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## BDA CANNOT ORDER DEMOLITION OF SITE 2180 & 2179 IN HAL 2<sup>ND</sup> STAGE AS APPLICATIONS ARE PENDING FOR RECONVEY UNDER RESOLUTION 629 OF BDA DATED 21-06-1980



By: M.S.Yatnatti: Editor and Video Journalist Bengaluru: BDA engineers cannot pass orders for demolitions of sites for which applications are pending for re-convey in re-convey department headed by assistant commissioner level competent authority. Request is made to The Commissioner / Assistant Commissioner (R&R) Bangalore Development Authority to execute the Re-convey sale deed in the name of 1) Sri Papanna s/o shamanna site number 2179 2) Nagraj s/o shamanna site number 2180 (30x40) 3) Venkatesh s/o shamanna site Number 2186 (30x40) 4) Gopool s/o shamanna site number 2187 (30x40) 5) Rajappa s/o shamanna site Number 2178 (30x40) 6) Mariyappa s/o shamanna site Number 2168 (30x40) 7) Munichamma w/o Shamanna site Number 74 (42x85) all revenue sites in Survey No 223/1 Kodihalli HAL 2<sup>ND</sup> STAGE Bangalore carved out of 34 Guntas in possession above revenue site owners since several decades as all revenue sites in all survey numbers of All extensions of BDA layouts were brought in Re-convey area under one resolution as per Subject No. 629 of meeting of BDA held on Saturday the 21st June, 1980 and in view of this Assistant Commissioner (R&R) is duty bound to re-convey revenue sites in Survey No 223/1 Kodihalli as BDA has brought and covered all extensions (Layouts) under re-convey area under one master and general resolution passed to include all revenue sites of all extensions under one resolution passed in subject number No. 629 dated 21st June, 1980. As per regularization and re-allotment of sites as resolved by Proceedings of the meeting of the BDA, Bangalore held on Saturday the 21st June, 1980 in Subject No. 629 which gives general power to include all extensions of BDA which are pending for regularization by re-allotment cases in all other extensions which are pending for a long time, so that the cases of other revenue site owners may also be solved wherefore BDA need to re-convey all sites in respect of S No 223/1 consisting 34 Guntas Kodihalli HAL 2<sup>ND</sup> STAGE Bangalore which are in owners possession as site owners and legal heirs since several decades and pending regularization as since owners had applied for regularization several time in the past and since provision of law is now available for regularization BDA is duty bound to Re-convey all revenue sites each 30x40 coming under S No 223/1 consisting 34 Guntas Kodihalli HAL 2<sup>ND</sup> STAGE Bangalore. And as per Section 5 of the Amendment Act introduced Section 38-C in the Act and Section 9 of the Amendment Act validated the allotments made between 20.12.1973 to 8.5.1986 retrospectively. Under section 38C power has been confirmed on BDA if the CITB had already passed a resolution to re-convey the land in favour of a person or any site formed in the land which belong to them and which had vested or had been acquired by the BDA or CITB for the purpose of any development scheme and on the ground that it is not practicable to include such site for the purpose of the development scheme, then authority can allot such site by way of sale or lease in favour of such person i.e., the person to whom the site belonged originally. 1998 (5) Kar LJ 646 G Umadevi Vs BDA. The word "reconvey" appearing in S 38C presupposes that the person to whom the allotment is made should be an erstwhile owner whose land has been acquired and in which the site to be re-conveyed has been formed. ILR 2001 KAR 1727 LV Hosappa Vs BDA. The Preliminary Notification was dated 28.11.1959, Final Notification was dated 19.8.1964 and the Award according to the BDA was passed on 13.5.1969. However, possession of the land in question is claimed to have been taken on 28.12.1976. The B.D.A. Act came into force w.e.f. 20.12.1975 (received the assent of the Governor on 2.3.1976). Earlier to that, the City of Bangalore Improvement Act, 1945 (hereinafter called "1945 Act") was in force.

State of Karnataka amended the Bangalore Development Authority Act, 1976 by the Bangalore Development Authorities (3rd Amendment) Act, 1993 (for short "the Amendment Act") which came into force with effect from 31st March, 1994. Section 5 of the Amendment Act introduced Section 38-C in the Act and Section 9 of the Amendment Act validated the allotments made between 20.12.1973 to 8.5.1986 retrospectively. Section 38-C and Section 9 of the Amendment Act are reproduced below:- "38-C. Power of Authority to make allotment in certain cases. Notwithstanding anything contained in this Act or in any other law or any development scheme sanctioned under this Act, or City Improvement Trust Board Act, 1985 where the Authority or the erstwhile City Improvement Trust Board, Bangalore has already passed a resolution in favour of any persons any site formed in the land which belong to them or vested in or acquired by them for the purpose of any development scheme and on the ground that it is not practicable to include such site for the purpose of the development scheme, the Authority may allot such site by way of sale or lease in favour of such persons subject to the following conditions, -(a) the allottee shall be liable to pay any charges as the Authority may levy from time to time; and (b) the total extent of the site allotted under this section together with the land already held by the allottee shall not exceed the ceiling limit specified under Section 4 of the Urban Land (Ceiling and Regulation) Act, 1976." "9. Validation of certain allotment. Notwithstanding anything contained in any law or any judgment, decree or order of any court where in pursuance of any resolution passed by the Authority or the erstwhile City Improvement Trust Board, Bangalore to re-convey in favour of any person any site out of the land which belonged to them or vested in or acquired by them for the purpose of any development scheme, the Authority has made allotment of such site by way of sale, lease or otherwise in favour of such person after the twentieth day of December, 1973 and before eight day of May, 1986, such allotment shall be deemed to have been validly made and shall have effect for all purpose as if, it had been made under Section 38-C of the Principle Act as amended by this Act and accordingly (a) all acts, proceedings and things done or allotment made or action taken by the authority shall for all purpose be deemed to be and to have always been done or taken in accordance with law; (b) no suit or other proceedings shall be instituted, maintained or continued in any court for cancellation of such allotment or for questioning the validity of any action or things taken or done under Section 38-C of the Principle Act as amended by this Act, and no court shall enforce or recognize any decree or order declaring such allotment made or any action taken or things done under the Principle Act as invalid." Section 38-C commences with non obstante clause. It provides that irrespective of anything contained in any law or any judgment, decree or order of any Court where in pursuance of any resolution passed by the authority or the erstwhile City Improvement Trust Board, Bangalore in favour of any person re-conveying the site formed in the land which belong to them or vested in or acquired by them for the purpose of any development scheme and on the ground that it is not practicable to include such site for the purpose of any development scheme, the Authority allot such site for the purpose of development scheme by way of sale or lease in favour of such persons subject to the allottee paying such charges which the authority may levy from time to time and the extent of site allotted under this provision together with the land already held by the allottee shall not exceed ceiling limit specified under Section 4 of the Urban Land (Ceiling & Regulation) Act, 1976. Section 9 of the Amendment Act speaks of validation of certain allotment. It also starts with the non obstante clause and provides that if a resolution has been passed by the Bangalore Development Authority or the City Improvement Trust Board to re-convey in favour of any person any site out of the land which belonged to him or vested or acquired from him for the purpose of any development scheme, the Authority has already made allotment of such site by way of sale, lease or otherwise in favour of such person after 20th of December, 1974 and before 8th of May, 1986, then such allotment shall be deemed to have been validly made and shall have effect for all purpose as if, it is made under Section 38-C of the Principal Act as amended by Act 17 of 1984. On a conjoint reading of Section 38-C read with Section 9 of the Amendment Act it would be seen that Section 38-C gives the authority to make allotment in certain cases. It gives the authority to the BDA to re-convey/allot in favour of any person any site formed in the land which belonged to them or vested in or acquired by them for the purpose of any development scheme and on the ground that it is not practicable to include such site for the purpose of development scheme by way of sale or lease in favour of such person whose land was acquired subject to his liability to pay any charges that the authority may levy from time to time and that the total extent of site allotted under this Section together with the land already held by the allottee would not exceed the ceiling limit under Section 4 of the Urban Land (Ceiling and Regulation) Act, 1976. Section 9 of the Amendment Act validates the allotment made between 20th December, 1973 to 8th May, 1986. Section 38-C only authorizes the BDA to allot a site in a development scheme to a person whose land had been acquired. Section 38-C BDA Act is prospective in its application except to the extent of the allotment made between 20th December, 1973 to 8th May, 1986 which is saved by Section 9 of the Amendment Act. The resolution of CITB/BDA of 17-11-1982 agreeing to re-convey the part of the land acquired is covered by the provisions of Section 9 of the Amendment Act. In the present case, the resolution of the CITB/BDA is dated 17-11-1982 and it would be deemed to be validated by the deemed fiction created by Section 9 of the Amendment Act to bring it within the provisions of Section 38-C. As per "citation of high court orders in Re-view Petition in K N KAMALAMMA versus BDA Reported in 2009(1) Kar .L.J.658(DB) in Division Bench Karnataka High Court on 17th July 2008 (Para 14) and as per the resolution passed in Subject No. 629: meeting by the BDA held on 21-6-1980 in respect of Regularisation and re-allotment of sites in certain survey numbers of Avalahalli, Gavipuram and Gerahalli Villages, under Banashankari III Stage - fixation of layout charges. No doubt, it is true that the word 'reconveyance' has not been used in Resolution No. 629 and instead the words used are 'regularisation' and 'reallotment' of site. But it is implicit in the resolution of the BDA that what is really meant by regularization and re-allotment of the site was only re-conveyance of the site" as BDA itself has "RE-ALLOTTED AND REGULARISED" "RE-CONVEYED" the sites in many Layouts and its extensions. Regularizing few people sites in few extensions and not regularizing other sites in few extensions is illegal and discrimination. Thus in view of the accepted position that BDA has already executed the sale deed in favour of similarly situated persons and not allotting and registering site in the name of few is violation of above stated Division Bench High Court Order. It is Violation of human rights by commissioner of BDA other officers connected with R&R BDA. The findings recorded in the said judgments in K N KAMALAMMA versus BDA Reported in 2009(1) Kar .L.J.658(DB) in Division Bench Karnataka High Court on 17th July 2008 (Para 14) are binding on BDA.

BDA cannot issue any notice of Eviction or Legal action as Gopal and others as perfected its title by adverse possession as it is in settled position for 34 Guntas in S No 223/1 Kodihalli HAL 2<sup>ND</sup> STAGE Bangalore with structure since decades for more than 12 years consequently the title of BDA stood extinguished (If anyone, who has trespassed into BDA land or in unauthorized possession of BDA land, has put up a structure and completes and accomplishes the act of possession and continues in such settled possession asserting possession and ownership in himself, openly, peacefully and uninterruptedly to the knowledge of BDA, for more than 12 years, then it is possible for him to contend that he has perfected his title to such property by adverse possession and consequently the title of BDA stood extinguished as per Division Bench order Reported in John B. James And Others vs Bangalore Development Authority ... on 7 August, 2000 Equivalent citations: ILR 2000 KAR 4134, 2001 (1) KarLJ 364). BDA has no power to enforce the lapsed Acquisition notification in respect of S No 223/1 Kodihalli HAL 2<sup>ND</sup> STAGE Bangalore consisting 34 Guntas. Wherefore BDA or its agents or its allottees has no power to disturb the peaceful possession and uninterrupted enjoyment of property of original owners or their legal heirs. As per Karnataka court orders citations the Acquisition notification in respect of S No 223/1 Kodihalli HAL 2<sup>ND</sup> STAGE Bangalore consisting 34 Guntas is considered to be lapsed and dead Acquisition notification is not enforceable. As per Section 19 of 1945 Act 'BOARD TO EXECUTE THE SCHEME WITHIN SEVEN YEARS - Where within a period of seven years from the date of the publication in the (Mysore Gazette) of the declaration under Clause (b) of Sub-section (1) of Section 18, the Board fails to execute the scheme, substantially the scheme shall lapse and the provisions of Section 27 shall become inoperative.'" The Preliminary Notification was dated 28.11.1959, Final Notification was dated 19.8.1964 and the Award according to the BDA was passed in LAC No 460 / 77 dated 04-09-78 and a cheque was deposited in court on 06-03-1999. But compensation was not paid till today to original owners or their legal heirs. The reason is, the Layout plan produced by the BDA along with Memo dated 17.9.2004 (filed in the Court on 20.9.2004) disclose that the same was approved vide BDA Resolution No. 184 dated 14.4.1976.

When the lay-out plan itself was approved after long lapse of the period mentioned in Section 19 of 1945 Act, question of executing the scheme within the stipulated period does not arise at all. That apart, even according to the BDA, possession of the land in question was taken only on 28.12.1976, which is more than 12 years from the date of declaration made in the year 1964. Therefore, it has to be held that the scheme had lapsed under Section 19 of 1945 Act. The Preliminary Notification was dated 28.11.1959, Final Notification was dated 19.8.1964 and the Award according to the BDA was passed on 13.5.1969. However, possession of the land in question is claimed to have been taken on 28.12.1976. The B.D.A. Act came into force w.e.f. 20.12.1975 (received the assent of the Governor on 2.3.1976). Earlier to that, the City of Bangalore Improvement Act, 1945 (hereinafter called "1945 Act") was in force. The said Act governs the acquisition proceedings of the land in question. Section 19 of 1945 Act reads thus: "BOARD TO EXECUTE THE SCHEME WITHIN SEVEN YEARS - Where within a period of seven years from the date of the publication in the (Mysore Gazette) of the declaration under Clause (b) of Sub-section (1) of Section 18, the Board fails to execute the scheme, substantially the scheme shall lapse and the provisions of Section 27 shall become inoperative." From the admitted facts and with reference to the above provision of the repealed Act, it should be held that the scheme was not executed within 7 years from the date of declaration. However, since the scheme is subsequently executed substantially, it has to be held that in so far as the land in question, the scheme had lapsed for non-execution of the same within 7 years as prescribed under Section 19 of the 1945 Act. The reason is, the lay-out plan produced by the BDA along with Memo dated 17.9.2004 (filed in the Court on 20.9.2004) disclose that the same was approved vide BDA Resolution No. 184 dated 14.4.1976. When the lay-out plan itself was approved after long lapse of the period mentioned in Section 19 of 1945 Act, question of executing the scheme within the stipulated period does not arise at all. That apart, even according to the BDA, possession of the land in question was taken only on 28.12.1976, which is more than 12 years from the date of declaration made in the year 1964. Therefore, it has to be held that the scheme had lapsed under Section 19 of 1945 Act.



In the circumstances it has to be held that the BDA has abandoned its scheme in so far as the land in question for the reason that it has not formed sites upon the land in question as is evident from the Master Layout plan produced by the BDA. Consequently, the successor BDA had no jurisdiction to execute or implement the lapsed and abandoned scheme. Therefore the legal consequence is that the officers of BDA should not have exercised their power over the land in question under the provisions of the BDA Act and Rules for demolishing the existing structures and formed the sites upon the property and sold the same in the public auction on 23.8.2003. It is no doubt true that under Section 19 of the 1945 Act and under Section 27 of BDA Act the scheme would lapse if it is not implemented substantially within the specified period. But, what should happen to the lands acquired by the erstwhile CITB for the scheme and not utilized for several years despite the scheme is substantially executed in respect of the other lands? If the acquired lands are not utilized for the purpose for which they were acquired within a reasonable period (for example within a period of 10 years from the date of final notification), it shall be held that such lands are not required for the purpose for which they were acquired and the same are abandoned. In such cases, it has to be held that the acquisition proceedings automatically lapsed on account of abandonment of the same for decades and the original owners of such lands can exercise full ownership rights upon such lands. Otherwise, neither the original owners nor the authority for which the land was acquired will use the land and the valuable lands remain un-utilised even for several decades. That results in defeating the very object and purpose for which the land was acquired under the guise of public purpose on the one hand and on the other hand the owners of the lands are deprived of their valuable rights of enjoying and exercising their ownership rights. Therefore, an end has to be put to such a situation so that lands are utilized properly either by the owners or acquired body or Authority in whose favour lands are acquired. If the acquired land is not utilized for several years by the acquired body or authority for the purpose for which it was acquired, it has to be held that the acquired body or authority failed to exercise its rights over the land. In such a situation, the right of the land owner revives. In the instant case since the petitioner is in settled possession upon the land, he has acquired a valuable statutory right as held in James case. Hence the officers of the BDA should not have demolished the existing structures upon the land in question by using force without taking possession of the land from the petitioner with due process of law as held in several decisions. On the scope of Section 27 BDA Act, a Division Bench of this Court has considered the same and explained to the effect that for the scheme to lapse under Section 27, there must be dereliction of duty or failure on the part of the authority to execute the scheme specifically within 5 years from the date of publication in the official Gazette and a declaration under Section 19(1) of the Act. The two conditions to be fulfilled to attract the provisions of this Section are, there must be failure to execute the scheme i.e., there must be dereliction of statutory duties without justification and not a mere delay in execution of the scheme. Secondly, substantial execution in the context depends on the magnitude of the scheme and the nature of the work to be executed. Though burden is upon the BDA to furnish material to the Court to show that there is substantial execution on the matter, it is for the appellant to place necessary material before the Court to show that there has been dereliction of statutory duties and not mere delay in implementing the scheme. BDA should stop exhibiting the style of functioning in a dictatorial manner either without understanding the statutory provisions, law laid down in a catena of decisions, violating rule of law or in utter ignorance of law. BDA cannot exercise powers illegally, arbitrarily and discriminately giving a go-bye to all norms, guidelines and principles required to be scrupulously followed for taking possession of the acquired property, formation of layout and disposal of the sites either by way of allotment or sale of the same in accordance with the Rules framed by the State Government in exercise of its statutory power under Section 38 of the BDA Act of 1976 (in short referred to as 'BDA Act'). The arbitrary exercise of power by the officers for demolition of the existing structures upon the property in question, formation of the sites and disposal of the same in the public auction in utter violation of the Bangalore Development Authority (Disposal of Corner Sites and Commercial Sites) (Amendment) Rules, 1984 shocks the conscious ordinary citizen. For the reasons stated in paragraphs above, in the instant case the acquisition proceedings in respect of the land in question are not in force as the acquisition proceedings have lapsed and the B.D.A has abandoned its scheme due to non-utilization of the land in question for nearly four decades. The BDA has no right to exercise its power over it at this stage as the original owners and appellants has acquired a valuable statutory right upon the land in question. Accordingly, B.D.A. has to issue no objection certificate to original owners and their legal heirs stating that acquisition proceedings in respect of the land in question are not in force as the acquisition proceedings have lapsed and the B.D.A has abandoned its scheme due to non-utilization of the land in question for nearly four decades. Waiting for your reply and no objection statement from BDA in respect of S.No 223/1 kodihalli Village HAL 2<sup>nd</sup> stage Indir Nagar Bangalore stating that acquisition notification stands lapsed and no enforceable. The police is requested to stop the trespass by BDA and its agents from encroaching the sites on the strength of lapsed notification. Many eviction orders of BDA have been set aside by courts. The title of BDA stood extinguished (If anyone, who has trespassed into BDA land or in unauthorized possession of BDA land, has put up a structure and completes and accomplishes the act of possession and continues in such settled possession asserting possession and ownership in himself, openly, peacefully and uninterruptedly to the knowledge of BDA, for more than 12 years, then it is possible for him to contend that he has perfected his title to such property by adverse possession and consequently the title of BDA stood extinguished as per Division Bench order Reported in John B. James And Others vs Bangalore Development Authority ... on 7 August, 2000 Equivalent citations: ILR 2000 KAR 4134, 2001 (1) KarLJ 364). The State Government has rightly decided to regularize 3,699 acres of encroachment of Bangalore Development Authority (BDA) land, which may house an estimated 66,500 sites plus about 20,000 pending files in all about one lakhs sites. For this state government need to amend BDA Act and Rules. This land spread across 68 BDA layouts, has been notified and acquired by BDA during the formation of these respective layouts. However, private individuals though do not have titles over the property have had possession of these lands and has seen development. These private individuals have been enjoying these properties in many cases for more than two decades now. Not just that, most of these cases are currently pending before the courts as the private property owners have either challenged the acquisition or have sought a title deed. Former Chief Minister Siddaramaiah had said and it is on record that as most of these lands are developed into residential areas, it was not possible for the Government to evict all these residents. "There are only two options here. Either we evict them or regularise them. It is a question of more than 60,000 households. Therefore, it was considered necessary to amend the Bangalore Development Authority Act, (i) to take power to make bulk allotment; (ii) to validate bulk allotment made earlier. Opportunities are also taken to make certain consequential amendments. The Act was amended and section 38-C and VALIDATION Act was introduced in BDA Act. Several thousand sites were validated and BDA was in process of issuing sale deeds and R&R department was created in BDA to carry out Re-Convey re-allotment and regularization..

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