vested interests and the concerned authorities. The Committee seeks reasons as to why 92 cases of resumption involving 288.63 acres of land referred to the Ministry are pending for sanction. The Committee would like to have a complete status paper of all such OGBs, the land area, the properties resumed and the properties awaiting sanction for more than three months. Further, the Committee observes that there has been obvious dereliction of duty by both DEOs and LMAs in not ensuring strict compliance of the policy directives. They, therefore, recommend stringent disciplinary action against such Officers and the Committee apprised.*

A true copy of the Eighty Ninth report dated 04.11.2013 submitted by the Public Accounts Committee, Lok Sabha on Defence Estates Management is annexed hereto and marked as **ANNEXURE P-13**.

22. **GROUNDS**

That the present Writ Petition is being filed on the following amongst other grounds;

- A. That the crass mismanagement of defence lands is intrinsically linked to irregularities, illegalities and corruption. The fact that nearly 25 per cent of all defence lands has not been 'mutated' or transferred in the name of the Defence Estates Department facilitates encroachment and usurpation of defence lands. It has been pointed by CAG that the encroachment of defence land has increased from 6,903 acres

in January 1997 to 14,539.38 acres in July 2009. This results in a huge loss to public exchequer and a complete violation of the rule of law, the doctrine of public trust and eventually, Article 14 of the Constitution.

- B. That the policy of non-declaration of surplus defence land despite there being no existing or future need of such land either by the services or the cantonments, militates against the principle of transparency and accountability. It is apparent from the fact that there has been no comprehensive internal audit of land utilization by the defence accounts department. An internal report of the Ministry of Defence has revealed the lack of verifiable utilization records for at least 88 per cent of a total of 17.3 lakh acres of prime land across the country.
- C. That the urban population density across India has increased manifold since Independence. The required expansion of the administrative, social and institutional infrastructure has severely been constrained by the unavailability of government land. In this situation, the continued retention of huge tracts of surplus land over and above the Defence Ministry's own land requirements norms is totally indefensible. There is no justification for retention of such lands and buildings in the name of an unspecified future defence purpose. In fact, the land use norms for defence services and establishments, which were fixed during an alien rule to awe and intimidate a subject people, need to be rationalized in consultation with the state governments keeping in mind the growing civilian

requirements, so that both defence and civilian interests are harmonized.

- D. That the CAG in several reports has underlined huge losses to the public exchequer on account of disposal of defence lands by private parties, mutation of lesser areas of land in civil revenue records, incorrect identification of defence lands and huge discrepancies in land records of LMAs and DEOs . Several cases have been pointed out by the CAG where the lease period had expired, but the defence land continued to be under the possession of the former lessees without renewal of leases/ revision of lease rent and where land had been transferred without settlement of terms, or implementation of the terms of transfer, showing a lack of co-ordination among the users, the DEO and the Ministry.
- E. That there seems to be no justification whatsoever for the commercial use of defence lands. These lands are held in trust by defence personnel for specific defence purposes, and if not put to such use, must be surrendered to the appropriate government. In the mean time, the revenue generated from commercial use of public land must be credited to government funds and not appropriated to various entities created by the services to avoid public scrutiny and accountability.
- F. Considering the magnitude of the irregularities and mismanagement, and the possibility of the involvement of high ranking Defence officials and other authorities, a court-

monitored investigation by an SIT is required to ensure proper investigation in the matter.

G. That the rot in the management of Defence lands, which works to the advantage of certain vested interests and to the great detriment of the public interest is the antithesis of Article 14 and 21 of the Constitution. It can only be stemmed by putting in place a rational policy and an effective institutional framework for the management and optimal utilization of these lands.

23. The petitioners have not filed any other writ, complaint, suit petition or claim regarding the matter of dispute in this Hon'ble Court or any other court or tribunal throughout the territory of India. The petitioners have no better remedy available.

### **PRAYERS**

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may in public interest be pleased to: -

- a. Issue an appropriate writ or any other order / direction for a court-monitored investigation by the CBI into the illegalities and irregularities in defence land management by public servants; and
- b. Issue an appropriate writ constituting an independent task force for undertaking a comprehensive audit of defence

lands, recovering the lands under encroachment as well as the losses occasioned to the public exchequer on account of the unauthorized use /commercial exploitation of defence lands; and

- c. Issue an appropriate writ or direction to the Union of India to constitute a broad-based expert committee to recommend comprehensive systemic reforms in the management of Defence lands and buildings and formulate, after undertaking an extensive public consultation, revised norms of requirement of land for defence use and a rational policy for the determination, release and utilisation of surplus lands to achieve the socio-economic objectives of the nation.
- d. Issue an appropriate writ or direction to the Union of India to take over the defence lands and properties being commercially exploited or under the unauthorized use of private parties and ensure that the revenue generated from any use of defence land is accounted to the consolidated funds of India; and
- e. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper in the facts of the case and in the interest of probity and rule of law.

Petitioners

Through



Prashant Bhushan  
(Counsel for the Petitioners)

Drawn By: Ramesh K Mishra  
Drawn & Filed On:  
New Delhi