Land Based Financing in Metropolitan Cities in India: The Case of Hyderabad and Mumbai

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Rationale for Land Based Financing

Demand

- Backlog of infrastructure
- Substantial growth
- Indivisible lumpy investments

Land Based Financing Tools

Supply

- Limited own resources
- Limited intergovernmental transfers
- Limited access / capacity to borrow

Land Based Financing Options

Benefit Tax	Development Charge levied at the time of granting permissions under Town Planning Acts
Land Value Increment Tax	Improvement Trusts Acts, Town Planning Schemes, MMRDA Act provide land value capture
Impact Fees	Fees to recover incremental costs attributable to new development 'rational nexus'
Sale of Development Rights	Sale or assignment of Development Rights (FSI) at a Premium/Charge/Fee

Land Based Financing Options (cont.)

Regularising Unauthorised Development	Fees and penalties levied for regularising unauthorised development
TDR and Incentive FSI	Used as substitute for monetary compensation, for land acquisition or development objectives
Monetizing or Unlocking Value of Public Land	Public land undeveloped or under sub-optimal or obsolete use can be developed for financing infrastructure

Development Charges

- Most States mandate levy of Development Charge at the time of granting development permission under the respective Town Planning Laws.
- The tax base is the area of land and construction and the rate is prescribed in absolute Rupees.
- Rates not adjusted for inflation > revenues lack buoyancy
- Additional levies on same base introduced by Gujarat and Tamil Nadu
- Maharashtra changed rate to percentage of Ready Reckoner land Rate in 2010.

Land Value Increment Tax

International

- UK unsuccessful attempts
- Colombia uses in two forms
  - Valuations of benefits of infrastructure
  - Pre and Post infrastructure land values
- Contribution has been on decline
- Problems of measurement

Indian

- Improvement Trusts had legal provisions, but not in vogue
- Town Planning Schemes have legal provisions for betterment levy.
  - Practiced only in Gujarat – more for land assembly and appropriation of land for public purposes.
- MMRDA Act 1975 provides for betterment levy in case of infrastructure project. Never used.

Impact Fees

International	Indian
• Legislative framework available • Used for incremental investment necessitated by new development • Not used (required) for backlog • Supported by CIPs	• No legislative support • Difficult to isolate incremental investment needs from significant backlog that prevails • Practice of CIP is not yet well established.

Sale of Development Rights

International

- Sao Paolo, Brazil auctions additional development rights (CEPAC)
- Supported by law that limits the right of landowner to FSI 1 and virtually nationalises rest of development rights.

Indian

- Chennai, Mangalore, Mumbai, Ahmedabad have premium or chargeable FSI. Hyderabad has no FSI but charges for High Rise are prevalent.
- Mumbai's attempt to charge premium for extra FSI was struck down by High Court for want of legal provision – a landmark judgment. Act has since been amended.
- Other cities are proceeding without legal support.
- Attempt to nationalise development rights may face same problems of ULCRA

Regularisation of Unauthorised Development

Indian examples

- Gunthewari Act 2001: Regularising large scale illegal sub divisions in peri-urban areas by recovery of development charge and penalty
- Gujarat Regularisation of Unauthorised Development Act 2011
- Regularisation of ULCRA violations in AP
- Compounding Fees for unauthorised development in Hyderabad, Layout and building regularizing schemes
- Premium for condoning deviation from rules in Mumbai
- Akrama Sakrama in Bengaluru

TDR and Incentive FSI

International

- US: TDR used for conservation of farmland and heritage buildings.
- Regulations would have amounted to ‘regulatory taking’ requiring compensation.
- To avoid compensation TDR – an indirect fiscal tool

Indian

- Mumbai 1991 TDR as substitute for monetary compensation for acquisition of land. Act amended.
- Many states followed
- Mumbai uses incentive FSI / TDR for promoting slum rehabilitation, chawl renewal, schools, hospitals, hotels, IT/ITES
- Apparent success due to land constraint and low base FSI

Monetising Public Land

- Public land in cities is many a time sub-optimally used or under obsolete use
  - Water works, Sewerage works, Jails, Dairy farms etc.
- These can be strategically used for unlocking their value (monetarily or otherwise)
- However institutionally such lands are owned by Central Government agencies like Defence, Railways or Ports, State Government Departments. Directing the money toward local infrastructure investment is a challenge

THE CASE OF MUMBAI AND HYDERABAD

Mumbai: Land Based Financing

					Rs. in Crores
Source	2010-2011	2011-2012	2012-2013	2013-2014	2014-2015
Premium charges	845.05	710.03	870.65	1005.47	1200.00
Development Charges	225.15	306.86	307.36	317.63	450.00
0.33 FSI	0.01	229.85	194.06	325.00	417.00
FCFSI	0.00	2.14	1068.55	1200.00	1600.00
FCFSI-SRA	0.00	0.00	149.64	130.00	160.00
DCR 64(b)	166.01	73.38	172.03	173.28	387.40
Total	**1236.22**	**1322.25**	**2762.29**	**3151.38**	**4214.40**

MCGM Budget for 2014-15 is Rs 39000 crores
Capital budget is Rs. 11000 crores
Expected capex is Rs. 6600 crores

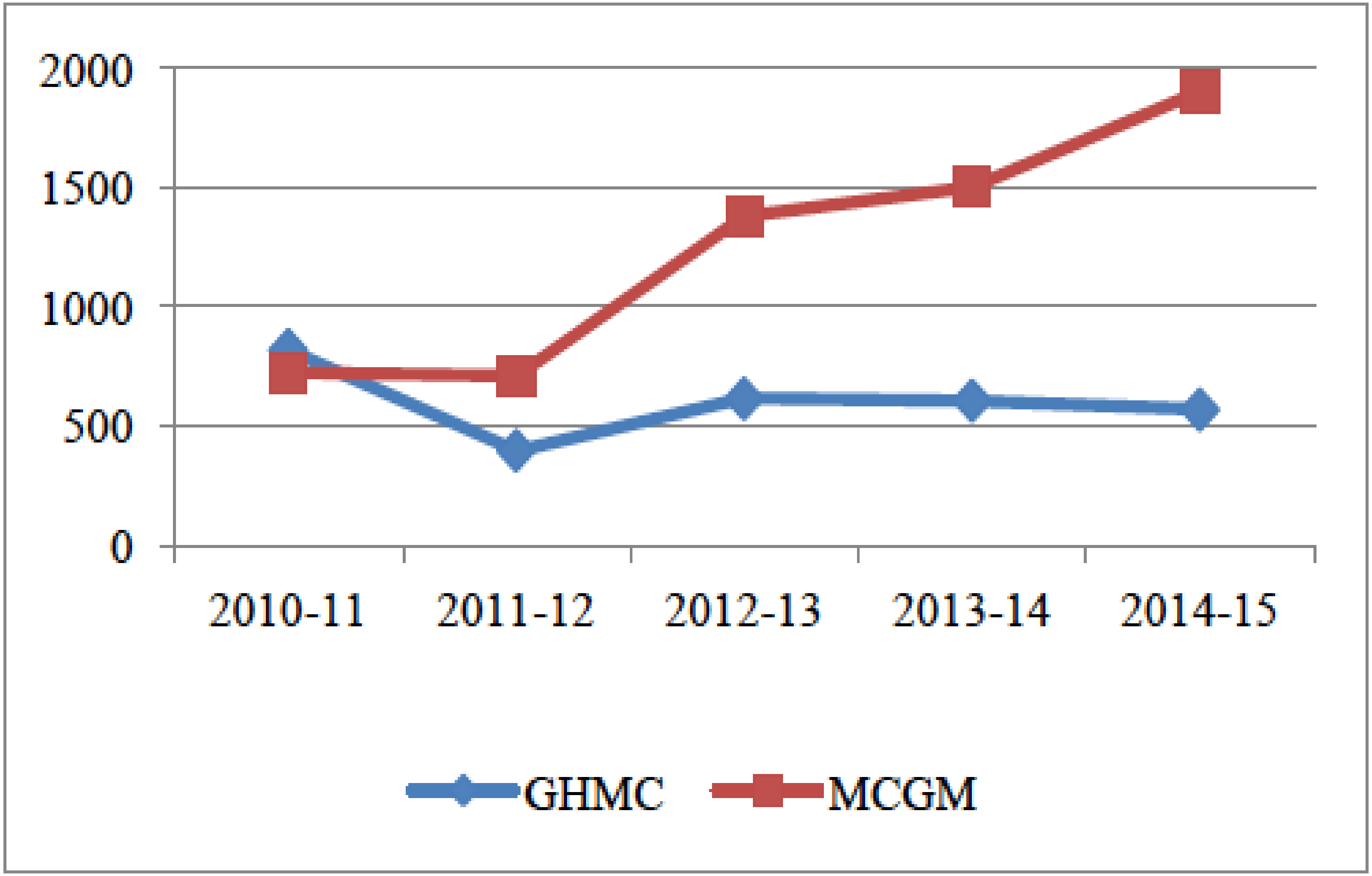
LBFC: GHMC

	2010-11	2011-12	2012-13	2013-14	2014-15
GHMC					
Vacant Land tax	0.6	0.05	0.24	3.12	4.94
Layout/subdivision	2.72	1.06	1.88	3.66	3.95
Building permit fee	59.78	63.06	96.54	91.57	98.76
Development charges	30.78	25.72	35.08	44.48	44.44
Betterment charges	35.12	29.34	41.15	49.71	49.38
External betterment charges	8.45	4.6	7.25	10.46	10.86
Impact fee	27.38	48.35	76.63	78.49	81.48
Open space contribution	7.12	9.85	14.03	26.16	27.16
Rain water harvesting	1.14	1.84	3.24	3.14	3.21
Compounding fee	6.73	8.1	10.5	10.46	17.28
Building penalization scheme	254.8	2.77	42.84	26.16	14.57
Layout regularization scheme	116.29	72.66	85.08	60.72	26.99
LBFC (Total)	**550.94**	**267.43**	**414.46**	**408.14**	**383.03**
Properties Tax (Rs In crores)	302.1458	354.5721	424.8309	444.7589	469.1263
LBFC as proportion of Property Tax	1.82	0.75	0.98	0.92	0.82

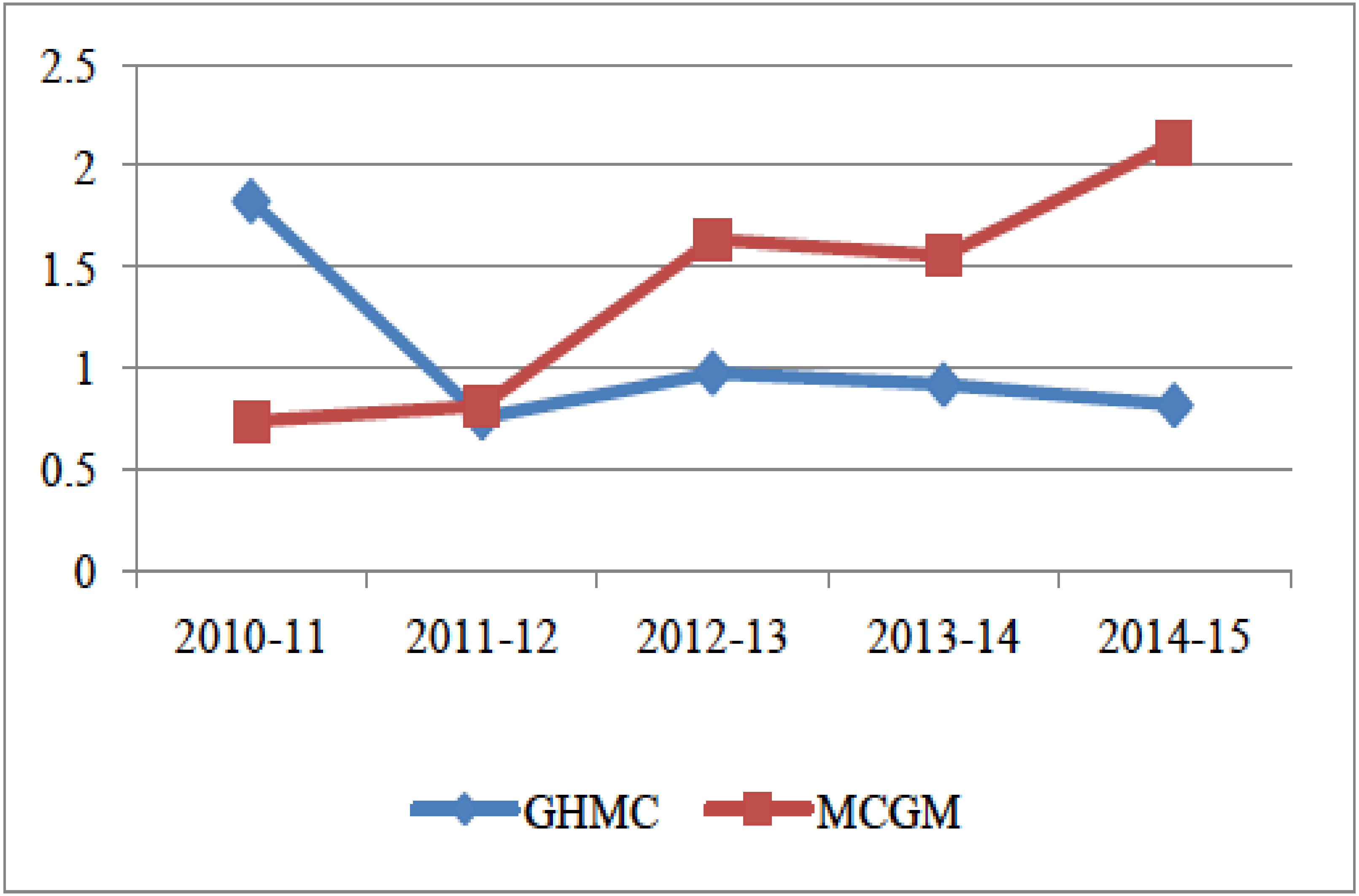
LBFC: MCGM

MCGM					
Development charges	159.39	201.03	188.59	184.7	248.66
Premium charges received for additional 0.33 FSI	0.01	150.58	119.07	188.99	230.43
Collection of infrastructure charges for redevelopment proposal in MHADA layout	29.32	20.83	26.38	42.84	44.48
FCFSI	0	1.4	655.66	697.8	884.14
FCFSI – SRA	0	0	91.82	75.59	88.41
Fees/compensation received under DCR 64 (b)	117.52	48.07	105.56	100.76	214.07
Betterment charges	0.01	0.02	0.06	0.07	0.1
Premium charges	598.23	465.14	534.23	584.68	663.11
LBFC (Total)	**904.48**	**887.06**	**1,721.37**	**1,875.42**	**2,373.41**
Properties Tax (Rs In crores)	1,229.57	1,091.05	1,053.44	1,206.36	1,123.64
LBFC as proportion of Property Tax	0.74	0.81	1.63	1.55	2.11

Per Capita LBFC: MCGM and GHMC



LBFC vs. Property Tax: MCGM & GHMC



Some Economic and Legal Issues

Land Based Financing

General Tax	**Property Tax**
Benefit Tax	**Development Charge**
Compensatory Fee	**Impact Fees**
Regulatory Fee	**Building Permit Fees**

Some Legal and Economic Considerations

- No tax can be levied without authority of law
- Only regulatory fees can be charged as a part of regulatory function to defray cost of regulation
- Irrespective of the label used, Charge, Fee, Premium, legal authority is necessary
- Compensatory Fees must satisfy the test of 'Rational Nexus (US)', 'Necessity Test (UK)' or 'Quid-pro-quo'. This in turn requires an established practice of preparing 'Capital Improvement Plans'.
- If sale of FSI is to be used as financing mechanism, clarity on ownership of development rights is necessary. Risk of sate monopoly of DRs to be avoided

Some Legal and Economic Considerations (Cont.)

- Measurement of LVI particularly its attribution to a cause is methodologically complex and therefore subject to litigation
- Land based financing needs to be seen as supplementing other avenues – property and other local taxes, intergovernmental transfers and borrowings – and not as substitution.
- LBF may be seen as capital receipts and used only for capex
- Market distortion caused by LBF needs to be monitored and kept under control

POLICY DIRECTIONS

- Regularisation of unauthorised development should not be seen as a legitimate fiscal tool.

- The best course would be to structure it as UIBT (Urban Infrastructure Benefit Tax)

  - Tax base: Value of proposed development

  - Valuation: Be adopted from assessment for Stamp Duty e.g. Ready Reckoner in Maharashtra, Jantri in Gujarat

  - Advantage: Value capture without complexities of measurement and buoyancy of revenue

- Have one single tax, avoid multiple levies on the same base

Policy Challenges

- Sale of FSI needs to be used cautiously
  - perverse incentive of keeping the base FSI very low to exact high fees.
  - causing market distortions and
  - excess transaction cost
  - legal validity
- Unlocking value of public land
  - Similar to disinvestment - needs caution
  - Inclusive growth could also be an objective
  - Resolving sharing of revenues between land owning agencies and ULB is a key challenge.

Thank You