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## UDD ORDERS VIOLATED BY DS BDA HAS ILLEGALLY FRAUDULENTLY ALLOTTED ALTERNATIVE SITE ON 12-08-2013 OVER SHOOTING HIS POWERS



By : M.S.Yatnatti Editor and Video Journalist Bengaluru : Despite Government orders and UDD orders DS-2 has illegally and fraudulently allotted alternative site to Smt Leelavathammas GPA Holder M Srinivas on 12-08-2013 as alternative scam broke out in BDA and shashidhar committee gave its report and Government issued orders to cancel all illegal alternative sites .In Legislative assembly this issue was raised and then chief minister had issued orders to stop illegal alternative site allotments .Reportedly request is made to cancel illegal allotment made on 12-08-2013 by DS-2 to Smt Leelavathammas GPA Holder M Srinivas in respect of site No 3970, 3<sup>RD</sup> MAIN ROAD 17 E CROSS Banashankari 2<sup>nd</sup> stage Bangalore : 560070 which is in possession of Smt Radhamma since 40 years as DS-2 is not the authority to deal with re-convey proposal Smt Leelavathammas for Re-convey proposal in lieu of Survey number 10 Kahtriguppe and to illegally allot her alternative site in survey number 43 of Yediyur is illegal as in Re-convey "no alternative site" can be allotted as per high court orders and BDA Rules consequently DS-2 is not authority to allot re-convey site and DS-2 his allotment letter and sale deed is illegal and attract disciplinary proceedings Against DS-2 and this allotment need to be cancelled as it is illegal alternative site allotment letter and AC (R&R) need to execute the Re-convey sale deed in the name of Smt Radhamma in respect of site number No 3970 3<sup>RD</sup> MAIN ROAD 17 E CROSS Banashankari 2<sup>nd</sup> stage Bangalore : 560070 ( 40x60) feet as per court order in MA 33/2014 dated 31-10-2015 as Smt Radhamma has accrued legal for re-convey as revenue sites were regularised under BDA resolutions and policy.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 Re-Convey Section all about one lakhs sites .BDA secretary eviction order is set aside in M.C.A NO. 33 / 2014 in respect of Banashankari I Stage recently "instead let BDA reconvey sites". I have asked The Public Information Officer, and Assistant Commissioner (R&R) Bangalore Development Authority Bangalore to provide me information and reasons 4(I) (d) RTI Act for delay executing the sale deed in favour of Smt Radhamma as per court order in MA 33/2014 dated 31-10-2015 .The order by Principal City Civil and Sessions judge Bangalore in court hall number 42 in MA 33/2014 dated 31-10-2015 has declared that Smt Radhamma has accrued the legal right to proceed with the application for re-conveyance in view of section 38-C(2) of BDA Act in respect of Re-Convey and executing sale deed by BDA site No 3970, 3<sup>RD</sup> MAIN ROAD 17 E CROSS Banashankari 2<sup>nd</sup> stage Bangalore : 560070 40x60 feet in the name of Smt Radhamma w/o M. Rangappa as she is legal heirs to the property which was earlier part of 80x60 site owned by her husband's father of which another site No.3971 site number measuring 40x60 which is already re-conveyed and registered by BDA in the name of legal heirs of Radhamma husband's father .Please provide me information as per RTI Act in respect of Re-Convey by way of re-allotment and regularisation and executing sale deed by BDA in respect of No 3970 3<sup>RD</sup> MAIN ROAD 17 E CROSS Banashankari 2<sup>nd</sup> stage Bangalore : 560070 ( 40x60) feet in the name of Smt Radhamma w/o M. Rangappa as she is legal heirs to the property which was earlier part of 80x60 site of which 3971 site number is already Re-allotted and Regularised (re-conveyed ) and registered by BDA. 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 all power to other regularisation by re-allotment cases in other extensions which are pending for a long time, so that the cases of other revenue site owners may also be solved and BDA policy decision as per BDA/CITB Reslution to regularised revenue sites as per notification published in Deccan herald news paper by notification dated BDA/ADM/PA/195/76-77 Dated 14<sup>th</sup> july 1976 .

BDA do not learn lessons despite this situation .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 .In this scenario the Bangalore Development Authority (BDA) issuing notices on 152 constructions is illegal capricious and unwarranted , mostly residential houses, in Banashankari III Stage, claiming that these have been built illegally on 5.3 acres of its property. After 4 decades BDA cannot issue notices of eviction. The notices are dated November 16, 2015 and when some of the residents protested, authorities took the help of police and photographed and videotaped the serving of notices. Reportedly The 'illegal layout' is the area behind the Kamakya Theatre off the Ring Road.What has irked the residents is that many of their homes here are decades old. The BDA notice says the constructions are illegally done on survey numbers 77/1 and 77/2 in Kathriguppe village, Uttarahalli Hobli, Bengaluru south taluk. It states that these lands were acquired by the BDA through the notification of September 10, 1979, and a final notification on April 30, 1981. "These are properties of the BDA. It is noticed that you have put up illegal/unauthorized constructions and are residing there. You are informed to provide any documents about the property if you have any within seven days, else action as per BDA rules will be initiated against you," the notice read. This notice is issued in violation of as per citation of high court orders in 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 cannot issue any notice of Eviction or Legal action as these residents have perfected their title by adverse possession as they are in settled position for of their sites with structure since 1973 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).Reportedly The current land value of the 5.3 acres is estimated at Rs 300 crore for which BDA need not have stomach ache . The alleged unauthorized constructions are largely individual houses, a few multi-storied buildings and a Mahalakshmi temple. The residents include many government servants. A local resident, who has been served the notice, said, "Most homes were constructed here with bank loans. In many cases, the loans have also been cleared. That is how old the houses here are. Some people started talking about this being an illegal layout six months ago. Some of the residents sold the properties and vanished. Some houses have changed hands many times over. I do not understand how BDA decided that it is its property now. No-objection certificates have been issued and in an old case, the BDA had claimed that this was a private layout.

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. Chief Minister Siddaramaiah said 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. We have decided to regularise these possessions with a fee that is presently being worked out. This will ensure revenue of a few thousand crores to BDA and also solve the issue for the people," he said adding that the Government had sought legal opinion on the process to be followed for the same. It is good decision as State Government need to amend the BDA Act and rules. Some of the bulk allotments Re-Convey re-allotment and regularisation were made by the Authority in favour of the State and Central Government Organisations, House Building Co-operative Societies and several thousand individuals have been quashed by the High Court of Karnataka in various Writ Petitions because there is no provision in the Act for making bulk allotment and Re-conveyance . 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. Sevral 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. While BDA was in process another blow came from supreme court in Bangalore Development Authority ... vs R. Hanumaiah & Others on 3 October, 2005.It was held that "BDA can do Re-Convey re-allotment and regularization only for the allotment made between 20th December, 1973 to 8th May, 1986 and not prior to that as Section 9 of the Amendment Act validates the allotment made between 20th December, 1973 to 8th May, 1986. Section 38-C only authorises the BDA to allot a site in a development scheme to a person whose land had been acquired. "This apart Section 38-C is prospective in its application except to the extent of the allotment made between 20th December, 1973 to 8th May, 1986 which are saved by Section 9 of the Amendment Act. The resolution of CITB of 1972 agreeing to re-convey the part of the land acquired is not covered by the provisions of Section 9 of the Amendment Act. In the present case, the resolution of the CITB predecessor-in-interest is dated 19.4.1972 and it would not 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.".This small mistake of government put 20,000 files pending while it clared several thousand files with this amendment for the resolutions passed between 20th December, 1973 to 8th May, 1986 which were validated and approved by several court orders.But government intension was to solve problems of all the bulk allotments Re-Convey re-allotment and regularisation were made by the Authority since CITB formation in 1945 in favour of the State and Central Government Organisations, House Building Co-operative Societies and several thousand individuals .Now government and BDA have realized their mistake and proposed a small amendment to validation Act to solve this problem and the amendment is instead of "between 20th December, 1973 to 8th May, 1986" the amendment will be in the place of word "20th December, 1973" the following word may be substituted "Since the formation of CITB in 1945" to 30th December, 2015 .Which will make the Validation Act Section 9 of the Amendment Act validates the allotment made between Since the formation of CITB in 1945 to 8th May, 1986. Section 38-C only authorises the BDA to allot a site in a development scheme to a person whose land had been acquired and this will solve more than 20,000 files will be cleared and houses regularized and BBMP can give them A khata and get taxes from them legally.

Instead of issuing orders of eviction after decades of revenue site holders occupation and enjoyment BDA should think of reconvening them to the owners and their heirs as all have even perfected their titles by adverse possessions. This was an appeal filed by the appellants aggrieved by the order dated 06-08-2014 by The Secretary & competent officer ,BDA Bangalore under Karnataka Public Premises Act (eviction of Unauthorised Occupants)Act 1974 .The appellants submit that, and presently BDA admits that the site in question comes in Re-convey area and admittedly Sri Mudappa had applied thrice for reconvey of 60x80 site and admittedly Sri Mudaappa died on 03-01-1977 and both Smt Lashamma and Radhamma were legal heirs the property 60x80 site and entire site was for due for allotment and within prescribed limit of re-conveyance Act as 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."one part was given to Smt Lakshamma 40x60 and another part of 40x60 was to be given to Radhamma for which she is legally entitled as per amended BDA Act was not given for which Radhamma applications are pending and when the application is duly pending in one section of the BDA no eviction notice can be given by the engineering section of BDA . The appellants submit that 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 authorises 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.

The appellants submit that 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 17<sup>th</sup> 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 regularisation and reallotment of the site was only reconveyance of the site" as BDA itself has "RE-ALLOTTED AND REGULARISED" "RE-CONVEYED" half site in name of Lakshamma and not allotting another half site in the name of Radhamma 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 Radhamma 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 17<sup>th</sup> July 2008 (Para 14 ) are binding on the parties. The appellants submit that Even otherwise as per citation of high court orders in 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 cannot issue any notice of Eviction or Legal action as Radhamma has perfected its title by adverse possession as it is in settled position for 40x60 sq feet site with structure since 1973 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). The findings recorded in the said judgments are binding on the parties .The citations were filed before court with separate memo,

Conclusion: Citizens can force every PA to create information every day strictly as per the system and procedure as per listed Acts and rules regulations listed under 4(1) (a) (b) (c) every day and that can be cross checked by applicant by asking reasons under 4(1) (d) by the affected person and copy of the same can be given to any applicant under 2(f) of RTI Act .Promote transparency and accountability in the working of every public authority. Policy on Prevention, Detection, and Remediation of Fraud and Corruption by government is must and a major element of good governance is the control of corruption. For that reason, controlling corruption has been a key indicator. Good governance is a keystone of government.

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