OF Master Plans and Illegalities in an era of Transition

Alternative Law Forum

PREFACE

The preparation of the Comprehensive Development Plan for Bangalore, or for that matter, any case of urban planning is indeed a complicated issue having myriad dimensions. Planning is not just a geographical process but more so a social process interlinking the practices and trends of different geological realities with their associated social and legal implications. Hitherto, too much emphasis has been placed on a particular form of urban planning where the focus has been on the law, regulations, land zoning and landscaping among other such similar aspects.

It is our understanding that such a process would provide rather limited results and instead we need to factor in the growth patterns of different classes of society and their engagements with the abovementioned aspects. We have tried to understand the issue of land use, ownership, claims and the social and legal regulations through an analysis of the existing urban land tenures and the existing legal framework.

It has been seen that planning largely consists of the application of abstract and usually normative concepts and paradigms egging the city towards a particular form that is "ideal", based on an untenable view of society and social relations. This has been seen from previous experience where the projected planned city, as envisaged in the CDPs, exist largely in the CDPs and are rarely translated into reality. This is so, because the concepts of planning do not emerge from a systematic analysis of the social phenomenon that the city is, but relies instead on spatial dimensions. Therefore, what is supposedly desirable is translated into the planning sketch with scant regard given to the observed trajectories of the real "unplanned" city as it exists. What one witnesses then is the imposition of a desired model of a planned city without considering the possibility of fit.

We are of the opinion that any planning tradition must emerge from a comprehensive analysis of the existing city creating sufficient understanding of the system that is being

built upon. In the course of this report we have tried to detail an understanding of Bangalore as it exists.

In the section titled “Of Master Plans, Laws and Illegalities in an Era of Transition” we have tried to locate the concepts of planning, laws and illegalities in the present endevaour of preparing the Comprehensive Development Plan of Bangalore.

The section titled “Land and Planning Laws in Karnataka” devotes itself to understanding the myriad land laws and their working besides detailing the tenures that emerge from the legal framework. Here we have investigated the various laws that govern land from a purely legal framework and analyzed the urban land tenures that emerge from this legal framework.

In the section titled “Urban Land Tenures” we have provided a theoretical and functional framework for understanding the existing urban land tenures in Bangalore. We have also elaborated on a few critical land tenure systems.

In the section titled “Revenue Layouts” we have tried to understand the phenomena of “revenue layouts”, their emergence and associated legality.

The section titled “Land Acquisition Act” analyzes the theme of acquisition of land and the powers of the State to do so under the Land Acquisition Act, 1894 and offers a critique of the use of the Land Acquisition Act in acquiring lands for various “public purposes”.

In the section titled “Land Acquisition under the KIADA” we have developed a critique of the process and use of the Karnataka Industrial Areas Development Act (KIADA) in acquiring lands for various “public purposes”. We have also tried to elucidate on the emergence and critical relevance of the KIADA.

The next section titled "Information Technology Corridor" provides a detailed account of the large-scale acquisition of prime agricultural lands that are taking place in the IT Corridor region, by the Bangalore Development Authority and the Karnataka Industrial Areas Development Board, using the powers of acquisition under the Land Acquisition Act and the Karnataka Industrial Areas Development Act.

We have also provided a detailed account of the implications of recent legislations for any urban planning process. In the section titled "Implications of the 73rd and 74th amendments for Planning" we have provided a legal interpretation of these constitutional amendments that seek to herald in local self-governance. We have also provided our understanding of the legal implications this has on the process of urban planning. A similar attempt has been made in the context of the Karnataka Right to Information Act in the section titled "Implications of the KRIA for Metropolitan Area Planning".

The section titled "Appendix" consists of supplementary notes. The part titled "Social and Economic Rights" charts the emergence of rights of citizens in the context of housing and access to basic services looking at the Constitution of India and International covenants, resolutions and declarations.

In the part titled "Large scale acquisition of land for proposed IT Corridor", we have provided a brief summary of ongoing litigation in the Karnataka High Court and Magistrates Court in relation to the acquisition of lands for the IT Corridor.

In the part titled "Summary of significant Court decisions under the KIADA" we have summarized some of the important Court cases regarding issues surrounding acquisition under the KIADA.

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TRANSITION

"It is the ultimate aim of every Bangalorean to own a house. It is virtually impossible for a person who does not own a site in Bangalore to approach an authority, agency, developer or dealer and purchase a site across the counter by paying its price….the lower middle class or weaker sections part with their hard earned money in the hope of owning a piece of land…The numbers of public who have resorted to such illegal purchases and unauthorised constructions and the sheer number of public involved in such acts has virtually converted what will be a law and order situation into a human social problem."

Introduction

One of the key contributions of urban studies has been to complicate any simple narrative account of modernist planning. The project of planning has always unfolded itself within the larger fabric of models of development, mirroring transitions in social and economic relations. In the era of globalization and rapid urbanization, it is not the nation but the city which is seen as the circuit through which flows of capital and service occur. There is little doubt that in the past ten years, Bangalore has attained almost a mythical status as the silicon valley of India and emerged as one of the important nodes for the global flow of services, serving as the back end of many corporations across the world. Over the past ten years we have seen a significant transformation of Bangalore with the emergence of the dominant narrative of Bangalore as the silicon valley of India, a symbol of the emergence of India as an IT superpower, and as a global city working in virtual time with the US in terms of the provision of IT enabled services. If dams were the most important symbols of post colonial India's entry into the modern, the IT industry has emerged as the most important symbol of India's entry into the global or into the new modernity marked by the pre-eminent position given to knowledge based services.

The Bangalore Summit in 2000 represented a new stage in the public life of the city, bringing the private sector to the foreground in a city which has long been envisaged and promoted as the public sector city par excellence. Shedding its more timid presence in a city, where the state has long been the prime mover, the new corporate culture attributes the city's problems to inefficient management while envisaging realizable plans that made a Singapore possible. This is a fresh attempt at moving to center stage the economic and technological aspects of planning which may be at odds with social, community and ecological uses of city land.

Co-existing parallel with this vision of Bangalore as "Singapore" and the trajectory towards this vision is a city mirroring the silent but steady growth of local economies lacking the infrastructural provisions and state backing unlike the IT companies. This city weaves in its core the "unorganized" and "unplanned" growth of the city, both economically and spatially. It is here that the urban poor comprising a quarter of the city reside and carry out trade in conditions that make a decent living standard unattainable.

It is in this larger context of globalization and the changing self representation of Bangalore that we have to contextualize the present proposal of rewriting the Comprehensive Development Plan ("CDP").

A further point to note, in the context of the CDP rewriting, would be the present emphasis and great stress by the State government to promote Bangalore as the desired destination for IT companies. One of the biggest carrots being dangled is the availability of land, subsidies and guaranteed infrastructural services. This necessarily impinges on the CDP process since we witness land-use change of great scale and pace especially in the light of the proposed IT Corridor.

As reported in a prominent newspaper, "At a recent meeting on IT Corridor, convened by Chief Minister S M Krishna, the need for incorporating IT Corridor Master Plan into

the City's CDP was felt as it would ensure a systematic growth. The land-use pattern will be determined by the CDP for business, residential, commercial, educational institutions, recreation and transport and infrastructure. It will drastically reduce the scope for violation of land use"

While this only symbolizes the seriousness of the thrust being given to the IT industry it has serious implications for zoning and regulations. A large portion of the planning area for the IT Corridor falls within the green belt area. To quote from the report, "Out of 138.6 sq km, a large part of the land falls outside the CDP boundary for Year 2011 on land zoned as Green Belt zone. No development is allowed unless the CDP boundary can be reviewed and amended. This issue should be addresses at the next CDP review."

This represents one end of the spectrum that impinges on the process of rewriting the CDP and lays the context for some of the key concerns of this report, which are to examine what these wide ranging global changes mean for our idea of planning and to what extent do they reflect the diverse interests that lie in the city. This space of the new global city (unlike the rest of India) however has to jostle, economically, culturally and legally with the older networks of interests and claims upon the city. We should therefore have no doubts in our minds that any attempt at formalizing the new vision of Bangalore will have to contend with the various contestations and contradictions that competing models of development and interests raise. One of the critical flaws of the modernist project of planning has been to imagine itself as mega project of social cohesion, creating economic and social efficiency through the orderly and planned development of society. It unfortunately assumes for itself a set of stable references such as 'order', 'development', 'efficiency', 'legality' etc. without realizing that these are the very terms of contestation and conflict. James Holstrom writes for instance that "…modernist planning does not admit or develop productively the paradoxes of its imagined futures. Instead it attempts to be a plan without contradictions or conflict. It assumes a rational domination of the future in which its total and totalizing plan dissolves any conflict between the imagined

and existing society in the enforced coherence of its order. This assumption is false and arrogant as it fails to include as its constituent element, the conflict, ambiguity and indeterminacy characteristic of actual social life"

It is of course widely acknowledged that activities and institutions of planning really account for a marginal percentage of land and housing in most Indian cities and it is now widely acknowledged that Master Planned areas actually service only a small part of the city, with the rest being given over to unauthorized (middle to lower class) constructions, revenue layouts, Gramthana sites and slums. There is little agreement about the exact proportion of planned to unplanned city. But it clear that there almost exist parallel cities within most Indian cities, the city of planned development is marked by official markers of development and legality, while the other unplanned city is often represented in terms of un-orderly development, illegality and chaos. This gap between the intention of the state and the ground reality is usually explained in terms of the failure of planning, an inability of the technocratic planning apparatuses to manage or cope with bewildering demographic growth.

There is however a larger question that needs to be addressed here, which is to examine critically the correlation between planning and illegality. It is far too easy to look at them as distinct processes and, from such perspective acts of illegalities would be seen to be those which do not conform to the planned growth of the city. There is however another manner in which it can be examined and this would require us to look at the production of illegalities as a result of the planning process. Clearly any simplistic account of the widespread illegality in terms of failure of planning, corruption, etc. would only perform an epistemic violence which does little to aid our understanding of urban experience and the ways in which people create avenues of participation and make claims to the city. One of the tasks of this report is to examine the various registers through which the experience of the city is mediated.
There are at least four competing registers which find their way into this report:

- First, there is the official history of the city as narrated through the prism of property laws, planning laws and the institutional forms envisaged for Bangalore's urban growth and development. It is within this account that the task of rewriting a CDP would fit. These annals of official history, document the institutional restructuring that is required to accommodate the changes in Bangalore's vision. They also document the various legally recognized land tenure forms through which people may acquire land, housing urban amenities. They also deal with modes through which people may alienate property.

- The resurgent and modified activities of the para-statal bodies such as the Bangalore Development Authority (BDA) and the Karnataka Industrial Areas Development Board (KIADB) in the context of these changing development trajectories and under the influence of and in coordination with the newer forms of governance such as the BATF and other corporate private interventions. The housing projects of the BDA, which slumped for most part of the 1990s, witnessed resurgence along with the branching of BDA activities into the sphere of urban infrastructure development such as flyovers, ring roads, grade separators, etc. The monopoly over the housing sector has been unabashedly flaunted as the BDA comes crashing down on revenue layouts. The KIADB has also emerged as a major player in shaping urban land-use by means of its role in the completed projects like the Electronic city, ITPL, etc and proposed projects such as the Devanahalli International Airport, IT Corridor, etc.

- The implications of the Right to Information Act, and decentralization of powers (as per the 73rd and 74th Constitutional Amendments) in contrast with ongoing corporate – government collaborations at the realm of policy, for Bangalore's planning process make up the third register. In the early nineties, the government incorporated the 73rd and 74th amendment to the constitution which sought to decentralize and devolve power to local bodies including the Panchayats and municipal corporations. A key issue that is raised in this study is an assessment of the impact of the 73rd and 74th amendment and to what extent they have been realized, or unrealized as a result of the converging forces of globalization and the change in models of development. One can see for instance the clear conflict between the goal of decentralizing power on the one hand, and the strengthening of institutions of planning such as the BDA, the KIADB. All this, while the role of the corporates in governance is being strengthened. Intrinsic to the very idea of centralized planning, is a top down approach which has no place for the participation of local bodies or elected representatives at the local level. This conflict emulates earlier modes of disenfranchising which set up local bodies as the 'enemies of development', rather than looking at them as legitimate participants within a process of development that clearly affects local communities and interests.

- Finally, and perhaps in our opinion, most importantly an account of the social life of land and the various networks of relationships and practices that determine land claims/ land tenure in Bangalore. This is a world marked by ad hoc practices, porous legalities and its stubborn refusal to be subdued by the dominant narratives of unplanned development, illegality and unproductive transgression. It is our argument that these instances of unplanned development and illegal practices tend to pose a narrative problem for the official annals described above as well as for the new institutions of governance. One of the tasks, then of this study is to outline a few entry points, beyond the looming tale of legality/ illegality, through which we can make sense of these economies of participation.

Cities, Citizens, Comprehensive Plans and Contested Claims

> *The three petitioners in the group of Writ Petitions 4610-4612 of 1981 are a journalist and two pavement dwellers. One of these two pavement dwellers, P. Angamuthu, migrated from Salem, Tamil Nadu, to Bombay in the year 1961 in search of employment. He was a landless labourer in his home town but he was rendered jobless because of drought. He found a job in a Chemical company at Dahisar, Bombay, on a daily wage of Rs. 23 per day. A slum-lord extorted a sum of Rs. 2500 from him in exchange of a shelter of plastic sheets and canvas on a pavement on the Western Express Highway, Bombay. He lives in it with his wife and three daughters who are 16, 13 and 5 years of age.*
>
> *The second of the two pavement dwellers came to Bombay in 1969 from Sangamner, District Ahmednagar, Maharashtra. He was a cobbler earning 7 to 8 rupees a day, but his so-called house in the village fell down. He got employment in Bombay as a badli kamgar for Rs. 350 per month. He was lucky in being able to obtain a "dwelling house" on a pavement at Tulsiwadi by paying Rs. 300 to a goonda of the locality. The bamboos and the plastic sheets cost him Rs. 700.*
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> - Extract from Olga Tellis v. State of Maharashtra

We have begun this section with an extract from the narration of the facts from the landmark case of Olga Tellis v. State of Maharashtra. This case is popularly represented in standard constitutional law textbooks as the case which expanded Article 21 of the constitution to include the rights of pavement dwellers. However, a close reading of the case reveals that the final order only allowed the pavement dwellers not to be removed until the monsoon was over to minimize the hardship involved. So despite the recognition of the immense hardships which the pavement dwellers in Bombay face as a result of the inability of the state to provide housing to majority of the urban poor, the court subscribes to the larger logic of planned development and in this vision that it shares with the city planners, clearly there is little space for the pavement dwellers. This account of the interaction of law, violence and a section of the urban population is more or less the grim reality of a particular experience of the older city. The new global city certainly does not do away with the conflicts of the older. Instead it tends to sharpen the polarities between those with privileged access to the city, and those who do not have similar access.

In this report we have attempted to provide an account of the various marginalia of the city and how they lay claim to the city and access rights in the city. There are specifically two lines of arguments that we draw:

Understanding illegalities – The first line is to argue that the gaze of the law has always been upon activities of those in the lower classes, and from this gaze it is inevitable that almost every act of securing a right in the city (slum dwellers, hawkers, squatters, petty shop owners, landless laborers etc) will emerge as an illegal one. However if one were to reverse this gaze of legality and include within its ambit, those with relative privilege in the city (house and shop owners who encroach upon the footpath, construction companies which secure the right to construct buildings beyond the permissible limits, companies which use the eminent domain principle with the help of the state to acquire

cheap land, large companies / apartments that "privatize" pavements) and look at the intricate network of propertied interests and power, the illegal acts of the urban poor appear relatively trifle though the consequences they face are far more severe.

Claiming the city: Claiming Citizenship – We believe that one interesting manner in which we can begin to understand these practices is by pushing our liberal ideas of republican citizenship to practices which are not usually considered within traditional political analysis. Our argument is that rights of citizenship and democracy in terms of access to economic and social opportunities, democratic institutions and representation etc are often mythical rights which are constitutionally guaranteed, but have a precarious shelf life when it comes to actually being realized. Instead the confluence of new forms of property and the alliance between the state and huge corporate interests create everyday illegalities, reminiscent of the 18th century transition from the commons to privately legislated property rights.

Understanding illegalities:

The understanding of the dominant legal framework defining the "legality" or "illegality" of the above tenure forms is rather simplistic necessitating a scrutiny of the ambit of illegalities.

Illegality clearly permeates all sorts of social relations in urban areas – with respect to civil, commercial or criminal law. The focus in the present endeavor has been on the illegal aspects of social processes providing access to land and housing. As pointed above illegalities prevail in the actions of all classes of people from the upper to the middle class to the urban poor.

Illegality is commonly perceived to be one that is associated exclusively with the poor. However, this is not exclusively the case. Illegal forms of production of urban land and housing are being observed more and more frequently in the more privileged parts of third

world countries. They involve, for instance, closed condominium developments in which gates creating private enclosures may prevent the public from gaining access to the road system as well as cordoned off or walled-in beaches, the occupation of environmentally protected areas, etc.

This understanding stands true also for Bangalore. One is witness to the flurry of upper-class enclosed "housing enclaves" in villages on the fringe areas where access is denied even to the residents of the villages. Within the city we also see the fact that public spaces such as parks, etc are being "maintained" by corporate houses and access to parks denied to certain sections of society. It is common practice for vehicle owners to "encroach" on and park their cars / motorcycles on the roads through the night and day. There are other forms of illegalities including the violation of building bye-laws and zonal land-use regulations especially in the upper and middle class localities like Koramangala and Indiranagar. It is a known fact that large real estate transactions involve the movement of black money that goes unaccounted for. Another major land settlement process that is termed as illegal is the formation of revenue layouts.

Similarly the urban poor are party to a wide range of illegalities such as pavement dwellings, slums, hawking, illegal water, sewage and electricity connections, etc.

The ad hoc treatment meted to the various illegalities by the legal authorities forces one to assume that some illegalities are more "illegal" than others. More often than not the illegalities of the urban poor are dealt with much more strictly than those associated with the middle or upper classes. To illustrate this with an example; while pavement dwellers are denied any tenure security or access to basic services since they are "encroachers", the encroachments on roads for parking of cars/motorcycles in middle/upper class areas day and night, or the conversion of pavements into private gardens and parking lots is generally ignored.

It must be noted that though illegalities permeate all classes of the social strata the ones that are hit most are the urban poor. This is seen in land settlements such as slums and pavements which are cracked down upon since they violate ownership as well as rules and regulations while other housing settlements that blatantly violate building bye-laws and planning norms are let off or are regularized more easily. Further the State plays a very important role within the formation of these illegalities and in many instances is the perpetrator of illegalities itself.

Regularization vs. Change in Law!

Over the past two decades a number of illegal revenue layouts have been regularized by the government from time to time. Most of these layouts catered to the lower to middle class and managed to get regularization after much difficulty. Prior to this, they were subject to severe difficulties and managed access to basic services by using various tactics ranging from bribes to loopholes in the law to political patronage. However, presently there is a stringent drive initiated by the BDA to de-legitimize several revenue layouts that are coming up on the fringes of Bangalore. While the BDA claims that they are illegal, the developers (both big and small) of the revenue layouts claim to have clearances from the local authorities (City Municipal Councils).

However, the differential treatment is best exemplified when contrasted with the case law surrounding the *Bhaktavar Trust v MD Narayan* that also reflects the double standards adopted by the Authorities in enacting and enforcing planning laws.

In 1980 certain builders were granted permission to construct eight-storied building, 80 feet in height, in Rajmahal Vilas Extension by the Corporation though this was in contravention of the Outline Development Plan and the Zonal Regulations, which only allowed for construction up to 55 feet. The permission was challenged by the adjoining property in the High Court and in June 1982, after hearing arguments, the High Court struck down the permission accorded to the builders to build up to the height of 80 feet. This decision was unsuccessfully challenged by the builders before the Supreme Court.

The Commissioner thereafter passed an order that 3 floors (6th, 7th and the 8th floors) of the building constructed by the builders be demolished. Upon the failure of the builder to demolish the three floors as per the orders of the Commissioner, a contempt petition was filed in the High Court for non-compliance. While the matter was pending, the Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, 1996, (Amending and Validating Act) was passed by the Karnataka Legislature, modifying the maximum height of the new building up to above 165 feet and validating the new construction raised in violation of Outline Development Plan and the Zonal Regulations.

After this Act came into effect, a fresh round of litigation commenced. The constitutional validity of the validating Act was challenged before the High Court. The State of Karnataka and the builders defended the validity of the Act. The Karnataka High Court struck down the Act holding it to be constitutionally invalid. The decision of the High Court was challenged before the Supreme Court, which set aside the judgment of the Karnataka High Court and upheld the validity of the Act, on the grounds that the Parliament and State Legislatures have powers to make retrospective legislation. The Supreme Court also held that the intention of the legislature in passing of a particular statute is beyond the pale of judicial review.

Another example would be the hundreds of IT firms who are tenants of residential buildings. A survey by the BDA in 2001 of an important zone in the IT corridor, Koramangala, found that IT companies accounted for 70 of 132 violations, in which "neither the owner nor the tenant had applied for change in land use all of which violated the rules governing the CDP." In at least one case, Indya.com had usurped BDA property "which amounts to encroaching Government land."

In *Subbanna v. State of Karnataka,* representatives of Doddabommasandra Jalahalli in Bangalore North sought the court's intervention in striking down the amalgamation of the area as it placed restrictions on the uses to which the land could be put. The court

however upheld the authority of the revised Development plan, saying "that the CDP is an integrated [plan] and either it must exist as a whole or fall through as a whole. It cannot be sub-divided or truncated as it would amount to redrafting of the CDP." The court did admit however, that the state had permitted several BDA schemes (amounting to 7419 acres) housing societies (200 acres) and new industrial uses (610 acres) within the Green belt area, but believed that these developments served a public purpose.

Degrees of legality:

As demonstrated above the illegalities of the urban poor are subject to much more scrutiny and punishment than of others. This leads one to believe that there are varying '"degrees of illegality': as described by Fernandes (1998), and that some forms of illegality tend to be more accepted and/or tolerated than others, by both the state and public opinion. Therefore, we can infer that land tenures could be located along a spectrum of illegality, and, depending on this location, are treated differently. There are several trends that suggest that there is a differential application of law resulting in this "degrees of illegality" and that the urban poor are inevitably the most vulnerable of the lot.

What is also obvious is that this differential application of law has resulted in the urban poor being rendered vulnerable with limited or no tenure security and denied access to basic services like drinking water, electricity, roads, sewage systems, schools, street lights, health services etc.

There are 778 slums in Bangalore providing housing to more than 18.5 lakhs of people. Just about half of these slums have been recognized by the Karnataka Slum Clearance Board while the rest, according to the KSCB, do not exist. The provision of even basic services like drinking water, latrines, roads, schools, public health facilities, etc is desperately lacking resulting in sub-standard living conditions of varying degrees in most slums.

According to STEM, a research organization, who conducted a survey of 985 slums across Karnataka:

- 30% of the slums do not have access to drinking water
- 66.3% of the slums do not have latrine facilities
- 37.3% of the slums do not have drainage facilities
- 54.5% of the slums do not have proper roads
- 63.6% of the slums have insufficient street lighting
- 70.5% of the slums do not have proper garbage disposal facilities
- 75.4% of the slums have no PHC (public health centers) facilities
- 34.2% of the slums do not have anganwadis (crèches)

There are several reasons for the varying degrees of illegalities including the visibility factor. The tenures of the urban poor are more visual and (and made visible) and hence easily illegitimised; however, most other tenures are couched in secrecy and high-end transactions and hence difficult to illegitimise in the public gaze. This is important to analyze since this necessarily impinges on the status of the tenure security and by implication, for the urban poor, access to basic services. It is our understanding that the crucial factor determining the degree of legality/illegality is the complex web of relationships between the claimants and various institutional (police constables, BESCOM officials and line workers, BWSSB officials and line workers, KSCB officials, BDA, BMP, etc) and other relevant players (real estate agents, developers, NGOs, Panchayats, Municipal Councils, political bigwigs, local goons, etc). These relationships revolve around money exchanges, vote banks, livelihood issues, power equations, influence and connections, etc.

Therefore, while for slums, hawkers, lower-end revenue layouts, etc this network of relationships results in howsoever unreliable yet at least sporadic access to basic services and probable desired regularization at some later point in time, for the middle end revenue layout it may mean regularization and legal recognition of the layout. It is at the high-end that the illegalities get ignored or are incorporated into the definition of law itself, as evident in the Jaymahal case.

Legal contradictions:

When one accepts that though at the theoretical realm there is only the legal and the illegal, in practice there actually exist varying degrees of illegality/legality. Therefore, even though illegal, the citizens have legal access to access to water, electricity, roads, etc, are registered voters, have managed to get cards, have various individual-based tenure forms like BDA / BMP / KSCB identification cards, etc. This represents a movement towards further tenure security and legal recognition. This also blurs the line between legal and illegal since one witnesses tenure forms that are located somewhere in between.

This sets up the context of the land settlement systems as being the arena where notions of legality and illegality are contested while claims of citizenship administered.

On the other hand, this also establishes a clear conflict between the rights of citizens as guaranteed by the Constitution and International declarations, covenants and regulations, and the denial on the grounds of the citizen "illegal" status. Again this conflict is almost exclusively devoted to the life-standards of the urban poor since the contest is in their terrain. The other illegalities more often than not, by virtue of revolving around issues other than livelihoods such as profit, accumulation, encroachments, etc do not necessarily provide ground for such a face off between conflicting guarantees and rights.

Claiming the City: Claiming Citizenship

Moving beyond the comfortable world of liberal legality, we then need to chart out avenues or entry points through which we can understand this phenomenon of the illegal city. Our argument is that we need to move beyond the abstract spaces of democracy, and move to an understanding of the real ways in which rights are claimed. For instance within the normative world of liberal democracies, there is no doubt for instance that the language of equality and citizenship has great appeal in an abstract manner. In fact the precise

power of such abstractions is its ability to conceal the nature of conflicting claims nuanced by complications of class, caste, gender and, in the context of Bangalore, linguistic groups. Once we move beyond the assumption that the liberal state acting as the guardian of the interests of the citizens (as enshrined in the preamble to the constitution of India: " and to secure to all its citizens: Justice: economic, social and political) to a realistic assessment of the ways in which, in the failure of the state to fulfill its constitutional mandate, people secure for themselves these various citizenship rights. These claims by the urban poor have also found their way into the dominant interpretations of the law by the courts in India. For instance the Supreme court has been forced to respond on a number of occasions to this apparent 'lack' in the developmental and welfare state, when it comes to the question of the provision of the basic citizenship rights for marginalized groups, and this has resulted in a gradual expansion of the scope of Article 21 of the constitution (right to life and personal liberty), where it has read into Article 21 a number of rights recognized in international human rights documents related for instance to the right to housing, health, water etc. There still remains however the gap between the judicial authorship of human rights, and their translation in the context of the urban everyday. These claims have also found their way into international declarations and covenants recognizing their claims to the city and their rights to particular standards of living.

For us , it is not at the constitutional level alone that conflicts of citizenship are resolved, and we need to read the city as the predominant site for the claiming and contestation of citizenship rights, which have in recent times, served as an important metaphor through which we can attempt to understand the illegal city. Appadurai writes for instance that "the great turmoil of citizenship in cities derives in large measure from new concentrated of wealth and misery among nationals related to industrialization. Where the shanties of migrants sprout next to the mansions, factories and sky scrapers of industrial state capitalism, new kinds of citizens engage in strugglers over the nature belonging in national society. Such struggles are particularly evident in the fight of the urban poor for rights to

the city. They are especially associated with the emergence of democracy because they empower poor citizens to mobilize around the redistributive right claims of citizenship. These movements are new not only because they force the state to respond to new social conditions of the working poor- in which sense they are, indeed, one of the significant consequences of massive urban poverty for citizenship. They are also unprecedented in many cases because they create new kinds of rights outside of the normative and institutional definitions of the state and its legal codes. These rights generally address the new and collective spaces of the modern metropolis, especially its impoverished residential neighborhoods. They affirm access to housing, sanitation, health, property, education, child care and so forth on the basis of citizenship. In this assertion they expand the scope and understanding of entitlement. In this sense the growth of the economy itself fuels the growth of citizenship as new areas of social and economic life itself are brought under the calculus of rights"

This sharp polarity between the legal and the illegal city, the planned and the unplanned portions of the city are clearly symptomatic of the larger class conflicts that exists in many post colonial societies, rapidly moving towards a globalized world. The era of globalization inaugurates a new dynamic of inequality that challenges the basis of the earlier common allegiances. The two cities with its respective citizens and denizens, creating their own entry points into the global tends to its own promotion, "delegitimizing if not criminalizing the other".

This rapid acceleration into the global, seen in a city like Bangalore, also has its antecedent problems of legal restructuring, which adds another dimension into the already divided city. To be 'investment friendly' there are a number of laws which need to be amended to suit the requirements of flexible production and accumulation. The fact that you are competing with other cities within the country such as Chennai, Delhi and Hyderabad does not help in any manner. In a city like Bangalore this has been best seen in terms of the various incentives and benefits provided to the IT sector, by ways of tax breaks,

cheap land, infrastructure development etc and at the same time there is a parallel move towards ensuring that this image of the clean and green Bangalore is not affected by rag pickers, squatters, hawkers etc. Thus even as the translocation of the city generates new legal regimes, it also propagates new and diverse forms of illegality. This "unstable mixture of the legal and the illegal, and of various forms of each, turns the city into a honeycomb of jurisdictions in which there are in effect as many kinds of citizens as there are kinds of law. Such multiplicity delegitimizes the national justice system and its framework of uniform law, both hallmarks of citizenship. Although we have seen this urban multiplicity can spawn new and more democratic forms of citizenship, it also suggests the emergence of an almost medieval body of overlapping, heterogeneous, non-uniform, and increasingly private memberships".

If we were given the difficult task of posing a central question in the current study, it would be about the often unquestioned normative assumptions of the planning process itself. The idea that through the planning process, one can attain the common good for 'all the people' is clearly a myth that fails to take cognizance of the varied political, economic and social interest that inform the ideology of planning. This process of assuming the common good necessarily involves policy choices that create a fragmented idea of public interest, split on the lines of the 'deserving citizen' and the 'not quite citizens'. Our task in a sense has been to pose the question of what happens to people who fall off official maps, and how do they find their ways in the increasingly complex landscape of the global, the national and the local.

LAND AND PLANNING LAWS IN KARNATAKA

Ownership of immovable property in Karnataka

Introduction

Under the Indian Constitution "Land and land tenures" fall within the exclusive legislative and administrative jurisdiction of the States as provided in Entry No. 18 of List II of the Seventh Schedule to the Indian Constitution.. The major laws pertaining to land

administration and planning in Karnataka are:

Karnataka Land Reforms Act, 1961

Karnataka Land Revenue Act, 1964

Karnataka Town and Country Planning Act, 1961

Karnataka Municipalities Act, 1964

Karnataka Municipal Corporations Act, 1970

Bangalore Development Authority Act, 1976

Bangalore City Planning Area, Zonal Regulation (Amendment and Validation) Act, 1976

Bangalore Metropolitan Region Development Act, 1985

Industrial Areas Development Act, 1960

Regularization of Unauthorized Constructions in Urban areas Act, 1991.

The law pertaining to the transfer of immovable property between parties is governed by the provisions of the Indian Transfer of Property Act.

Acquisition of title over land:

Absolute ownership of immovable property can be acquired under various ways. The most common ways in which absolute ownership of property is acquired in Karnataka are as under:

1. Purchase of immovable property;
2. Allotment by Government bodies like the BDA, KIADB etc.;
3. Inheritance/Succession;

Purchase of immovable property:

The sale/purchase of immovable property is governed by the provisions of the Indian Transfer of Property Act, 1882. Section 54 of the Act defines a "Sale" as "a transfer of ownership in exchange of a price paid or promised or part paid and part promised" Registration of a sale of immovable property of a value of Rs. 100/- and above is mandatory under Section 17 of the Registration Act. Therefore, effectively, anyone who desires to acquire valid title over immovable property by virtue of a sale has to

necessarily register the sale transaction. The Registration of documents is done by the Revenue Department. Each District has Sub-Registrars of Assurances, who are, interalia, empowered to register transactions in immovable property. Documents presented for Registration have to be stamped in accordance with the provisions of the Karnataka Stamp Act. The stamp duty payable on a sale transaction is calculated on the market value of the property. The Revenue Department has notified the market value of immovable property in Bangalore Urban and Bangalore Rural vide Notification No. PDSS/MAMOUNISA-1/2000-2001 Bangalore dated 12-7-2002. Presently, if the property is situated within the limits of the Bangalore Metropolitan Regional Development Authority – the stamp duty payable is 10% of the value and if the property is situated within the limits of City Corporation or City or Town Municipal Council or any Town Panchayats other than the areas falling within the limits of the BMRDA, the stamp duty specified is 9% of the value.

While purchasing immovable property, a prudent purchaser will closely inspect the following documents before effecting the purchase.

In case the property is vacant land:

(a) Parent documents pertaining to the title of the seller – i.e previous sale deed, partition deed, etc.
(b) Khata endorsement issued by the Corporation or the Municipal Council as the case may be;
(c) Encumbrance certificate for the last 30 years;
(d) All tax-paid receipts including latest tax-paid receipt

In case the property being purchased is a site allotted to the seller by the BDA on which the seller has constructed a building:

(a) Sale confirmation letter issued by the BDA.

(b) Receipt issued by the BDA or bank challan for the cost of site.

(c) Certified copy of the auction sale agreement.

(d) Possession Certificate issued by BDA.

(e) Katha certificate issued by BDA (or BMP if the area comes under BMP)

(f) All tax-paid receipts including latest tax-paid receipt

(g) Encumbrance Certificate from the date of allotment to date

(h) License for construction

(i) Copy of Sanction Plan

(j) Tax Assessment Order for the building.

(k) Original Sale Deed executed by BDA.

In case of purchase of a flat from a builder or developer:

a) Title deeds of the plot on which the building has been constructed or proposed to be constructed,
b) Development agreement executed between the land owner and the builder/developer;
c) Power of Attorney executed in favour of the builder by the land owner;
d) title certificate from a solicitor or advocate to the effect that the title is clear and marketable and that the builder/developer has powers to enter into an agreement for sale,
e) approved plans with signatures of the owner, architect, signature and seal of the authorized officer of the local authority,
f) letter of approval, commencement certificate issued by the local authority indicating permission for development,
g) No objection certificate from the Air force authorities, fire fighting department, water supply and sewage department, telecom department and electricity department;
h) Encumbrance certificate with respect to the land in question;
i) Latest tax paid receipts;
j) Conversion order;
k) Layout sanction plan.

In case the land is a site converted from agricultural to non-agricultural:

a) Sale Deeds -past and present,
b) General Power of Attorneys (if any),
c) Development Charges paid receipt issued by the Corporation,
d) Khatha Transfer Fee Receipt issued by the Corporation,
e) Khatha Certificate,
f) Extract of Vacant Site Records from the Corporation,
g) Tax Assessment Notice from the Corporation,
h) Conversion Order,

i) Tax paid receipts from the Corporation,
j) Latest Encumbrance Certificate,
k) Latest Tax Paid Receipt from the Corporation.

The above list is only indicative and could vary from property to property.

Allotment by Government agencies:

While sale of immovable property between two private persons is governed by the provisions of the Transfer of Property Act, 1882, a person in Karnataka may also acquire title over land through the allotment process of the Government agencies. The most prominent Government agencies in this regard are the BDA (which predominantly allots lands for housing purposes) and KIADB (which allots land for industrial purposes only). The procedure for allotment by these two bodies is briefly dealt with as hereunder.

BDA: Allotment of lands by the BDA is governed by the provisions of the Bangalore Development Authority (Allotment of Sites) Rules, 1984, which have been framed by the Government of Karnataka under powers vested in it by virtue of Section 69 of the Bangalore Development Authority Act, 1976.

When the Authority form an extension or layout, it gives publicity in respect of the sites for allotment specifying their location and inviting eligible persons to submit applications in this regard. The price of the sites are also notified. To meet the eligibility criteria for allotment of a BDA site, a person has to be a major, domiciled in Karnataka for atleast

fifteen years and none of his family members should own a site allotted by the BDA. An "Allotment Committee" constituted by the BDA scrutinisess the applications received decides upon the allotment of sites. Once allotted, the applicants are called upon to pay the balance value of the site and the same is registered in his/her name.

KIADB: As already mentioned, only industrial land is allotted by the KIADB. An intending allottee is required to submit an application in the prescribed format along with a project report; details of the constitution of the Company; an Ernest Money Deposit of Rs. 500/- per acre subject to a maximum of Rs. 10,000/-; the proposed land utilisation plan for the project along with a percentage of the cost of the land. An approval of the High Level Committee (constituted by the State Government) is also required if the proposed new industrial project has an investment in excess of Rs. Fifty Crores. An Allotment Committee discusses the project and decides upon the allotment of land to the applicant.

Once the land is allotted to the applicant, the KIADB enters into a "lease cum sale agreement" with the applicant where under, the land is initially leased to the allottee for a minimum period of six years. Only on the successful implementation of the project is a regular sale deed executed in favour of the allottee subject to utilisation of minimum of 50% of the land or on implementation of the project and utilisation of land as per the terms and conditions of the lease agreement. Effectively speaking, KIADB reserves its power to resume the land if the applicant does not implement its project for which the lands were allotted.

Acquisition of title through Inheritance/Succession:

Devolution of immovable property after the death of its owner, is governed by the respective personal laws to which the owner was subjected to. The Hindu, Muslim and Christian laws have theior own rules of succession. On the death of the owner of immovable property, title passes on to the respective heirs by operation of law. As far as non-agricultural lands are concerned, acquisition of rights in immovable property do not require to be intimated to the Government authorities and hence the names of the successors are often not reflected in the land records maintained by the Government. However, with respect to agricultural lands in Karnataka, acquisition of rights in immovable property by virtue of succession is required to be reported to the prescribed officer appointed under the Karnataka Land Revenue Act. Such information is first recorded in a "Register of Mutation" and after due enquiry, the information is entered in the "Record of Rights". An entry in the Record o f Rights is an evidence of title to the land.

Restrictions on the transfer of land in Karnataka:

The following are the restrictions on the transfer of the land in Karnataka:

Under chapter III of the Karnataka Land Reforms Act, 1961, occupancy rights can be granted to the holder of the land by making an application to the Tribunal constituted under the Act. Any person who has been granted such occupancy rights, pursuant to the final orders of the Tribunal, is prohibited from transferring either by sale or gift, exchange, mortgage, lease or assignment, the lands so granted for a period of fifteen years from the

date of the final order of the Tribunal.

a) Section 63 of the Karnataka Land Reforms Act, 1961, imposes a ceiling up to which a person is entitled to hold agricultural lands, weather as a land lord, land owner or a tenant. Any person owning land in excess of the ceiling limit is prohibited from alienating his holding or any part of his holding either by way of sale, gift, exchange or otherwise, unless he as furnished a declaration of his holding as required under section 66 of the Act.

b) Any agreement to sell, sale, mortgage with possession or otherwise of any agricultural land to a non agriculturalists is prohibited under section 79A of the Karnataka Land Reforms Act, 1961.

c) Any agreement to sell, sale, lease, mortgage with possession or otherwise of any agricultural land to an educational, religious, charitable institution society, trust, company, association, other body of individuals or a co-operative society other than the co-operative farming society in contravention of section 79-B of the Karnataka Land Reforms Act, 1961 is prohibited.

d) Any Agreement to sell, sale, gift, lease, mortgage with possession or otherwise of any agricultural land granted under the Karnataka Land Grant Rules, 1969 is prohibited.

e) Under Section 3 of the Karnataka Land (Restriction on Transfer) Act, 1991, a person is prohibited to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which has been acquired by the Government under the Land Acquisition Act, 1894 (Central Act 1 of 1894) or any other law providing for acquisition of land for a public purpose.

f) Further, under Section 4 of the Karnataka Land (Restriction on Transfer) Act, 1991, previous permission of the competent authority is required where a person transfers or purports to transfer, by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which is proposed to be acquired in connection with the Scheme in relation to which the declaration has been published under Section 19 of the Bangalore Development Authority Act, 1976 or section 19 of the Karnataka Urban Development Authorities Act, 1987.

g) Section 4 of the Karnataka Schedule Caste and Scheduled Tribes (Prohibition of Transfer of Certain Lands Act), 1978, prohibits transfer of any land granted by the Government in favour of a person belonging to the Schedule Caste or Scheduled Tribe. Any such transfer is null and void and no right title or interest in such land is conveyed by such transfer.

Other forms of Tenure

Apart form ownership, the other forms of tenure most commonly found in Bangalore are Lease, licence and Mortgage. It is pertinent to note that these forms of tenure are not unique to Bangalore or Karnataka but are prevalent all over the country. These are dealt with in brief as follows:

Lease:

A lease of immovable property is defined under Section 105 of the Transfer of Property Act as "a transfer of right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms"

Effectively, a lese is a transfer of a right to enjoyment of immovable property for a fixed period of time or in perpetuity for a consideration called rent.

The essential elements of a lease are:

1) The parties – i.e the "Transferor" who is generally the owner of the immovable property and is also known as the lessor or the landlord; and the "Transferee" also known as the lessee or the tenant;
2) The subject matter – which is the immovable property;
3) The demise or transfer of the right to enjoy the property for a term;
4) Consideration – also known as rent which is generally payable monthly although the parties are free to fix any other period for the payment of the rent.

Under Section 17 of the Indian Registration Act, any document which creates a lease for a period exceeding one year requires mandatory registration. The stamp duty payable is as per the Karnataka Stamp Act and the present rates of stamp duty are:

- Stamp Duty payable on Rental Agreement for a period below one year is Rs.50/-;
- Above one year but not exceeding five years @ 5% on the average Annual Rental Rate;
- Above five years but not exceeding ten years @ conveyance on twice the average Annual Rental Rate;
- Above ten years but not exceeding twenty years @ conveyance on thrice the average Annual Rental Rate;
- Above twenty years but not exceeding thirty years @ conveyance on four times the average Annual Rental Rate;
- Exceeding thirty years @ conveyance on prevailing market value.

Considering the high rates of stamp duty prescribed, parties seldom register their lease deeds or rental agreements. Generally, agreements are executed on stamp paper of nominal value or Rs. 50/- or 100/-. The consequences of non-registration of a document which requires compulsory registration is that it cannot be produced as evidence in a court of law for any purpose.

However, ingenious parties, with a view to avoid payment of stamp duty often enter into an "agreement to lease" (as against a "lease deed") whereunder the various stipulations of a usual lease deed is mentioned. However, possession is not handed over under the agreement but is agreed to be granted on a future undetermined date. The agreement further mentions that the lease shall come into effect on the date of handing over the possession of the property to the lessor and that the parties undertake to execute a lease deed on the lease coming into effect. Thereafter, possession is handed over separately after a few days of entering into the agreement to lease but no lease deed is ever entered into. The entire lese is thereby governed by the agreement to lease which requires nominal stamp duty and does not require compulsory registration under the law in force.

Irrespective of whether the lease deed/rental agreement is registered or not, the land lord cannot summarily evict the tenant upon the expiry of the term agreed upon. If the tenant refuses to vacate, recourse has to be made either to the Transfer of Property Act or the Karnataka Rent Control Act before ejecting/evicting the tenant.

Licence:

Where one person grants to another or to a definite number of other persons, a right to do, or continue to do in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence. A licence is a permission to do something on an immovable property such as occupation of it. The intention of a licence is that the licencee will have a personal privilege but not interest in the property. A typical example of a licence is where the owner of immovable property permits "paying guests" to occupy his premises where the paying guests are not granted exclusive possession of the premises but are only in permissive occupation of it.

Mortgage:

Mortgage is a transfer of interest in specific immovable property for the purpose securing payment of money advanced, or to be advanced by way of loan, an existing or future debt, or the performance of an engagement, which may give rise to a financial liability.

The transferor is called a Mortgagor, the transferee a Mortgagee, the principal money and interest of which payment is secured for the time being are called mortgage money, and the instrument, if any, by which the transfer is effected is called a Mortgage Deed. There are 6 types of mortgages. They are Simple Mortgage, English Mortgage, Equitable Mortgage or Mortgage by deposit of title deeds, Usufructuary Mortgage, Mortgage by Conditional Sale, Anomalous Mortgage. The first three are the most common types of Mortgage

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Simple mortgage

Simple mortgage is an agreement only whereby the mortgagor agrees to repay the money borrowed to the mortgagee and agrees that in the event of failure to do so, the property may be sold and the money realized out of the sale proceeds. Simple mortgage does not

refer to any property transfer at all.

English mortgage

An English mortgage is a transaction where the mortgagor commits himself to pay the mortgage money on a specific date and transfers the mortgaged property to the mortgagee absolutely, subject to the condition of transferring it back upon payment of the mortgaged money, as agreed. English mortgage involves a transfer of property to the mortgagee absolutely and on repayment the mortgagee is bound to transfer the property back to the mortgagor.

Equitable Mortgage or Mortgage by deposit of title deeds

In Equitable Mortgage or Mortgage by deposit of title deeds, the deposit of title deeds can be done orally and the conditions of loan transactions can be recorded in writing. This type of mortgage can be created in specific cities such notified by the Government from time to time. The mortgagor can enforce the security only by sale of property through Court

Mortgage by condition sale

Under a mortgage by condition sale, the mortgagor sells the property to the mortgagee on the condition that if payment of the mortgage money is defaulted on the specific date, the sale shall become absolute, or on the condition that on repayment of the mortgage money, the mortgagee transfers the property back to the mortgagor.

Usufructary Mortgage

Under Usufructary Mortgage**,** the mortgagor delivers possession, binds himself to deliver possession of the mortgaged property to the mortgagee, and authorizes him to retain such possession until payment of the mortgage money and to receive rents and profits accruing from the property in lieu of interest. This is otherwise known as compensation mortgage

and as lease with no rent and no interest payable.

Agricultural lands:

Under Section 83 (3) of the Karnataka Land Revenue Act, 1966, lands which were assessed for non agricultural purposes like residential, commercial or industrial at the commencement of the Karnataka Land Revenue Act, 1966, continue to be assessed as such. By virtue of Section 83(1) of the said Act, all other land is assessed with reference to the use of the land for the purpose of agriculture. Therefore the nature of land is industrial, commercial or residential if it is assessed such under the Land Revenue Act. Otherwise, the land is agricultural in nature. The Supreme Court, in the case of *State of Karnataka v Shankara Textiles Mills Ltd*., held that the purpose of Section 83 "(i)s to prevent indiscriminate conversion of agricultural land into non-agricultural land. The provision strengthens the presumption that agricultural land is not to be used, as per the holder's sweet will, for non-agricultural purposes. This is also clear from the absence of any provision under (the) Act requiring permission to convert non-agricultural land into agricultural land"

In Karnataka, information on rights in agricultural land is set out in the record of Rights Tenancy and Crop in Inspections (RTC) which is maintained at the village level with the copy of the RTC maintained in the office of the Thasildar at the Taluk level. The RTC includes the following particulars,

a) The names of persons who are holders, occupants, owners, mortgages, landlords or tenants of the land or assignees of the rent or revenue therof;
b) The nature and extent of the respective interest of such persons and the conditions or liabilities if any attaching thereto;
c) The rent or revenue if any payable by or to any of such persons; and
d) Such other particulars as may be prescribed.

Further, any person acquiring by succession survivorship, inheritance, partition, purchase, mortgage, gift, lease, or otherwise, any right in the land is required to report the acquisition of such right to the prescribed officer under the Karnataka Land Revenue Act. However, if such right is acquired through a registered document, the person acquiring the right is exempted from reporting the acquisition. On receiving such information, the same is entered in the Register of Mutations. Objections are thereafter invited from all

interested persons, and if no objections are received the entries pertaining to the acquisition of rights are transferred from the register of Mutations to the Record of Rights. In the event of any objections being received, an enquiry is done into the objections, before transferring the entry into the record of rights. Every holder of agricultural land is supplied with a book known as a "Patta book" containing a copy of a record of rights pertaining to the land As in the case of a registered document, an entry in the Record of Rights or a certified entry in the Register of Mutations or a Patta Book are presumed to be true and is an evidence of title to the land.

In Karnataka agricultural land can be bought after fulfilling 3 requirements. They are: (1) The annual average income of the person including agricultural income, should be less than Rs. 2 lakhs. (2) The person must have an agricultural land in his name before the year 1974. (3) The person should be an agriculturist or an agricultural labour by profession.

While purchasing agricultural lands, a prudent purchaser would inspect the following documents closely before effecting the purchae.

a) Parent Documents to prove how the owner got the property,
b) Family Tree,
c) Index of Land,
d) Record of Rights,
e) Village Map,
f) Survey Map,
g) Nil Tenancy Certificate,
h) No Acquisition Proceedings Certificate,
i) RTC for 30 years,
j) Mutation Extracts,
k) Latest Tax Paid Receipts,
l) Endorsement from Tahsildar that the land is not Grant or Inam.

Formation of Private Layouts:

The demand for housing in and around Bangalore is constantly growing resulting in booming business for several real estate developers and builders. More often than not, these developers identify agricultural lands in and around Bangalore to launch their projects, be it forming a layout or construction of apartments. For a layout to be formed, it is mandatory for the developer to initially convert such agricultural land to non agricultural. This can be done by applying to the jurisdictional Deputy Commissioner appointed under the Karnataka Land Revenue Act, 1966. After converting the land, separate permission has to be obtained from the BDA for forming the layout.

Conversion of land from Agricultural to Non Agricultural purposes:

Section 95(2) of the Karnataka Land Revenue Act entitles an occupant of land assessed or held for the purpose of agriculture, to apply to the Deputy Commissioner seeking grant of permission to divert such land or a part of such land for a purpose other than agriculture. The Deputy Commissioner has the discretion to either grant or refuse permission so sought. The exercise of power by the Deputy Commissioner in the matter or refusal of permission or grant of permission on conditions, is made subject to the provisions of Section 95 and the Rules made under the Land Revenue Act. Sub Section (3) circumscribes the power of the Deputy Commissioner in the matter or refusal to grant diversion of land from agricultural use to non agricultural use to cases –

(i) Where the diversion is likely to defeat the provisions of any law for the time being in force;
(ii) where the diversion is likely to cause a public nuisance; or
(iii) where the diversion is not in the interests of the general public
(iv) where the occupant is unable or unwilling to comply with the conditions that may be imposed under Section 95(4) of the Act.

Section 95(4) provides that the Deputy Commissioner may impose conditions to secure the health, safety and convenience of the occupiers. Further, in case conversion is sought

for the purpose of forming building sites, conditions may be imposed that the dimensions, arrangement and accessibility of the sites are adequate for the health and convenience of the occupiers and are suitable to the locality and do not contravene the provisions of any law relating to town and county planning or the erection of buildings.

In *Special D.C v Bhargavi Madhavan*, the Karnataka High Court held that the Deputy Commissioners, when deciding upon an application for the conversion of land from agricultural to non-agricultural, i.e formation of building sites, have to observe the mandatory pre-requisites and conditions of law. The procedure to be adopted by the Deputy Commissioners in determining the conditions for grant of conversion must be just and reasonable and in accordance with the principles of natural justice. When conversion is sought for the purpose of forming sites, the Deputy Commissioner is required to call upon the applicant to furnish a "building sites scheme", which is proposed for the land. Such a building site scheme has to satisfy the requirement of Section 95(4) of the Land Revenue Act. The Court further held that the applicant is required to furnish information, when called upon to do so, regarding:

(a) location of the land and its surrounding areas;
(b) the manner in which the building sites are to be laid, roads to be formed, drains to be made on the land concerned is reflected in a layout plan;
(c) drainage, sanitary, water supply and electric supply arrangements proposed to be carried out under the "Building Sites Scheme";
(d) whether the "Building Sites Scheme" conforms to the requirement of law relating to Country and Town Planning;
(e) whether the "Building Sites Scheme" conforms to the requirement of law relating to the erection of a building on the land concerned

Sanction from the BDA:

After converting the land from agricultural to non agricultural, the developer has to then obtain sanction from the Planning Authority for forming a new layout. In this regard, Section 32 of the Bangalore Development Authority Act, 1976, enables private owners of land to assist the development of the City of Bangalore in an orderly fashion by obtaining

the permission of the BDA to form a layout. According to Section 32 of the Act, notwithstanding anything contrary in any law for the time being in force, no person shall form or attempt to form any extension or layout for the purpose of constructing buildings thereon without the express sanction in writing of the BDA and except in accordance with such conditions s the BDA may specify. Where the extension or layout lies within the local limits of the Corporation, the BDA is required to take the concurrence of the Corporation before according any sanction. In case the BDA and the Corporation do not agree on the formation of or the conditions relating to the extension or the layout, the matter is to be referred to the Government, whose decision on the same shall be final.

Any person intending to form a n extension or a new layout is required to apply to the Commissioner along with the plans and sections showing the following:

(f) the laying our of the sites of the area upon streets, lands or open spaces;
(g) the intended level, direction and width of the street;
(h) the street alignment and the building line and the proposed sites abutting the streets;
(i) the arrangement to be made for leveling, paving, metalling, flagging, channeling, watering, draining, conserving and lighting the streets and for adequate drinking water supply.

The BDA is required to dispose the application so made within a period of six months either by sanctioning the scheme, disallowing it or asking for further information with respect to it. The BDA is also empowered to require the applicant to deposit, before sanctioning the application, the sums necessary for meeting the expenditure for making roads, side-drains, culverts, underground drainage and water supply and lighting and the charges for such other purposes, provided that the applicant also agrees to transfer the ownership of the roads, drains, water supply mains and open spaces laid out by him to the BDA permanently without claiming any compensation. Additionally, the applicant may also be required to deposit further sums to meet a portion of the expenditure towards the execution of any scheme or work for augmenting water supply, electricity, roads, transportation and such other facilities within the Bangalore Metropolitan Area.

Where the BDA does not dispose the application within a period of six months, sanction will be deemed to be granted and the applicant is thereafter entitled to proceed to form the extension or layout. However, such formation of the extension or layout ought not to contravene any of the provisions of the BDA Act and the rules or bye-laws made under it.

Any person who forms or attempts to form any extension or layout in contravention of the above commits an offence and is liable, upon conviction, to pay a fine which may extend to Rs. 10,000/- (Rupees Ten Thousand only). Further, where any extension or layout is formed in contravention of Section 32 of the BDA Act, the BDA is empowered to either alter the extension or layout or demolish it. Such alteration or demolition can however be done only after affording an opportunity to the offender of being heard. Once a layout is formed in accordance with Section 32 of the BDA Act, 1976, the BDA cannot have any say in the allotment of the sites in such layout.

Section 170 of the Karnataka Municipalities Act, 1964, also similarly provides that notwithstanding anything contrary in any law for the time being in force, no person shall form or attempt to form any extension or layout for the purpose of constructing a building thereon without the express sanction in writing of the Municipal Council and except in accordance with such conditions as the Municipal Council may specify. In all other respect too, for all practical purposes, Section 170 of the Karnataka Municipalities Act, is analogous to Section 32 of the BDA Act. The following "Smaller Urban Areas" around Bangalore, which fall within the jurisdiction of the BDA, have City Municipal Councils or Town Municipal Councils as their local bodies of self governance;

a) Yelahanka;
b) Byatarayanapura;
c) Krishnarajapura;
d) Bommanahalli;
e) Dasarahalli;

f) Pattanagere;
g) Mahadevapura;
h) Anekal;
i) Kengeri;
j) Ramanagar;
k) Doddaballapur;
l) Channapatna;
m) Magadi;
n) Devanahalli;
o) Hoskote;
p) Vijaypura and
q) Kanakapura.

This gives rise to an interesting question – Whose permission is required to form an extension or layout if the lands in question fall within the jurisdiction of both the BDA as well as the concerned Municipal Council?

A close reading of both Section 32 of the BDA Act, 1976 and Section 170 of The Karnataka Municipalities Act, 1964, reveals that both the provisions start with the common non-obstante clause "Notwithstanding anything to the contrary in any law for the time being in force…" This being the case, two arguments would support the contention that it is the BDA and not the Municipal Councils, which is empowered to grant permission in case the lands fall under the jurisdiction of both the BDA and the Municipal Councils:

(a) BDA Act, 1976, is a special enactment in relation to planning and hence as the provisions of a special enactment override the provisions of a general enactment, the provisions of the BDA Act would apply in case of a conflict.
(b) BDA Act 1976, is a later enactment and hence would prevail over the provisions of the Karnataka Municipalities Act, 1964.

However, the controversy does not end here. Article 243-Q of the Indian Constitution, provides that there shall be constituted in every State,

a) A Nagar Panchayat

b) A Municipal Council for a smaller urban area and a Municipal Corporation for a larger urban area;

The Constitution also empowers the State to endow the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self government. Further, such laws may also provide for the performance of function and the implementation of schemes as may be entrusted to them including "regulation of land use and construction of buildings". Article 243-ZF provides that notwithstanding anything in this part (Part IX A), any provision of any law relating to Municipalities in force in a State immediately before the commencement of the Constitution (Seventy Fourth Amendment) Act, 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until the expiration of one year from such commencement, whichever is earlier. Effectively, it means that any State law which is inconsistent with the 74th Amendment to the Constitution can remain in effect for a maximum period of one year after the commencement of the 74th Amendment.

It could therefore be argued that although Section 32 of the BDA Act, 1976, is a special provision and later in point of time to Section 170 of the Karnataka Municipalities Act, 1964, Section 32 of the BDA Act has ceased to remain in effect after the expiry of one year of the commencement of the 74th Amendment, to the extent Section 32 applies to areas which fall under both the jurisdiction of Municipal Councils and the BDA. To the knowledge of this author, there are however no judicial pronouncements of the Karnataka High Court in this regard.

Regularisation of unauthorised constructions:

One of the reasons why the BDA has been finding it difficult to meet the increasing demand for residential sites is the disproportionately high number of unauthorised constructions on urban land. While wholesale demolition of such unauthorised construction would create law and order problems, it was felt necessary to have a compressive legislation for regularisation of certain types of unauthorised constructions. As a result, in the year 1991, the Karnataka Legislature passed the Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991. the said Act come into force with effect from 1-8-1992.

Section 3 of the Act provides for regularisation of constructions made in urban areas provided the unauthorised construction in question has been made prior to 1-1-1995 on the land belonging to the State Government or on land which is a revenue site owned by a person or in cases where the land, though belonging to the owner of a building, is proposed to be acquired under any scheme of acquisition but has not yet vested in favour of the authority for which the acquisition is proposed. In the case of *Shankarsa Kalburgi and Others v State of Karnataka*, it was held that where the applicant seeking regularisation is not the owner but only a person in occupation of land in pursuance of an agreement of sale made in his favour by the owner of the land, such an applicant has no locus standi to seek regularisation.

Section 4 of the Act lists the unauthorised constructions which shall not be regularised. These are:

(i) unauthorised construction coming in the way of existing or proposed roades, (including those proposed for widening) and railway lines, communications and other civic facilities or public utilities;
(ii) unauthorised constructions made in forest land or on tank bed;
(iii) unauthorised constructions made by any person on the land belonging to another

person over which the former has not title;
(iv) unauthorised constructions made in violation of the Urban (Land Ceiling and Regulation) Act, 1976 (Central Act 33 of 1976);
(v) unauthorised constructions on land belonging to the State government and appurtenant to any building belonging to the State government;
(vi) unauthorised constructions on land belonging to the Central Government;
(vii) unauthorised constructions made on land appurtenant to any building owned by the Central government or by any company owned or controlled by the State Government or Central Government;
(viii) unauthorised constructions made on land belonging to or vested in any authority or a Local Authority; and
(ix) unauthorised constructions on any land reserved for parks, play-grounds, open places or for providing any civic amenities.

Under the Act, no unauthorised construction shall be regularised if the applicant for regularisation or any member of his family owns any building or site within the urban area in which the unauthorised construction sought to be regularised is situated.

Procedure for Regularisation:

Under the Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991, the procedure for regularisation of unauthorised constructions is as follows:

An application has to be made and addressed to the "Competent Authority". The application is to be in accordance with From No. 1 prescribed under Rule 3 of the Karnataka Regularisation of Unauthorised Constructions In Urban Area Rules, 1994. The application is to be accompanied by a site plan of the land wherein the unauthorised construction is situated indicating the site and the location of the unauthorised construction including the appurtenant land. After hearing the applicant, the Competent Authority passes a provisional order and communicates the same to the applicant. If the unauthorised construction is made on land belonging to the State Government, the competent authority also makes a provisional order for grant of appurtenant land included in the unauthorised construction. Once a provisional order has been made by the competent Authority, the person in whose favour the order has been made is required to

pay the amount prescribed for the regularisation within a period of two months. In case the unauthorised construction is on the land belonging to the State Government and a provisional order is made in the applicants favour, the land is granted to the applicant who then becomes eligible to get a sale deed executed for such land in his favour and at his cost. Once the cost of regularisation is paid and the sale deed (if the unauthorised construction is on land belonging to the Sate Government), a final order is passed regularising the unauthorised construction. The orders of the Competent Authority have to be "speaking orders". Any order merely rejecting the application without disclosing the reasons will be invalid. It is pertinent to note that the deadline for making an application for the regularisation of unauthorised construction was 31st December 1995.

All unauthorised constructions not regularised under the Karnataka Regularisation of Unauthorised Constructions in Urban Areas Act, 1991, are liable for demolition and the supply of water or electricity is also liable to be disconnected without notice. Further, the persons who have made such unauthorised constructions are liable to be evicted summarily in accordance with the relevant law.

The Act was scrutinised by the Karnataka High Court in the case of *K.C. Raju Reddy v The Commissioner, BDA*. The court observed: "[t]he intention of the Act is not to encourage encroachment of properties belonging to others. Protection of life, liberty, reputation and property of its citizens has always been considered as one of the fundamental functions of a democratic Government. The very notion of any statute or Government Order permitting or encouraging any person to illegally encroach on another's property and then claim ownership thereto is anathema to the Rule of law and will not be permitted to stand. " Accordingly, an applicant would be entitled to regularisation only as per the provisions of the Act. The Court went on to observe - "There is an urgent need to find a proper and satisfactory solution by forming a comprehensive programme involving at least a three pronged attack –

(a) dealing with the existing unauthorised structures by disposing of the pending applications for regularisation without delay but without sacrificing or affecting the orderly and planned development of the city;

(b) preventing further unauthorised structures and encroachments by strict preventive and punitive action;

(c) making available sites and low cost houses in large number, by BDA or other authorities forming layouts so that the public do not find the need to resort to purchase of illegal sites or unauthorised constructions."

The Court further observed that there may be several other facets to the problem which may require consideration and solution. It is for the legislature and executive to take necessary steps and find suitable solutions.

The case of *Corporation of City of Bangalore v T Venkatapathy Setty and another* is a perfect example of the stand off between the judiciary on the one side and the executive and the legislature on the other, on the issue of regularisation of unauthorised constructions in Bangalore. This case reflect the true picture of the prevailing situation relating the unauthorised constructions in the city. In this case, as early as in 1983, the Corporation sought to demolish certain unauthorised constructions belonging to the defendant. The defendant approached the Civil Court and, after a period of ten years, obtained a decree from the Civil Court restraining the Corporation from demolishing the construction subject to the condition that the plaintiff approach the Standing Committee as provided under Section 320 (2) and Section 344 of the Karnataka Municipal Corporations Act. The decision of the Civil Court was challenged by the Corporation before the High Court wherein it was urged that the High Court deprecate the action of builders in obtaining a stay before the Civil Court and then dragging on the case for years, thereby frustrating the actions of the Corporation in exercising its powers. Taking serious note of this trend, the High Court directed the Trial Courts to refrain from stopping the demolition on frivolous and unsustainable grounds. The High Court clarified that

regularisation is a special power that has to be sparingly exercised in the minimum number of cases and provided, it does not offend the basic requirements and set at naught the very provisions that have been breached. The High Court further clarified that the power to regularise presupposes that the breach, if any, was marginal and more so that the end result will not in any way interfere with or cause impediments to the basic provisions. The High Court observed that the manner in which the Corporation and the BDA have functioned in this regard, in the recent past, has resulted in giving a complete and total go-by to the very provisions that they are expected to observe and the total breakdown of the planning process is directly attributable to this state of affairs. The Court took cognizance of the fact that unfortunately, when an illegality in relation to property takes place there is invariably a cover-up action and therefore, it is not often that a Court finds the law being enforced by the authorities. Passing interim orders of stay by the Courts creates an impression in the public mind that the wrong doer had succeeded in getting the approval and protection of the Court. The Court went on to observe that every time an honest official decides to implement the law, the elected representatives of the people such as Corporators, M.L.As, M.Ps, Ministers and party leaders, whose obligation is to uphold the law, actively interfere and often succeed in stopping the action after which the officer is invariably at the receiving end which certainly means a transfer to a punishment station. The Court thereafter suggested it would be desirable, in the light of the past experience, for the State Government to consider the immediate introduction of certain amendments for the reasons set out below:-

a) That a provision be incorporated in each of the relevant statutes, that in all cases of unauthorised constructions and instances where breaches of the regulations have taken place, that the property involved in the breach shall stand forfeited to the State Government. Having regard to the rampancy that is prevalent in the urban areas because of the high gains that are involved and the attendant corrupt practices, it would be necessary to ensure that whereas today, the breaking of the law provides windfall gains which explains why every conceivable form of corrupt practice is found profitable, that if a forfeiture clause is introduced, the observance of the law will turn out to be profitable and the breach thereof would have disastrous economic consequences. The power of regularisation will have to be severely limited, it will have to be confined only to marginal

and borderline cases where there is a valid and good ground for making an allowance by even in such instances the regularisation fee will have to be made extremely high in order to prevent the abuse of this power. Secondly, in all cases of regularisation, speaking orders will have to be passed in respect of which one compulsory review will have to be made necessary for obvious reasons.

b) That along with the forfeiture clause, a provision be introduced making the officers who have either been guilty of dereliction of duty in permitting the illegality as also those who have actively colluded in the action such as passing of the plans, granting of the occupancy certificates, etc., be made personally liable for all amounts that the public authority is required to spend to undo this damage. Similarly, these officials should be held personally liable *vis a vis* third parties who may be victims such as purchasers of the structures in question who may ultimately come to grief if the property is demolished or forfeited.

c) Penal provisions be incorporated in the statutes holding all those persons including the concerned officials liable to prosecution with certain basic minimum punishments provided for all such breaches.

d) That since the government and the public authorities are equally in need of commercial and residential accommodation, that an example be made as is done under the Income Tax Act, by confiscating the offending properties instead of incurring heavy expenditure and wanton loss by merely seeking to demolish them which is in fact rarely ever done. In those of the cases where demolition is inadvisable such as in high rise buildings etc., and where the forfeiture clause is applied, in appropriate cases, an option may be provided to an interested party to retain the premises by paying a redemption fine which shall be equivalent to three times the market value.

The Court recommended that the State Government should seriously consider incorporating the requisite amendments in the law immediately so that action along more constructive lines than those which provision is made can be undertaken and this would eminently be in public interest also. The Court also observed that it would be highly desirable that area-wise surveys be undertaken in respect of all residential/commercial structures and that all cases in which breaches have been detected be reviewed. If the regulations in question have been breached, and the action has been covered up, the parties concerned cannot be permitted to be beneficiaries of this situation merely because of the passage of time. Furthermore, the wisdom in adopting such a procedure will be that in all cases of immovable structures where influence or corrupt practices have been employed, merely because the structure is complete or has been permitted to be wrongly regularised or occupied, the cases shall not be treated as glaring monuments to illegalities

by shall always be open to rectification in which case, the incentive to habitually breaking the law and getting away with it will no longer be an attractive proposition.

Although over eight years have elapsed since the Court made the above observations, to the knowledge of this author, no fresh laws or amendments have been introduced in any of the applicable local legislations giving effect to the suggestions made by the Court.

Bangalore City Planning Area, Zonal Regulation (Amendment and Validation) Act, 1996.

The other statutory enactment with respect to regularisation of unauthorised constructions is the Bangalore City Planning Area, Zonal Regulation (Amendment and Validation) Act, 1996. The scope, purport and intent of the Act is best reflected in the Supreme Court decision rendered in the case of *Bhaktavar Trust v MD Narayan*. A study of this case law largely reflects the double standards adopted by the Authorities in enacting and enforcing planning laws. It also reflects the futility of the common man in attempting to challenge patently unauthorized constructions.

In 1980 the builders were granted permission to construct eight-storied building, eighty feet in height, in Rajmahal Vilas Extension, Bangalore by the Corporation. The permission was challenged by the adjoining property owners alleging that the permission granted by the Corporation is in contravention of the Outline Development Plan and the Zonal Regulations framed for the City of Bangalore under the provisions of the Karnataka Town & Country Planning Act, 1965 ("the Planning Act").. Pertinently, the outline development plan and the Zonal Regulations framed under the Act provided for maximum height of new construction as 55 feet, whereas Rule 16 of Bye-laws 38 framed by the Bangalore Municipal Corporation provided maximum height of new building as 80 feet. The Division Bench of the Karnataka High Court passed an order restraining the builder from constructing the building. Aggrieved, the builders challenged the order before the Supreme Court. The Supreme Court permitted the builders to continue the

construction on the condition that that in the event of the writ petition being decided against them, they would have no objection to the demolition of the portion of the building made by them. Thereafter in June 1982, after hearing arguments, the High Court held that the licence to construct the building up to 80 feet was repugnant to the Zonal Regulations framed under Section 13 of the Planning Act which provided a maximum height of new building as 55 feet. As such, the High Court allowed the writ petition striking down the permission accorded to the builders to build up to the height of 80 feet. This decision was unsuccessfully challenged by the builders before the Supreme Court. The Commissioner thereafter passed an order that 3 floors (6th, 7th and the 8th floors) of the building constructed by the builders by demolished. Upon the failure of the builder to demolish the three floors as per the orders of the Commissioner, a contempt petition was filed in the High Court for non-compliance of the order of the High Court. While the matters were pending, the Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, 1996, (Amending and Validating Act) was passed by the Karnataka Legislature, modifying the maximum height of the new building up to above 165 feet and validating the new construction raised in violation of Outline Development Plan and the Zonal Regulations. The Act, which received the assent of the Governor on 14.3.1996 and was published in the Karnataka Gazette Extra-ordinary on the same day, reads thus :

"1. *Short title and commencement* :- (1) This Act may be called the Bangalore City Planning Area Zonal Regulations (Amendment and Validation) Act, 1996.

(2) It shall come into force at once.

2. Amendment of Zonal Regulations appended to the Outline Development Plan :-

Notwithstanding anything contained in any judgment, decree or order of any court, Tribunal or any other authority, Zonal regulations appended to the Outline Development Plan of the Bangalore City Planning Area made under the Karnataka Town and Country Planning Act, 1961 (Karnataka Act 11 of 1963) as they existed during the period from 22nd May 1972 to 12th October, 1984 (hereinafter referred to as the said Zonal Regulations) shall be deemed to have been modified as specified in the Schedule with

effect from the 22nd Day of May, 1972.

3. Regularisation of certain constructions :-

(1) Notwithstanding anything contained in the Karnataka Town and Country Planning Act 1961 (Karnataka Act 11 of 1963) or in the said Zonal Regulation as modified by this Act if any person after obtaining permission from the Corporation of the City of Bangalore during the period from 22nd May, 1972 to 12th October, 1984 has constructed any building deviating from the said Zonal Regulations as modified by this Act or the permission granted by the Corporation of the City of Bangalore such person may within thirty days from the date of commencement of this Act, apply to the State Government for regularisation of such construction in accordance with the provisions of this Section.

(2) There shall be a committee for the purpose of regularisation of constructions referred to in sub-section (1) consisting of the following members, namely :-

(i) The Secretary to Chairman Government, Urban Development Department

(ii) The Commissioner, Member Corporation of the City of Bangalore

(iii) The Commissioner, Member Bangalore Development Authority

(iv) The Director of Town Member Secretary Planning

(3) The Committee shall scrutinise the applications received under sub-section (1) and after holding such enquiry as it deems fit if it is satisfied that the deviation referred to in sub-section (1) does not constitute material deviation from the said Zonal Regulations as modified by this Act or the permission granted by the Corporation of the City of Bangalore it may make recommendations to the Government for regularisation subject to payment of such amount as may be determined by it having regard to, -

(i) the situation of the building;

(ii) The nature and extent of deviation;

(iii) Any other relevant factors.

Provided that the amount so determined shall not be less than an amount equivalent to one and half times the then market value of such construction.

(4) The State Government may, on receipt of the recommendation of the committee and after payment of the amount by the appellant towards regularisation of such construction, order for regularisation of the construction.

4. *Validation* :- Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any permission to construct building granted by the Corporation of the City of Bangalore during the period from 22nd May, 1972 to 12th October 1984 and building constructed in pursuance to such permission and regularised under Section 3 shall be deemed to have been validly granted or constructed and shall have effect for all purposes as if the permission had been granted and buildings had been constructed in conformity with the said Zonal Regulations as modified by this Act, and accordingly;

(a) all such permissions granted, buildings constructed or proceedings or things done or action taken shall for all purposes deemed to be and to have always been done or taken in accordance with law.

(b) No suit or other proceeding shall be instituted, maintained or continued in any court or before any Tribunal or other authority for cancellation of such permission or demolition of buildings which were constructed after obtaining the permission from the Corporation of the City of Bangalore and were regularised under Section 3, or for questioning the validity of any action or things taken or done in pursuance to the said Zonal Regulations as modified by this Act, and no Court shall enforce or recognise any decree, judgment or order declaring any such permission granted or buildings constructed, action taken or things done in pursuance to the said Zonal Regulations as modified by this Act as invalid or unlawful."

Effectively, the Amending and Validating Act, retrospectively modified the Zonal Regulations of 1972 by raising the height of a building from 55 feet to above 165 feet

After this Act came into effect, a fresh round of litigation commenced. The constitutional validity of the validating Act was challenged before the High Court. The State of Karnataka and the builders defended the validity of the Act. Subsequently, Karnataka High Court allowed the writ petition and struck down the Act holding it to be constitutionally invalid. The High Court was, *inter alia,* of the view that the impugned Act, instead of curing the basis of the decision rendered by the High Court, purported to set at naught the decision given by the High Court which was upheld by the Supreme Court; that the object of the impugned Act was to invalidate the pronouncement of the High Court and not to remove the fact of invalidity on the action taken by the appellant; and that Section 2 of the Act only amends the Zonal Regulations appended of the Outline Development Plan made and framed by the Executive in exercise of the delegated power of legislation vested in it without amending the provisions of the Planning Act. The decision of the High Court was challenged before the Supreme Court. The Respondents contended that the impugned amendment was tantamount to a naked usurpation of judicial power inasmuch as its stated purpose and effect were to nullify the effect of the earlier judgment adjudicating the rights between the parties. Further, the intention of the legislature was to render the decision of the High Court infructuous rather than to correct any infirmity in the legal position.

Setting aside the judgment of the Karnataka High Court and upholding the validity of the Act, the Supreme Court held that "[i]t is well settled that the Parliament and State Legislatures have plenary powers of legislation within the fields assigned to them and subject to some constitutional limitations, can legislate prospectively as well as retrospectively. This power to make retrospective legislation enables the legislature to validate prior executive and legislative acts retrospectively after curing the defects that led to their invalidation and thus makes ineffective judgments of competent courts declaring the invalidity. It is also well settled that a validating Act may even make ineffective judgments and orders of competent Courts provided it, by retrospective legislation, removes the cause of invalidity or the basis that had led to those decisions." The

Supreme Court also held that the intention of the legislature in passing of a particular statute is beyond the pale of judicial review.

Planning Laws:

The Karnataka Town and Country Planning Act:

Urban planning in Bangalore is largely governed by the Karnataka Town and Country Planning Act, 1961. The Karnataka Town and Country Planning Act aims to provide for the regulation of land use development and for the making and execution of town planning schemes in the State of Karnataka.

In order to insure that town-planning schemes are made in a proper manner and their execution is made effective, the Act provides for declaration of "local planning areas" and a "local authority" to prepare a development plan for the entire local planning area falling within its jurisdiction. The Bangalore Development Authority is the Planning Authority for the local planning area comprising the city of Bangalore. Every Planning Authority is a body corporate having perpetual succession on a common seal having power to acquire hold and dispose property, enter into contracts and sue and be sued in its own name.

Every Planning Authority consists of the following members:

i. Chairman
ii. Town Planning Officer (who is the Member Secretary to the Planning Authority)
iii. Representatives of local bodies and
iv. Three other Members appointed by the State Government

The extent of the Local Planning Area of Bangalore comprises the Bangalore city and the surrounding Towns and Villages as listed in Notification No. HDP 496 TTP 83(1) dated 06-04-1984.

The Karnataka Town and Country Planning Act mandates every Planning Authority to prepare an Outline Development Plan and a Comprehensive Development Plan for the area falling under its jurisdiction.

The Outline Development Plan generally indicates the manner in which the Development and Improvement of the entire Planning Area is to be carried out and regulated. In

particular, the Outline Development Plan includes,

a) A general land-use plan and zoning of land-use for residential, commercial, industrial, agricultural, recreational, educational and other public purposes;

b) Proposals for roads and highways and widening of such roads and highways in congested areas;

c) Proposals for the reservation of land for the purpose of the union, any state, any local authority or any other authority established by law in India;

d) Proposals for declaring certain areas as areas of special control, development in such areas being subject to such regulations as may be made in regard to building line, height of buildings, floor area ratio, architectural features and such other particulars as may be prescribed;

e) Such other proposals for public or other purposes as may from time to time be approved by the Planning Authority or directed by the State Government in this behalf.

Every land use and change in land in the development of the Planning Area is to thereafter conform to the Outline Development Plan. Any change in the local use can be made only with written premises of the Planning Authority. In the case of *Special Deputy Commissioner v Narayanappa*, the question arose whether the Deputy Commissioner, under Section 95 of the Karnataka Land Revenue Act, 1964, could continue to exercise jurisdiction over lands falling within the Bangalore City Planning Area and covered under the Comprehensive Development Plan. The Karnataka High Court held that under Section 14 of the Karnataka Town and Country Planning Act, 1961, a written permission for change of land use in respect of land falling within the Bangalore City Planning Area and covered by the CDP, is mandatory. Therefore, the authority of the Deputy Commissioner under Section 95 of the Karnataka Land Revenue Act, to grant conversion of land from agricultural to non-agricultural purpose in respect of the lands falling within the planning area is ousted.

Subsequently amendments were made to both, the Town and Country Planning Act, 1961, as well as the Karnataka Land Revenue Act, 1964. Under the Town and Country Planning Act a proviso to section 14(2) was inserted with affect from 19.04.91 wherein it was provided that any change in land use under section 14 of the Karnataka Town and Country Planning Act needed a diversion of Agricultural land to non agricultural purposes, such use or change of use is not to be permitted, unless permission is obtained in accordance with the provisions of the Karnataka Land Revenue Act. Simultaneously the Karnataka Land Revenue Act was also amended providing that if any occupant of land assessed or held for the purpose of agriculture wished to divert that land or any part thereof, he shall *notwithstanding anything contained in any law for the time being in force* apply for permission to the Deputy Commissioner, who may, subject to the provisions of Section 95 of the Land Revenue Act and the rules made thereunder, refuse permission or grant it on such conditions as he may think fit. A proviso to section 95(2) was also introduced with effect from 20th March 1991 to the effect that the Deputy Commissioner shall not refuse permission for diversion of Agricultural land to Non Agricultural purposes where the land is included in the Outline Development Plan or the Comprehensive Development Plan and if such diversion is in accordance with a purpose of land use specified in respect of the land in the Comprehensive Development Plan.

These amendments, both to the Town and Country Planning Act and the Land Revenue Act have apparently been passed in order to over come the decision of the Karnataka High Court in the case of *Special Deputy Commissioner v Narayanappa* mentioned above. The validity of these amendments have been upheld by the Karnataka High Court in the case of *Daulatraj v State*.

With in a period of three years from the date of the Publication of Outline Development Plan, the Planning Authority prepares a Comprehensive Development Plan. The Comprehensive Development Plan consists of a series of Maps and Documents which

indicate the manner in which the Development and Improvement of the entire Planning Area is to be carried out and regulated. The Comprehensive Development Plan is to include proposes for,

a) Comprehensive zoning of land-use for the planning area, together with zoning regulations;

b) Complete street pattern, indicating major and minor roads, national and state high ways, and traffic circulation pattern, for meeting immediate and future requirements;

c) Areas reserved for agriculture, parks, play-grounds and other recreational uses, public open spaces, public buildings and institutions and area reserved for such other purposes as may be expedient for new civic development;

d) Widening of such road and highways in congested areas;

e) Areas for new housing;

f) New areas earmarked for future development and expansion;

g) The stages by which the plan is to be carried out.

Further, the report is to consist of the relevant details in regard to,

a) Acquisition of land for purpose of implementing with Comprehensive Development Plan,

b) The financial responsibilities in connection with the proposed improvements,

c) The manner in which these responsibilities have to be met.

Section 22. of the Karnataka Town and Country Planning Area provides for the procedure to be followed by the Planning Authority for getting the Comprehensive Development Plan approved. This includes the provision for the publication of the draft

Comprehensive Development Plan by way of a notification, which gives the public an opportunity to give their comments. Thereafter, once the Comprehensive Development Plan and the report are finally approved, they are published by the Planning Authority. On publication, the Comprehensive Development Plan supersedes the Outline Development Plan. The Comprehensive Development Plan is to be revised at least once in ten years after coming in to force. The Karnataka Government under GO No. HUD 139 MNJ 94 dated 5thJanuary, 1995 has passed the zoning of land use and regulations.

The Bangalore Development Authority Act, 1976:

The Bangalore Development Authority Act has been passed to provide for the establishment of a Development Authority for the development of Bangalore and areas adjacent to Bangalore.

The Bangalore Development Authority (which is the Planning Authority for the Bangalore Metropolitan Area) is a body corporate having perpetual succession and a common seal with power to acquire hold and dispose property, enter into contracts and sue and be sued in its own name.

The Bangalore Development Authority consists of the following members:

a) Chairman
b) One Finance Member
c) An Engineer (who is to be an officer of the Karnataka Engineering Service)
d) Town Planner
e) Architect
f) The Commissioner Corporation of the City of Bangalore (exofficio)
g) Two members of the Karnataka State Legislature
h) Two persons of whom one is a woman and one belonging to the schedule cost for the scheduled trips
i) Four others of whom one represents the labour
j) Representative of the Bangalore Water Supply and Sewerage Board
k) Representative of the Karnataka Electricity Board
l) Representative of the Karnataka State Road Transport Corporation
m) Two Councilors of the Bangalore City Corporation

Of the above the Chairman, the Engineer, the Finance Member and the Town Planning Members are whole time members and other members are part time members.

The objects of the Bangalore Development Authority are to promote and secure the Development of the Bangalore Metropolitan Area comprising the city of Bangalore and other areas adjacent to it as the Government may notify. For the purpose of development of the Bangalore Metropolitan Area, the BDA has the power to acquire, hold, manage and dispose of movable and immovable property, to carryout building, engineering and other operations and generally to do all things necessary or expedient for the purpose of Development.

The Bangalore Development Authority draws up detailed development schemes which mandatorily provide for,

a) The acquisition of any land which, in the opinion of the Authority, will be necessary for or affected by the execution of the scheme;
b) Laying and re-laying out all or any land including the construction and reconstruction of buildings and formation and alteration of streets;
c) Drainage, water supply and electricity;
d) The reservation of not less than fifteen percent of the total area of the layout for public parks and playgrounds and an additional are of not less than ten percent of the total area of the layout for civic amenities

The scheme may also provide for,

a) Raising any land which the Authority may consider expedient to raise to facilitate better drainage;
b) Forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;
c) The sanitary arrangement required;

Once a development scheme is prepared the Bangalore Development Authority prepares a notification to this effect. The Notification is sent to the Corporation giving it an

opportunity to make any representation with respect to the scheme within a period of 30 days. Thereafter the scheme is published in the Official Gazette. Every person whose name appears in the assessment list or in the land revenue records register as being primarily liable to pay the property tax or land revenue assessment on any building or land proposed to be acquired is served with a notice calling upon him/her to show cause why the contemplated acquisition should not be made. Although Section 17 (5) of the Act provides that the show cause notice is to be served during the next thirty days after it is published in the Official Gazette, the Karnataka High Court has held that though service of notice is mandatory, it is not mandatory that it be served within thirty days. It can be served even beyond the period of thirty days. this provision cannot be held to be mandatory Thereafter, after considering the representations made the Bangalore Development Authority finalizes the development schemes and submits the same to the Government for sanction. Once the scheme is sanctioned by the Government, the Government publishes a declaration stating the sanction of the scheme in the Official Gazette wherein it is also stated that the land sought to be acquired by the Bangalore Development Authority is for a public purpose. The declaration is required to state the limits within which the land proposed to be acquired is situate, the purpose for which it is needed, its approximate area and the place where the plan of the land may be inspected. Upon the declaration, the BDA proceeds to execute the scheme. If it appears to the BDA that an improvement can be made in any part of the scheme, it may alter the scheme and proceed to execute it. The Karnataka High Court has consistently held that the Sections 17 and 19 of the Act are independent of the Land Acquisition Act, which is a Central enactment providing for acquisition of lands. Section 6(1) of the Central Act provides for a limitation period of one year from the date of the preliminary notification for the making of the final declaration. The time limit specified in the Land Acquisition Act is not applicable for the purpose of issuing the final notification under the BDA Act. At the same time, it cannot be said that the authorities are at liberty to issue the final notification as and when they desire. The Karnataka High Court has held that such power of issuing the final notification is to be exercised within a reasonable time. If it is not exercised

within a reasonable time, it amounts to unreasonable exercise of power. Taking into consideration various factors involved in the acquisition process under the BDA Act, or any other enactment in the State of Karnataka which provide for acquisition of land for a public purpose, it has been held that three years time is a reasonable limit for issuing the final declaration. The BDA's power to make an improvement to the scheme has been interpreted to mean making an alteration in the layouts such as formation of sites, roads, for providing of civic amenities to be made and such alteration has to result in improving the scheme. Once the lands are acquired, the BDA is duty bound to implement the scheme and cannot divert the land for a purpose different from the one specified in the scheme. The Bangalore Development Authority is required to execute the scheme within a period of five years. The Act also empowers the BDA, with the previous approval of the Government, to enter into an agreement with the owner of any land or any interest therein, for the purchase of such land or interest therein for the purpose of the Act. No part of the land acquired by the State Government can be released by the BDA and the BDA is not competent to denotify the acquisition of the land which has been acquired for it by the State Government.

The Bangalore Development Authority is also empowered to levy a tax on lands or buildings or both situated within its jurisdiction at the same rate at which the Corporation levies taxes within its jurisdiction.

The Bangalore Metropolitan Region Development Authority

As the State Government felt that there is no proper coordination among the local bodies like the Bangalore Development Authority, the Bangalore Water Supply and Sewerage Board, the Karnataka Electricity Board, and the Corporation etc. within the Bangalore Metropolitan Area. It decided to set up the Bangalore Metropolitan Region Development Authority under a separate legislation. The Bangalore Metropolitan Region Development Authority is set up for the purpose of Planning, coordinating and supervising the proper and orderly development of the area falling within the Bangalore Metropolitan Region.

The Bangalore Metropolitan Region consists of the following members:

a) The Chief Minister of Karnataka who shall be the Chairman;
b) The Minister in charge of Urban Development who shall be the Vice-Chairman;
c) The Chairman, Bangalore Development Authority;
d) The Mayor, Corporation of the City of Bangalore
e) The Chief Secretary to the Government of Karnataka;
f) The Divisional Commissioner, Bangalore Division, Bangalore;
g) The Secretary, Finance Department, Government of Karnataka;
h) The Secretary, Housing and Urban Development Department, Government of Karnataka;
i) The Secretary, Public Works Command Area Development, Government of Karnataka;
j) The Secretary, Commerce and Industries Department, Government of Karnataka;
k) The Chairman, Bangalore Water Supply and Sewerage Board;
l) The Chairman, Karnataka Housing Board;
m) The Chairman, Karnataka Slum Clearance Board;
n) The Chairman, Karnataka Electricity Board;
o) The chairman, Karnataka State Road Transport Corporation;
p) The Director of Town Planning, Government of Karnataka;
q) The Chief Conservator of Forests (General), Government of Karnataka;
r) The Chairman, Bangalore Urban Art Commission;
s) The Divisional Railway Manger, Southern Railway, Bangalore (with the consent of the Central Government;)
t) The General Manager, Bangalore Telephones Bangalore (with the consent of the Central Government;)
u) Four members appointed by the Government representing labour, women and schedule Castes and Scheduled Tribes;
v) Four members of the Karnataka State legislature representing the Bangalore Metropolitan Region, appointed by the Government; and
w) Four members from amongst the persons representing the local Authorities in the Bangalore Metropolitan Region, appointed by the Government.
x) The Metropolitan Commissioner, who shall be the member-Secretary.

The powers and functions of the Bangalore Metropolitan Region Development Authority are:

i. To carry out a survey of the Bangalore Metropolitan Region and prepare reports on the surveys so carried out;
ii. To prepare a structure plan for the development of the Bangalore Metropolitan Region;

iii. To cause to be carried out such works as are contemplated in the structure plan;
iv. To formulate as many schemes as are necessary for implementing the structure plan of the Bangalore Metropolitan Region;
v. To secure and co-ordinate execution of the town planning scheme and the development of the Bangalore Metropolitan Region in accordance with the said schemes;
vi. To raise finance for any project or scheme for the development of the Bangalore Metropolitan Region and to extend assistance to the Local Authority in the Region for the execution of such project or scheme;
vii. To do such other acts and things as may be entrusted by the Government or as may be necessary for, or incidental or conductive to, any matters which are necessary for furtherance of the objects for which the Authority is constituted;

viii. To entrust to any local Authority the work of execution of any development plan or town planning scheme;
ix. To co-ordinate the activities of the Bangalore Development Authority, the Corporation of the City of Bangalore, the Bangalore Water Supply and Sewerage Board, the Karnataka Slum Clearance Board, the Karnataka Electricity Board, the Karnataka Industrials Areas Development Board, the Karnataka State Road Transport Corporation and such other bodies as are connected with developmental activities in the Bangalore Metropolitan Region.

Consequent of the setting up of the Bangalore Metropolitan Region Development Authority all development within the Bangalore Metropolitan Region is to be carried out only with the expresses permission of the Bangalore Metropolitan Region Development Authority. Further, even the local authorities empowered to grand permission for any development within the Bangalore Metropolitan Region can do so only after the Bangalore Metropolitan Region Development Authority grants permission for such developments. The Bangalore Metropolitan Region Development Authority is also empowered to carry out Development plans and schemes formulated by it and further, is also empowered to issue directions to the Bangalore City Corporation, the Bangalore Development Authority, the Bangalore Water Supply and Sewerage Board, the Karnataka Electricity Board and the other bodies connected with the development activities within the Bangalore Metropolitan Region. Such directions issued prevail over any directions issued by the Bangalore Development Authority under section 52 of the Bangalore Development Authority Act, 1976. The Bangalore Metropolitan Region Development

Authority is also empowered to carryout the directions issued by it in the event of any failure of the local body concerned to comply with the Bangalore Metropolitan Region Development Authority directions.

The 74th Amendment: An overview:

The 73rd and the 74th amendments to the Indian Constitution in 1994 have been regarded as landmarks in the evolution of local governments in India. The Constitution (73rd Amendment) Act, 1992 (commonly referred to as Panchayat Raj Act) came into effect on April 24th, 1993 and the Constitution (74th Amendment) Act, 1992 (the Nagarpalika Act) came into effect on June 1st, 1993. While the 73rd amendment provides for constitution of Panchayats in rural areas, the 74th amendment provides for constitution of Municipalities in urban areas.

Since local government is a State subject in Schedule VII to the Constitution, legislation with respect to local government can only be done at the State level. Therefore, upon the coming into force of the 73rd and the 74th amendments, it was the tasks of the respective States to pass laws in conformity with the amendments.

The amendments contain both mandatory and discretionary provisions. While the mandatory provisions contain the word "shall" in reference to the steps that individual States need to take to implement the amendments, the discretionary provisions contain the word "may". Effectively, the discretionary provisions envisage a vision, leaving it to the individual States to decide upon the extent to which it could legislate.

Under the 74th amendment, the discretionary provision with respect to Urban Planning is contained in Article 243 W which reads as follows:

243W. Powers, authority and responsibilities of Municipalities, etc.—

Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow—

(a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self- government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to—

(i) the preparation of plans for economic development and social justice;

(ii) the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule;

(b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

The relevant entries under the Twelfth Schedule are:

1. Urban planning including town planning.
2. Regulation of land-use and construction of buildings.
3. Planning for economic and social development.
4. Roads and bridges.
5. Water supply for domestic, industrial and, commercial purposes.
10. Slum improvement and upgradation.
12. Provision of urban amenities and facilities such as parks, gardens, play-grounds.
17. Public amenities including street lighting, parking lots, bus stops and public conveniences.

The mandatory provisions are contained in Articles 243-ZD and 243-ZE which read as follows:

243ZD. Committee for district planning.—

(1) There shall be constituted in every State at the district level a District Planning Committee to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole.

(2) The Legislative of a State may, by law, make provision with respect to—

(a) the composition of the District Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than four-fifths of the total number of members of such Committee shall be elected by, and from amongst, the elected members of the Panchayat at the district level and of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district;

(c) the functions relating to district planning which may be assigned to such Committees;

(d) the manner in which the Chairpersons of such Committees be chosen.
(3) Every District Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) matters of common interest between the Panchayats and the Municipalities including spatial planning, sharing of water and other physical and natural resources, the integrate development of infrastructure and environmental conservation;

(ii) the extent and type of available resources whether financial or otherwise;

(b) consult such institutions and organizations as the Governor may, by order, specify.

(4) The Chairperson of every District Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

243ZE. Committee for Metropolitan Planning.—

(1) There shall be constituted in every Metropolitan, area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

(2) The Legislature of a State may, by law, make with respect to—

(a) the composition of the Metropolitan Planning Committees;

(b) the manner in which the seats in such Committees shall be filled:

Provided that not less than two-thirds of the members of such Committee shall be elected by, and from amongst, the elected members of the Municipalities and Chairpersons of the Panchayats in the, Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area;

(c) the representation, in such Committees of the Government of India and the Government of the State and of such organisations and institutions as may be deemed necessary for carrying out the functions assigned to such Committees;

(d) the functions relating to planning and coordination for the Metropolitan area which may be assigned to such Committees;

(e) the manner in which the Chairpersons of such Committees shall be chosen.

(3) Every Metropolitan Planning Committee shall, in preparing the draft development plan,—

(a) have regard to—

(i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

(ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical and natural resources, the integrated development of infrastructure and environmental conservation;

(iii) the overall objectives and priorities set by the Government of India and the Government of the State;

(iv) the extent and nature of investments likely to be made in the Metropolitan area by agencies of the Government of India and of the Government of the State and other available resources whether financial or otherwise;

(b) consult such institutions and organisations as the Governor may, by order, specify.

(4) The Chairperson of every Metropolitan Planning Committee shall forward the development plan, as recommended by such Committee, to the Government of the State.

In keeping with the mandates of the 74th Amendment, the Karnataka Legislature has amended the existing laws to provide for the constitution of Metropolitan Planning Committees for the Metropolitan areas. Every Corporation is required to prepare a development plan every year and forward the same to the District Planning Committee or

the Metropolitan Planning Committee as the case may be. Similarly, even the Municipal Councils are now required to prepare development plans every year and forward the same to either the District Planning Committee or the Metropolitan Planning Committee as the case may be. It is pertinent to note that no effective legislation has been passed by the Karnataka Legislature to implement the discretionary provisions as envisaged under Article 243 W to the Constitution. Further, there are no provisions in the concerned legislations providing for the implementation of the plans prepared either by the Corporation or the Municipal Council.

One is constrained to conclude that at least with respect to Urban Planning, only cosmetic changes have been made to the applicable laws in Karnataka pursuant to the coming into force of the 73rd and the 74th Constitutional amendments. The BDA's jurisdiction which extends over the area falling under the Bangalore City Corporation and as many as seventeen Municipal Council's surrounding Bangalore remains unaffected. BDA continues to be the Planning Authority over the areas covered by the Bangalore City Corporation and seventeen other Municipal Councils. Since the 74th amendment makes it discretionary for the States to legislate empowering the Municipalities with the responsibility of urban planning, it would be difficult to contend that BDA's extensive jurisdiction as a Planning Authority is violative of the 74th Amendment, although it is very much against the spirit of the same. At least two Committee reports have questioned the role of the BDA pursuant to the 74th Amendment. The Committee on "Urban Management of Bangalore City", which was headed by the then Commissioner, Bangalore City Corporation, Dr. A Ravindra, submitted its report to the Government of Karnataka in November 1997, inter alia observing that the BDA's role as a Planning Authority would become redundant upon the setting up of the Metropolitan Planning Committee (as envisaged under Section 503-A of the Karnataka Municipalities Act). The report on "Urbanisation Policy, Amendments to Town and Country Planning Act, Town Planning Manual & Urban Development Authorities" submitted in 2002 by the Expert Committee constituted by the Government of Karnataka observed that the provisions of

law relating to town planning in force in Karnataka are inconsistent with the provisions of the Constitution (74th Amendment). The Committee suggested that municipal areas notified under State Municipal laws may be declared as local planning areas and the respective Municipalities should be declared as the Planning Authority for the concerned Municipal area. Effectively, the suggestion implies that the Corporations and the Municipal Councils should act as Planning Authorities for their respective areas, which if implemented, would render the existence of BDA as redundant. **URBAN LAND TENURES**

The attempt of this paper is to broadly map the various systems of land tenure in existence in and around Bangalore.

Introduction:

Recent developments surrounding regulations of land and its usage describe a movement towards increased dogmatism regarding land control and use. Urban land and the associated tenure forms are coming under further scrutiny from the State. This reaction is often explained as necessary to stem the emergence of illegal tenure forms resulting in the unorderly spatial growth of urban spaces and causing unmanageable pressure on the existing infrastructure. However, with the pace of urbanization increasing ever so rapidly the demand pressures on land with access to services is proportionally on the rise. This in turn is further creating pressure on the existing land use and tenure systems and resulting in improvisations that are leading to the bureaucratic administration and the government feeling the need to necessitate regulations for control of land use and tenure. This rather cyclic process sets the context of the present research.

Urban Settings:

Urban spaces are rapidly increasing and have been so over the past few decades. At the beginning of the twentieth century India's urban population was less than 11 % of its

total population, by 1951 this figure had increased to about 18 % and by 1991 it increased to about 26 %. The urban population was estimated at about 34 per cent in 2000. According to estimates, by the year 2001, it has been speculated that the urban population would be about 35 % of the projected 1 billion population of India. A key determinant of urban population growth in India, as elsewhere, is migration from rural areas. Between 1951 and 1991 the proportion of the population living in the cities with a population greater than 10,000 rose from 44.6 per cent to 65.2 percent. Over the same period, the metropolitan share (those cities with a population of over 1 million) increased from 19 per cent to 30 per cent.

In 1901, according to the Census of India, there were 1811 urban areas in India, and only one city with a population crossing one million. In 1951, there were 2795 urban centres and five metros with over one million people; in 1991 the Census of India enumerated 3609 urban centres and twenty-four metros. The projection for 2001 is that the number of metros will increase to about forty. Meanwhile it is estimated that India's urban centers will have increased to 5000 by 2021. The projected urban growth rate for 1991 to 2001 is almost 3 per cent per annum, similar to the 1981 to 1991 annual growth rate.

According to the Comprehensive Development Plan (1995) of Bangalore, the city is one of the fastest developing metropolitan cities in India. It is ranked the sixth largest city in India with a population of 56 lakhs (2001 census).

Decadal growth of population in Bangalore, 1901 – 2001

YearMetropolitan AreaPercentage IncreaseCorporation AreaPercentage Increase1901228,00015.5161,000-
1911260,00014.5192,00019.21921311,00019.2240,00025.41931396,00027.5308,00029.1
1941510,00028.9407,00032.61951991,00094779,00091.619611,207,00021.4906,00016.7
19711,664,000371,422,00056.919812,913,00076.722,482,00074.5719914,086,00040.272
,650,0006.7720015,800,00041.954,500,00069.81Source: Bangalore Development

Authority, 1995

Spatial Realities:

The spatial expanse of Bangalore can be seen as two dynamic zones – the core region having multiple-use pockets including residential, commercial, industrial pockets etc., and the fringe region, having in addition to the above, agricultural land. For a growing city the fringe area is consistently outward moving bringing further rural areas within its region of influence, while the core keeps growing outwards subsuming the also expanding fringe area. Bangalore's urban sprawl, as it is known otherwise, is extending outwards at quite a rapid pace.

"Bangalore" is a spatial amalgamation of areas over a historic period with newly incorporated areas having a distinct flavor of the appropriating agencies. Founded in 1537 by a local military chief, Kempe Gowda, it consisted of a mud fort with a settlement inside or alongside it. Inside the fort and settlements were areas apportioned to different communities and social strata. Surrounding the fort was a moat, as well as separate farming and trading communities, and interwoven with these shrines, forests, and bodies of water that gradually came to be linked to the fort and the new settlement through a variety of relationships. This mode of land settlement, that is the urban formation, perhaps represents the usual mode in the historical period.

The occupation of the city by various dynasties strengthened its growth over time and was accompanied by in-migration of various cultural groups like the Tamil and Marathi speaking groups besides new Muslim communities and the spatial growth of the city with the building of a new fort alongside the mud one. The modern expansion of the city relates to the decision made by the British in 1809 to form a cantonment in the city. This new centre grew by absorbing several villages in the area and had its own municipal and administrative apparatus, although technically it was a British enclave within the territory

of the Wodeyar kings. In recognition of the dual political and legal nature of the area, separate municipal boards were created for Bangalore Town and Bangalore Cantonment in 1862. Bangalore Municipality had originally eight divisions in 1862: Palace, Balepet, Manovartepet, Halsurpet, Nagarthapet, Lalbagh, Fort and High Ground. After 1881, they were called the Bangalore City Municipality and the Bangalore Civil and Military Station municipality. Towards the end of the nineteenth century, the city began to grow spatially with a number of extensions being laid out. About 26 villages were engulfed in this expansion. In 1894, Palace and High Ground divisions were grouped with the Palace division. This was the western section of the city. The cantonment consisted of six municipal divisions of Halsur, Southern, East General Bazaar, West General Bazaar, Cleveland town and High Ground. In 1889, a committee was formed for the development of extensions. The earliest to be added, in 1892 were: one north-ward from Race Course (Seshadripuram) and the other south-westward from the Fort (Chamarajapet). The next years saw the rapid development of a number of new extensions to accommodate the growing population, both resident and migrant such as Basavanagudi and Malleshwaram in 1898. In 1901, Bangalore covered an area of 74.72 square kilometres. Further extensions that were added to the city were Frazer town in 1906, Richmond town in 1912, Vishveswarapuram in 1919, Venkatarangapura in 1925, Gandhinagar in 1930 and Kumara Park and Narasimharaja Colony in 1938.

The Bangalore City Improvement Trust was formed in 1945, and further extensions were planned: Kumara Park West Extension and Wilson Garden in 1947, Vyalikaval Extension and Sunkenahalli Extension in 1948, and Jayamahal in 1949. In 1949, the City and the Cantonment came together to form the Bangalore City Corporation, with fifty territorial divisions. The plans for new extensions continued and included Jayanagar, Indiranagar and Rajajinagar. In 1956, Mysore State was reorganized with Bangalore as the capital resulting in a major influx of migrants and further extension of the city. In 1961 the census included all villages within a five mile radius of the city as falling within the jurisdiction of the Bangalore Metropolitan Area, which, however, was not acceptable to the 1971 census

which transferred 171 localities of the Trust Board area to rural areas. Some localities including Jodikempapura, Kethmaranhalli and Yeshwantpur were then joined to the city.

Bangalore was wrenched out of its existence as a divided town to become a big city in the 1970s, then startled into the recognition that it was already a metropolis by the 1980s, hurtling towards a destiny it only reluctantly acknowledges, and for which it is largely unprepared. In 1981 three more villages were joined to the City corporation. Meanwhile, the extensions to the city were growing, and were added to the Bangalore Urban Agglomeration in censuses after 1971: by 1981, there were 47 "outgrowths" to main localities which were considered as part of the Urban Agglomeration, including outgrowths adjoining BEL, B.M. Kaval, HAL, ITI, Kengeri, Krishnarajpuram and Yelahanka: some of these were managed by City Municipal Councils, Notified Area Committees or Sanitary Boards. In 1991, the area of Bangalore City Corporation was 200 square kilometres. The area of the Bangalore City Corporation in 1998 was about 241 square kilometres. Later through the 1990s, the Bangalore urban conurbation was the sum of the city, the urbanized outgrowths, and villages earmarked for urbanisation, totaling 449 sq kilometres.

Though the area of Metropolitan Bangalore is less than 0.5% of the area of the State, it has nearly 10% of the total population or 30% of the urban population of Bangalore. Growth of Bangalore city has been more rapid than the average for urban centers in India. The limit of the Local Planning Area is 1279 sq. kms. of which the conurbation area is 449 sq. kms.

Land-use break-up of the spatial growth of Bangalore, 1963 - 2011

Classification1963 (area in acres)1972 (area in acres)1983 (area in hectares)1990 (area in hectares)2011 (proposed) (area in hectares) Residential10,528 (37.5)14,537 (41.34)5,777.65 (28.48)9,877.65 (34.78)24,369.21 (43.16)Commercial683 (2.55)958 (2.73)634.07 (3.13)675.07 (2.38)1,643.68

(2.91)Industrial3,069 (10.57)3,069 (8.74)1,956.61 (9.65)2,038.61 (7.18)3,844.07 (6.81)Public and semi-public2,100 (7.6)2,596 (7.4)2,533.64 (12.49)2,615.64 (9.21)4,908.91 (8.69)Parks and open spaces2,206 (7.98)2,485 (7.08)2,050.16 (10.11)2,132.16 (7.51)7,788.15 (13.79)Agricultural2,940 (10.6)2,940 (8.37)---Defence or unclassified 6,474 (23.2)7,179 (20.43)2,114.24 (10.42)2,114.24 (7.45)2,213.94 (3.92)Transport-1,356 (3.86)8,946.63 (25.72)8,946.63 (31.49)11,697.04 (20.72)Total28,000 (100)35,120 (100)20,283.18 (100)28,400 (100)56,465 (100)Note: Number in parentheses indicate ratio of annual total. A hectare is equal to 2.471 acres.

Developing an Understanding of Land Tenures in an Indian Urban Context:

A theoretical or functional framework on urban land tenure that recognizes plurality is very recent but also gaining serious recognition. Much of this comes from contexts where the governments recognize the value of such an approach to ensure a pro-poor policy and institutional environment. Recent research has also made the attempt to broadly map the commonality of urban land tenures across countries and continents.

Our attempt, in this context, is to understand the various tenure forms and their legality besides developing an understanding of their legal, social and economic contexts and associated implications. It is our attempt to try and focus on the various urban tenure systems, tenure security and the dynamic relation between tenure form and access to basic services, civic amenities, etc. With this background research, we adopt a pluralistic framework to capture the complexity of the existing situation in Bangalore.

A common understanding of land tenure systems is that it is a representation of a diverse facility empowering a person / people / community to stake a claim over land or its attachments, and to use these for habitation, livelihood, and also to establish and sustain cultural identity. Land tenure has also been explained as the mode by which land is held or

owned, or the set of relationships among people concerning land or its product. Land tenure is also defined as the bundle of rights and responsibilities under which land is held, used, transferred and succeeded. Another understanding of land tenure refers to it being the conditions and institutional arrangements under which land is held, used and transferred.

Simply put, land tenure refers to the rights of individuals or groups in relation to land. The exact nature and content of these rights, the extent to which people have confidence that they will be honored, and their various degrees of recognition by the public authorities and communities concerned will have a direct impact on how land will be used. It has been noted that, tenure often involves a complex set of rules, frequently referred to as a 'bundle of rights'. A given resource may have multiple users, each of whom has particular rights to the resource. Some users may have access to the entire 'bundle of rights' with full use and transfer rights. Other users may be limited in their use of the resources (i.e. nature of the use…length of use, etc.)

Land, due to being used for various purposes like agriculture, housing, commerce, recreation, religion, etc., by multiple users, throws up complex tenure forms by means of claims by these multiple users each having varying degrees of acceptability within the legal framework. Further, from the urban context, the usage of land is rarely for a single purpose, being rather more multi-purpose. Moreover the usage of land is a dynamic process depending on larger institutional processes as well as more localized personal reasons both social and economical. This complicates the already complex web of tenure systems further creating newer tenure forms and claimants.

It is our understanding that in addition to the above defining factors, the most important factor is the complex web of relationships between the claimants and various institutional (police constables, BESCOM officials and line workers, BWSSB officials and line workers, KSCB officials, BDA, BMP, etc) other relevant

players (real estate agents, developers, NGOs, Panchayats, Municipal Councils, political bigwigs, local goons, etc). Land tenures are definitely a result of the claims having relevance within and emerging from this complex web of relationships. Further, the basis of these relationships does not fall within the legal paradigm and are governed by the definitive elements of various human needs of both the claimants and the relevant actors. These relationships revolve around money exchanges, vote banks, livelihood issues, power equations, etc.

With this understanding, land tenure could be defined as the "bundle of rights" emerging from the dynamic manner in which land is held, used and transferred for single / multi usage practices by one or more persons governed by the dynamics of the complex web of relationships between the many users and the institutional and other relevant actors. This "bundle of rights" encompasses the privileges burgeoning from diverse perspectives of human rights, civil liberties and constitutional rights. Besides the legal framework and its flexibility to incorporate emerging land tenures, these privileges have varying degrees of official acceptability and legality and restrictions depending on the interpretations of the rights of individuals and communities,.

Land tenure could, therefore, be understood to be a function of:

- the use of land by one or many
- the usage of land for single or multiple purposes, and,
- the complex web of relationships that allow and regulate the usage of land

Forms of Claimants – Plurality of land tenures:

This prevailing complex situation gives rise to certain land tenures where the claimants are, more often than not, Collective – based. Further, the forms of collective claims are staked mostly by those on the margins of acceptable legality including slum populace, pavement dwellers, revenue layout dwellers, pavement hawkers, etc. The Collective claim is necessary for any chance of validation of the individual's claims. There are also

collective claims from Shopkeepers associations, BDA residential associations, Apartment associations, etc, though the stakes are extremely different.

In addition, within these tenure systems, individual-based claims are staked as tenure sub-systems.

It is with this understanding of the vast range and complex web of tenure systems that has forced us to discard the linear understanding of tenure forms and instead adopt a multi-dimensional approach. Hence our approach is such wherein we seek to map the tenure forms emerging along a spectrum of land sub-systems ranging from agriculture to housing, and land-ownership and the dynamic relations therein.

Therefore we could say that there are,

- Tenure forms emerging from community-based claims i.e. Community – Based Land Tenure forms (CLT)
- Tenure forms emerging from claims by individual i.e. Individual-based Land Tenure forms (ILT)

Example – Slums are community-based tenures providing the overarching framework for the individual tenures that families lay claims to for the land they occupy within the slum i.e. BDA/ BCC identification cards, independence day cards, etc). Further examples would be:

SquatterBribes, etcSlumsBDA/ BCC identification cards, independence day cards, etc, rent, lease, etc.BDA, Apartments, co-operatives own use, lease, rent, mortgage, licensing, sub-tenants, etc“illegal” revenue layoutsKEB NOC, Form 10, services provided, Clearance from City Municipal Councils, Panchayat, etc.The CLT are more of a community-based claim to the government (or others, if any) while the ILT is more of an individual-based claim to the CLT and the government (or others, if any)

Conceptual Approach:

A brief understanding of previous approaches to urban land tenures reveals three principal approaches that could be adopted to map the tenure systems. These are:

1. Land sub-system based
2. Actor based
3. Location based

The **first approach** would imply the analysis of the CLTs and the ILTs emerging from the various land sub-systems. This has been one of the commonly adopted approaches in the past and is especially evident in analyses of housing land sub-system, squatter settlements, revenue layouts, etc. Even the classical analysis of agriculture and the tenure systems emerging therein adopted this approach while identifying the predominant tenure systems such as the *zamindari, jagirdari, inamdari* (all basically landlord tenure forms), *mahalwari* (community based tenure forms) *rayatwari* (individual tenure forms), etc. This approach has been predominantly used though the emphasis has been on the identification of the CLTs without detailing the ILTs that provide basis for other legitimate claimants.

In this approach one could look at the tenure systems within the following:

- Residential array (land sub-systems)
- Commercial array (land sub-systems)
- Industrial array (land sub-systems)
- Religious array (land sub-systems)
- Agricultural array (land sub-systems)
- Village Common lands array (land sub-systems)
- Others including Military, Air-force, etc.

The **second approach** revolves around analyzing the land tenures that emerge from an understanding of it as several processes revolving around central and peripheral actors who are defining the dynamics of these processes. The actors are present at a micro level as well as at macro levels, interacting within an intricate local political framework. The

interests can be complementary and conflicting in nature, leading to various alliances as well as conflicts. Moving on to the specific typology of actors, Bryant and Bailey's (1997) distinction between private and government actors is highly applicable to the study of land-use issues. The main actors are the residents, farmers, settlers, entrepreneurs, speculators, Corporations, real estate agents, developers and the various government representatives and para-statal agencies.

The **third approach** would be more locational – based where the city is understood to be divided spatially, though not so distinctly, such as –

- Pavements
- Slums
- Illegal revenue layouts
- Resettlement sites
- Gramthanas
- Regularized layouts
- BDA layouts
- Military land
- Government lands
- Principally commercial and industrial areas
- Religious institutions land
- Villages
- Municipal Corporations

Here the ILTs would be analyzed from the various land sub-systems put in place by the concerned communities associated with the locational sub-system. For example in a slum we would have the land being used for housing, hotels, small workshops, rentals, leases, etc. These would form the tenure sub-systems i.e. the ILTs while the slum itself would be the CLT.

Adopted Approach:

The above mentioned approaches to understanding urban land tenures have been adopted in the past. However, we find these to be limiting since they often tend to ignore two critical aspects defining land tenures:

- the usage of land by multiple users for multiple purposes, and,
- the fact that these land tenures are a result of and hence defined by a complex web of relationships.

We intend to elucidate on the necessity of such an approach by examining few land settlement processes. Within these processes of land settlement what would become clear is the simultaneous existence of plural tenure forms and their legitimacy from a more grounded understanding of the circumstances describing their emergence.

We choose to examine the tenures existing in the realm of the urban poor since these are the tenure forms most contested by the existing legal framework. The urban poor have extremely limited access to land for housing and much less access to basic services, which are more-or-less, a global phenomenon. The tenures that they access are in the form of pavement dwellings, slum settlements and unorganized colonies on the fringe areas. It is seen that despite the rather restricted access to land the poor, driven by desperate need and lack of choice, have adopted particular land settlement practices resulting in diverse tenure forms. These tenures are made possible mostly because the communities are involved in interactions with various entities under whose patronage the tenures move through various degrees of legality and tenure security.

Pavement Dwellings

Pavement dwellers have been on the rise in Bangalore almost consistently over the past decade. The settlement pattern can best be described as one on public / private land without necessarily having any transaction. Though the term pavement appears to be rather specific it is used generically to describe settlements where the possibility of a permanent tenure is not possible under any circumstances. These are accessed by means of bribes to the local cops and goons as well. It is almost a form of rent being paid to these “owners”/actors.

The phenomena of seasonal migration into Bangalore and of workers being employed in

short-term jobs including government work like digging roads, laying pipes, cables, wires, etc. has also resulted in their opting for pavement dwelling for the duration of the work. The same goes for the migratory labourers who are employed in fringe area construction sites.

More often than not, on establishing the dwelling units, some of the inhabitants also set up small shops selling *beedis*, cigarettes, *gutkas*, etc. They not only service the pavement dwellers but also passersby and the employees in nearby offices, etc. Sometimes one or two enterprising men / women may start a tea shop. As time goes by and there is some sense of tenure security though the fear of eviction may persist others may venture into opening small cycle repair shops, puncture repair shops, etc. What goes without saying is that these "commercial establishments" pay tax for establishing these units to the police on a daily or weekly basis.

On completion of the work, some of the pavement dwellings are shifted to the site of the next available work. Sometimes the pavement- dwellers are likely to stay on, mostly depending on its location and further on the employment opportunities for the dwellers in the vicinity. Another important factor determining this is the patronage they are able to solicit from politicians, goons and NGOs.

According to the Homeless International, in Mumbai, people who have lived for over 20 years in makeshift tent-like dwellings are those who have come from the most underdeveloped districts of India to Mumbai to look for jobs. Whilst they found work (which barely feeds them and their family), they had to also be able to live close to that place of work. When the city did not give them a place or space for their home, they, like thousands of others, squatted wherever it was feasible. Four or five decades ago, people who migrated to cities simply squatted wherever they could find work.

On the face of it, pavement dwellers are as "illegal" as it gets by virtue of the fact that

they are unhidden to the legality police. Then what is it that makes this tenure form possible? It is our understanding that the nature and dynamics of the relationship between the pavement dwellers and the police constables, local goons, local political godfathers, etc allows for such tenure to emerge. Even the money transactions (in the form of bribes), over time, transform this relationship between the pavement dwellers and the police or the goons and becomes even to some extent intimate. This evolving relationship ensures a steady income for the police or the goons while it offers some form of security to the dwellers themselves.

This form of tenure probably represents one of the most vulnerable claimants, possible from every point of view, who are under constant threat of being evicted and of having their makeshift homes destroyed. In other words these are located at the bottom rung of tenure security just above the drifting population in the city who cannot bargain as a community and live more isolated lives. These homeless people including street children, etc, face an acute problem with regard to even limited access to basic amenities such as drinking water and toilets, let alone access to shelter.

Squatter Settlements

Commonly known as Slums, these settlements have been understood by many to be rational developments where migrants squat on public/ private lands when the public allocation systems have failed to provide legitimate housing as per its mandate and further have not taken them into consideration while planning the city's growth. These groups are thus left with no option since even the private land markets provide no housing delivery to them.

Squatting has been criticized as encouraging disorderly settlement; bringing settlers to regions without churches, schools, or proper infrastructure; and encouraging violence between competing claimants to lands. It has also been praised as facilitating development

by superceding overly restrictive government land policies of settlement at the frontier. In urban areas in many developing countries, squatting on public land and private lands has emerged as response to large-scale immigration and growth of populations living in poverty.

As per the survey conducted in 1998 by Bangalore City Literacy Committee sponsored by national Literacy Mission, there are at least 778 slums in Bangalore with a population of more than 18.5 lakhs. 40% of the populations in slums are dalits, 17% minorities and the remaining Backward Castes and others as per the study conducted for Bangalore City Corporation by Centre for Symbiosis of Technology Environment and Management (STEM) in 1992.

According to Jan Sahyog (an organization working in the Bangalore slums), 60% of the lands on which slums are existing belonging to the State government, 30% are private people owned lands and the remaining belongs to either central government or quasi government bodies.

Depending on the status of the slum vis-à-vis the Karnataka Slum Clearance Board there are two forms of community based tenure that emerge – notified slums and un-notified slums. In terms of other tenure forms that the individuals lay claim too there are : 1) ID card distributed to families by the Karnataka Slum Clearance Board; 2) Possession Certificate by the Bangalore City Corporation; Possession Certificate issued by the Bangalore Development Authority; 3) *Ashraya* Housing holders patta; 4) *Ambedkar* scheme Hakku *patra;* 5) *25th* Independence day *Hakku patra*.

As more migration into the cities happens on a sustained basis, it is seen that even the pressure on lands that the poor have access to is constantly increasing. Here we see the tenure categories branching off into the market, delivering in return for rent, leases, etc. As countries adopt market led approaches to economic development, the tendency towards

commodification or commercialization of urban land is intensified. Plots or rooms in squatter settlements which would have been earlier allocated to friends or relatives free of cost are now sold / rented / leased. In Mumbai, despite lacking any title, services or paved access, some of these squatter shacks were on the market for US $15,000.

The commercialization process in the slums takes place in various ways with the establishment of "*petti kade*" selling *beedis*, gutka, etc, grocery shops, vegetables, cycle repair shops, tailor shops, grinding mills, flour mills, and puncture shops. In many slums, depending on its size, small hotels are established either towards the centre of the slum or on the road-facing side. In slums that have existed for long and where consolidation has taken place on the housing structures, the ground floor rooms are converted into shops and run by the families themselves or are rented / leased out.

Another interesting transformation takes place as the communities opt for certain other income generating activities. This is initiated at a small scale with easy entry options and then gradually specialized in particular niches. Thus, the ability to transform residential land use to accommodate other uses is essential for economic transformation and for flourishing of local economies. As clustering economics evolve, the larger firms attract sub-contractors, retailers, fabricators and other service workshops.

The transition of the slum from a purely housing settlement into the commercial sub-system, takes place depending on the age of the slum, its population, access to basic services and the tenure security. This movement from a single sub-system to a multiple sub-system throws up much more complex tenure forms and a further complicated set of claimants.

"Illegal" Revenue Layouts

These are the illegal settlements of the middle and upper middle class, (basically those

upwardly mobile on the money ladder) as well those at the lower end. They access political patronage for services, can invest money in developmental processes and are more concerned about tenure security and access to basic services than the urban poor. To illustrate with an example we take Egipura located in ward 68 of the Bangalore. The entire area was developed on paddy fields and coconut grooves with the owners converting their lands into sites and selling them. The buyers were predominantly lower middle class though there were some upper middle class buyers as well. The formation of Egipura has taken more than 25 years. To date the inner reaches of the area suffer from bad roads and no water supply being forced to rely on tankers for water. While some of the site owners have managed to obtain *Khatas* others have still not bothered to.

Hawkers and Daily / Weekly "Santhes" (bazaars)

The phenomenon of road-side hawking has various versions such as those selling things that are carried in cane baskets carried on their heads to those pushing carts and selling vegetables and fruits. There is also the hawking that takes place in the "market" style on a daily or weekly basis. These are called "Santhes".

The image of women / men carrying flowers in cane baskets and selling them every morning at people's doorsteps is etched in most memories. One has also seen hawkers selling their wares either from carts or from sidewalks. It is seen that the hawkers occupy the same place day after day or week after week as the case may be. Further there are those who sell fruits, vegetables, toys, bangles etc, from carts that they push around. There are those who also sit near temples / mosques / *gurudwaras*, churches, etc and sell flowers, candles and other such which are used in worship.

A rather recent innovation on the hawking front has been the road-side sale of food by men / women at many places around Bangalore. Though previously one saw *bajjis*, *wadas* etc being prepared and sold to customers, now we witness food including rice, *rotis*, *dhals*, vegetables, chicken, mutton, etc. More often than not, the food is prepared at home and sold though depending on the age of the enterprise, food is also prepared on the road-side itself. The food is carried to these road-side "hotels" by the afternoon mostly in autos, though now there are instances where the transportation is done by Maruthi vans!

The customers accessing the hawkers or the "santhes" or the road-side "hotels" range from construction workers to software engineers to government employees. The type of customers depends on its location, quality of food sold and the pricing.

It is common knowledge that those employed in such trade are mostly from the slums. It is clear that they pay bribes to the police for the period of occupying the place. This is in

the form of cash or kind. In case of road-side eateries free food is the norm. There are instances where when the hawking is done on pavements, owners of houses near the pavement permit such activity for free. The hawking also takes place near the established markets such as Russel Market, K.R. Market, BDA Complexes, etc.

Almost every locality in Bangalore has its daily or weekly road-side bazaars, commonly known as "Santhes". This has been happening on a daily or weekly basis for many years.

The conflict between hawkers and vendors and municipalities as well as citizens' groups anxious to protect public spaces from encroachment is one that is repeatedly played out in various cities of India including Bangalore. The Supreme Court of India has recognized the right to carry on trade or business on streets and pavements (subject to regulation) as part of the fundamental right guaranteed under Article 19(1)(g) of the Constitution. The Supreme Court has held that street trading cannot be denied on the grounds that streets are meant exclusively for passing or repassing and for no other use.

However, the operative term used is "subject to regulation", basically implying that hawking could be carried out only in Hawking zones under express condition of licences from the local municipalities. For Mumbai the Supreme Court, in 1985, asked the municipality to designate hawking and non-hawking zones within the city in keeping with guidelines in the judgement. Despite this deadline the Bombay Municipal Corporation (BMC) did nothing for a decade. In 1997 the BMC commissioned a socio-economic census survey of hawkers in 23 wards of Greater Bomby. The survey found 1,06,951 hawkers. In 1998 the BMC designated hawking and non-hawking zones. This scheme stirred up a hornet's nest. Numerous residential colonies found that their streets and pavements were designated to accommodate 'surplus' hawkers who were to be shifted out from congested localities and main thoroughfares. Several citizens' groups protested at the lack of public consulatation, before faming the scheme. In a batch of petitions filed before the Bombay High Court, the court directed the BMC to enforce the scheme only

after fresh public comments on the draft scheme. In July 1999, the BMC sanctioned the final scheme.

BMC claimed that of the 1,06,951 hawkers as per the survey in 23 wards only 38,000 could be accomodated in these wards. The hawkers resisted this and every move to remove unlicensed hawkers was met with stiff resistance as the hawkers claimed that the Supreme Court order was not being implemented.

There are several such cases where the Supreme Court have passed directions for setting up of zones and regulation.

We, however, believe that though the Supreme Coiurt may have recognised the hawker's right to carry out trade the manner in which this could be effected was not understood or directed adequately. Still hawkers remain on the streets and innovate with time in an assertion of their claim to the city through these various tenure forms.

Agricultural Lands

The various forms of tenure that exist in the realm of agricultural practices are:

- Own use – where the farmer who owns the land i.e. has title deed, cultivates the land.
- Lease – where the farmer who owns the land i.e. has title deed, has leased the land to others on a seasonal basis. The cultivator pays the owner a fixed sum of money for the usage of land for a full year or on a seasonal basis. There is no signing of any contract in this tenure form.
- Sharecropping – where the farmer who owns the land i.e. has title deed, has leased the land to others on a seasonal basis. There are no written agreements and the arrangement is such that the cultivator and the owner share the produce equally. Even in this tenure form there is no formal signing of any contract.
- Mortgage
- Encroachments on government lands – it is seen that farmers / landless labourers encroach on the government lands and cultivate the same. This is duly recorded by the revenue officials and fines are collected as well.
- Landless agricultural labourers – we believe that this category of land workers is the one of the most vulnerable lot in this spectrum. Though they do not own the lands

they work on it through the year on wage basis or crop share basis.

- Bonded labour – this is definitely the most vulnerable category of land workers. The labourers are bound to the owners due to loans, etc and hence are exploited rather inhumanly.
- **REVENUE LAYOUTS**

As seen from the chapter on "Urban Land Tenures" one of the forms of tenure in the residential land sub-system that people have been accessing and continue to access are what are commonly known as "revenue layouts". The term "revenue layouts" is used generically to represent quasi-legal layouts that are formed on agricultural land without proper approvals from the concerned planning authorities under the relevant laws i.e. Karnataka Land Reforms Act, BDA Act, Karnataka Land Revenue Rules and as per other provisions of law. Semi-legal areas can be defined as areas that are subdivided and sold by the owner or his agent, without formal registration of the transfer. This rather organic settlement process can be viewed as a result of the increasing demand for residential spaces. "Illegal subdivisions" are understood to be the cutting up of agricultural land mostly on the fringe areas, into sites and their sale without due regard being given to the zoning, subdivision regulations, layout formation norms and building regulations. These layouts have been a consistently occurring land settlement form in the fringe areas from the late 1970s and form the bulk of land supply systems not only in Bangalore but other cities and towns of Karnataka and also in the country.

There are no extensive surveys with regard to the housing sector of Bangalore to understand the extent to which the several major housing delivery agencies have provided access to shelter, let alone surveys on the extent of coverage of revenue layouts or the populations they service, except for the Bangalore Urban Household survey in 2001. There is also a lack of research on this issue from a purely local point of view to understand the reasons behind such developments – both social and economical. This is a particularly alarming situation where there is no attempt to know the extent of such "unplanned development" of Bangalore though the number is undoubtedly large judging

from the miniscule supply of BDA plots or BDA approved sites in comparison to the large new extensions that have emerged in the peripheral areas.

This is an attempt to understand the phenomena of revenue layouts and the reasons behind their formation and associated legality.

Global situation:

All cities or densely populated regions in the developing countries are almost completely surrounded by informal or unregulated settlements.

This phenomenon is not limited to Bangalore and is actually a widely occurring land settlement formation on the fringe areas of countless cities in most developing countries. More often, such settlements have developed on private agricultural land, frequently outside the Municipal boundaries.

Depending on the country and the author, other terms used to describe these settlements include Semi-legal areas, unauthorized land development, illegal commercial land subdivision, informal subdivisions, informal land developments, *loteamentos* (Brazil) and *colonias* (Mexico).

Examples of these types of informal settlement are the *fraccionamientos clandestinos* (Mexico City), the *barrios piratas* (Bogota), the *urbanizaniones clandestinos* (Quito), the *loteos ilegales* (Buenos Aires), the *loteamentos clandestinos* (Sao Paulo) and the *fraccionamientos piratas* (Guayaquil). In South Africa a similar land development pattern known as "*shack farming*" have been instrumental in providing shelter to the poor. In the three largest cities of Turkey – Istanbul, Ankara and Izmir, these informal settlements known as *hisseli tapu* (unauthorized subdivision) provide access to housing to more than half the populations along with *gecekondu* (squatting). In Jordan, the *hujja*, the only

document required for land transactions prior to colonization, is used by tribal members in transactions regarding small 'illegal' housing plots and farms that they have managed to subdivide and sell to lower-income groups who could not afford land and housing elsewhere in the city.

In the Philippines, 'illegal settlements' represent settlements where the residents have knowingly or unknowingly broken planning regulations. In Hanoi (Vietnam), farming families have built apartments that they rent out or have sub-divided their land and sold it to urban house seekers.

YearCityIrregular settlementsSettlement type-Dhaka50%Slums, squatters-Manila40%Irregular / underserviced settlements1993Bangkok8%-20%Slums, underserviced settlements*(Source: Alain Durand-Lasserve, "Regularization and Integration of Irregular Settlements: Lessons from Experience", Urban Management Program, 1996)*

Recent research has proven the prevalence of this form of land settlement as one of the principal suppliers of access to housing to the urban lower to middle – income groups, of access to housing, along with squatting. These forms of land settlements are in fact catering to the housing (and other commercial options) to 40 – 70% of the populations of major cities even in India.

Indian Experience:

By far the most prevalent types of irregular settlements in Indian cities fall into the two broad categories of squatter settlements and illegal subdivisions. They occur on public and private land and also on village common lands and tribal customary lands in urban fringes.

Like elsewhere in major developing cities around the world, different terminologies are

used to represent these layouts. In India they are also known as unauthorized colonies, unauthorized layouts, refugee colonies (West Bengal), slums, village extensions, etc.

Illegal subdivisions or unauthorized layouts exist, to some extent, in all the towns of Andhra Pradesh. The same is true for most of the large towns and cities in India. According to Banerjee, there are about 800 unauthorized layouts in Nagpur (Maharashtra) with 237,000 plots purchased from illegal developers by individuals or cooperative societies. The same phenomenon is also seen in Chennai (Tamil Nadu) where a large number of unapproved layouts exist in scattered locations and around villages on the periphery of city.

In most of the cities, along with "revenue layouts", the slums or squatter settlements are the major housing tenures accessible to the urban poor and middle-class.

YearCityIrregular settlementsSettlement type1981Delhi36%Irregular settlements1983Bombay40%Irregular settlements-Calcutta42%Rental "bustees", refugee colonies1987Hyderabad30%Squatters1987Bhopal27%Squatters1981Jaipur42%Irregular settlements*(Source: Alain Durand-Lasserve, "Regularization and Integration of Irregular Settlements: Lessons from Experience", Urban Management Program, 1996)*

Bangalore Context:

Revenue layouts have been under scrutiny of the development authorities ever since they emerged on the fringes of Bangalore for various reasons. Despite this there has been little or no documentation of the coverage of this form of land settlement. These illegal subdivisions emerged on agricultural land in the fast growing periphery of Bangalore (Karnataka) in the mid-1970s. Since the 1980s, the city's peripheral areas have evolved as "revenue layouts" with minimal infrastructure and civic amenities. They catered mostly to low-and middle-income groups and small-scale enterprises.

Formal housing delivery mechanism, including the public agencies, private sector and cooperatives, have been highly deficient in providing solutions to the people in Bangalore.

Legal Framework:

Under the CDP notified in 1995, drawn up for Bangalore under the Karnataka Town and Country Planning Act, 1961, the Metropolitan Area is divided into different zones, which are, in turn, sub-divided for the purposes such as residential, industrial, commercial, agricultural etc. Any development must conform to the land-use of the zone in which it is located and to the zoning Regulations, which are a part of the CDP.

According to Section 95 of the Karnataka Land Revenue Act, 1964, agricultural lands cannot be converted for non-agricultural purposes without the prior permission of the Deputy Commissioner.

Further, as per the Karnataka Town and Country Planning Act, 1961 and the BDA. Act, 1976, any layout in the Bangalore Metropolitan Area must be approved by the BDA. Karnataka Land Reforms Act prohibits the purchase of agricultural land by non-agriculturists, including house building co-operative societies, Therefore, land which is not exempted under the provisions of the Urban Land Ceiling and Regulations Act is also not allowed to be bought or sold.

Hence, for the formation of a legal private layout, first the land has to be converted for residential purposes, by paying conversion charges before the Special Deputy Commissioner. In common parlance, the land is henceforth known as a "DC – converted land". Added to this pre-condition are the zonal requirements as per the CDP, which prevents the usage of land for any other purpose than earmarked implying that a residential layout can only come in a residential zone and so on. No construction is permitted in the Green Belt as per the CDP. The BDA being the official authority to

approve the layouts, it is mandatory for the layout plans to be approved by the BDA. It is only if the above norms are met will the layout be considered legal. The layouts so formed are commonly known as “private layouts” and are legal from the BDA point of view.

However, the formation of “revenue layout” is a land settlement situation emerging from the following conditions:

- the conversion of the land from usage for agriculture to residential purposes is not carried out by the Deputy Commissioner
- the land is situated in the Green Belt
- the plans are not sanctioned and approved by the BDA

Despite these strict regulations and procedures it is found that many "revenue layouts" are nevertheless being formed and sold in the Bangalore Metropolitan Area. Technically speaking, buying such a site implies that one may be denied the change of Khatha (evidence of title deed) to their name and may not get access to power supply, water and sewerage connections or other basic amenities, however, in reality access to these basic amenities is achieved through various means.

What has been detailed above is the popular understanding of revenue layouts as per the Bangalore Development Authority and other competent administrative agencies.

Forms of “revenue layouts”

As mentioned above this particular form of land development has also been seen in many other cities. In Brazil, the local version of revenue layouts, known as *loteamentos*, developing in the peripheral areas of developing cities are formed by similar processes. The occupiers of these settlements have bought the land from the landowners and regardless of the problems, have signed contracts, paid for their plots and paid all the due taxes. This is despite the fact that they are not being allowed to register their contracts at the registry office.

Similarly in South Africa the phenomena of shack farming, is an example of irregular subdivision in which the occupants rent land. The formation of these is also accompanied by several "problems including that of jurisdiction.

The degree of compliance with the legal framework defined by the various processes adopted for the formation of revenue layouts gives rise to various sub-forms of revenue layouts with varying "degrees of legality". Some include,

- Non DC – converted layout
- DC – converted revenue layout without BDA approval
- DC – converted revenue layout without BDA approval though applications for approval have been made
- DC – converted revenue layout without BDA approval without any intentions of getting BDA approval
- DC – converted layout with approvals from the City Municipal Council / Panchayat
- DC – converted layout with possession of Form 9/10 from the Panchayats

At present the revenue layouts being developed in the fringe areas of Bangalore and that are under severe legal scrutiny are being developed by wide range of people, all willing to take these risks. At the high-end there are the private developers and major co-operatives while at the middle end are the co-operative societies formed by employees of various public sector installations, welfare associations, bank employees, etc while at the low-end there are the local real estate brokers or a group of farmers themselves. This is resulting in mixed land-use for residential purposes to cater to different income groups in need of housing.

In contrast, formal planning processes with the rules and regulations that underpin them stifle the development of heterogeneous and mixed land use localities and in turn also stifles the emergence of an accessible choice in housing tenure. For example, an item on

the agenda of the Comprehensive Development Plan for 2011 prepared by the Bangalore Development Authority states, "[c]ontrol growth of urban squatters, sporadic developments [read revenue layouts] and mixed land use development in planning areas".

A combination of the farmer(s) and their possession of land coupled by the interested party willing to finance the "revenue layout" create a situation where a lot of under-the-table exchanges and political patronage ensures that the layout is initiated.

At points varying from before any construction is started to when inhabitants finally move in, various factors result in the layout getting access to basic services like electricity connections, water connections, underground drainage etc. The access to these amenities also implies the proportionate increase in the layout's "degree of legality" and increased tenure security. The movement towards a full legality ends when the competent authorities decide to regularize the illegalities. However, in the beginning, the installation of initially rudimentary technical infrastructure is done while power lines and water pipes are often tapped (through political patronage or bribes) though organized solid waste removal is non-existent.

Why do revenue layouts form?

BDA's limitations and revenue layout growth

The Bangalore Development Authority came into existence in 1976 as a successor to the erstwhile City Improvement Trust Board (CITB).

In the 1960s and 1970s, the erstwhile City Improvement Trust Board (CITB) created several new planned layouts including the Jayanagar layout, etc. The CITB distributed about 64,656 sites between 1945 and 1976, and the BDA distributed about 63,062 sites between 1976 and 1988, and a total of 71, 483 by 1991. According to official sources, the

BDA, since its inception, it has allotted about 107389 sites. The year-wise break-up is:

YearSites allotted**Year**Sites allotted**1976-77**12,270**1990-91-1977-78**10,764**1991-92-1978-79**4,050**1992-93**625**1979-80**450**1993-94**625**1981-82-1994-95**625**1982-83**703**1995-96**1,521**1983-84**2,000**1996-97-1984-85**1,403**1997-98-1985-86**5,836**1998-99**1,581**1986-87**1,834**1999-2000**1,350**1987-88**2,612**2000-01**8,000**1988-89**1,6485**2001-02**15,000**1989-90**4,655**2002-03**15,000

The Karnataka Housing Board built 5506 houses in Yelahanka, and 15,000 on the outskirts. The Karnataka Slum Clearance Board built a mere 2125 houses until 1989. The delivery on the part of the BDA kept on waning until the late 1980s coming to a near standstill between 1991 and 1999. In fact about 40,000 plots have been developed by the BDA since 1991; however 80% of the plots have been produced in the last 3 years. Though there is no official data on the number of allotted plots that lie vacant a conservative estimate would be about 15% including quite a large percentage of the plots that have been allotted in the past year or so lie vacant as well.

Overall one sees quite a limited role of the BDA in providing housing access since its inception and that it was not really relevant as a land development agency from 1991 until the year 1999. Coinciding with the diminishing housing delivery performance of the BDA has been the emergence of the "revenue layout" type of land settlement. This evolution of such an informal settlement pattern can be directly attributable to the fact that the low-income groups could not afford housing plots at the prevailing rates and the totally inadequate supply of legal and affordable land sites.

It was also during this period that the twin processes of globalization and urbanization brought large-scale migration of predominantly poor and led to the spatial growth of the city. Left with no option people made their own arrangements, settling in slums or revenue layouts, depending upon their financial capability.

The contribution of the public sector to housing stock has been minimal - estimates range from 1% (Mengers) to 3% (GHK International*, et al.*, 1997: 11). The formal private sector only fares marginally better with a contribution of nine percentage points (GHK International*, et al.*, 1997: 11).

Formal housing delivery mechanism, including public agencies, private sector and cooperatives, have been highly deficient in providing housing solutions to the people in Bangalore. The housing interventions by public agencies, Bangalore Development Authority (BDA), Karnataka Housing Board (KHB) and Bangalore Mahanagar Palike (BMP), have been in the form of developed sites and built up units. These account for 12.0 per cent of the dwellings of the sample households. The interventions by the other actors in the formal sector, private builders/developers, cooperative housing societies and employers, have also been limited and account for 10.6 per cent of the housing units.

This is not a very startling revelation. Studies across the world have found that the "official" government agencies have indeed been rather limited in bridging the gap between housing needs and supply. What follows from this argument then is that a majority of the people living in and on the fringes of cities, already access and still are, accessing housing settlements being established supposedly outside the purview of the dominant understanding of law. If one is to consider land tenure, infrastructure requirements and building standards, it is found that more than 40 – 70 per cent of the populations of major cities are living in illegal conditions.

Cumbersome and expensive legal process

Also the fact that the processes for formation of legal layouts mentioned above are cumbersome and expensive. Moreover, the economics of getting an official sanction costs way too much (both official and unofficial payments). Until recently the cost of obtaining a DC conversion cost approximately 3 lakhs per acre. Besides when the farmer finds a

willing companion in an investor or a developer willing to take the risk and pulls strings if necessary, there is a need to take the trouble of obtaining the Deputy Commissioner's permission and incurring the huge expense.

Real estate interests

The interests of the real estate players ranging from the big-time developers to the small-time agents play an important role in the development of revenue layouts.

Failure of agriculture as economic option

For most farmers on the fringe areas of Bangalore, agriculture has ceased to be an economically feasible occupation. The many reasons for this can be cited across a wide spectrum, ranging from the falling agricultural policies of the state to the problem of labour. Sometimes, owing to this the possibility of an occupational transformation may appeal to the farmer as a way out of dipping agricultural prospects and speed up the decision to sell part or all of the land.

Urban sprawl

Farmers on the fringe areas of Bangalore are most aware of the urban sprawl and its pace bringing in an environment of inevitability regarding the subsuming of their lands. The inevitability of the situation coupled with the option of converting the land into plots and selling them is also one very important reason for sprouting of revenue layouts. With urban sprawl arrives the prospect of rising land values and the risks involved in maintaining the ownership of land can induce a farmer to sell or convince him not to sell and instead opt for creation of revenue layouts.

Risk of acquisition

It has been observed that sometimes the fear acquisition plays an important role in this

process. In the recent past the Government has been acquiring large tracts of agricultural land for various reasons. The most recent incident is the notification of about 3300 acres of land across 16 villages in the Byatarayanapura Municipal Council jurisdiction for the creation of the Arkavathy (BDA) layout. In a bid to secure their lands farmers are moving at a rapid pace to convert their lands into revenue layouts and encourage buyers. Some had already begun the formation of revenue layouts after having received clearances from the Byatarayanapura CMC while others in addition to this clearance had also sought the approval of the BDA. However, the BDA has not approved many and instead has been issuing public notifications declaring these layouts as illegal.

Financial problems

It has also been found that personal financial stress has resulted in lands being sold off as house plots or the farmer entering into an agreement with a developer to this end.

The combination of the above factors in specific situations explains the great diversity of attitudes within the local land-owning group concerning their farmland.

Who do these cater to?

A large proportion of higher paid formal sector (public and private) employees, have access to land in residential areas developed by the BDA or luxury apartments developed by private sector builders. The former tends to be concentrated in the northwestern, western, southwestern, southern, southeastern and eastern intermediate and peripheral wards of the city. Middle-level formal sector employees have the option of applying for units in residential blocks constructed by the Karnataka State Housing Board or plots developed by the BDA. For most of the poor and lower middle classes the options are greatly reduced. Most of the poor reside in squatter settlements, improved squatter settlements, rehabilitated squatter settlements and relocated resettlement sites with a few in public housing (developed by the Karnataka State Slum Clearance Board). Lower-

income groups have no option but to purchase un-serviced sites in revenue layouts (quasi-legal sub-divisions) - only a few are lucky enough to be allotted units in pubic sector housing developments.

However, it is not just the lower-income groups that are accessing the revenue layouts mushrooming on the fringe areas of Bangalore. Many middle and high-income group residential developments are also made without following proper planning procedures.

The major pressure on demand is exerted by households at the lower-end of the income scale, which means that greater attention needs to be paid to the problem of provision of land for the housing of the lower income groups.

We have found that the revenue layouts that are mushrooming in the fringe areas are catering to various income groups from the high-end to low-end income groups.

As pointed above the BDA has come down very heavily on the formation of revenue layouts. As per available information, BDA has issued notices to 65 unauthorised layout developers. It has also put out names of unauthorised layouts to caution people against buying plots.

The government has also passed an order restraining the CMC from collecting betterment charges and issuing khatas to revenue site owners. This has been met with lot of resistance with the CMCs and other political parties demanding the withdrawal of the order.

The stringent measures of the BDA however have not led to the stoppage of revenue layout development, as we found on our numerous visits to the Arkavathy layout region. There are several reasons that can be attributed to the present nature of the BDA. On the one hand one has witnessed the resurgence of the BDA over the past 3-4 years, but on

the other, one is also witness to the rapid mushrooming of revenue layouts. This sets the context for conflicting interest over the housing supply sector and therein control over land and revenue accruing from its development. Commenting on the development authorities, the 10th Five Year Plan states that these "agencies tend to behave like the monopolies that they are. It is in the interest of the monopolist to restrict the development and sale of new land and keep prices high, so as to maximize its own returns.

It is our contention that the BDA has exceeded its jurisdiction to infringe on the powers and functions of the local bodies of governance. The order restraining the collection of betterment charges and issuance of khatas does precisely that. Instead the BDA must allow for more decentralized creation of housing availability and concentrate on setting standards that have to be met for the creation of revenue layouts. These benchmarks should not just revolve around zoning and land–use regulation but also have limitations on the kind of housing needs it fulfills. That is to say that it must ensure that every revenue layout must cater to all classes of society in a proportionate manner.

In conclusion we would like to comment that the phenomena of revenue layouts has traversed several political regimes and varying degrees of scrutiny by BDA. Like similar forms of land settlement processes across India and other developing cities it is a result and reaction to a particular need of society that has to be met. This must be taken into account in dealing with this phenomena and the present approach of the BDA, sadly, ignores this entirely.

LAND ACQUISITION ACT

The Land Acquisition Act (LAA), 1894 was brought into being for the purpose of compulsorily acquiring land as and when required for public purposes. The laws for acquisition were brought in the Colonial times for various purposes and adopted by the republic of India on gaining its independence. Post Independence, the history of the LAA

is intrinsically tied to the development paradigm fashioned by the dominant ideologies in India. The LAA was primarily used by the state to acquire land for large development projects such as irrigations and hydro-electric projects such as large dams, highways, nuclear plants, mines, industrial estates, etc.

Within an urban context it is used by the authorities for the establishment of civic structures and housing purposes mainly. In Bangalore the LAA (along with the Karnataka Industrial Areas Development Act – KIADA) has been used by the state for similar purposes, however, with increasing global connections there has been a focused promotion of large mega urban development projects. This includes the IT corridor, the Bangalore Mysore Infrastructure Corridor (BMIC), the Golf Course, the Software Technology Park, the International Airport, and also several infrastructure projects like the ELRTS, various flyovers.

However, the increased activity of the BDA has seen the resurgence of the LAA usage within and on the fringes of Bangalore. Within the last few months it has used the Act to notify 3340 acres of land in 16 villages for the formation of the Arkavathy Layout and another 1522 acres in 12 villages for the formation of a Hi-Tech City and road between Hosur Road (Electronic City) and Sarjapur road.

Key Principles:

Eminent Domain:

The ability of the state to acquire land for such projects arose from the doctrine of "Eminent Domain". The only restriction placed upon the acquisition process was that the project for which the land was being acquired should have been for some "public purpose". Under the doctrine of *Eminent domain* every state reserves the authority to appropriate or confiscate or deprive the owner of the lands situate within the limits of its jurisdiction for purposes of public utility. In India, appropriation must be for public

utility or public purpose. The doctrine inherited from colonial legislations was adapted to the needs of the modern developmentalist state.

In the United States of America power to take private property for public use is called by American lawyers *eminent domain*. It is the power of the State to take property upon payment of just compensation for public use: it is an inherent attribute of sovereignty - not arising even out of the Constitution, but independently of it, and may be exercised in respect of all property in the States for effective enforcement of the authority of the union against private property or property of the State.

Eminent domain is similar to the power of taxation, an offspring of political necessity, it is supposed to be based upon an implied reservation by Government that private property acquired by its citizens under its protection may be taken or its use controlled for public benefit irrespective of the wishes of the owner.

The response of the Supreme Court was that the principle of eminent domain was inapplicable to the Constitution of India, as mentioned in the case of *State of West Bengal v. Subodh Gopal Bose.* Through a series of later judgments, the Supreme Court has accepted the concept of 'eminent domain' for the acquisition of land for 'public purpose' by the state. This was held in the case of *State of West Bengal v. Union of India.*

Public necessity:

Public necessity is seen to be the cornerstone and is the paramount law as public necessity is greater than that of private interest, which may therefore be justly subordinated. Thus the basic principles that would be the rationale behind the Land Acquisition Act are:

Solus populi est supreme

Necessitas publica major est quam privata, i.e., public necessity is greater than private necessity.

Compensation:

It is defined as the full value to be paid for property taken by the government for public purposes as guaranteed by the Fifth Amendment to the US Constitution, which states "nor shall private property be taken for public use without just compensation."

As per the principles of land acquisition, the state indeed has power to take away the property of an individual; however the standing principle therein is that the individual has to be compensated appropriately. Essentially, the land is valued and the compensation is given in tandem with this valuation. The problem of valuation is the determination of the present market value in relation to lands and buildings. Market value is said to be the price at which a property can be expected to sell as between a willing vendor and a willing purchaser both of whom are fully informed regarding the property in question, who are neither forced to buy nor sell and who are free to deal elsewhere if they choose.

Public Purpose:

A law made for the purpose of securing an aim declared in the Constitution to be a matter of the Directive Principles of State Policy is for a public purpose. If, therefore, the acquisition of property sought to be effected by the impugned Act is for the purpose of implementing one or more of the Directive Principles of State Policy it will be for a public purpose within the meaning of the Constitution of India, and it will be unnecessary to consider whether for other purposes it comes within the meaning which the law has given to that expression. A certificate of "existence of public purpose" by the government is not required if the property is acquired under some Special Act which does not provide for such certificate directly or by implication.

Public purpose is not defined in the Constitution of India. The definition of public purpose under sec 3(f) of the Act is an inclusive one, and does not define it exclusively. The question that often arises in one's mind is that whether public purpose should be defined or not; not defining 'public purpose' would lead to the serious abuse of this provision – in the name of public purpose.

In *Somavanti v. State of Punjab*, it held "Now whether in a particular case the purpose for which land is needed is a public purpose or not is for the state government to be satisfied about… subject to one exception. The exception is that if there is a colourable exercise of power the declaration will be open to challenge at the instance of the aggrieved party."

In the above case the Supreme Court observed that it would be an impractical proposition even to attempt a serious and comprehensive definition of public purpose, which is bound to change with the times and prevailing conditions in society.

This gives rise to a fundamental question as to whether the doctrine of public purpose is one that can be challenged and if it is not so, then whether it should be challengeable. Sec 6(3) of the Act, as explained by the Supreme Court in the above case, completely bars judicial review of public purpose of an acquisition under the Act, save one condition, i.e., if there is a colourable exercise of power. The court held that neither the meaning nor the existence of public purpose could be questioned. It was also held that the finding under sec 6(3) by the government is conclusive that the land is being acquired for public purpose. These principles were also upheld in the cases of *Ratilal Shankar Bhai and others v. State of Gujarat and others* and *Jage Ram and another v. State of Harayana.*

Now the second part of the question, should the doctrine of 'public purpose' be made questionable. It must be noted that the doctrine of 'public purpose' is justiciable in any post-constitutional act; however the LAA being a pre-constitutional law, it is protected from challenge. There is little justification for continuing with the provision under sec 6(3)

of the LAA, which makes the government the sole judge to decide whether the purpose of acquisition is a public purpose or not. Prima facie, the government can only be presumed to be good judge to decide whether the purpose of acquisition was in the general interest of the community. But to make the government an absolute judge, is to deny the person whose property is acquired the right of insisting upon an objective proof of the existence of a public purpose.

Where the entire compensation to the land owner is to be paid by the company for which the land is being acquired and no part of the compensation is to come out of the public revenues or some fund controlled or managed by a local authority, the notifications issued by the government declaring that the land is needed for a public purpose, is to be held invalid in the view of sec. 6(1) of the Act. In the case of *Kishori Lal v. State of Punjab,* it was held that not even pretence of declaration had been made under sec. 6(3) that the land is being acquired for a public purpose at a public expense. It was also held that the government has no power to issue notification of public purpose if a company wholly pays the compensation. However, it has been held that if part of money, even if insignificant, is paid by the government, then it will be said to be in public purpose, even if the balance is paid by a private organization.

In the case of *Sri Ramtanu Co-operative Housing Society Ltd. v. State of Maharashtra*, it has been held that acquisition of land for industrial area development is public purpose.

Basic process of acquisition:

Land identified for the purpose of a project is placed under Section 4 of the Land Acquisition Act (LAA). This constitutes notification. Objections must be made within 50 days to the Collector of the concerned District.

The land is then placed under Section 6 of the LAA. This is a declaration that the

Government intends to acquire the land. The Collector is directed to take steps for the acquisition, and the land is placed under Section 9. Interested parties are then invited to state their interest in the land and the price. Under Section 11, the Collector shall make an award within two years of the date of publication of the declarations. Otherwise, the acquisition proceedings shall lapse.

In case of disagreement on the price awarded, within 6 weeks of the award the parties (under Section 18) can request the Collector to refer the matter to the Courts to make a final ruling on the amount of compensation.

Once the land has been placed under Section 4, no further sales or transfers are allowed.

Compensation for land and improvements (such as houses, wells, trees, etc.) is paid in cash by the project authorities to the State government, which in turn compensates landowners.

The price to be paid for the acquisition of agricultural land is based on sale prices recorded in the District registrar's office averaged over the three years preceding notification under Section 4. The compensation is paid after the area is acquired, actual payment by the State taking about two or three years. An additional 30 percent is added to the award as well as an escalation of 12 percent per year from the date of notification to the final placement under Section 9. For delayed payments, after placement under Section 9, an additional 9 percent per annum is paid for the first year and 15 percent for subsequent years.

The scheme of the LAA is that normally the collector must make the award of compensation before the land is taken, i.e., before it is acquired. However, in the case of an emergency and in the case of arable or wasteland, the government may acquire the land before making the award of compensation, thus suspending the procedure under sec 5(a).

The question as to whether an emergency situation exists or not, so as to waive the procedure required under sec 5(a) and take possession of the land pending the award, is a matter of subjective satisfaction of the government and it is not open to judicial review. This was held in the case of *Rajasthan Housing Board and others v. Shri Krishnan and others*.

The Land Acquisition Act, however, does not lay down any test or criteria to determine an 'emergency situation', and hence this gives a vast discretionary power to the government to affect the rights of the persons interested in the land since they are not left with the opportunity of being heard. Since the urgency clause under sec 17 should be invoked only in extreme cases, it is a matter of consideration whether the legislature should spell out the circumstances when the urgency clause may be invoked and not leave the matter to the uncontrolled discretion of the government.

Acquisition of land:

- The government decides on a 'public purpose' project and the land is selected.
- Notification is made under sec 4, there is a publication made in the locality, in the gazette and in two local newspapers, one of which must be in the regional language
- Hearing of objections of interested parties by the collector as provided under sec 5 of the Act. A report is to be made by the Collector. The government may: (i) decide to withdraw the idea of acquisition and hence the acquisition proceedings (ii) declare that the land is to be acquired.
- Government makes a declaration under sec 6 of the Act with conclusive evidence that the land is being acquired for public purpose
- Notice under sec 9 of the Act is sent to the people whose lands are intended to be acquired
- sec 17(1) and 17(2) the collector takes possession of the lands within 15 days of giving the notice under sec 9
- collector makes an award under sec 11
- Compensation is determined under sec 23 and 24 of the LAA
- government takes possession of the land under the sec 16

LAND ACQUISITION UNDER THE KIADA

(KARNATAKA INDUATRIAL AREAS DEVELOPMENT ACT)

Introduction:

The initial history of the Land Acquisition Act is intrinsically tied to the early history of the development state in India. The Act was primarily used by the state to acquire land for large development projects such as dams, mills etc. The ability of the state to acquire land for such projects arose from the doctrine of "Eminent Domain". The only restriction placed upon the acquisition process was that the project for which the land was being acquired should have been for some "public purpose". There is a rich history of the Land Acquisition Act and the various amendments etc. that it has gone through. This note seeks to highlight the changes that have taken place in the political economy of India, and particularly the state of Karnataka in the past ten years and what this has meant for the process of acquisition of land by the state.

While activists and scholars have focused on the use of the land acquisition act for urban development and in particularly contentious issues of "public purpose". In cities with increasing global connections, we find the promotion of large mega urban development projects: In Bangalore, this includes the IT corridor, The BMIC, the Golf Course, the Software Technology Park and it's extension, the New International Airport, and also several infrastructure projects like the ELRTS, various flyovers. This compliments projects like urban renewal in the city center. At another level, are increasing efforts by "civic" society to promote a form of "poor group" cleansing - moving the poor out of exclusive neighborhoods. At this level, we also find attempts to shift out particular types of economic activities like hawking and vending as a way to shift the poor out. This is not only in Bangalore but Delhi, Bombay and Calcutta too have similar issues at play.

While some of these projects use the conventional form of institutional process, many like the BMIC, the IT corridor are centered on new inventions where big business plays a direct role. This change also relates to the way the BATF in particular has taken on a

central nodal and directive role in shaping Bangalore's development. In almost all, some bodies like the KIADB play a facilitative role to access land in large parcels and ensure little opposition. This is primarily because the KIADB land development procedures is more "authoritarian" than the BDA or what the BWSSB use. There is a clear shift from the use of the Land Acquisition Act to the use of the Karnataka Industrial Areas Development Act for the purposes of acquisition of land. Some of the questions which will need to be answered include:

a. Why has there been such a shift from LAA to KIADA?
b. What are the comparative features of the Land Acquisition Act and the KIADA?
c. What has been the history of the acquisitions under the KIADA etc?

Karnataka is one of the most industrialized areas and is in the forefront of the race to woo the entrepreneurs. Abundant natural and mineral resources, good climatic conditions excellent infrastructure and encouraging and supportive governments have all contributed towards making Karnataka the destination for all entrepreneurs. For the growing Information technology sector the State Government has evolved an exclusive Industrial Promotion policy which is highly beneficial to related industries.

The Karnataka Industrial Areas development Board (KIADB) was set up under the Karnataka Industrial Areas Development Act (KIAD ACT) of 1966 for the speedy development of Industry in Karnataka by acquiring land and forming industrial areas complete with all infrastructure facilities.

The KIADB has won a reputation for delivering quality work on schedule.

FUNCTIONS OF KIADB

KIADB acquires land and forms Industrial Areas with all infrastructure facilities including roads, water and power. The Board also acquires land in favor of Single Unit Complexes

and public sector organizations.

PERFORMANCE SO FAR

Since its inception, the KIADB has acquired nearly 57,000 acres of land all over Karnataka. It has developed 93 industrial areas over approximately 27,500 acres, while the remaining land has been given to single unit complexes.

Background to the passing of the Karnataka Industrial Areas Development Act

While the Land Acquisition Act served the purposes of the developing state with its requirement of a modernizing state with its requirement for large amounts of land for development projects, it was not best suited for the purposes of acquisition of land for companies. Sec. 40 and 41 of the Land Acquisition Act provided for acquisition for companies, and initially there was no requirement that the acquisition for companies satisfy the other requirement of the Land Acquisition Act namely the satisfaction of the public purpose requirement. Sec 40(1)(b) and sec 41 of the LAA came up for consideration before the Supreme Court in the case of *R.L.Arora v. State of Uttar Pradesh*. In this case, some land was acquired by the government for a company for the construction of textile machinery parts, invoking part VII of the Act. It was held that land can be acquired for a company under sec 40(1)(b) read with sec 41 only when the work to be constructed would be directly useful to the public and the public would be entitled to use the work as right for its own benefit.

The court stated that "We also find that clause (aa) specifically uses the words "public purpose" and indicates that the company for which land is required should be engaged or about to be engaged in some industry or work of a public purpose. It was only for such a company that land was to be acquired compulsorily and the acquisition was for the construction of some building or work for such a company, i.e. a company engaged or about to be engaged in some industry or work which is for a public purpose. In this

setting it seems to us reasonable to hold that the intention of Parliament could only have been that land should be acquired for such building or work for a company as would subserve the public purpose of the company; it could not have been intended, considering the setting in which clause (aa) was introduced, that land could be acquired for a building or work which would not subserve the public purpose of the company. In the circumstances it seems to us clear that the literal construction of the clause based on rules of grammar is not the only construction of it and it is in our opinion legitimate to hold that the public purpose of the industry of the company, which is imperative under the clause, also attaches to the building or work for the construction of which land is to be acquired. Further, acquisition is for the construction of some building or work for a company and the nature of that company is that it is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose. When therefore the building or work is for such a company it seams to us that it is reasonable to hold that the nature of the building or work to be constructed takes colour from the nature of the company for which it is to be constructed. We are therefore of opinion that the literal and mechanical construction for which the petitioner contends is neither the only nor the true construction of clause (aa) and that when clause (aa) provides for acquisition of land needed for construction of some building or work it implicitly intends that the building or work which is to be constructed must be such as to subserve the public purpose of the industry or work in which the company is engaged or is about to be engaged.

In short, the words "building or work" used in clause (aa) take their colour from the adjectival clause which governs the company for which the building or work is being constructed and acquisition under this clause can only be made where the company is engaged or is taking steps to engage itself in any industry or work which is for a public purpose, and the building or work which the company is intending to construct is of the same nature, namely, that it is a building or work which is meant to subserve the public purpose of the industry or work for which it is being constructed. It is only in these cases where the company is engaged in an industry or work of that kind and where the building

or work is also constructed for a purpose of that kind, which is a public purpose, that acquisition can be made under clause (aa). *As we read the clause we are of opinion that the public purpose of the company for which the acquisition is to be made cannot be divorced from the purpose of the building or work and it is not open for such a company to acquire land under clause (aa) for a building or work which will not subserve the public purpose of the company"*

The court also stated that the Land Acquisition Act did not intend for the government to act as a general agent for the acquisition of land, in order to make profits. This decision of the Supreme Court was resented to by a number of state governments, who felt that it would impede economic growth and development. They felt that the decision would render planned development of industries extremely difficult, and also that there would be a danger that the acquisition made for companies made in the past would be questioned. There was therefore a consensus that there was a special legislation that was required to enable the government's to easily acquire land, for the purposes of industrial development. There were consequently two effects that arose out of the Arora case: These were:

a. Amendment to sec. 40

b. Promulgation of special state legislation that enabled acquisition of land for companies

There was some parliamentary debate about the amendment with a number of supporters and critics on both sides and there was a demand for a more exact and precise definition of public purpose itself. The amended section reads as follows:

Sec. 40 Previous enquiry -

(1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under Section 5A, subsection (2), or by an enquiry held as hereinafter provided, -

(a) That the purpose of the acquisition is to obtain land for the erection of dwelling-houses for workmen employed by the Company or for the provision of amenities directly connected therewith, or

(aa) That such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or

(b) That such acquisition is needed for the construction of some work and that such work is likely to prove useful to the public

The significance of the amendment of course was the fact that it rendered a larger arrays of activities possible by the use of the phrase “construction of some work and that such work is likely to prove useful to the public".

Justiciability of Public Purpose

Having then established that the determination of whether or not a particular private project satisfies public purpose is a subjective determination test. The question that then arises is whether the subjective determination of 'public purpose' is justiciable in a court of law? In Somavanti v. State of Punjab the Supreme Court held that "In our opinion the question whether any of the aforesaid purposes falls within the expression public purpose would arise for consideration only if the declaration of the Government is not conclusive or if the action of the Government is colourable. If, as contended by the learned Advocate General, sub-s. (3) of s. 6 concludes the matter - and the validity of this provision is not challenged - and the action of the Government is not colourable the other question would not arise for consideration" Furthermore, after a valid acquisition for public purpose has been determined, it becomes almost impossible to challenge the acquisition on any grounds. In New Rivera Co –Op Housing (1996) 1 SCC 731, it was

held that the right of shelter and livelihood cannot be a defense against the acquisition of land for a public purpose activity. The Supreme Court stated that "Right to shelter is undoubtedly a fundamental right. A person may be rendered shelterless, but it may be to serve a larger public purpose. Far from saying that he will be rendered shelterless this Court did not circumscribe the State's power of eminent domain, even though a person whose land is being acquired compulsorily for the public purpose is rendered shelterless. If that contention is given credence no land can be acquired under the Act for any public purpose since in all such cases the owner/interested person would be deprived of his property. He is deprived of it according to law. Since the owner is unwilling for the acquisition of his property for public purpose, Section 23(2) provides *solatium* for compulsory acquisition against his wishes. Under those circumstances, it cannot be held that the acquisition for public purpose violates Article 21 of the Constitution or the right to livelihood or right to shelter or dignity of person"

Procedure to be followed under the LAA for acquisition for a company

- First an agreement has to be entered between the state and the company under sec. 39 read with Art. 229 of the constitution
- One of the pre requisites is that before any acquisition proceedings take place, the government consent should have been taken and before a government consent is provided the government needs to have an inquiry into the merits of the acquisition and also if it serves the public purpose requirement
- Satisfaction of the government as to the requirement is not justiciable unless there has been a mala fide exercise of power
- Before a consent is provided the government should be satisfied that there is a need for such acquisition and towards that purpose it has to follow all the procedures for determining whether or not there is a need for the acquisition

It is thus rather clear that after the Arora case and the subsequent amendment to the Land Acquisition Act and the judicial interpretation of the same, the powers of acquisition for companies under the LAA are already very wide. And yet in the past few years, it is clear that in Karnataka the favored mode of acquisition has been through the Karnataka Industrial Areas development Ac, rather than through the Land Acquisition Act. We therefore need to examine the significant aspects of the KIADA and also a comparison of

the KAA with the Land Acquisition Act.

The Karnataka Industrial Areas Development Act

Following closely on the heels of the Maharashtra Industrial Development Act, 1962 the Karnataka government in 1966 passed the Karnataka Industrial Areas Development Act. The preamble to the act states its intentions very clearly: It is to enable the "establishment and orderly development of industries". Sec. 3 of the act provides for a rather comprehensive power of the KIADB to notify an area as an industrial are and define the limits of the area. This is a critical provision as it enables the Board to then give a notice of acquisition to convert non industrial areas into industrial areas, and then have the lands acquired under the act. The provision is particularly useful when it comes to urban peripheral lands which may be deemed as agricultural lands etc.

Sec. 6 of the act provides for the composition of the Board. The members of the boar include Secretary, Commerce and industries department- ex officio chairman, Secretary, Finance, Secretary, Housing and Urban development, Commissioner for industrial development and director of industries and commerce, Chairman, Karnataka State industrial and development corporation (KSIIDCL), Chairman, Karnataka State Pollution Board, Director, Town Planning, MD, Karnataka Small Scale industries Limited, Executive Member of the Board, 2 Nominees of the Industrial development Bank of India

Sec. 12 of the Act is a savings provision which states that no act done or proceedings taken under the act shall be questioned merely on the ground of any vacancy in the constitution of the board, or of any defects or irregularity in such act or proceedings not affecting the merits of the case

The general powers of the Board include acquiring and holding property, Purchase/ lease or under any form of tenureship land, Providing amenities and facilities, making available

land/ buildings on lease/ sale etc for industries, Allotting factory sheds, delegating any powers generally, Entering into and performing all contracts.

Sec. 25 empowers the state government to apply the Karnataka Public Premises (Eviction of Unauthorised occupants) and the non application of the Rent control act

Section 28 of the act provides the procedure for acquisition under the KIADA.

1. 28(1) The state government may through notification, give notice of intention to acquire land
2. After initial notice, the government will give notice upon the owner or where the owner is not the occupier, the occupier and on all such persons known or believed to be interested therein to show cause notice within 30 days as to why the land should not be acquired
3. After consideration and after hearing the owner, the state government may pass orders as it deems fit
4. After orders under (3) the state government is satisfied that land should be acquired, a declaration shall be made to the effect
5. After the declaration under 4 the land shall vest absolutely in the state free from all encumbrances
6. If any person refuses or fails to comply with an order made under 5, the state government may order any person in possession to surrender ort deliver possession to the state within 30 days
7. If any person refuses to comply with order made under 5 the state government may take possession of the land and may for that purpose use any force as may be necessary
8. After land acquired by the state it may transfer the land to the board for the purpose for which it was acquired

There are two ways of determining compensation:

- Agreement between the state government and the person to be compensated
- If there is no agreement, then the state government will refer the case to the deputy commissioner to determine the amount of compensation to be paid for such acquisition
- The provisions of the LAA shall apply in respect of enquiry and award by the DC

Comparative notes and trends

While comparing the KIADA and the LAA, it is important to remember that they are not mutually exclusive and more often than not, there will always be a strategic decision as to whether the KIADA should be used or the LAA should be used. This note tries to compare the two from a comparison of the social effects of the two legislations. The primary distinction between the two is that the LAA is a general purpose legislation enabling the acquisition of land for various activities which fall under the definition of 'public purpose'. The KIADA however is a special legislation intended for a primary purpose, namely the acquisition of land for the purposes of industrial development. However under the KIADA , there is no requirement for satisfying any public purpose as it is in the LAA. There are some clear advantages that the KIADA has over the LAA in the following respects:

- Under the KIADA, title passes even before possession whereas under the LAA the title passes only after possession
- Under the KIADA you can have possession even without the award being passed whereas in the LAA it is not possible.
- There is no time frame under the KIADA for the passing of the final notification but under the LAA it has to be within a period of two years
- The disadvantage under the KIADA is that the procedures established are a lot more elaborate than under the LAA as there is requirement for sending notice to every person (occupier and owner); It is therefore not true that the procedures under the KIADA are more relaxed and less stringent than under the LAA because under the LAA the

The significant shift from the 50's and the 60's to the post liberalization era is that while earlier land used to be acquired for the purposes of development of industrial areas by the state, in the present context it is acquired for specific projects which are primarily private projects. Earlier the land that was acquired was primarily small chunks of land but now the acquisitions are generally for bulk land. Earlier the state itself was the investor in the entire process of land acquisition but now it is a case where the state plays a secondary role. The choice of the government to acquire under either the LAA or the KIADA is absolute and cannot be questioned in any manner. (See for instance, S S

Darshan v. State of Karnataka 1995 SC). The KIADA is seen to be almost procedurally almost fool proof because even if there is some mistake that has been committed during the time of any procedures under Sec. 28, the government can always have the land notified again under and then ensure that you do not make any mistake in the procedure second time around There are currently approximately 250 cases against the KIADB which are pending before the High court.

Important Decisions with respect to the KIADA

We have included summaries of some of the significant cases under the KIADA in the appendix.

INFORMATION TECHNOLOGY CORRIDOR

"At a recent meeting on IT Corridor, convened by Chief Minister S M Krishna, the need for incorporating IT Corridor Master Plan into the City's CDP was felt as it would ensure a systematic growth. The land-use pattern will be determined by the CDP for business, residential, commercial, educational institutions, recreation and transport and infrastructure. It will drastically reduce the scope for violation of land use"

Bangalore, also known as "Silicon City", occupies the much coveted position of being the leader in the arena of Information Technology in India. There are supposedly more than 960 Indian and foreign IT companies located here including Infosys, Wipro, Microland, Compaq, Novell, Microsoft, Honeywell and Intel to name a few. The recent past has seen a spate of front running IT companies establishing operations here. The government, on its part, has not only encouraged but enticed companies to invest in the State, in a bid to ward off the stiff competition it faces from Hyderabad and Chennai.

Gauging from emerging trends and policies it is rather clear that the State government is on a mission to maintain this premium position. To this extent, the State government harbors

plans of creating an IT Corridor stretching from Electronic city in the south to Old Madras road to the North east: covering a curvilinear stretch of 25 km in length and 7.5 km in width and covering an area of about 138.6 sq. km. This report has been prepared by Jurong Consultants (Singapore) at a cost of $350,000. Further, the report envisages the IT Corridor to become "self-contained" with work, living, shopping, civic amenities, educational institutions, healthcare and leisure. To quote from the report: “The vision for the IT Corridor is to provide a showcase environment for IT professionals to live, work, play and strike business deals”. According to the state government BDA has been made the nodal agency for implementing this master plan.

Though the report has been submitted to the government in January 2003, there has been considerable silence ever since. No comments have been forthcoming regarding its acceptability, viability or its applicative feasibility. However, the government in continuing to encourage IT investments in Bangalore has, through the Karnataka Industrial Areas Development Board (KIADB), taken up large-scale acquisition of land within the proposed IT Corridor for IT companies. This, we have found out, is the result of the implementation of a Pilot IT Corridor, a policy level decision that ahs already made.

Further the BDA has just notified land for acquisition for establishing a Hi-Tech City and a link road. From this, it appears as though the government is already implementing the principle of the report by pursuing a policy of concentrating new IT installations within the project area of the proposed IT Corridor, even before any official decision is made on the report.

Further a large portion of the planning area for the IT Corridor falls within the green belt area. To quote from the report, “Out of 138.6 sq km, a large part of the land falls outside the CDP boundary for Year 2011 on land zoned as Green Belt zone. No development is allowed unless the CDP boundary can be reviewed and amended. This issue should be addresses at the next CDP review.”

Acquisition by BDA:

In early September, the BDA has notified the acquisition of 1522 acres of land in about 12 villages including Bellandur for the formation of a Hi-Tech City and road between Hosur Road (Electronic City) and Sarjapur road. The areas that have been notified for acquisition are well developed and most of them are converted lands (i.e. from agriculture to revenue) which command an average rate of Rs. 500/- per sq. ft. Naturally, the land owners challenge the acquisition proceedings, in the Court of law with various facts. This would defeat the very purpose of acquisition, since the process gets entangled in legal battle, which is time consuming. Acquiring the developed area for the least price and allotting the same for nominal cost to influential purposes and IT companies is not justified.

Acquisition by KIADB:

Previously the operations of the KIADB was mainly to acquire large parcels of land, divide them into small and medium – size plots and install all necessary infrastructure thereby establishing Industrial Estates (such as Peenya) after which the plots were allotted to interested companies. Interestingly, care was taken to ensure that the land chosen for acquisition consisted of as a little government land as possible.

However, now, it is acquiring lands specifically demanded by the individual companies and allotting the same to them. That is to say that now an IT Company can demand, on the basis of a letter of intent and nothing more, for a certain parcel of land of whatever size and be confident of receiving that land.

To date, the KIADB has issued 5 notifications for acquisition of about 700 acres of prime agricultural land on either side of the outer ring road in Bellandur Panchayat. The process for acquisition of lands follows a standard procedure.

- The interested IT Company submits a detailed project proposal along with the quantum and location of the land required (inclusive of survey numbers of the land). The proposal is made to the Single Window Agency or to the High Level Committee depending on the magnitude of the project (proposal less than 50 crores are placed before the Single Window Agency and others before the High Level Committee).
- Once the proposal is accepted the KIADB acquires the land in the procedure prescribed in the KIADA.
- Once the lands are acquired it is transferred to the IT Company.

In such manner 5 notifications have been issued:

- CI 46 SPQ2001 dated 17.3.2001 – acquisition of about 29 acres for Primal Projects. The construction work has already begun and is currently in full swing.
- CI 255 SPQ2002 and CI 289 SPQ2002 both dated 10.12.2002 – acquisition of about 470 acres for the three IT companies floated by Garg family; Vikas Telecom, Royal Fragrance and Supreme Build Cap.
- CI 293 SPQ2002 dated 21.11.2002 – acquisition of about 36 acres for Adarsh Developers However, at some point during the acquisition process Intel demanded for land besides the ring road. The KIADB, supposedly, cajoled Adarsh Developers to transfer about 30 acres that land to Intel with the promise that other land would be acquired in lieu of this land. Intel has contracted Larsen and Toubro for land development and construction, which is currently in full swing.
- CI 70 SPQ2003 dated 16.5.2003 – acquisition of land for Adarsh Developers to compensate for the land that they transferred to Intel.

Role of the IT Companies:

An obvious conclusion that can be drawn is that the IT companies are major players in this real estate market with incredible flexibility and scope to choose lands. It is clear that the IT companies are dictating the process almost entirely. From the timing of the notification to the approach adopted by the KIADB there is evidence of dictates from the IT companies. This is an issue of grave concern since the farmers who are losing their lands against their wishes are relegated to silent spectators.

Another of the more serious issues is the doubts surrounding their authenticity as IT Companies! While there are established IT companies like the Intel and Infosys that have

entered the market, there are also companies which appear to have no credibility at all. Vikas Telecom, Royal Fragrance and Supreme Build Cap are companies registered under the ownership of the Delhi-based Garg family are principally major real estate players and in the construction industry. Vikas Telecom and Royal Fragrance have no previous history, background or expertise as IT players, while Supreme Build Cap (Pvt) Ltd "has a farm house at Mehrauli and is planning a future project when condition is favorable". According to the presentation made to the HLC in October 2001, Supreme Build Cap has claimed itself to be a "premier construction house in North India and prominent player in Indian real estate for the past 25 years". At no point has it claimed to be an IT company of any sort. The same goes for the other two companies as well. One of the farmers has also filed a criminal complaint in the Magistrate Court in this matter. Even though the Magistrate Court ordered an immediate enquiry by COD. However, the Garg family then appealed this order in the High Court, which ordered that the case be looked into again by the Magistrate Court. This matter is now pending before the Magistrate Court.

Obviously companies like Adarsh developers and those owned by the Garg family are real estate players interested in playing the real estate market in the IT Corridor only for speculative purposes.

Role of the State government:

With regard to the State one can understand its role by looking at the manner in which policy level interventions and subsidies are being offered to promote the IT industry. At the policy level much legislation including the IT policy has been introduced. In a bid to implement these legislations the State has already generated the IT Corridor report. Further, we also must understand the usage of the KIADB in this context and the amendments brought to it in the recent past. As pointed above, while previously the KIADB acquired land to create industrial estates now it acquires land in this belt for individual companies.

At the level of policy itself any credible critique would easily locate the introduction of these policies and other related developments within the realm of urbanization, globalization and the blatant impetus being offered to the IT industry. This also represents a theoretical shift in the State's notions of development and nation's interest from the Nehruvian model to the present model affirming the shift from the public sector to the private. This has been accompanied by a grave erosion of rights of local communities. At the level of the citizen it epitomizes the eroded notions of citizenship, fundamental rights as enshrined in the Constitution and defined in numerous international covenants.

The issue of political backing not just at the level of policy but at the level of implementation has also clearly emerged. What else could explain the situation unfolding at Bellandur village? What else explains the ease with which projects are being approved?

General Issues:

2. No consultations with the local communities and its representative bodies including the Gram Panchayat in any process regarding the IT Corridor plans. This includes the choice of area for the IT Corridor and the preparation of the report itself. There is also no participation elicited from the community with regard to the lands being presently acquired / notified for various companies.
3. The communities have not been informed about the plans of the IT Corridor.
4. The State has ignored all objections to the acquisition process raised by any farmer / whole community / Panchayat.
5. It is reported that 60% of those who have received compensation are squandering this amount in an unwise fashion.
6. There is corruption at almost every level.
7. There are instances where the farmers have sought and received clearances to convert their agricultural land into revenue layouts. The KIADB has not taken cognizance of this and notified even these lands for acquisition for Vikas Telecom. In fact, Vikas Telecom has approached the High Court to prevent these farmers from further developing their land.

1. **IMPLICATIONS OF THE 73rd AND 74th AMENDMENTS FOR PLANNING**

Background:

Cities grow. There is a sense of inevitability about this in all minds. Those who have lived in Bangalore for sometime would affirm that, in the recent past, its spatial growth has rapidly brought in its fold areas that were considered beyond its boundaries as commonly perceived. This has been the case with areas such as Peenya, Nelamangala, Yelahanka, Nagarbavi, Kengeri, Dasarahalli, Whitefield, Bommanahalli, Hebbal, Marathalli, etc.

This physical expansion of Bangalore is obviously one of the most tangible offsets of its rapid pace of growth. With the State's concentrated emphasis on Bangalore's development and promotion as an ideal city (being known as the garden city, pensioner's paradise, etc), came of the influx of professionals along with migration of cheap labour all in search of work. This could not be accommodated within its existing boundaries resulting in the outward movement of its elastic boundary.

During the past many decades, spatial planning of Bangalore has been a very top down process with the Bangalore Development Authority (BDA) being the monopoly in the preparation of comprehensive development plans for Bangalore. The spatial growth and the zonal regulations have all been decided without involving the local bodies which will be directly affected in the event of such planned growth. However, now, it is constitutionally mandatory that such a process be amended suitably to factor in the role of the local self governance authorities not just as spectators but as active participants having powers to affect the planning process.

The 90's; the period which witnessed the period of most rapid spatial growth of Bangalore, also saw the crucial 73rd and 74th amendments to the Constitution according constitutional status to the Panchayats and the Municipals Corporations. The spirits of

these amendments were to enforce decentralization and development planning through local governance. However, despite the implementation of these amendments through consequent state legislations, in the context of Bangalore's rapid urbanization, what we are witness to is the further concentration of development planning and de-facto governance (of areas coming under the Panchayat and Municipal Council jurisdiction) with the Urban bodies such as the BDA and para-statal bodies like the Karnataka Industrial Areas Development Board (KIADB). This raises questions regarding the right of the local bodies to be party in the planning of development in the areas under their jurisdiction. What is also brought to fore is the lack of participation of the local bodies and their mandate in development planning in their areas. What is evident is the undermining of the decision-making and participatory powers of the local bodies by the high-level government authorities.

More recently we have witnessed the promotion of Bangalore as the Information Technology (IT) capital of India, India's Singapore, etc. This has resulted in further influx and greater pressure on the existing city to yet again expand and provide all necessary services to the IT companies. To this extent we have seen the setting up of the construction of new roads, ring roads, flyovers, Electronic city, ITPL, etc. The State has also envisaged projects on the peripheral areas such as the Devanahalli International Airport, Arkavathy Layout (BDA), Hi-tech city and link road between Hosur and Sarjapur (BDA), Bangalore Mysore Infrastructure Corridor (BMIC) and the IT Corridor among others. Obviously the physical expansion of the city is inevitable and indeed on the fast track now.

It is obvious that the growth of the city, at all points, has meant the erasure of rural spaces and the associated impacts – social, cultural and economic – on the village communities. More often than not, the result has been devastating on the communities especially the landless laborers, small entrepreneurs and local artisans. It is a matter of fact that the physical expansion of the city – neither whether caused by the State nor by

private developers interested in quick profits from housing ventures, resorts, etc – is detached from any concern for the needs and rights of the affected rural communities nor is there any participatory process initiated in either planning or implementation. While this process obviously gives rise to critical questions regarding citizenship and democracy, it also brings to fore the abject neglect of these communities and their fundamental rights.

Therefore, there is a definite need to engage with the above emerging issues and engage with procedures and processes of urban planning and the role of the Bangalore Development Authority, Bangalore Mahanagara Palike (BMP), Karnataka Industrial Areas Development Board, Panchayats, Municipalities, Bangalore Agenda Task Force, Bangalore Metropolitan Region Development Act (BMRDA), and other relevant authorities.

Constitutional and Legal Framework:

Constitutional Framework

The 73rd and 74th Constitutional Amendments Acts were introduced in the early 1990's in a bid to achieve democratic decentralization and provide constitutional endorsement of local self governance authorities. These amendments confer authority on legislatures of States to endow respectively Panchayats and Municipalities with such powers and functions as may be necessary to enable them to act as institutions of self – government. For the purpose, the Panchayats and Municipalities have been charged with the responsibility of preparing and implementing plans for economic development and social justice including those in relation to matters listed in the Eleventh and Twelfth Schedules of the Constitution. The central objective of these amendments is the decentralization of planning and decision making procedures. It also has the implicit intention of removing centralized notions of control and monopoly over development of resources.

Panchayats

Article 243G provides that, subject to the provisions of the Constitution, the legislature of any State may, by law, endow the Panchayats, with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayat at the appropriate level.

Municipalities

Articles 243W provides that, subject to the provisions of the Constitution, the legislature of any State may, by law, endow the Municipalities, with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities respectively at the appropriate level.

Powers and Functions

The Panchayats have been entrusted with the implementation of schemes for economic development and social justice including those in relation to the matters listed in the Eleventh schedule.

The Municipalities have been entrusted with the implementation of schemes for economic development and social justice including those in relation to the matters listed in the Twelfth schedule. These being, among others,

- Urban Planning and town planning
- Regulation of land-use and construction of buildings
- Planning for social and economic development
- Slum improvement and up gradation
- Provision of urban amenities and facilities such as parks, gardens, playgrounds
- Public amenities including street lighting, parking lots, bus stops and public conveniences.

Article 243ZD provides for the creation of a district level planning committee for the preparation of the District Development Plan. The District Planning Committee has been

placed with the powers to prepare a draft district development plan to consolidate the plans prepared by the panchayats and municipalities, having regard to matters of common interest including spatial planning, sharing of water and other natural and physical resources, the integrated development of infrastructure and environmental considerations. Further, the district development plans should be prepared to consolidate the plans prepared by the panchayat and municipalities.

Article 243ZE provides that for metropolitan areas, a metropolitan Planning Committee shall be elected by and from amongst the elected members of the municipalities and chairpersons of the panchayats within the metropolitan area in proportion to the ratio between the population of the municipalities and panchayats in the metropolitan areas having the same mandate as mentioned above for the district planning committee.

Article 243N and Article 243ZF provides that, any provision of any law relating to Panchayats and Municipalities respectively, in force at the time of the of the amendments, which are inconsistent with the provisions of this amendment, shall continue to be in force until amended or repealed by a competent legislature or other competent authority or until one year from such commencement, whichever is earlier.

Legal Framework:

Local Government

Karnataka Panchayati Raj Act, 1993

Section 58 (1) of the Act offers that the Gram Panchayat shall perform the various functions, including,

- Preparation annual plans for the development of the Panchayat area
- Preparation of annual budget
- Promotion and development of agriculture and horticulture
- Development and maintenance of grazing lands and preventing their unauthorized alienation and use
- Promotion of rural and cottage industries

- Distribution of house sites within Gramthana limits

According to Section 309 of the Karnataka Panchayati Raj Act, 1993, the Gram panchayat, Taluk panchayat and Zilla panchayat are empowered to prepare yearly development plans. The Zilla panchayat would forward the development plan for the district to the District Planning Committee. Section 310 provides for the constitution of the District Planning Committee.

Karnataka Municipal Corporations Act, 1976

Post the 74th amendment the government of Karnataka introduced amendments to the above mentioned Act inserting Section 503A and 503B. While Section 503B provides for the constitution of Metropolitan Planning Committee for metropolitan areas, Section 503A provides for the preparation of the development plan every year by every corporation and forwarding of the same to the Metropolitan Planning Committee or the District Planning Committee as the case may be.

Karnataka Municipalities Act, 1964

Through similar amendments to the Karnataka Municipalities Act, 1964 Section 302A has been inserted in the Act that provides for the preparation of yearly development plans by every Municipal Council to be submitted to the Metropolitan Planning Committee or the District Planning Committee as the case may be.

The municipalities have been entrusted with the powers and responsibilities in most matters relating to entries 2 to 18 in the Twelfth schedule except in relation to the first entry “urban planning including town planning”.

Planning

Karnataka Town and Country Planning Act, 1961

Urban planning in Bangalore is largely governed by the Karnataka Town and Country

Planning Act, 1961. The Karnataka Town and Country Planning Act aims to provide for the regulation of land use development and for the making and execution of town planning schemes in the State of Karnataka. In order to insure that town-planning schemes are made in a proper manner and their execution is made effective, the Act provides for declaration of "local planning areas" and a "local authority" to prepare a development plan for the entire local planning area falling within its jurisdiction. The Bangalore Development Authority is the Planning Authority for the local planning area comprising the city of Bangalore. Every Planning Authority is a body corporate having perpetual succession on a common seal having power to acquire hold and dispose property, enter into contracts and sue and be sued in its own name.

The extent of the Local Planning Area of Bangalore comprises the Bangalore city and the surrounding Towns and Villages as listed in Notification No. HDP 496 TTP 83(1) dated 06-04-1984.

The Karnataka Town and Country Planning Act mandates every Planning Authority to prepare an Outline Development Plan and a Comprehensive Development Plan for the area falling under its jurisdiction. The Outline Development Plan generally indicates the manner in which the Development and Improvement of the entire Planning Area is to be carried out and regulated. Every land use and change in land in the development of the Planning Area is to thereafter conform to the Outline Development Plan. Any change in the local use can be made only with written premises of the Planning Authority.

With in a period of three years from the date of the Publication of Outline Development Plan, the Planning Authority prepares a Comprehensive Development Plan. The Comprehensive Development Plan consists of a series of Maps and Documents which indicate the manner in which the Development and Improvement of the entire Planning Area is to be carried out and regulated.

Once the Comprehensive Development Plan and the report are finally approved, they are published by the Planning Authority. On publication, the Comprehensive Development Plan supersedes the Outline Development Plan. The Comprehensive Development Plan is to be revised at least once in ten years after coming in to force. The Karnataka Government under GO No. HUD 139 MNJ 94 dated 5thJanuary, 1995 has passed the zoning of land use and regulations.

Statutory Authorities / Corporations

Bangalore Development Authority Act, 1976

Just as the Planning Authority, the Bangalore Development Authority (which is the Planning Authority for the Bangalore Metropolitan Area) is also a body corporate having perpetual succession on a common seal with power to acquire hold and dispose property, enter into contracts and sue and be sued in its own name.

The objects of the Bangalore Development Authority are to promote and secure the Development of the Bangalore Metropolitan Area comprising the city of Bangalore and other areas adjacent to it as the Government may notify. For the purpose of development of the Bangalore Metropolitan Area, the BDA has the power to acquire, hold, manage and dispose of movable and immovable property, to carryout building, engineering and other operations and generally to do all things necessary or expedient for the purpose of Development.

The Bangalore Development Authority has the authority to draw up detailed development schemes. The Bangalore Development Authority is also empowered to levy a tax on lands or buildings or both situated within its jurisdiction at the same rate at which the Corporation levies taxes within its jurisdiction.

The Bangalore Development Authority came into existence in 1976 as a successor to the

erstwhile City Improvement Trust Board. According to the official web site of the BDA, since its inception, it has allotted 76,000 sites. In the 1960s and 1970s, the erstwhile City Improvement Trust Board (CITB) created several new planned layouts including the Jayanagar layout, etc. However, the delivery on the part of the BDA kept on waning until the late 1980s coming to a near standstill between 1991 and 1999. In fact about 40,000 plots have been developed by the BDA since 1991; however 80% of the plots have been produced in the last 3 years.

Presently the BDA has just completed development of the Anjanapura layout and the Visheswaraiah layout and is in the process of acquiring 3300 acres of land in 16 villages in Byatarayanpura Municipal Corporation for the formation of the Arkavathy layout. It has further notified the acquisition of 1522 acres for the formation of Hi-Tech City and road between Sarjapur Road and Hosur Road. The notified lands fall under the jurisdiction of about 12 villages.

Karnataka Industrial Areas Development Act, 1966

The Karnataka Industrial Areas development Board (KIADB) was set up under the Karnataka Industrial Areas Development Act (KIAD ACT) of 1966 for the speedy development of Industry in Karnataka by acquiring land and forming industrial areas complete with all infrastructure facilities like roads, water, power, communication etc.

KIADB acquires land and forms Industrial Areas with all infrastructure facilities including roads, water and power. The Board also acquires land in favor of Single Unit Complexes and public sector organizations. Since its inception, the KIADB has acquired nearly 57,000 acres of land all over Karnataka. It has developed 93 industrial areas over approximately 27,500 acres, while the remaining land has been given to single unit complexes. Details of Industrial Areas 31.01.2003:

Area AcquiredArea DevelopedAllottedVacant

areaAreaUnits29112.7627547.2516062.1894446826.49

In Bangalore the KIADB has acquired about 8493 acres of which it has developed about 8314 acres for the formation of 19 industrial areas. Of this about 6016 acres has been allotted to 2684 industrial units.

Presently the KIADB is involved in the formation of Electronic City Phase III (113 acres), Export Oriented Industrial Zone (EOIZ)/EPIP I and II Phase (540 acres), Devanahalli International Airport (about 4276 acres) and IT Corridor (overall 18,290 acres though till now about 700 acres have been notified). There is also information that the KIADB is proposing a self-contained residential township near Electronic City over 750 acres of land.

Bangalore Metropolitan Region Development Act

As the State Government felt that there is no proper coordination among the local bodies likes the Bangalore Development Authority, the Bangalore Water Supply and Sewerage Board, the Karnataka Electricity Board, and the Corporation etc. within the Bangalore Metropolitan Area. It decided to set up the Bangalore Metropolitan Region Development Authority under a separate legislation. The Bangalore Metropolitan Region Development Authority is set up for the purpose of Planning, coordinating and supervising the proper and orderly development of the area falling within the Bangalore Metropolitan Region.

Consequent of the setting up of the Bangalore Metropolitan Region Development Authority all development within the Bangalore Metropolitan Region is to be carried out only with the expresses permission of the Bangalore Metropolitan Region Development Authority. Further, even the local authorities empowered to grand permission for any development within the Bangalore Metropolitan Region can do so only after the Bangalore Metropolitan Region Development Authority grants permission for such developments. The Bangalore Metropolitan Region Development Authority is also

empowered to carry out Development plans and schemes formulated by it and further, is also empowered to issue directions to the Bangalore City Corporation, the Bangalore Development Authority, the Bangalore Water Supply and Sewerage Board, the Karnataka Electricity Board and the other bodies connected with the development activities within the Bangalore Metropolitan Region.

Land Law

Land Acquisition Act, 1894

The LAA was primarily used by the state to acquire land for large development projects such as dams, mills etc. The ability of the state to acquire land for such projects arose from the doctrine of "Eminent Domain". The only restriction placed upon the acquisition process was that the project for which the land was being acquired should have been for some "public purpose".

Karnataka Land Revenue Act, 1964

The main purpose of the Act is to create a comprehensive/ consolidated law on land and land revenue administration in Karnataka.

Provisions under the Act cover the following areas broadly the powers and functions of revenue officers- divisional commissioners, deputy commissioners, tahsildars etc., the procedures to be followed by revenue officers- in enquiring into cases (quasi judicial authority), functioning of the Revenue Appellate Tribunal, use of land for public purposes, conversion of land from agricultural land to use for other purposes, collection of land revenue, revenue survey, grants of land, Etc

More specific provisions of the Act deal with the notifications regarding the creation of the Green Belt avoid the haphazard growth of village limits and the conversion of agricultural land for purposes other than agriculture. However, section 95 (3B) clearly states that no permission for conversion of agricultural lands lying the Green Belt Area

should be given for any other purpose.

Core Problem:

The conflict that appears to emerge is between the bodies of local self – governance and the statutory authorities, and it revolves around the core issue relating to control over land and it's planning.

The Constitution has clearly laid down the norms and procedures for facilitating the decentralization of policy and decision making and the shift to local self – governance bodies on various levels. These are in regard to the powers, functions and responsibilities that need to be devolved to increase the capacity of the bodies of self-governance. Within this lies the process of bolstering of capacities of the local self bodies to plan the annual development of their regions.

At another level it was imperative that the State analyzed the existing laws and legislations and brought in the necessary amendments to make these laws in consonance with the constitutional amendments.

One would imagine that such clear directives in the Constitution provide an unambiguous account on the intentions, procedure and scope of devolution of powers to the local governance bodies. However, despite this the State governments have played truant in the application of these decentralization processes on the most important fronts. The incomplete devolution of powers has resulted in a rather murky situation where there is much ambiguity regarding the mandate of the constitutionally endorsed panchayats, municipalities and district / metropolitan planning committees. Resultantly, on the planning front it is seen that the State is still pursuing the policy of envisaging and implementing projects in a centralized manner with no participation of the local bodies of self-governance. These projects include the International Airport, Arkavathy Layout

(BDA), Bangalore – Mysore Infrastructure Corridor (BMIC), IT Corridor, etc. All this, while the local bodies are even denied the power to sanction simple housing projects or introduce any other developmental projects.

This is a direct result of the apparent failure on the part of the government of withholding devolution the control over revenue land and its usage.

Further, the introduction of the 73rd and 74th amendments bestowed certain powers on the local governance bodies that were hitherto held by other para-statal authorities. This sets the context for the conflicts arising out of overlapping provisions in different Acts and their statutory agencies, with specific regard to revenue land control, regulation, usage, management and collection of revenue. i.e. at the level of the authorities, a direct conflict between the Panchayats / Municipalities and various authorities such as the BDA, KIADB, BMRDA, Revenue Department, etc, and at another level, the conflicts and contradictions in overlapping provisions of the Constitution and various Acts such as the Karnataka Panchayati Raj Act, Karnataka Municipal Corporations Act, Karnataka Municipalities Act, Land Acquisition Act, Karnataka Industrial Areas Development Act, Karnataka Land Revenue Act, Bangalore Metropolitan Regional Development Authority Act, BDA Act, Karnataka Town and Country Planning Act, etc.

As seen from above there is a direct conflict over the authority placed with the necessary legal sanction to plan for areas that fall in the jurisdiction of the Panchayats and Municipalities. There are various situations of conflict that emerge ranging from the conflict between authorities placed with similar mandates such as the BDA and the City Municipal Councils, to conflicts between the authorities such as the KIADB and the Panchayats / City Municipal Councils regarding their mandate itself.

This throws up several rather critical issues pertaining to the mandate, powers and functions of these committees besides the crucial question as to who should prepare the

development plan of a Metropolitan area like Bangalore.

- Do the panchayats and the municipalities have the powers to evolve development plans affecting revenue land-use change in their jurisdiction or not?
- Should the Metropolitan Planning Committee have its own planning department or should the Town Planning directorate help the Metropolitan Planning Committee?
- What should be the relationship between the various statutory organizations such as the Karnataka Industrial Areas Development Board, Bangalore Development Authority, etc and the Metropolitan Planning Committee?
- Are the development plans initiated by the BDA / KIADB in the areas coming under the jurisdiction of the Panchayats / Municipalities unconstitutional and infringing on the jurisdiction rights of these local self-governance bodies?
- What are the powers of these organizations in areas that fall within the jurisdiction of the Metropolitan Planning Committee, that is, the panchayats and the municipal councils?
- Has the existence of the Bangalore Metropolitan Regional Development Authority (BMRDA) that was constituted for preparation of Regional Development Plans become unnecessary after the constitution of the Metropolitan Planning Committee?
- Same goes for the Bangalore Development Authority and other such authorities.

These issues have to be resolved immediately conscious of the constitutional necessity to maintain the autonomy of the local bodies and their powers in decision making. Therefore, the conceptual issues that emerge for being resolved are:

1. Constitutional status of local government.
2. Relationship between local / state / central government.
3. Local government as a democratic institution of self government.

These issues have been raised from time to time and the state government is very evident of the same. To quote from the report of the Committee on Urban Management of Bangalore City; “The Constitutional Amendment envisages that the municipalities may be endowed with “such powers and authority as may be necessary to enable them to function as institutions of self-Government and such law may contain provision for devolution of powers and responsibilities upon Municipalities.” The Constitution has empowered the State Legislature to determine the functions, resources and structure of the municipal bodies. It must be pointed out that the conforming legislation in Karnataka,

as elsewhere, has remained largely incomplete…As a result the objective of decentralization envisaged in the Constitutional Amendment are yet to be fulfilled."

The report on "Urbanisation Policy, Amendments to the Town & Country Planning Act, Town Planning Manual and Urban Development Authorities" by the Expert Committee constituted by the Government of Karnataka has submitted to the government explicit recommendations to comply with the 73rd and 74th Constitutional Amendments. The gist of the report suggests that:

- The devolution of powers envisaged by the amendments has not been fulfilled.
- Therefore it has expressly recommended that the performance of functions and implementation of schemes in relation to "urban planning including town planning" (first item in the Twelfth Schedule of the Constitution) should be entrusted to the Corporations, Municipal Councils and Town Panchayats.
- It has also recommended that the Corporations, Municipal Councils and Town Panchayats should function as Planning Authorities.
- To enable the above functions of the Corporations, Municipal Councils and Town Panchayats, it has further recommended amendments to the Karnataka Town and Country Planning Act, Karnataka Urban Development Authorities Act, Bangalore Development Authority Act, Karnataka Housing Board Act among others.

It is obvious that the act of planning necessarily needs to undergo fundamental changes along with revision of the powers and functions of authorities such as the BDA among others. However, despite this knowledge of incomplete fulfillment of the 73rd and 74th Constitutional Amendments and available recommendations to overcome them, there has been no move to factor these into the present endeavor of preparing the plans for Bangalore. **IMPLICATIONS OF THE KRIA FOR METROPOLITAN AREA PLANNING**

(KARNATAKA RIGHT TO INFORMATION ACT)

What is right to information?

A Right to have access to information held by the government relating to the rights of individuals, which could be in the form of records, files, registers, maps, data, drawings,

etc.

A Right to be told something that could affect a person's rights implying that the government has a positive duty to give certain types of information without waiting to be asked for it. This would include information on issues concerning projects that directly affect the people or the environment, information on health, agriculture, weather conditions, or simply, information about the services provided or the functions performed by various public bodies, etc.

Right to Information not only means the citizens right to ask for information that they want – it also includes more importantly so the duty of public bodies to disclose information ***suo moto***. For example: if a flyover is being constructed in Bangalore – the public has the right to know, purpose served by the flyover, benefits and negative effects, information regarding the cost of the project, time frame for completion, nature of traffic disruption, information regarding the contractor undertaking the construction and all relevant information that would affect the public should be made known to all. This type of information must be made known to all citizens – it should not be necessary for each citizen to approach the concerned department individually.

Why was the law passed?

More than five years ago, the Shourie committee set up by the central government had recommended the enactment of a legislation to effectuate the right of the people of the country to have transparency in the functioning of the government and the right to get information about the affairs of any department or arm of the government.

This act was passed, because, "it is necessary that every governmental action should be transparent to the public" for this they said, "Every citizen should be able to get information from the government"

Right to Information – from whom?

Under Karnataka Right to Information Act (KRIA) a citizen has the right to access information relating to any matter in respect of the administration or decisions of:

- all offices of the state government
- all local authorities e.g.: panchayat, municipal corporation, Bangalore Development Authority,
- all authorities created by or under an act of the state legislature e.g.:- universities.
- any organization or body funded, owned or controlled by the state government.

All the abovementioned bodies have been defined in KRIA as ***"public authority".***

Who should a citizen approach to seek information under KRIA?

Every public authority must have a person whose responsibility it is to deal with requests for information under KRIA – the law calls this person ***"competent authority".***

Under KRIA the head of an office will be the competent authority – unless some other officer or person has been notified by the State government to be the competent authority.

Therefore all applications under the KRIA must be made to either the head of the office or in cases where some other person is notified – to such other person.

What kind of information is available under KRIA?

As stated above right to information means not only the right to seek information that a person requires but also the duty on the part of the public authorities to provide information on their own.

If information is to be provided to people it is imperative that there be systems in place in every public authority to help deliver information to the public. KRIA recognizes this and has cast a duty on all public authorities to:

- maintain all records as per operational requirements, all records must be properly catalogued and indexed
- publish the following information at least once a year
- particulars of the organization, its functions and duties
- powers and duties of the officers and employees and procedure followed by them in decision-making
- norms set up by the public authority for carrying out its functions
- details of facilities available to citizens for obtaining information

This information must be available on a notice board in the office of the public authority. The law also says that it is not necessary to publish the above if the same information is included in any other publication, report, booklet or pamphlet, that has been brought out by the Public Authority or there is no change in the information already published during the previous year.

- publish all relevant facts concerning important decisions and policies that affect the public while announcing such decisions and policies.
- before sanctioning or initiating any project or scheme facts available to the public authority or which the public authority feels should be known to the public in general or to persons affected by such project in the interest of democratic principles must be published.

What the use of the Act?

There is a wide arrange of cases in which such a law can be effectively utilized. People have used it to find out information on questionable Panchayat or municipality licenses. Others have used the law to find out whether the principle of job-reservations is being adequately implemented. Trade unions could get access to useful information under the law. So could environmental campaigners. If there is a problem caused by a polluting industry, you could demand the right to inspect files to see how that unit was given licenses. In the file, you can also take a look at the noting, which give you an insight into the decision-making process.

Right to Information in Urban planning process:

The 1993, 73rd Constitutional amendments gave full power to rural India through a revamped 'Panchayat Raj' and the 74th Amendment is for urban India through Municipal Corporations, and their revamped ward committees for large settlements of 0.30 million population and above, municipalities for small cities and large towns and nagar Panchayats for small towns. Now the right to information law is providing access to information … which would promote openness, transparency and accountability in administration …..", the make Urban Planning more effective to keep transparency government must give full information like,

- What is the project/ plain about,
- Cost of the plan/project,
- To whom it is going to benefit,
- For what purpose,
- The need of the plan/project,
- What are the benefits are available for the plans/project
- The rehabilitation policy for the people who are getting effect by putting up the project.

People have got full right to see whether the project is viable or non viable, ant the people who are getting effect are who are getting effected.

Procedure for supply of information:-

(1) A person desirous to obtain information shall make an application to the competent authority in the prescribed manner, along with such fee, in such form and with such particulars, as may be prescribed. Provided that the fee payable shall not exceed the actual cost of supplying information. (2) On the receipt of an application requesting for information, the competent authority shall consider it and except for justifiable reasons, pass orders thereon either granting or refusing it, as soon as practicable and in any case within fifteen working days from the date of receipt of the application; Provided that where the competent authority does not have the information, he shall within fifteen days from the date of receipt of application transfer the application to the officer or person with whom such information is available and inform the applicant accordingly and

thereafter such officer or person to whom such application is transferred shall furnish information within fifteen working days from the date of receipt of the application from the competent authority.

(3) Where a request is rejected under sub-section (2), the competent authority shall communicate in writing to the person making the request:

- The reasons for such rejection.
- The period within which the appeal against such rejection may be preferred.
- The particulars of the appellate authority

Conclusion:

Karnataka Right to information Act is one among the best acts which is available in India. This has given powers to the people to seek information from government regarding its policies and their implementation. It has provided a capacity for transparency and disclosure that is important for better governance. The challenge, however, lies in the usage of the spirit of this Act especially in the context of the large projects that are coming up in Bangalore besides the process of Urban Planning itself.

APPENDIX

SOCIAL AND ECONOMIC RIGHTS

The land tenures that are often termed as illegal under the gaze of land legislations mostly relate to the tenures that ensure access to housing. These include the pavement dwellers and the slums besides some of the revenue layouts. The so-called illegal status often results in the denial of basic services to the populations including drinking water, sanitation, schools, health services, etc. This is one perfect example of the inescapable link between housing and the standard of life ensured to the occupants. This obvious yet often unrecognized link has been time-and-again reiterated in the various judgments of the Court and in covenants and resolutions of International Human rights bodies. It must be understood that these rights are a direct result of the claims staked by these citizens.

Indian Constitution

The Indian Constitutional scheme very broadly distinguishes between civil and political rights and social and economic rights. Civil and political rights are deemed enforceable and one can approach court in cases where these rights are violated. Social and Economic Rights which are listed under the Directive Principles of State Policy are non justiciable but deemed to be fundamental in the governance of the country.

However due to judicial interpretation by the Supreme Court of India , many of the Directive Principles which were previously deemed unenforceable have become enforceable rights. The law laid down by the Supreme Court forms a part of the enforceable law of the land as per Art 141 of the Constitution. It is in this context that one needs to understand the regime of socio-economic rights in the Indian Constitution.

The primary mode through which socio-economic rights have become enforceable is through the expanded interpretation and meaning given to the Fundamental Right to life and personal liberty given under Art 21 of the Constitution. Some of the dimensions of this expanded notion of the right to life and personal liberty are:

Regarding Quality of life:

The Court has expanded the dimension of right to life arguing that it does not mean mere 'animal existence' but living with 'human dignity'. In Francis Coralie's case the Court noted, 'But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. **We think that the right to life includes the right to live with human dignity and all that goes along with it. Viz. the bare necessities of life such as adequate nutrition, clothing and shelter over the head…Of course the magnitude and content of the components of this right would depend upon the economic development of the country, but it must, in any view of the matter, include the right to the basic**

necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.'

In Bandhua Mukti Morcha, the Court elucidated upon the expanded interpretation of Art 21 by noting, 'It includes protection of health and strength of workers, men and women and of the tender age of children against abuse…just and human conditions of work and maternity relief. These are the minimum conditions which must exist in order to enable a person to live with human dignity. No government can take any action to deprive a person of the enjoyment of these rights.'

In *Chameli Singh vs State of Uttar Pradesh*, The Supreme Court noted, 'In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhabit his growth. All human rights are designed to achieve this object. **Right to live, guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society**.'

Regarding Right to livelihood:

The Supreme Court has held that the **right to life includes the right to livelihood**. In a case involving pavement dwellers right's which were affected by their eviction by the Bombay Municipal Corporation, the Court noted, 'the question which we have to consider is whether the right to life includes the right to livelihood. We can see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Art 21 is wide and far reaching. It does not mean, merely that life cannot be extinguished or taken away, as for example by the imposition and execution of the death penalty, except according to procedure established by law. That is but one aspect of the right to life and equally important facet of that right is the right to livelihood because no person

can live without the means of livelihood.'

Regarding Slum Dwellers:

In Olga Tellis's case the Supreme Court ruled that the eviction of persons from pavement or slum not only results in deprivation of shelter but would also inevitably lead to deprivation of their means of livelihood, which means deprivation of life in as much as the pavement dwellers were employed in the vicinity of their dwellings. 'The conclusion, therefore in terms of the constitutional phraseology is that the eviction of the petitioners will lead to deprivation of their livelihood and consequently to the deprivation of life.'

Regarding access to Roads:

In *State of Himachal Pradesh vs Umed Ram*, the Supreme Court emphasized upon the importance of roads in the hilly regions for the enjoyment of life. The Court observed, 'We accept the proposition that there should be road for communication in reasonable conditions in view of our constitutional imperatives and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. To the residents of the hilly areas as far as feasible and possible society has constitutional obligation to provide roads for communication.'

International Covenants, Declarations and Resolutions:

The indivisibility and interdependence of all human rights find clear expression through the right to housing. As recognized by several human rights bodies of the United Nations, the full enjoyment of such rights as the right to human dignity, the principle of non-discrimination, the right to an adequate standard of living, the right to freedom to choose one's residence, the right to freedom of association and expression (such as for tenants and other community-based groups) and the right not to be subjected to arbitrary interference with one's privacy, family, home or correspondence is indispensable for the right to

adequate housing to be realized, possessed and maintained by all groups in society.

At the same time, having access to adequate, safe and secure housing substantially strengthens the likelihood of people being able to enjoy certain additional rights. Housing is a foundation from which other legal entitlements can be achieved. For example: the adequacy of one's housing and living conditions is closely linked to the degree to which the right to environmental hygiene and the right to the highest attainable level of mental and physical health can be enjoyed. The World Health Organization has asserted that housing is the single most important environmental factor associated with disease conditions and higher mortality and morbidity rates.
This relationship or "permeability" between certain human rights and the right to adequate housing show clearly how central are the notions of indivisibility and interdependence to the full enjoyment of all rights.

Everyone, therefore, has the right to adequate housing and should have sustainable access to natural and common resources, clean drinking water, energy for cooking, heating and lighting, sanitation and washing facilities, food storage facilities, refuse disposal, site drainage and emergency services.

The right to adequate housing is one of the economic, social and cultural rights to have gained increasing attention and promotion, not only from the human rights bodies but also from the United Nations Centre for Human Settlements (Habitat). This began with the implementation of the Vancouver Declaration on Human Settlements issued in 1976, followed by the proclamation of the International Year of Shelter for the Homeless (1987) and the adoption of the Global Strategy for Shelter to the Year 2000, by the United Nations General Assembly in 1988.

The right to adequate housing forms a cornerstone of the Global Shelter Strategy:
The right to adequate housing is universally recognized by the community of nations…All

nations without exception, have some form of obligation in the shelter sector, as exemplified by their creation of housing ministries or housing agencies, by their allocation of funds to the housing sector, and by their policies, programmes and projects…All citizens of all States, poor as they may be, have a right to expect their Governments to be concerned about their shelter needs, and to accept a fundamental obligation to protect and improve houses and neighbourhoods, rather than damage or destroy them.

Adequate housing is defined within the Global Strategy as meaning:
adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities-all at a reasonable cost.

The right to adequate housing and the necessity to ensure access to basic services by implication has also been addressed in many resolutions adopted by all types of United Nations decision-making organs. Most of the resolutions concerning housing rights have been directed at Governments, with a view to encouraging them to do more to realize this right. These include,

International Conventions and Covenants:

- International Covenant on Economic, Social and Cultural Rights (1966)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965)
- Convention on the Elimination of All Forms of Discrimination Against Women (1979)
- Convention on the Rights of the Child (1989)
- Convention Relating to the Status of Refugees (1951)
- International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)

International Declarations and Recommendations:

- The Universal Declaration of Human Rights (1948)

- Declaration of the Rights of the Child (1959)
- International Labour Organisation (ILO) Recommendation No. 115 on Worker's Housing (1961)
- Declaration on Social Progress and Development (1969)
- Vancouver Declaration on Human Settlements (1976)
- Declaration on the Right to Development (1986)

Selected United Nations Resolutions:

- General Assembly resolution 41/146
- General Assembly resolution 42/146
- Economic and Social Council resolution 1987/62
- Commission on Human Rights resolution 1986/36
- Commission on Human Rights resolution 1987/22
- Commission on Human Rights resolution 1988/24
- Commission on Human Rights resolution 1993/77
- Commission on Human Settlements resolution 14/6
- Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/12
- Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1991/26

LARGE-SCALE ACQUISITION OF LAND FOR PROPOSED IT CORRIDOR

Summary of some ongoing Cases in various Courts of Bangalore

The acquisition of agricultural lands in the fringe areas of Bangalore surrounding the ring road in Bellandur panchayat region has already been initiated by the KIADB. In this regard we have come across few of the relevant petitions that have filed in the court regarding this process. While there are two cases filed by companies owned by the Garg family demanding instantaneous completion of acquisition proceedings, two have been filed by farmers challenging the process and acquisition itself.

We have prepared summaries of these cases that are presently *sub-judice* since it provides one with enough information to understand the true intentions of the state and the companies while exposing the blatant denial of rights of farmers.

Case 1:

Supreme Build Cap Pvt Ltd vs. State of Karnataka and KIADB

(Writ Petition No 28686/2003)

Writ Petition No 28686/2003 has been filed in the High Court by Supreme Build Cap Pvt Ltd making the State of Karnataka and KIADB among others as the respondents. As pointed out before in other briefs, Supreme Build Cap Pvt Ltd (SBC) is an organization belonging to the Garg family and is part of a larger group of companies including – Vikas Telecom Pvt Ltd, Royal Fragrances Pvt Ltd, Brijwasi Construction Farms and Leasing Limited, Indo Traders and Export Limited, Raisina Golf and Resorts Pvt Ltd, and Dynamic Apartment Pvt Ltd and several others. It is engaged in various parts of the country in developing infrastructure. SBC attended the Global Investor Meet that was essentially organized to invite investments in Karnataka especially in the areas of Information Technology.

Supreme Build Cap entered into contract with KIADB to purchase land in the IT corridor project and further develop it into it parks, hotels, entertainment centres etc. A high level committee meeting was held and the proposal by SBC to purchase 35 acres was accepted. After estimates of land required were carried out, SBC needed only 25 acres. This was also approved by a high level committee meeting. Meanwhile due to mistake in the approval by the high level committee, two survey numbers were erroneously left out. This was corrected by another meeting of the high level committee. SBC paid an amount of Rs 1,05,68,500 to KIADB to purchase the land. It also purchased around 6 acres to evince interest in the project. Meanwhile SBC discovered that the state government and KIADB had also entered into contract with Intel to acquire land and sell it to Intel.

Intel had submitted that they will invest US $41 million in the IT Corridor Project and requested for 43 acres in the same area to set up a "Chip Design and Hardware Development Facility" there. The State of Karnataka considered the high nature of investment and high technology area and the spin off it would create, resolved to cater to the needs of Intel on a priority basis. Land identified by Intel was duly acquired for handing it over. It was seen that the land acquired for Intel was also allotted to one Adarsh Project Pvt Ltd and also SBC to an extent of about 3 acres. While Adarsh Project Pvt Ltd realized the effect of Intel's investment would have on the local economy, they amicably resolved the dispute and agreed to accept the same area of land elsewhere and shifted their project, SBC approached the court.

SBC has filed this petition in the high court challenging the allotment of land to Intel.

CASE 2:

Venkatesh Reddy and others Vs. State of Karnataka and KIADB

(Writ Petition No 34412-416/2001(LA-KIADB))

This Petition has been filed by Venkatesh Reddy and his brothers, all well – educated,

land owning farmers from village Bellandur. They are challenging the notification for acquisition issued by KIADB. Their lands are very well irrigated by a U shaped channel which is fed by Bellandur Lake. Owing to the nature of the soil and water available, it qualifies as prime agricultural land. The petitioners now cultivate paddy on this land and depend on it for their livelihood. They believe that acquisition of lands in their village would render the whole area useless for agriculture, create ecological imbalance.

Their claim is that the KIADB has issued acquisition notification for acquisition for the vested interests of 3 persons, namely, D Kupendra Reddy, K V Rajagopala Reddy, and M K Sathya. The three persons - – D Kupendra Reddy, K V Rajagopala Reddy, and M K Sathya, incorporated a Company under the Companies Act and proposed to set up an IT Park, which the Government had approved under the Mega Projects. The three persons had absolutely no experience in the field of Information Technology. Their background indicates that they were all civil engineers involved basically in real estate development. Their plans of the IT Park do not even show the Bellandur Lake, or the High Canal. It does not even show the Circular Ring Railway shown in the comprehensive Development Plan, which is in fact a part of its land demanded. It also does not show the water treatment plan required for it purpose or the total green cover to be maintained. Their project plan rather shows resorts, hotels, cinemas, golf resorts, club house, shopping arcade etc. What the petitioner questions is that where is need of all these in an IT Park. The IT Park of the three persons is in no way in relation to the Millennium IT Policy of the Karnataka State.

The petitioners have claimed that they and many other land owners have been approached by the above trio to sell their lands. They were threatened that if they did not sell, then their lands would be acquired by KIADB and given very low compensation. Some poor, ignorant, illiterate farmers wee misled and pressurized by these three persons and forced to sell their land. The three persons not only coerced the poor farmers but also used police and muscle power and had huge political influence in the Government. The

three persons purchased major portions from poor farmers at low rates of 10 to 12 lakhs an acre while the prevailing rates was 68 to 70 lakhs an acre. The three persons had the exact details of the notification an year earlier to the issue of the notification. They forced the petitioners to sell their land and even got an agreement of sale prepared and gave it to the petitioners.

The other part of the land adjoining the Ring Road, on its either side was sought for acquisition for the formation of a layout, but the land rates being relatively high, it was decided to drop the move and let the land be let to the land owners enjoy the ownership. Instead of acquisition, a tax was levied by a gazette notification which called for payment of betterment tax. The point the petitioner seeks to make is that when it was first decided to let landowners enjoy their ownership right, why did the government change its stand and let KIADB occupy it and thus act contradictory to the decision of the planning authority. Thus there is a callous defiance by the respondents to the provisions of Karnataka Town and Country Planning Act, as well as the BDA Act and grab the lands to suit the requirements of private entrepreneurs and real estate developers. Thus there is lack of public interest and *mala fide*.

The Petitioners have claimed that they are highly qualified engineers. They themselves are interested in setting up IT Company. They also formed a partnership firm named – Avinash Software Incorporated. If the Government of Karnataka was genuinely interested in encouraging the IT Industry, then the petitioners would have been given a chance to develop their company in their own lands. Instead their land is being acquired for other real estate developers, which does not serve any purpose. A proposal was put forward for the same under the Single Window Agency Scheme. There have also many serious disparities in the acquisition process like ignoring the objections filed, assuming that no objections are there and have consented to the acquisition, verification of General Power of Attorney. All objections were rejected on the basis that the whole area has already been declared as 'Industrial'. This shows total lack of application of mind and arbitrary

decision.

The Petitioners have prayed for dismissal of the notifications.

CASE 3:

Vikas Telecom Pvt Ltd vs. State of Karnataka, KIADB and the local Panchayat

(Writ Petition No : 26321-26322/ 2003 (LA-KIADB))

Writ Petition No : 26321-26322/ 2003 (LA-KIADB), has been filed by Vikas Telecom Pvt Ltd against the State of Karnataka, KIADB and the local Panchayat claiming that they have been aggrieved due to non issuance of necessary notification by KIADB and also order the respondents to stop the unauthorized encroachment, illegal occupation and construction taking place in the lands which are in the process of being acquired for the IT Project proposed by the Petitioners.

Vikas Telecom Pvt Ltd, owned by the Garg family, has requested for over a hundred acres of land for setting up an IT Park along with hotels, residential layouts, resorts, shopping arcade, multiplex and other centres of amusement. They have submitted an application under the single window agency scheme and have their project approved by a High Level Committee. Vikas Telecom Pvt Ltd, while making the claim for land had noticed that construction work being carried out in the land to be acquired for them. They appealed to KIADB to intervene and stop the construction and expedite the issuance of notification of land to be acquired . The police authorities were informed as well. According to them, however, this was not done and this has resulted in unauthorized construction and encroachment of land.

As pointed above even this company is owned by the Garg family and has no previous experience in IT related work. The so-called encroachment is the development of the land into residential layouts for which the owners have already gotten prior permissions.

CASE 4:

Mr. Jagannath Vs. members of Garg family

(PCR 26 / 2003)

This criminal complaint has been filed by in the X Additional Chief Metropolitan Magistrate by one Mr. Jagannath, on the Garg family under various sections of the Criminal Procedure Code and Indian Penal Code. Mr. Jagannath was the President of the Bellandur Gram Panchayat and presently the elected member of the same body.

According to the complaint the Garg family are impatient to possess very large areas of land in the IT Corridor region by purchasing at very low rates only to later sell it to third parties. To this end they have floated three bogus supposedly IT companies – Vikas Telecom Ltd, Supreme Build Cap Ltd, and Royal Fragrance Ltd. They have proposed to purchase land and develop an IT Park and other centres of amusement on the land. Actually, the Garg family are in fact businessmen involved in real estate and construction business. Despite having such questionable credentials they managed to get their proposed approved under the single window agency scheme. They have falsely claimed to be part of an IT company - Comat Technologies.

To make the acquisition easier for KIADB, the Garg family had actually purchased lands through illegal means. This is so because non-agriculturists are not allowed to purchase agricultural land in Karnataka. However, they bought land from farmers under the guise of being farmers themselves by falsely claiming to own lands in Mathura. They have also lied about their addresses.

The single window agency scheme/ Karnataka Udyog Mitra asked for certain documents from the Garg family to take decision regarding the project, of which none seem to be submitted. There were some procedural lapses on the part of the State and KIADB, which have ensured that such bogus companies are being cleared and lands being acquired

for them by KIADB.

Based on the above facts the Magistrate ordered the COD enquiry into the criminal complaint filed by Mr. Jagannath.

However, the Garg family went to the High Court on appeal. The High Court pronounced procedural flaws in the approach of the Magistrate Court and has directed the Magistrate Court to pas orders by following the correct procedure.

SUMMARY OF SIGNIFICANT COURT DECISIONS UNDER THE KIADA

Constitutional validity of the Act

Case 1: Ramtanu Co-Operative Housing v. State of Maharashtra
(AIR 1970 SC 1771)

(This case does not concern the KIADA but the Maharashtra Act; The question posed was with respect to the constitutional validity of the Maharashtra Industrial Development Act.)

In principal two main issues were raised:

- whether the State of Maharashtra is competent to enact the Maharashtra Industrial Development Act, 1961 since the Act is for the incorporation, regulation and winding up of the Maharashtra Development Corporation (hereinafter referred to as the Corporation) and that the Corporation is a trading one and therefore the impugned legislation falls within Entry 43 of List I of the Seventh Schedule of the Constitution
- whether there is procedural discrimination between the Maharashtra Industrial Development Act, 1961 and the Land Acquisition Act, 1894.

Held:

a. constitutional validity upheld

b. No inconsistency between the LAA and the KIADA

Relevant Extracts

20. The underlying concept of a trading Corporation is buying and selling. There is no aspect of buying or selling by the Corporation in the present case. The Corporation carried out the purposes of the Act, namely, development of industries in the State. The construction of buildings, the establishment of industries by letting buildings on hire or sale, the acquisition and transfer of land in relation to establishment of industrial estate of development of industrial areas and of setting up of industries cannot be said to be dealing

in land or buildings for the obvious reason that the State is carrying out the objects of the Act with the Corporation as an agent in setting up industries in the State. The Act aims at building an industrial town and the Corporation carries out the objects of the Act. The hard core of a trading Corporation is its commercial character. Commerce connotes transactions of purchase and sale of commodities, dealing in goods. The forms of business transactions may be varied but the real character is buying and selling. The true character of the Corporation in the present case is to act as architectural agent of the development and growth of industrial towns by establishing and developing industrial estates and industrial areas. We are of opinion that the Corporation is not a trading one

21. Counsel on behalf of the petitioners contended that there was procedure discrimination between the Land Acquisition Act the Act in the present case. It was said that there was a special procedure designed by the Land Acquisition Act for acquisition of land for the companies whereas in the present case the State was acquiring land for companies without adopting the procedure of the Land Acquisition Act. It is to be remembered that the Act in the present case is a special one having the specific and special purpose of growth, development and organisation of industries in the State of Maharashtra. The Act has its own procedure and there is no provision in the Act for acquisition of land for a company as in the case of Land Acquisition Act. In the present case, acquisition under the Act is for the purpose of development of industrial estates or industrial areas by the Corporation or any other purpose in furtherance of the objects of the Act. The policy underlying the Act is not acquisition of land for any company but for the one and only purpose of development, organisation and growth of industrial estates and industrial areas. The Act is designed to have a planned industrial estates and industrial areas. The Act is designed to have a planned industrial city as opposed to haphazard growth of industrial areas in all parts of the State. That Act is intended to prevent growth of industries in the development parts of the State. Industries are therefore to be set up in the developing or new parts of the State where new industrial towns will be brought into existence. The object of the Act is to carve out planned areas for industries. On one said

there will be engineering industries and on the other there will be chemical industries. There will be localization of industries with the result that the residents and dwellers of towns and cities will not duffer either from the polluted air or obnoxious chemicals of industries or the dense growth of industries and industrial population, within and near about the residential areas. The Land Acquisition Act is a general Act and that is why there is specific provision for acquisition of land by the State for public purpose and acquisition of land by the State for companies. The present Act on the other hand is designed for the sole purpose of development of industrial areas and industrial estates and growth and development of industries within the State. Industrial undertaking or person who are engaged in industries all become entitled to the facilities on such industrial growth. Under the Land Acquisition Act acquisition is at the instance of and for the benefit of a company, whereas under the present Act acquisition is solely by the State for public purposes. The two Acts are dissimilar in situations and circumstance.

Case 2: K.S. Chandrashekar v. LAO
(1991 KLJ)

Facts

Lands were proposed to be acquired under the KIADA for an auto factory. After the hearing of objections it was decided and ordered under Sec. 28(4). The petitioners however contended that rules under 28(3) had not been followed since the objections of the petitioners were not taken into account while coming to the final order and hence it was not a valid order that had been passed. Objections raised by the petitioners included the fact that they did not have any other lands, while there was alternative land that belonged to the state which was available in the same area that could be used (within a 3 KM radius). The order of the Land Acquisition officer stated that all the objections that been raised were technical objections and he was not concerned with them; and that the task of the KIADB is to ensure that once the acquisition is finalized, they collect the money for the compensation

Held:

d. Under 28(3) of the act the SLAO ids given powers to decide which are almost quasi judicial and hence he has to consider all objections that are raised in an objective manner. The decision must satisfy all the procedures that have been established under the KIADA, and where a private citizen's property is to be acquired one has to eliminate all arbitrary exercise of power and the law provides that the objections have to be heard. The objections were not all of a technical nature and where alternative land is available and has been shown by the appellants to be the case, then all the more imperative that he consider the objections that have been raised

Extract from decision

Thus sub-section (3) of Section 28 requires that the State Government or the Officer delegated with the power of the State Government, as in this case, it is stated that the Special Land Acquisition Officer is delegated with the power of the State Government is required to consider the objections raised and hear the objectors and decide the same. When a statute directs that the objections be called for, objector be afforded an opportunity of hearing and pass such order as it deems fit on considering the objections, it expects the authority exercising that power to decide the objections in a quasi judicial manner. The authority is required to decide the objections and give reasons for rejecting or overruling the same. No doubt, the acquisition proceeding is not a quasi-judicial proceeding, but where a statute requires that the acquisition should be made in a particular manner and it prescribes the manner and method or mode the authority must adhere to it. The decision of the authority must satisfy the norms prescribed by the statute. In other words, it must conform to statutory standards or norms as prescribed by the statute. We must view these provisions in the context they appear. The context is acquisition of a private property of a citizen. Therefore, in order to eliminate the possibility of arbitrary exercise of power to acquire a private property of a citizen, the law specifically provides that the objectors are to be heard and the objections arc to be considered before arriving at a decision that the property proposed for acquisition should be acquired. Therefore for overruling the objections, the reasons are to be given. The objections cannot be disposed of by stating that they are technical or that the objectors are not concerned as to whether

the auto complex can be established in an extent of 30 acres. It is not possible to agree with the Special Land Acquisition Officer that the objections raised by the objectors are all purely technical in nature. When the objectors contend that an alternative land belonging to the State Government is available, it becomes the duty of the Special Land Acquisition Officer to consider the same under subsection (3) of Section 28 of the Act and to find out whether the alternative land is available and if so whether it is suitable for the purpose for which the acquisition proceeding is initiated. Whenever a Government land is available and it is suitable for the purpose for which the acquisition is proposed there will be no justification for the Special Land Acquisition Officer to acquire the lands belonging to private citizens. Therefore, it was all the more necessary for the Special Land Acquisition Officer to consider those objections. The other objection that the lands proposed for acquisition consist of small bits of sites purchased by the objectors for the purpose of putting up houses for their residence and they do not own any other house or site, is also a valid objection which was required to be considered. Therefore, we are of the view that the order passed under sub-section (3) of Section 28 of the Act falls short of the requirement of Section 28(3) of the Act.

Case 3: Moses v. State of Karnataka

(1991 (1) KLJ 299)

Facts

On 1/11/1965 a notification was passed under Sec. 4-A of the Karnataka Town and Country Planning Act 1961- whereby lands belonging to the Hoodi village was classified as agricultural lands and for residential use only. This was also a part of the CDP approved by the government. In 1984 the KIADB notified the area to be an industrial area. It was contended by the appellants that Acquisition under the KIADA must conform to CDP, where the CDP approved by the government the use of land as agricultural land, then it is final and cannot be converted into industrial use.

Held:

e. Power of acquisition under 28(4) cannot be watered down by KTCPA- Acquisition is through the invocation of eminent domain and as long as the acquisition is within the KIADA no complaints will be entertained. Further there is no conflict between the KIADA and the KTCPA- KIADA and the KTCPA apply to two distinct realms of planning and development.

Case 4: SS Darshan v. State of Karnataka
(AIR 1996 SC 671)

Facts

Appeal on the validity of notification under the emergency provisions of Sec. 4(1) read with Sec. 17 of Land Acquisition Act for 11 acres of land. The government had acquired land under the KIADB for the ITPL. The amount of land was held to be insufficient and hence it was sought to be acquired under the emergency provision of the LAA. It was contended by the appellants that that acquisition for a private limited company cannot be said to be for public purpose and hence emergency provision under the LAA in sec 17 could not be invoked and provision for hearing under 5-A cannot be dispensed with. The appropriate mode of acquisition should have been through the KIADA.

The government argued that the Acquisition was not for the KIADB but for the ITPKL in which KIADB has a 20% stake. It was replied that acquisition was for a public purpose of establishing a tech park of national importance and it is JV involving a government of Karnataka through the KIADB. S.S. Darshan argued that the land acquired was then transferred to a private limited company and hence the acquisition was ultimately for a private purpose rather than any public purpose.

The Government argued that the private company participation was critical since it posses the know how of how to build an ITPL. It was contended that the acquisition could not have been made under the KIADA “in view of the urgent need for the

acquisition of land which cannot be met under the KIADA and resort to the provision of the central act cannot be faulted"

Held that the acquisition is for the public purpose of setting up the Technology Park by the Government of Karnataka through the said Board and the acquisition of this additional area become necessary on account of the inadequacy of the land acquired earlier under the Karnataka Act of 1966, in view of the urgency and the need to speed up the project. The foundation for the primary submission of the learned counsel for the appellant does not, therefore, exist.

Case 5: S P Gururaja v. KIADB
(AIR 1998 Kar 223**)**

Public interest litigation was filed against an allotment of 175 acres to BPL at Rs. 92 per square meter. It was also contended that a group of smaller entrepreneurs had made a similar application for a color tube project but their application was rejected. Under a notification under Sec. 28(1) issues in 1991, the KIADB acquired 296 acres of land. An Allotment made pursuant to the decision of the high level committee. It was contended that the Allotments were made in arbitrary manner, without notifying the general public. For instance a on a perusal of the records it was shown that the allotment was made even before a letter / application form the company.

Decision

The allotments were quashed on the grounds of nepotism and misuse of authority

Extracts from decision

f. 24. The grievance of the petitioners is that after acquisition of land, the Board has to develop it into industrial area, notify the availability of industrial area, call for applications from the general public and allot the same to prospective entrepreneurs, as per Regulation 7 of the Regulations called the regulations governing the disposal of lands by the Board framed under Section 41(2)(b) of the Act. But, according to the 2nd respondent, the allotment in question had been made under Regulation 13 of the

regulations which empowers the Board to allot the land notwithstanding anything contained in Regulation 7 as a special case. Under the said regulation, the allotment has to be made in consultation with the State Government. From what is quoted above, it becomes clear that allotment has been made contrary to that. The Board as such has not passed any resolution to this effect. It is pertinent to note that the High Level Committee has looked into the requirement of 3rd respondent and made the recommendation for allotment of land. As already noticed, the application itself was submitted along with the covering letter dated 15-2-1995 (Annexure-A). In that, reference is made to the 25th High Level Committee Meeting dated 24-1-1995. How the HLC discussed the matter and made recommendation for allotment of land in favour of 3rd respondent much prior to filing of applications is a serious matter which this Court takes judicial note. The allotment order is also issued within two months from the date of said application and surprisingly reference is made to various aspects of the matter in this short period, such as meetings of HLC, clarifications sought in the matter, notes put-up, proceedings conducted, discussions held at various levels etc. How all these things took place within such a short time, is a matter to be taken into consideration in this public interest litigation. Everything has been done in hurry in order to favour the 3rd respondent.

g. The fact that the entire proceeding was over in a matter of two months – and that the allotment was made even before the application

a. 35. The illegality in the allotment of land by the 2nd respondent in favour of the 3rd respondent is also clear from one more fact. That is, while it is stated that 2nd respondent has made allotment of the land in question, in reality what is done is lease of the land. Annexure R-8 is the lease deed which has been produced along with the additional statement filed by the 3rd respondent. It is dated 17-4-1996. But, even before execution of this document the possession of 149 acres 5.5 guntas of land has been handed over on 29-5-1995 under Annexure R-2 to the 3rd respondent by the Board. It is a matter of dismay as to how the Board, which is a statutory authority, can hand-over possession of the land even before execution of the relevant document (either lease deed or any other document) in that regard. We are constrained to observe the sorry state of affairs that have taken place in the impugned action. Thus, two aspects emerge from the transaction and they are, (1) various discussions have taken place and orders issued even before filing of the application seeking allotment of land and (2) the possession of land has been handed over even before execution of relevant document. How these things happened is a matter which this Court can take judicial note of. Further, even though the lease agreement at Annexure-R8 is dated 17-4-1996, the same has been presented for registration only on 17-9-1996 and the document was registered on 12-12-1996 as per the endorsements on the said document. The Board could have handed-over possession of the land only after the document was registered and not earlier to that. It is quite reverse in this case. This indicates the hurry shown by the Board to favour the 3rd respondent as otherwise the Board could not have violated its statutory duties. We have no hesitation to hold that the then Government was also a party for all these favouritism and colourable exercise of

power. In the circumstances, viewed from any angle, the impugned action cannot be sustained. We have got comments even on the recitals and terms and conditions of the lease agreement at Annexure R-8 but we refrain ourselves from making any comment thereon except to point-out, as an example, one aspect mentioned in the opening para of page 2 thereof. It is stated therein thus:

b. "Whereas, the lessee has applied to the lessor for the grant to it of the land and premises herein after described, which the lessor, has agreed to lease to it, upon certain terms and conditions, and, whereas, before signing this agreement, the lessee has paid to the lessor the sum of Rs. 5,55,27,470/- (Rupees five crores fifty-five lakhs twenty-seven thousand four hundred and seventy only) being the initial deposit/premium payable by the lessee".

c. A careful reading of the opening sentence extracted above makes it clear that the Board assumed that the 3rd respondent has applied for grant of the land and while so applying it has specifically mentioned for allotment of the land in question. In the application filed by the 3rd respondent no such mention is made and in fact it cannot ask for allotment of a specific land. It is the choice of the Board to consider the application and allot the available land and the applicant has no option for seeking allotment of a particular piece of land. The recitals of Annexure-R8 extracted above clearly demonstrates that the Board presumed itself that 3rd respondent has applied for allotment of the particular land in question. Thus, the impugned action is done on assumptions and presumptions in order to favour the BPL. It is also evident from the extracted portion that even before signing the said agreement more than 5.5 crores have been paid by the 3rd respondent to the Board. Such a huge payment can be made only after all the formalities are completed and agreement is entered in relation to the transaction. In this case everything has been done in advance ignoring all statutory obligations.

h. Held that the entire acquisition is illegal and hence quashed: But it is to be noted that the case subsequently went on appeal and the order has been stayed but the final orders have not been passed

Case 6: Kenchappa v. State of Karnataka

(1999 SC)

Facts

Public interest litigation was filed by the inhabitants of the village against the validity of a notification issued under 3(1) of the KIADA. The argument raised was that that the lands sought to be notified as industrial land were Gomal lands and if converted to industrial area, then the villagers would loose their grazing grounds for cattle. Gomal lands and lands

for residential purposes is in a green belt area and they should therefore not be allotted or acquired for any “non agricultural purpose” It was argued that The Karnataka Land Revenue Act which governs about the land revenue in the State provides that a gomal land cannot be changed for any other purpose, except with prior permission of the authority concerned. Under Section 71 of the KLR Act, power is given to the Deputy Commissioner to reduce or increase the gomal land (grazing land) according to the exigencies of requirement for providing house sites to weaker sections and Scheduled Castes/Scheduled Tribes/(SCs/STs) and to regularize unauthorised occupation of the land by weaker sections of the people and SCs/STs and assign the land to them. But, there is no power to the Deputy Commissioner to allot the agricultural land or gomal land to industrial purpose without conversion as provided under Sections 95 and 97 of the KLR Act.

Furthermore Section 95 of the KLR Act provides that where any area is declared as a green belt by issuing a notification under the said provision, the same cannot be rescinded by the Government by issuing a notification, except by amending the Act itself. Finally, the Karnataka Country and Town Planning Act provides to specify the green belt area while preparing the plan for urban area, and rural area so that pollution-free area is available to the residents of the locality and the Act also provides for reserving sites for civic amenities like parks, hospitals and other public requirements which cannot be converted for other use, unless specific permission is obtained as provided under the said Act. Thus, the scheme of the Constitution as well as the KLR Act and Karnataka Country and Town Planning Act makes it abundantly clear that protection of environment and maintaining ecological balance is essential for human life.

Held

"in order to maintain ecological equilibrium and pollution-free atmosphere of the villages, the authorities under the KIADB Act are directed to leave land area of 1 k.m. as a buffer zone from the outer periphery of the village in order to maintain a 'green area' towards

preservation of land for grazing of cattle, agricultural operation and for development of social forestry and to develop the area into green belt. This would measure the preservation of ecology without hindering the much needed industrial growth thus striking a balance between industrial development and ecological preservance.

But, having regard to the circumstances of the case and nature of establishment of respondent 3 and its activities, which is essential to the growth of computer industry and research and development in information technology, we do not wish to disturb the allotment made to 3rd respondent, but the notification under Section 3(1) of the Act and consequential proceedings or notification or orders issued in regard to the other disputed lands in the writ petition are quashed, to the extent of the lands which are reserved for grazing, agricultural and residential purposes. We further direct that whenever there is acquisition of land for industrial purpose or commercial or on non-agricultural purposes, except residential area, the authorities must leave 1 k.m. area from the village limit as a free zone or green area to maintain ecological equilibrium as stated above.

Extracts from the case

a. *28. Though we accept the contention of the learned Senior Counsel Mr. P. Chidambaram for respondent 3 that the provisions of Karnataka Land Revenue Act and other enactments will yield to the overriding effect of the KIADB Act, which is a special Act, we have to hold that the rights created under the provisions in a statutory body or authority, are subject to fundamental rights of the citizens guaranteed under Articles 21, 47, 48, 48-A and 51-A(g) of the Constitution. The learned Counsel for respondent 3 also submitted that there is a distinction between delegated legislative power and delegated administrative power and relied on the judgments in Union of India and Another v Cynamide India Limited and Another and M/s. Shri Sitaram Sugar Company and Others v Union of India and Others and contended that declaring an area as an industrial area under Section 3(1) of the Act is a legislative Act.*

b. *"It was also contended by the appellants that before any notification could be issued under Section 16 of the Gujarat Industrial Development Act, 1962, a hearing should have been given to the residents, because notifying an area under Section 16 of the said Act has civil consequences. If the residents had any objections, they should have been considered. Reliance was placed upon a decision of this Court in Baldev Singh's case, supra. In that case, under the Himachal Pradesh Municipal Act, a notified area had been*

declared under Section 256, This Court said that the inclusion of an area governed by a Gram Panchayat within a notified area would certainly involve civil consequences. In such circumstances, it is necessary that people who will be affected by the change should be given an opportunity of being heard otherwise they would be visited with serious consequences like loss of office in Gram Panchayats, an imposition of a way of life, higher incidence of tax and the like. Although the section did not, in clear terms, provide a right of hearing, the Court held that denial of such an opportunity was not in consonance with the scheme of the rule of law governing our society. A similar view has been taken in State of Uttar Pradesh and Others v Pradhan Sangh Kshetra Samiti and Others at 334. In this case, delimitation of panchayat areas and Gram Sabhas under the U.P. Panchayat Raj Act of 1947 was considered by this Court. It said that an opportunity of being heard should have been given to the people of the areas concerned. In that case, action having already been taken without giving an opportunity of hearing, in view of the urgency, a post-decisional hearing was considered as sufficient compliance with the principle of audi alteram partem. In the present case, however, there has been a long-drawn-out exchange of views, consultations as well as consideration of objections over the issuing of a notification under Section 16 of the Gujarat Industrial Development Act, 1962 which was also linked with the exclusion of this area from the panchayat area under Section 9(2) of the Gujarat Panchayats Act, 1961. It was precisely because of these consultations that the GR of 30-8-1993 was also issued to provide revenue to the Gram Panchayats from out of the taxes collected from notified areas which were removed from the jurisdiction of Gram Panchayats. Therefore, the appellants cannot complain of any violation of the principles of natural justice in the present case".

c. 29. In this case we are concerned with the right to issue a notification declaring an area as an industrial area. Respondent 2 has got the power and authority, but the same is subject to fundamental rights and as we have held, the rights of the villagers to enjoy the grazing land and land to be reserved for green belt is a fundamental right. Whenever it is violated, notification and the consequential acquisition has to be quashed.

d. 30. Learned Counsel for respondent 3 contended that none of the petitioners own land and they have not stated as to how many cattle they have. Therefore, the writ petition, as a public interest litigation, is not maintainable. The scope of the PIL has been thoroughly discussed and principles are laid down by the Apex Court and various High Courts. In a number of cases referred to supra, it is held that a writ petition is maintainable in the nature of PIL at the instance of any person to safeguard and protect environment and to espouse the public cause and protect the rights of those weaker sections who are not able to espouse their own cause. There is no rule that a person espousing a public cause must also own the land or cattle. We are therefore not able to agree with the contention of respondent 3 in this regard.

e. 31. It is further contended that once the Act holds the field, all the terms and actions are governed by the said Act and Sections 13, 14 and 41 of the Act read with Regulation 5 provide power to the Board to make regulations and for disposal of the lands acquired under the Act. Therefore, the lease executed in the present case is quite valid and within the power and competence of respondent 2. There is no dispute about this aspect also. But we

must point out here that in this case how the things have taken place. The application for allotment was made on 16-7-1999; allotment letter was issued on 17-7-1999 and possession was delivered on 20-9-1999 and lease-cum-sale deed agreement was executed on 30-9-1999. The lease-cum-sale deed mentioned only Sy. Nos. but not the extent of each survey number. It is also shown to us from the records that the Single Window Agency (SWA) has granted clearance. The SWA consists of members belonging to various Departments including Pollution Control Board. Though the Pollution Control Board Chairman was to be present, an Assistant Secretary was deputed in his place. Under the provisions of the Pollution Control Act, 1986, the Pollution Control Board has got power to grant clearance. Clause (12) of the Lease deed provides that the 3rd respondent should obtain Pollution Control clearance. Issuing a notification declaring an area as industrial area and putting in possession of the land even before execution of the lease deed and not obtaining the clearance of the Pollution Control Board as contemplated under Section 21 of the Act, all shows that how the things have taken place hurriedly. This practice on the part of respondent 2 is deprecated.

f. 32. Therefore, in view of the above circumstances, we hold that in order to maintain ecological equilibrium and pollution-free atmosphere of the villages, the authorities under the KIADB Act are directed to leave land area of 1 k.m. as a buffer zone from the outer periphery of the village in order to maintain a 'green area' towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry and to develop the area into green belt. This would measure the preservation of ecology without hindering the much needed industrial growth thus striking a balance between industrial development and ecological preservance.

g. 33. But, having regard to the circumstances of the case and nature of establishment of respondent 3 and its activities, which is essential to the growth of computer industry and research and development in information technology, we do not wish to disturb the allotment made to 3rd respondent, but the notification under Section 3(1) of the Act and consequential proceedings or notification or orders issued in regard to the other disputed lands in the writ petition are quashed, to the extent of the lands which are reserved for grazing, agricultural and residential purposes. We further direct that whenever there is acquisition of land for industrial purpose or commercial or on non-agricultural purposes, except residential area, the authorities must leave 1 k.m. area from the village limit as a free zone or green area to maintain ecological equilibrium as stated above.

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