सत्यमेव जयते

Report of the Comptroller and Auditor General of India on Denotification of land by Government and Allotment of sites by Bangalore Development Authority

भारतीय लेखा एवं लेखा परीक्षा विभाग ✦ INDIAN AUDIT AND ACCOUNTS DEPARTMENT

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Government of Karnataka

Report No. 3 of the year 2012

Report of the Comptroller and Auditor General of India on

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Preface

1. This Report for the year ended 31 March 2012 has been prepared for submission to the Governor under Article 151 of the Constitution.

2. The Report contains the results of examination by Audit of 'Denotification of lands by Government and Allotment of sites by Bangalore Development Authority.

3. The audit was conducted in conformity with the Auditing Standards issued by the Comptroller and Auditor General of India

Executive Summary

1. Denotification of land by the Government

The Bangalore Development Authority (BDA) had been set up under the BDA Act, 1976 to promote and secure the development of the Bangalore Metropolitan Area. Section 15 of the BDA Act empowers BDA to undertake developmental schemes with the previous approval of the Government. While Section 17 of the BDA Act enables BDA to draw up a notification (preliminary notification) specifying the land proposed to be acquired for the developmental scheme, Section 19 empowers the Government to publish a declaration (final notification) stating that land for such developmental scheme is required for public purpose. Thereafter, the acquisition of land is regulated by the provisions in the Land Acquisition Act, 1894 (LA Act) which also empowers the Government to withdraw acquisition proceedings of any land (to denotify the land), of which possession has not been taken.

While land measuring 34527-17 acres[1] had been acquired for the formation of 54 layouts in the Bangalore Metropolitan Area, the Government withdrew the acquisition proceedings in respect of 1355-01 acres of land at different stages during January 1995 to March 2012. A Performance Audit was conducted during February to July 2012 covering the period 2007-12 during which the Government denotified 212-39 acres of land, possession of which had been taken. The audit sample covered 40 *per cent* of the 126 cases of denotifications made during 2007-12.

After the issue of final notification for acquisition of land under the BDA Act, the important stages of acquisition leading up to the stage of taking possession of land are regulated by the LA Act as shown below:

- Section 11 requires the Deputy Commissioner to make an award of compensation for the land acquired after hearing objections, if any, from all the persons interested in the land.
- Section 16(1) empowers the Deputy Commissioner to take possession of the land after making an award under Section 11 and the land shall thereupon vest absolutely in the BDA, free from all encumbrances.
- Section 16(2) requires the Deputy Commissioner to notify in the official Gazette the fact of such taking possession

The audit of denotification of land, which had been taken possession of by BDA during 2007-12, was conducted on the basis of the following criteria

[1] 34527-17 acres means 34527 acres and 17 guntas. Forty guntas make one acre. While the numerical before the hyphen indicates the extent of land in acres, the numerical after the hyphen represents the extent of land in guntas – This has been uniformly adopted in the Report

derived from various judgments of the Supreme Court and the High Court of Karnataka:

- Once land notified for public purpose has been taken possession of under Section 16 (1) of the LA Act with the recording of a memorandum or Panchanama by the Land Acquisition Officer in the presence of witnesses signed by him/them, the Government has no powers to withdraw the acquisition proceedings under the LA Act, even if publication under Section 16 (2) had not been issued;
- Such land cannot be reconveyed to the erstwhile landowners even if the acquired land or part thereof is not needed for public purpose; and
- Subsequent to taking possession of land under Section 16 (1), the retention of possession of the acquired land by the erstwhile land owners would tantamount only to illegal and unlawful possession.

(Chapter 1)

The important audit findings relating to denotification of lands during 2007-12 are discussed below:

During 2007-11, the Government denotified 123-15.5 acres of land after taking possession under Section 16 (1) and another 89-23.5 acres of land after notifying the fact of taking possession under Section 16(2). As the Government had no power to denotify land after taking possession, the denotification of 212-39 acres of land during 2007-11 had been done in defiance of the law. There were no denotifications during 2011-12.

Though the Government had constituted a Denotification Committee for reviewing every case of denotification in and around Bangalore and recommending to the Government the appropriate action to be taken, the Government denotified land measuring 610-16½ acres during 2007-12 without referring the cases to the Denotification Committee.

(Chapter 2)

In seven cases, the Government irregularly denotified 16-15.2 acres in four layouts between October 2007 and September 2010 after land had been taken possession of, and developed by BDA. These denotifications had been done pursuant to the orders of the incumbent Chief Ministers who disregarded the well settled law that land, once taken possession of, could not be denotified. In three of these cases, denotifications had been done in layouts where sites formed on the denotified land had already been allotted to the general public. In four cases, the denotified land was subsequently sold to other persons, evidencing that the subversion of the acquisition process culminating in the denotifications had been done only to facilitate the sale of the land acquired for public purpose.

(Chapter 3)

In six cases, the Government irregularly denotified 6-12 acres in six layouts between May 2008 and June 2010 pursuant to the orders of the incumbent Chief Ministers. These denotifications defied law and had been done after land had been duly taken possession of and even while many cases challenging the acquisition process had been pending in the Courts.

(Chapter 4)

The Karnataka Land (Restriction on Transfer) Act, 1991 (KLRT Act) prohibits transfer by sale, mortgage, gift, lease or otherwise of any land or part thereof which is proposed to be acquired by BDA under Section 19 of the BDA Act and no registering authority can register any such document unless the transferor produces before such registering office a permission in writing of the competent authority for such transfer.

In nine cases, the Government denotified 23-38 acres in five layouts during June 2007 to May 2010. In three of these cases involving 6-13 acres, denotification had been done after land had been taken possession of. In all these cases, the Government overlooked the violations of KLRT Act before denotifying the lands. The pattern of transactions in these cases evidenced that prime land notified by BDA for various developmental schemes but remaining unutilized for a variety of reasons had been targeted for illegal purchases in violation of the provisions of KLRT Act. Unjustified denotification of such lands by the Government not only regularized the illegal transactions but also facilitated exploitation of such prime land for commercial purposes in a few cases.

(Chapter 5)

In six cases, the Government irregularly denotified 13-25 acres of land during August 2007 to October 2010. In five of these cases involving 6-36 acres, possession of land had also been taken. In all these cases, denotification had been done pursuant to the orders of the incumbent Chief Ministers overlooking the fact that the acquisition proceedings had been upheld by various Courts.

(Chapter 6)

In eight cases, the Government denotified 29-24½ acres and 11875.75 sq ft of land in eight layouts between March 2006 and June 2010 pursuant to the orders of the incumbent Chief Ministers. In four cases, denotifications had been done after the land had been taken possession of. BDA's failure to take possession of the notified land for 10 to 19 years (two cases), BDA's inability to conclusively establish the fact of taking possession of land (one case), conflicting legal opinions given by the Law Department (one case), fault of the administrative department in denotifying land excessively (one case), irregular transfer of title of the notified land to the owner (one case) and the disregard shown for the legal position (two cases) facilitated the denotifications in these cases.

(Chapter 7)

With a view to encouraging investment in housing projects by private and co-operative sectors, the Government issued an order (November 1995) with the approval of the Cabinet. In terms of this order, in cases where the acquisition proceedings in respect of the notified lands had not been completed and the land had not vested with BDA, the owner of the land was free to develop the land, with the approval of the Government, either for formation of sites or for group housing. While, in the case of group housing projects, the developer should relinquish 12 *per cent* of the total built up area to BDA, in the case of formation of sites, the developer should hand over 30 *per cent* of the sites formed as per the approved plan. In addition, the areas earmarked for parks and civic amenities and open spaces in the approved plan were to be relinquished in favour of BDA. However, the Government order of November 1995 had not prescribed any time frame for completing the project by the developer.

BDA had approved (September 2004) the composite project proposal received (February 2004) from a developer for implementing a group housing scheme over 28-05 acres of land and developing sites over another 12-06 acres of land in Kothnur and Raghuvanapalya villages of Bangalore South taluk. Against 6.31 lakh sq ft of area to be relinquished, the developer had relinquished only 5.19 lakh sq ft. Though 214 residential sites had been relinquished in April 2005, BDA could take possession of only 146 sites, as the area where the remaining 68 sites had been formed by the developer was under litigation. Out of four blocks of apartments sanctioned, the construction of only one block had been completed so far and the developer had not handed over 12 *per cent* of the built-up area of the block constructed. Though the terms and conditions of Government order of November 1995 had been violated by the developer resulting in substantial loss to BDA, BDA had not reported these violations to the Government which denotified 41-31 acres in favour of the developer in September 2007.

The Government denotified (December 1996) eight acres of land in Rupena Agrahara village in Bangalore South taluk in favour of a company for developing it in terms of Government order of November 1995. After a lapse of nine years, the company offered to pay, in lieu of 30 *per cent* of the sital area, 50 *per cent* of the prevailing allotment rate at which BDA was allotting sites to the general public. Overlooking the objections raised by the Urban Development Department, the Chief Minister ordered (January 2006) recovery at 200 *per cent* of the prevailing BDA allotment rate for the sital area to be given up, though there was no provision in the Government order of November 1995 for extending such concession. While the value of the sital area given up by the Government was ₹ 51.30 crore on the basis of the average bid price received by BDA during the same period in response to auction of sites in the same layout, the amount recovered from the company for the sital area as per the orders of the Chief Minister was only ₹ 2.24 crore, resulting in a loss of revenue of ₹ 49.06 crore to BDA.

The Government had denotified 2-20 acres of land in Sy.No.1/2 of Lottegollahalli village subject to the land owner developing it in terms of Government order of November 1995. The land owner had formed sites on the entire denotified land without leaving any space for civic amenity or parks and utilized the roads already formed by BDA in the layout to provide access to the sites. The land owner had sold all the sites without handing over any sital area to BDA and the entire area had been fully built up. The cost of sites not relinquished by the land owner worked out to ₹ 16.31 crore. BDA's poor enforcement of the conditions prescribed in Government order of November 2005 led to this state of affairs.

(Chapter 8)

The Karnataka Industrial Areas Development Board had acquired 99-13 acres of land in two villages during August 2002 to March 2003 on consent basis and handed over the land to a company for setting up an IT park. The acquisition made by the Board had far exceeded the limit of eight acres approved by the High Level Committee of the Department of Commerce in Industries during September 2000. Subsequently, during May 2007, pursuant to the orders of the Chief Minister, the Government denotified before taking possession another 60 acres in one of the two villages above in favour of the company for the same purpose. This denotification had been done against the recommendations of the Denotification Committee. The same company obtained a No Objection Certificate from BDA for utilizing another 43-09 acres in these two villages which had been denotified by the Government during May 2008 in favour of farmers. Thus, the company had been unjustifiably given huge tracts of land by subjugating public interest to private interest.

(Chapter 9)

In terms of a judgment delivered by the High Court of Karnataka, once a denotification has been issued, it cannot be withdrawn by another notification. If the Government or the acquiring body wants to withdraw the denotification, they will have to issue fresh preliminary notification and final notification to acquire the property.

In seven cases, the Government irregularly denotified 24-13 acres of land in seven layouts during December 2009 to September 2010 pursuant to the orders of the Chief Minister. While land had been taken possession of in six cases, there was no valid reason for denotification in the other case. These denotification orders were cancelled subsequently during October 2010 to February 2012. While no reason was given for the cancellation in three cases, the cancellation in three other cases was prompted by cases filed before the Courts challenging the denotification orders.

(Chapter 10)

Land Acquisition Officers/Deputy Commissioners of BDA had excluded 91-35½ acres of notified land in 94 cases while making the awards for payment of compensation. In 63 other cases, instead of paying compensation for the entire area covered by the award, payment had been made for a reduced area. The area excluded from payment of compensation in these 63 cases aggregated 16-20 acres. The exclusion of these lands from the purview of the award and payment of compensation was unauthorised as the Land Acquisition Officers/Deputy Commissioners had no power under the LA Act to do so. Further, possession of the lands had not been taken by BDA in these cases on the ground that awards had not been passed and compensation had not been paid. As the final notification for acquisition had been done in public interest in these cases, a reversal of that process by excluding the notified area from the purview of the award or compensation signified that the Land Acquisition Officers/Deputy Commissioners, who had directed it, subverted public interest by subjugating it to personal interest.

(Chapter 11)

Land measuring 162-07 acres included in the final notification for five layouts had been deleted from the purview of the award by the Commissioner, after collecting betterment tax, without the approval of the BDA. Under the BDA Act, the Commissioner had no power to exclude the notified lands from the purview of the award by collecting betterment tax.

(Chapter 12)

During 2007-12, the Government had denotified 305-37 acres of land after passing the awards under Section 11 of the LA Act. In these cases, BDA had not verified before denotification, whether land compensation had been paid to the entitled persons either by the Land Acquisition Officers or by the Court. BDA had failed to take action, wherever necessary, to recover the compensation already paid or to seek refund of money deposited with the Court for disbursing compensation. Though lands in many sampled cases had been developed by BDA before these were denotified by the Government, BDA did not recover the cost of development from the persons in whose favour the land had been denotified.

BDA also failed to monitor the disbursement of compensation against funds deposited with the Court.

(Chapter 13)

Against 34527-17 acres of land notified for acquisition during the period from June 1948 to February 2010 for the formation of 54 layouts, the possession of only 19049-02 acres (44 *per cent*) had been taken by BDA as of April 2012. Only in 20 out of 54 layouts, 75 *per cent* of the notified land had been taken possession of. In other layouts, the extent of land not taken possession of ranged from 26 to 100 *per cent*. As possession of the land was to be taken after making the award within two years from the date of final notification, the

inordinate delay in taking possession was not justified. Huge shortfall in taking possession of the land created scope for denotification of the land notified for public purpose.

(Chapter 14)

2. Allotment of sites by BDA

The BDA (Allotment of Sites) Rules, 1984, the BDA (Disposal of Corner Sites and Commercial Sites) Rules, 1984 and the BDA (Allotment of Civic Amenity Sites) Rules, 1989 provide the frame work for allotment of different categories of sites. During 2007-12, BDA had allotted 265 civic amenity sites, 541 corner sites and intermediate sites, 438 stray sites and 924 alternative sites. The audit findings in regard to these sites are given below:

During 2007-11, BDA had allotted 438 sites under "G" Category, meant for persons in public life. The Government allotted these sites on its own and BDA implemented the orders of the Government. The Government stopped the allotment of sites under "G" Category pursuant to a judgment (December 2010) of the High Court in which it was held that the State Government had no power or authority under the BDA Act, 1976 and the BDA (Allotment of Sites) Rules, 1984 to direct the BDA to allot sites to any person under "G" Category. However, BDA allotted 22 sites under "G" Category during 2011 long after the judgment on the ground that the Government had approved these allotments prior to the date of judgment.

Sixty *per cent* of the allottees under "G" Category were other than MLAs/MLCs/MPs/Ministers/artists or sports persons. In all the cases of allotments under "G" Category, BDA did not have any opportunity to determine the merits of allotments as it allotted sites on the basis of Government orders.

Though the BDA (Allotment of Sites) Rules, 1984 prescribe that no person who or any dependent member of whose family, owns a site or a house within the Bangalore Metropolitan Area shall be eligible to apply for allotment of a site, BDA had allotted 10 sites under "G" Category during 2007-11 to persons who had declared that they or their dependents had their own houses and/or sites. If these sites had been disposed of through public auction, BDA would have earned an additional revenue of ₹ 9.84 crore. Similarly, though these Rules prohibited allotment of a site to a person who has earlier been allotted a site by any agency of the Government, BDA irregularly allotted a site with a sale potential of ₹ 1.58 crore under "G" category to a person who had earlier been allotted a site.

As per the BDA (Disposal of Corner Sites and Commercial Sites) Rules, 1984, all the corner sites and commercial sites in the layouts are to be disposed of by auction. In violation of these Rules, BDA had allotted four corner sites and 22 commercial sites under "G' Category, resulting in a loss of ₹ 23.67 crore.

The Government irregularly approved bulk allotment of 46 sites under "G" Category during October 2007 to members belonging to a Samithi. This resulted in a loss of ₹ 11.08 crore to BDA.

(Chapter 15)

As per the BDA (Allotment of Sites) (Amendment) Rules, 2003, BDA is to allot an alternative site to an allottee only where it cannot give possession of the originally allotted sites for any reason. While doing so, BDA should allot the alternative site either in the same layout or other layout formed subsequently. It should not allot the alternative site in a layout formed prior to the layout in which the original allotment was made. An alternative site, up to ten *per cent* over and above the area of the originally allotted site may be allotted. The alternative sites are to be allotted by the Allotment Committee and approved by BDA.

While the Allotment Committee of BDA had irregularly allotted 34 alternative sites in older layouts during 2007-12, the Commissioner irregularly allotted another 11 alternative sites during the same period without the approval of the Allotment Committee. The loss to BDA on account of these irregular allotments aggregated ₹ 36.83 crore.

The Allotment Committee and the Commissioner irregularly allotted five alternatives of higher dimensions during 2007-12 in excess of the maximum permissible limit of 10 *per cent*, resulting in a loss of ₹ 1.14 crore.

The Commissioner/Secretary irregularly allotted alternative sites in 46 cases during 2007-12 without approval of the Allotment Committee. Had these sites been auctioned, BDA could have realized an additional revenue of ₹ 54.17 crore.

The Allotment Committee/Commissioner allotted four commercial sites as alternative sites during 2007-12 instead of disposing of these by auction, resulting in a loss of ₹ 2.98 crore.

(Chapter 16)

The BDA (Allotment of Civic Amenity Sites) Rules, 1989 provide the framework for allotment of Civic Amenity (CA) sites which are reserved for specific purposes in the layouts developed by BDA as well as the private developers. The CA sites formed in the private layouts are to be relinquished by the developers in favour of BDA before commencement of the development work. BDA is to notify the public about the CA sites and the purposes for which they have been reserved. The initial lease period is to be thirty years and selection of the lessee is to be done by the "CA Site Allotment Committee". If the lessee violates the conditions of lease, BDA is at liberty to resume the CA site with 30 days' notice to the lessee and the money paid by the lessee is liable to forfeited.

Eighteen CA sites measuring 32584.61 sqm had not been relinquished by private house building co-operative societies in favour of BDA as of March 2012. These sites, if leased out by BDA for 30 years, had the potential of fetching a revenue of ₹ 16.29 crore.

There was no transparency in allotment of CA sites. Where many applications had been received for allotment of a CA site and one of the applicants had been preferred over others, there were no recorded reasons as to why that particular applicant had been preferred.

A Trust who had been allotted a CA site during October 1979 encroached upon another site which had been earmarked for a park in the approved plan. Though there was no provision in the Rules to allot a park as a CA site, BDA resolved (September 2010) to allot the site as a CA site to the Trust on lease for 30 years by levying penalty and recovering the lease amount at the prevailing rate. Though BDA approved (September 2010) recovery of ₹ 4.80 crore from the lessee, it unjustifiably reduced the amount to ₹ 88.57 lakh at the request of the allottee by reducing the penalty and recovering the lease amount only for a part of the area leased out.

Though CA sites are to be leased only after notifying these to the public, BDA leased three CA sites directly to three institutions pursuant to the orders of the CM without notifying these to the public.

BDA allotted two CA sites directly to a developer during January 2012 under the orders of the Government. However, the allotment had been made under Revised Master Plan-2015 instead of under Zoning of Land Use and Regulations, BDA-1995. This had exposed BDA to the risk of non-recovery of the lease amount of ₹ 4.87 crore from the lessee.

BDA unjustifiably reduced the lease amount payable by a lessee by ₹ 1.02 crore though the lessee was not eligible for the concession.

BDA reduced the lease amount payable by a Trust from ₹ 64.42 lakh to ₹ 15 lakh pursuant to the orders of the CM and adjusted the unpaid amount of ₹ 49.42 lakh as donation to the lessee, though there was no provision in the BDA Act for making donations to a private trust.

The Commissioner renewed the lease of a CA site 16 months in advance of expiry of the lease period by recovering the lease amount of ₹ 13.23 crore at the prevailing rate. The lessee would have paid the lease amount of ₹ 21.12 crore had the lease been renewed in the normal course. The loss to BDA aggregated ₹ 7.89 crore.

Eight CA sites had been used for unauthorized purposes. Though the violations were within the knowledge of BDA, no action had been taken against the lessees. In 71 out of 1234 CA sites allotted by BDA, the leases (60

private institutions and 11 Government institutions) had not been renewed as of July 2012. The delay in renewal of leases ranged from eight to nine years in respect of Government institutions while it was 11 months to 32 years in respect of private institutions. Non-renewal of the leases in time deprived BDA of the opportunity of earning ₹ 43.45 crore by way of lease charges recoverable.

As of March 2012, 298 CA sites measuring 9.16 lakh sqm available with BDA remained unallotted. These included 140 CA sites in 14 layouts developed by BDA and 158 sites in 61 private layouts. Sub-optimal utilization of the area earmarked for civic amenity, besides resulting in lack of the intended civic amenities in the layouts, deprived BDA of the opportunity of generating substantial financial resources by leasing the CA sites with a revenue potential of ₹ 192.30 crore.

As of March 2012, 61 CA sites had been encroached upon. The revenue potential of these 61 CA sites encroached upon worked out to ₹ 60.73 crore on the basis of lease amount for 30 years. BDA had not taken any effective action to evict the encroachers and restore its properties.

(Chapter 17)

BDA allotted a park to a club and a music Sabha, though there was no provision in the Rules for allotment of parks to individuals or private institutions.

As of March 2012, 56 parks with an area of 321180.60 sqm under the jurisdiction of three out of four divisions of BDA had remained encroached upon. Twenty six of these parks were in layouts developed by BDA. Temples had encroached upon 26 parks, BBMP had encroached upon four parks, buildings had been unauthorisedly constructed in 15 parks, one park had been encroached upon by a private resort and the remaining parks had been encroached upon by schools, Bangalore Water Supply and Sewerage Board and Karnataka Power Transmission Company Limited. Large scale encroachment of parks indicated that the system of safeguarding the assets in BDA was ineffective, exposing BDA to the risk of losing valuable land due to encroachment.

Land measuring 1039-33 acres and valued at ₹ 24075 crore had remained encroached upon in 13 layouts formed between 1969 and 2002.

There were huge differences between the data in respect of the extent of land handed over and land developed, maintained by the Land Acquisition Section and the Engineering Divisions. These differences remained unreconciled. BDA had not maintained Asset Register despite the lapse having been commented upon persistently over the years by Audit.

The management of CA sites by BDA was ineffective. BDA had not devised any mechanism for periodical verification of the existence, maintenance and utilization of the CA sites for authorised purposes. BDA had not prepared

Demand-Collection-Balance statements for CA sites and there was, therefore, no system to keep track of the demand and collection of dues from the allottees of CA sites. No system was also in place to monitor the renewal of the leases of the CA sites.

(Chapter 18)

BDA unjustifiably waived off ground rent ₹ 1.52 crore payable by the Army Welfare Housing Organisation for their development plan for residential apartments, though there was no provision for such waiver in the BDA Act, rules or regulations.

(Chapter 19)

3. Recommendations

- The acquisition proceedings in respect of land notified for public purpose should not be reversed after its possession has been taken. To guard against recurrence of illegal denotifications, the State Government should enforce the LA Act appropriately and impose exemplary punishment on those who act against the provisions in the LA Act.
- The administration of the KLRT Act needs to be effectively managed to guard against illegal sale of land notified for public purpose. Government should take appropriate action against such illegal registrations.
- Any attempt to subvert the acquisition process by unauthorisedly deleting the notified land from the purview of the award or unauthorisedly collecting betterment tax should be frustrated by imposing exemplary punishment on those who resort to such subversions.
- The allotment of different categories of sites should be done strictly in accordance with the extant rules. This should be ensured by introducing appropriate oversight mechanism at the Government level. The irregular allotments, wherever made, should be reversed.
- The asset management requires a thorough overhaul and appropriate controls should be put in place to safeguard the assets and ensure their proper utilisation.

(Chapter 21)

1. Introduction

Till 1975, different authorities like Bangalore Municipal Corporation, City Improvement Trust Board, Bangalore City Planning Authority, Karnataka Housing Board, *etc.*, had been exercising jurisdiction over Bangalore city. Some functions of these bodies like planning, development *etc.*, were overlapping, creating avoidable confusion, besides hampering coordinated development. It was, therefore, considered necessary to set up a single authority like the Delhi Development Authority for Bangalore city and areas adjacent to it.

The Bangalore Development Authority (BDA) was, therefore, set up under the BDA Act, 1976 (BDA Act) to promote and secure the development of the Bangalore Metropolitan Area. Section (Sec) 14 of the BDA Act, 1976 empowers the BDA to acquire, hold, manage and dispose of movable and immovable property, to carry out building, engineering and other operations and to do all things necessary for the purpose of such development. Sec 15 of the BDA Act empowers BDA to undertake developmental schemes with the previous approval of the Government.

The legal framework provided by the BDA Act for acquisition of land for developmental schemes is shown below:

Sec 15:	Vests power in the BDA to draw up a Development Scheme for the development of the Bangalore Metropolitan area.
Sec 17:	When a development scheme has been prepared, the BDA is to draw up a notification (preliminary notification) specifying, inter alia, the land which is proposed to be acquired and the land in regard to which a betterment tax[1] may be levied.
Sec 18:	BDA shall submit the scheme to the Government for sanction and the Government may sanction the scheme after considering the proposal.
Sec 19:	Upon sanction of the scheme, the Government shall publish in the official Gazette a declaration (final notification) stating the fact of such sanction and that land is required for a public purpose.
Sec 27:	Where within a period of five years from the date of the final notification, BDA fails to execute the scheme substantially, the scheme shall lapse.

[1] Where as a consequence of execution of any development scheme, the market value of any land comprised in the scheme, which is not required for the execution thereof, has increased or will increase, BDA shall be entitled to levy a betterment tax for such land.

Sec 36	The acquisition of land under the BDA Act shall be regulated by the provisions, as far as they are applicable, of the Land Acquisition Act, 1894 (LA Act).

After publication of the final notification under the BDA Act, the acquisition will be governed by the provisions in the Land Acquisition Act, 1894 (LA Act). The following provisions in the LA Act deal with the subsequent stages of acquisition of land by BDA.

Sec 11	:	Requires the Deputy Commissioner to make an award of compensation for the land acquired after hearing objections, if any, from all the persons interested in the land.
Sec 16(1)	:	Empowers the Deputy Commissioner to take possession of the land after making an award under Section 11 and the land shall thereupon vest absolutely in the BDA, free from all encumbrances.
Sec 16(2)	:	Requires the Deputy Commissioner to notify in the official Gazette the fact of such taking possession.
Sec 31	:	Requires the DC to tender payment of compensation to the interested persons entitled thereto or to deposit the amount of compensation in the Court in cases, where the interested persons have not consented to receive it or where there are no persons competent to alienate the land or there is a dispute to the title of the land etc.
Sec 48(1)	:	Empowers the Government to withdraw acquisition proceedings of any land of which possession has not been taken.

Land measuring 34527-17 acres had been notified during the period June 1948 to February 2010 for the formation of 54 layouts in the Bangalore Metropolitan Area. During January 1995 to March 2012, the Government withdrew the acquisition proceedings in respect of 1355-01 acres[2] of land at different stages under Sec 48(1) of the LA Act as shown in **Table-1**:

Table-1: Details of land in respect of which acquisition proceedings had been withdrawn

Stage at which Government withdrew	Extent of land withdrawn (Acres-Guntas)
After publication of Final Notification	794-05
After passing award for compensation	161-00
After taking possession under Sec 16(1)	281-32
After publication of notification under Sec 16(2)	118-04
Total	**1355-01**

(Source: Information furnished by BDA)

[2] 1355-01 acres means 1355 acres and 01 guntas. Forty guntas make one acre. While the numerical before the hyphen indicates the extent of land in acres, the numerical after the hyphen represents the extent of land in guntas – This has been uniformly adopted in the Report

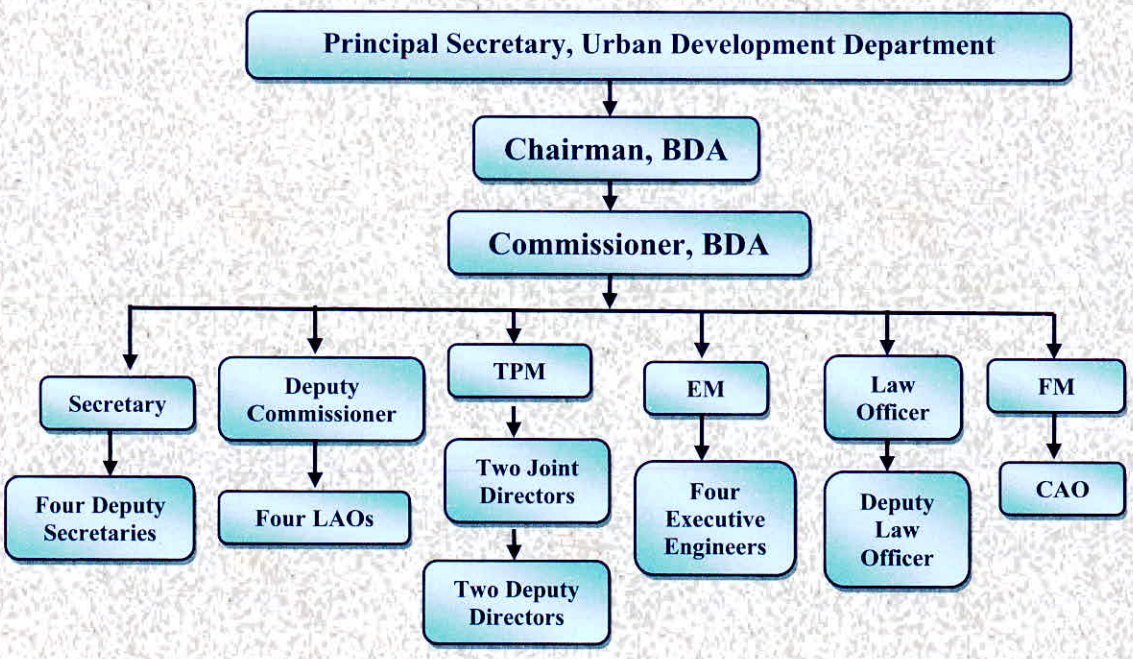
The BDA (Allotment of Sites) Rules, 1984, the BDA (Allotment of Civic Amenity Sites) Rules 1989 and the BDA (Disposal of Corner Sites and Commercial Sites) Rules, 1984 provide the framework for allotment of different categories of sites formed by BDA in the layouts.

BDA had not allotted sites to the general public during 2007-12. However, during this period, it had allotted 265 civic amenity sites, 541 corner sites and intermediate sites, 438 stray sites and 924 alternative sites.

2. Organisational arrangement

BDA functioned under the overall control of the Principal Secretary, Urban Development Department (PS). The Authority was headed by a Chairman, assisted by a Commissioner, and 12 official and two non-official members. The Commissioner was the Chief Executive Officer and Administrative Officer of the Authority. The Authority was assisted by a Deputy Commissioner (DC) in matters related to acquisition of land, a Town Planning Member (TPM) responsible for sanction of development plans and an Engineering Member (EM) entrusted with the responsibility of the development of the land acquired. The DC was assisted by four Land Acquisition Officers (LAOs), the TPM by two Joint Directors and two Deputy Directors and the EM by four Executive Engineers (EEs). While the Law Officer assisted by a Deputy Law Officer was responsible for advising the Authority on legal matters and handling litigation, the Finance Member (FM) assisted by a Chief Accounts Officer (CAO) was responsible for advising the Authority on matters related to finance. The Secretary of the BDA, assisted by four Deputy Secretaries, was entrusted with allotment of sites, assessment, demand and collection of property tax and general administration of the Authority.

Organisational Chart



3. Audit scope and methodology

The Performance Audit was conducted during February to July 2012 covering the period 2007-12 during which the Government had denotified 610-16½ acres of land at various stages of the acquisition process. An entry conference was held on 29 May 2012 with the Principal Secretary, Urban Development Department (PS), in which the scope and methodology of the Performance Audit were explained. The audit sample covered the Urban Development Department Secretariat, BDA, four LAOs, Town Planning Section, Law Section, Finance and Accounts Wing, Engineering Wing, Secretary including four Deputy Secretaries and four revenue officers.

The audit sample covered 40 *per cent* of 126 cases of denotifications made by the Government during 2007-12 after taking possession of land. Though the scope of audit was denotifications made by the Government during 2007-12, audit also accessed records relating to previous periods in the sampled cases to examine the developments that culminated in the denotifications. Audit also obtained encumbrance certificates from the jurisdictional sub-registrars to examine the developments in the sampled cases after denotification. Audit sample for allotment of sites covered 40 *per cent* of 265 Civic Amenity sites, 541 corner and intermediate sites, 438 stray sites and 924 alternative sites disposed of by BDA during 2007-12.

The audit findings were discussed with the PS in the exit conference held on 12 October 2012. The report has taken into account the replies furnished by BDA to the audit observations.

4. Audit objectives

Audit was taken up with the objective of ascertaining whether:

- the denotifications made by the Government were consistent with the extant Acts and Rules;
- the control mechanism was capable of preventing the subversion of the provisions in the Acts and Rules;
- the allotment of sites under different categories were compliant with the rules framed for the purpose;
- the private layouts relinquished the requisite areas in favour of BDA; and
- BDA had inventorised its assets to have an effective tool for managing these, besides guarding against encroachments of its properties.

5. Audit criteria

The audit criteria were derived from the following sources:

- The Bangalore Development Authority Act, 1976;
- The Land Acquisition Act, 1894 as amended by the Land Acquisition (Karnataka Extension and Amendment) Act, 1961;
- The Karnataka Land (Restriction on Transfer) Act, 1991;
- The Bangalore Development Authority (Allotment of Sites) Rules, 1984 and amendments thereto;
- The Bangalore Development Authority (Allotment of Civic Amenity Sites) Rules, 1989;
- The Bangalore Development Authority (Disposal of Corner Sites and Commercial Sites) Rules, 1984;
- Zoning of Land Use and Regulations, BDA-1995, and Revised Master Plan 2015, Bangalore -2007 –Zoning of Land Use and Regulations; and
- Judgments of the Hon'ble Supreme Court and the Hon'ble High Court of Karnataka;
- Relevant Government orders and instructions.

6. Organisation of audit findings

The audit findings have been organized into the following four parts and chapters for the convenience of understanding:

Part-I: Denotification of land by the Government

Chapter-1:	Overview of the legal framework for denotification of land
Chapter-2:	Denotifications not approved by the Denotification Committee
Chapter-3:	Denotification of developed lands
Chapter-4:	Denotifications during the pendency of Court cases
Chapter-5:	Denotification of land purchased after notification for acquisition
Chapter-6:	Denotification of land despite Courts upholding the acquisition proceedings
Chapter-7:	Denotification on other considerations
Chapter-8:	Denotifications of land for group housing and site development
Chapter-9:	Denotification of huge tracts of land
Chapter-10:	Cancellation of denotification orders
Chapter-11:	Restricted awards/compensation,
Chapter-12:	Betterment Tax

7. Acknowledgement

We place on record our appreciation for the cooperation extended by the State Government and the Bangalore Development Authority in conducting the Performance Audit.

PART-I

Denotification of land by the Government

Chapter-1

Overview of the legal framework for denotification of land

1.1 Power of the Government to withdraw from acquisition proceedings

Under Section 48 (1) of the LA Act, the Government is at liberty to withdraw from acquisition of any land of which possession has not been taken. Thus, if possession of land has been taken following the due procedure under the LA Act, Government has no power to withdraw from acquisition proceedings. This position has been upheld by the Supreme Court and the High Court of Karnataka in many cases. Extracts from some of the judgments are given below:

"If the land is acquired by the State Government for public purpose, then it is open to the State Government to withdraw the said acquisition proceedings under Sec 48 (1) of the LA Act before taking possession. The power conferred on the Government under Sec 48 (1) of the LA Act is the absolute power which can be exercised at its discretion before taking possession if it is of the opinion that the said land is not required for public purpose...." – R.M.S. Telephone Employees' House Building Co-operative Society Limited, Bangalore *v* Government of Karnataka and others.

After the vesting of the land and taking possession thereof, the notification acquiring the land could not be withdrawn or cancelled in exercise of powers under Section 48 of the Land Acquisition Act. Power under Sec 21 of the General Clauses Act cannot be exercised after vesting of the land statutorily in the State Government" – BDA and others v Hanumaiah and others 2005 (6) Kar LJ 161 (SC):ILR 2005 Kar.5533 (SC): 2005 AIR SCW 4881.

1.2 Accepted mode of taking possession

Sec 16 (1) of the LA Act prescribes that when the DC has made an award under Sec 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

The Supreme Court and the High Court of Karnataka had held in many cases that recording of a memorandum or Panchanama by the Land Acquisition Officer in the presence of witnesses signed by him/them is one of the accepted modes of taking possession of the acquired land. Extracts from some of the judgments are given below:

"It is settled by a series of judgments of this Court that one of the accepted modes of taking possession is recording of a memorandum or Panchanama by the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land...." - Tamil Nadu Housing Board Vs A.Viswam (AIR 1996 SC 3379).

"It is difficult to take physical possession of the land under compulsory acquisition. The normal mode of taking possession and giving delivery to the beneficiaries is the accepted mode of taking possession of the land. Subsequent thereto, the retention of possession (by the erstwhile owner) would tantamount only to illegal and unlawful possession...." – Kathri Education and Industrial Trust v State of Punjab -1996 (4) SCC 212.

"The Act is silent with regard to the mode of taking possession. One of the accepted modes of taking possession of the acquired land is recording of a memorandum or Panchanama by the DC or the LAO in the presence of witnesses signed by him/them and that would constitute taking possession of the land as it would be impossible to take physical possession of the acquired land...." – Muniyamma v State of Karnataka and others, 2007(5) Kar.L.J.11B.

1.3 Notification of the fact of taking possession not mandatory

Sec 16 (2) the LA Act envisages that the fact of taking possession may be notified by the DC in the official Gazette and such notification shall be evidence of such fact. It has been held by the High Court of Karnataka that the operation of Sec 16 (1) is not subject to and dependent upon compliance with Sec 16 (2). Extracts from some of the judgments are given below:

"There is nothing to show that the publication in the official gazette is mandatory. Sec 16(2) only states that the notification shall be evidence of taking possession of land. Even without such notification, the effect of Sec 16 (1) holds good. The operation of Sec 16 (1) is not subject to and dependent upon compliance with Sec 16 (2). In the instant case, the possession of the acquired was taken by recording of a panchanama by the LAO in the presence of witnesses and that would constitute the taking possession of the land in question. Non-publication of the notification in the gazette will not vitiate the acquisition proceedings...." – Modinbi and others v The Kalal Khatik Samaj Seva Sangha, Old Hubli, Dharwad District and others, 2002 (1) Kar. L.J. 180A (DB)

"Sec 16 (2) merely authorises the DC to publish the fact of taking possession in the Gazette and if there is such a notification, it shall be evidence of such fact. It does not say that the fact of taking possession cannot be proved in any other way. The production of the notification under Sec 16 (2) is not the only way of proving the taking of possession of the land acquired...." – Basavegowda KC v Seshappa Shetty, ILR 1976. Kar. 1694:1976(2) Kar. LJ 340.

1.4 No provision for reconveyance of the acquired land to the original owners

Once land is acquired under the LA Act by operation of Sec 16(1), it vests absolutely in the State free from all encumbrances and there is no provision in the LA Act to reconvey the acquired land to the erstwhile owners even when it is not needed for public purpose. This position had been clarified by the Supreme Court in a case, extract from the judgment of which is given below:

"In view of admitted position that the land in question was acquired under the Land Acquisition Act, it stood vested in the State free from all encumbrances. The question emerges, whether the Government can assign the land to the erstwhile owners? It is settled law that if the land is acquired for a public purpose, after the public purpose was achieved, the rest of the land could be used for any other purpose. In case there is no other public purpose for which the land is needed, then instead of disposal by way of sale to the erstwhile owner, the land should be put to public auction and the amount fetched in the public auction can better utilised for the public purpose envisaged in the Directive Principles of the Constitution...." - State of Kerala Vs Bhaskar Pillai, ILR 1997 Page 2196.

1.5 Criteria for audit of denotification of land

The criteria for audit of denotifications of lands made by the Government during 2007-12 derived from the various case laws discussed above are as under:

- Once land notified for public purpose has been taken possession under Sec 16 (1) of the LA Act, the Government has no powers to withdraw the acquisition proceedings even if publication under Sec 16 (2) had not been issued;
- Such land cannot be reconveyed to the erstwhile landowners even if the acquired land or part thereof is not needed for public purpose; and
- Subsequent to taking possession of land under Sec 16 (1), the retention of possession of the acquired land by the erstwhile land owners would tantamount only to illegal and unlawful possession.
- Wherever only Sections are mentioned in the Report without reference to the Act, these are to be read as Sections under the Land Acquisition Act, 1894.

Chapter-2
Denotification not approved by the Denotification Committee

2.1 Denotification of 610-16½ acres by the Government without reference to the Denotification Committee

As the Government had been receiving numerous requests from various individuals and organizations for denotification of land notified by BDA for acquisition, the Government constituted (January 2003) the Denotification Committee, under the Chairmanship of the Additional Chief Secretary (ACS) and restructured it in October 2010. The Denotification Committee was responsible for reviewing every case of denotification of land in and around Bangalore and recommending to the Government the appropriate action to be taken. It would be pertinent to mention here that as land once taken possession of, cannot be denotified, the scope of reference to the Denotification Committee could have been limited to cases where possession of land had not been taken.

During the period 2007-12, the Denotification Committee had met only four times in July 2007, August 2007, December 2008 and December 2010. During the period from 1 April 2007 to 27 December 2010, the Government denotified 610-16½ acres of land which had earlier been notified for acquisition by BDA for the formation of several layouts. The details are given in **Table-2**:

Table-2: Details of land denotified by the Government during 2007-12

Year	After final notification under Sec 19 of the BDA Act		After passing of award under Sec 11 of the LA Act		After taking possession under Sec 16(1) of the LA Act		After publication of notification under Sec 16(2) of the LA Act	
	Acres	Guntas	Acres	Guntas	Acres	Guntas	Acres	Guntas
2007-08	102	12	54	1	48	13	38	29
2008-09	117	10	8	26	5	28	0	0
2009-10	20	9.5	15	14	21	25	11	18
2010-11	64	28	14	37	47	29.5	39	16.5
2011-12	No denotification							
Total	**304**	**19.5**	**92**	**38**	**123**	**15.5**	**89**	**23.5**

(Source: Information furnished by BDA)

Land in all the cases had been denotified by the Government, without referring the cases to the Denotification Committee. Though the Government had no power under the LA Act to denotify land after taking possession, 123-15.5 acres of land had been denotified after taking possession under Sec 16(1) while another 89-23.5 acres had been denotified after notifying the fact of

taking possession under Sec 16(2). These denotifications had evidently been done in defiance of law.

Scrutiny showed that the Denotification Committee, in its meeting held on 17 December 2008, had recommended for denotifying 113-29 ½ acres[3] of land in 12 villages pursuant to several Court judgments. Of these, the Government denotified (June 2010) only 2-03 ½ acres of land in Sy.No.8/8B, 8/9 and 10/2 of Hosahalli village. In the other meetings held, the Denotification Committee had not recommended for denotification of land.

[3] Of 113-29 ½ acres, 98-36 acres had been recommended for denotification on the basis of court judgments. Another 14-33 ½ acres had been recommended for denotification on other valid grounds.

Chapter-3

Denotification of developed lands

As per the provisions under Section 48(1) of the LA Act and various judgments given by the Courts regarding the applicability of Section 48(1), the liberty to withdraw from acquisition is available to the Government where it has not taken possession of the land under the LA Act. Scrutiny, however, showed that in the cases listed in the **Table-3**, the Government withdrew from acquisition of land (denotified the lands) even after taking possession under Sec 16(1) of the LA Act, pursuant to the orders of the incumbent Chief Ministers (CMs).

Table-3: Details of denotifications after taking possession of land

Sl No	Name of the layout	Extent of land denotified by Government (Acres-Guntas)	Sy.No.	Village	Taluk	Period of taking possession by BDA under Sec 16(1) of LA Act	Period of denotification
1.	JP Nagar VIII Phase	4-35	171/3 172/5 172/6	Kothnur	Bangalore South	December 1999	January 2010
2.	Arkavathy	3-08	87/4B	Thanisandra	Bangalore East	November 2004	October 2007
3.	Banashankari V Stage	2-36	104/2 104/3 104/4	Uttarahalli	Bangalore South	May 1996	September 2010
4.	Arkavathy	1-17	86/2	Thanisandra	Bangalore East	November 2004	September 2010
5.	HSR	2-05	149	Agara	Bangalore East	June 1988	January 2010
6.	HSR	1-01.2	30/6B 31/1	Rupena Agrahara	Bangalore East	July 1988 November 2009	May 2010
7.	JP Nagar VIII Phase	0-33	24	Kothnur	Bangalore South	February 1996	June 2010
	Total	**16-15.2**					

In these cases, the reversal of the acquisition process had been done even after layouts had been developed by BDA on the land and sites had been allotted to the general public. As the acquisition of the land by Government in these cases had been done in public interest for the purpose of forming residential layouts and allotting sites to the general public, the reversal of the process on extraneous considerations signified that public interest was subverted. Details of these cases are discussed below:

3.1 Denotification of 4-35 acres in JP Nagar VIII Phase Layout

Acting on the request (April 2007) from the land owners for denotification of of land in Sy.Nos. 171/3, 172/5 and 172/6 of Kothnur village, Bangalore

South taluk, the Government sought (June 2008) a status report from BDA. Earlier, the High Court had dismissed (April 2008) the writ petition (3347/2000) as well as the writ appeal filed by the land owners, challenging the acquisition proceedings. BDA clarified (July 2008) to the Government that the lands in these survey numbers had been taken possession of under Sec 16(1) and handed over to the Engineering Section in December 1999.

Apprising (November 2009) the CM of the status of the land, the PS informed that in view of the dismissal of writ appeal filed by the land owners and possession of land having been taken by BDA, it was not possible to denotify the land. However, the CM ordered (December 2009) "Denotify 6-10 acres in Sy.No.171/3,172/5 and 172/6, as a special case." The PS re-submitted (December 2009) the file to the CM with a request to re-examine the orders, as it was against law to denotify the land after taking possession. However, further notings in the file showed that the PS subsequently discussed the matter with the CM and approved denotification of only 4-35 acres as the remaining 1-15 acres had been already utilised by BDA for formation of road in the layout. Accordingly, the Government issued (January 2010) orders denotifying 4-35 acres of land in Sy.Nos. 171/3, 172/5 and 172/6 of Kothnur village, Bangalore South taluk. Denotification of 4-35 acres of land after taking possession under Sec 16(1) and after the High Court had upheld the acquisition proceedings was irregular.

Besides an 80 feet road, BDA had also formed 42 sites, each measuring 40'x60', and 24 sites, each measuring 30'x40', on the denotified land. Of these, BDA had also allotted to the general public, eight sites each measuring 40'x60' and another 18 sites each measuring 30'x40' out of 66 sites. These sites had also been registered by BDA in favour of the respective allottees. Several allottees of sites appealed to the CM (December 2010) to cancel the denotification order, as they had been allotted sites by BDA after making several attempts spread over 16 years. Some of the allottees stated that they had also availed of bank loans for construction of houses and they had been regularly paying property taxes to BDA. However, the Government did not consider the appeals of the allottees.

Audit scrutiny showed that immediately after the denotification, the land owner had sold (January to May 2010) 3-37 acres of denotified land to two persons for a consideration of ₹ 98 lakh against the guidance value of ₹ 3.26 crore. In these sale transactions, though stamp duty had been paid by the purchasers on the basis of the guidance value, the sale consideration was grossly understated.

Thus, the irregular denotification of 4-35 acres of land in this case had been evidently done on extraneous considerations to facilitate the reconveyance of the acquired land to the owner and its subsequent sale.

3.2 Denotification of 3-08 acres in Arkavathy Layout

BDA had acquired (February 2004) 2750 acres of land in 16 villages of Bangalore North and East taluks for the formation of Arkavathy layout. The lands so acquired included 3-08 acres in Sy.No.87/4B of Thanisandra village, belonging to two persons. While the award had been approved by the DC on 17 September 2004, the possession of the lands taken under Sec 16(1) had been handed over to the Engineering Section on 10 November 2004 for forming the layout.

During April 2007, a Minister recommended to the CM for denotification of land acquired in this survey number on the ground that the family consisting of 15 members had been entirely dependent on this land for livelihood and did not own any other land or property elsewhere. The CM directed that the concerned file be called for and the Government sought (April 2007) a detailed report from BDA in this regard.

BDA informed (May 2007) the Government that after taking possession of the land on 10 November 2004, a layout had been formed and sites had been allotted. Though the Under Secretary opined (June 2007) that the matter could be placed before the Denotification Committee, the PS submitted (September 2007) the file directly to the CM, as requested.

Overlooking the fact that BDA had already formed a layout and allotted sites, the CM noted (September 2007) in the file that the request was considered sympathetically and in consideration of the fact that notification under Sec 16(2) had not been published, the land should be denotified. Accordingly, the Government denotified (October 2007) 3-08 acres of land in favour of the erstwhile land owners.

Scrutiny of the case showed the following:

- Though notification under Sec 16(2) had not been issued, possession of land had already been taken by BDA under Sec 16(1) in November 2004. In terms of judgment given by the High Court, non-publication of notification under Sec 16(2) would not vitiate the acquisition proceedings.
- BDA had formed 57 sites, each of 9 x 12 metre dimension, and also a 12 metre wide road. Out of 57 sites so formed, 44 sites had been allotted to the public and in all these cases, Lease-cum Sale Agreements had been executed and Possession Certificates handed over to the allottees.
- The observation made by the Minister that the land owners did not own any other land or property elsewhere was factually incorrect as apart from 3-08 acres in this survey number, the family members also owned 5-21 acres of land in five different survey numbers, as declared by themselves.

Further, the land owners had already formed sites on these lands and sold these to various persons.

- The land owners in their representation (July 2004) had sought denotification of their lands on the ground that they had invested huge amounts on the formation of a residential layout on the said land with amenities such as storm water drainage, road, water, electricity *etc.*, and that they had obtained "No Objection Certificate" (NOC) from BDA before registration of sites in the names of the allottees. However, the layout formed was also unauthorized, as BDA had not given any approval for forming any layout in this survey number.
- Further, the land owners sold the entire land (₹ 2.56 crore) in this survey number to a person on 14 July 2011, after getting it denotified.

Thus, the denotification of this case had evidently been done in disregard of law to facilitate the sale of the land acquired for public purpose. BDA stated (September 2012) that the Lokayuktha had seized the files in February 2012 for conducting an enquiry under Prevention of Corruption Act, 1988 and Karnataka Land Revenue Act, 1964.

3.3 Denotification of 2-36 acres in Banashankari-V Stage Layout

The final notification (May 1994) for acquisition of 1458-21 acres in 10 villages of Bangalore South taluk for the formation of Banashankari-V Stage Layout included 2-36 acres of land in Sy.No.104 of Uttarahalli village, as shown in **Table-4**:

Table-4: Extent of land in Sy.No.104 of Uttarahalli village

Sy.No	Extent (Acre-Guntas)
104/2	1-01
104/3	0-34
104/4	1-01
Total	**2-36**

(Source: Final notification dated 9 May 1994)

The LAO took possession of the land under Sec 16(1) and handed it over to the Engineering Section on 8 May 1996. Following the receipt of representation (July 2010) from the erstwhile land owners for denotification of these lands on the ground that they had been residing in the houses built on these lands and that adjacent lands had not been acquired, the Government sought (July 2010) a status report from BDA. BDA clarified (August 2010) to the Government that possession of the lands had been taken during May 1996, notification under Sec 16(2) had also been published on 18 August 2009, and the layout had also been formed on these lands. The ACS brought to the notice of the CM that it was not permissible to denotify the land, as possession of land had already been taken. However, the CM referred to four

denotifications made earlier in the same layout and in Banashankari VI Stage Layout during June 2007 to October 2007 by the previous CMs and ordered (September 2010) that this land also be denotified as a special case. It would be pertinent to mention that the CM had not been vested with any special powers under the LA Act to denotify land after possession had been taken.

Audit scrutiny showed that BDA had developed the land in Sy.No.104/4 and formed 24 residential sites of 30'x40' dimension and a 33' wide road. This was overlooked by the CM before ordering denotification. Further, after the denotification, the land owners in whose favour the Government had denotified the land during September 2010, subsequently sold these lands to other persons shown in **Table-5**:

Table-5: Details of lands sold after denotification

Sy.No.	Extent (In acres-guntas)	Sale Consideration (₹ in lakh)
104/2	1-01	29.00
104/3	0-34	28.00
104/4	1-01	NA
Total	**2-36**	

(Source: RTCs from Revenue Department website)

Thus, the denotification subjugated public interest to private interest and the irregular reversal of the acquisition process facilitated the sale of denotified lands.

3.4 Denotification of 1-17 acres in Arkavathy Layout

BDA had acquired (February 2004) along with other lands, 2-21 acres of land in Sy.No.86/2 of Thanisandra village of Bangalore East Taluk for forming the Arkavathy Layout. Possession of the land taken under Sec 16(1) had been handed over on 10 November 2004 to the Engineering Section of BDA for the layout formation. BDA had also developed this land besides forming a connecting road on this land.

After a lapse of six years, the owner of the land represented (July 2010) to the CM for denotification of 1-17 acres of land on the ground that he owned no other land, and his family consisting of 15 members had been entirely dependent on this land for livelihood. Acting on the request for denotification, the CM directed (July 2010) BDA to put up the file along with a detailed status report and clear opinion. BDA clarified (August 2010) that except for publication of notification under Sec 16(2), all other land acquisition processes had been completed, the possession of the land had been handed over to the Engineering Section on 10 November 2004, and it was not possible to denotify the land. While submitting the file to the CM, the ACS placed on record (September 2010) the opinion furnished by BDA. However, the CM overlooked the opinion and ordered (September 2010) denotification of 1-17

acres on humanitarian grounds, as notification under Sec 16(2) of the LA Act had not been published. However, the CM's order glossed over the well settled law that non-publication of notification under Sec 16(2) would not vitiate the acquisition proceedings. Further, the LA Act does not permit reversal of the acquisition process on humanitarian grounds. It was further seen by Audit that BDA had already formed roads on land in this survey number, before it was denotified by the Government.

3.5 Denotification of 2-05 acres in HSR Layout

The Government had notified (December 1986) 2-05 acres of land in Sy.No.149 of Agara village for the formation of HSR Layout. After possession of the land taken under Sec 16(1) had been handed over to the Engineering Section of BDA on 30 June 1988, notification under Sec 16(2) was also published on 2 January 1992. BDA had formed two roads by utilising 0-21¾ acre of the acquired land.

After 11 years, the legal heirs of the deceased owner requested (August 2003) the CM to denotify the land on the ground that they had been entirely dependent on this land for livelihood and that they had invested huge borrowed funds for establishing a dairy and poultry farm on the land.

Citing several judgments of the Supreme Court, BDA reported (November 2003) that it was not permissible to denotify the land after taking possession and there was no provision to entertain the request of the applicant at that stage. The Denotification Committee, which examined (June 2004) the issue also recommended rejection of the request of the applicant. However, the CM did not agree with the views of the Denotification Committee and ordered (January 2006) denotification of land on the ground that BDA had issued notification under Sec 16(2) on 2 January 1992, though there was an injunction from the Civil Court against BDA from interfering with or demolishing the existing structures and the case was withdrawn by the land owner only during 1993.

Thereafter, the PS sought (January 2006) the opinion of the Law Department on implementing the order of the CM. The Law Department opined (June 2006) that since it had not been possible to take possession without interference, the notification issued under Sec 16(2) during the operation of the stay order was not legally valid. It further advised the administrative department to take a prudent decision.

The Commissioner again informed (September 2006) the Government that denotification of the land would have an adverse impact on the formation of a planned layout. In a series of correspondences between BDA and the Government, BDA sought to establish that the denotification would dislocate the development of sites, road *etc*., and that the land formed an integral part of the layout. BDA further informed the Government (December 2006) that as

per the approved layout plan, 19th Main Road (40 metres long and 24 metres wide) was passing through this survey number and this road was absolutely necessary for the residents of Sector 1, 2 and 4 of the HSR Layout.

The PS made (January 2007) the following observations in the file:

- Land had been taken possession under Sec 16(1) on 13 June 1988 itself and compensation had also been deposited in the Court.
- The injunction order was dated 2 September 1988, subsequent to taking over possession and handing over the land to the Engineering Section.
- The point made by the Law Department that notification under Sec 16(2) had been issued when the Court injunction was in force, therefore, required review.

The PS proceeded to record that in any event the scope of notification under Sec 16(2) was to recognize that the land had been acquired and possession taken and thereby vesting of the land in Government was complete, i.e., there was formal closure of the acquisition process. The physical possession, however, had taken place earlier to the promulgation of the notification under Sec 16(2). The Law Department returned (June 2007) the file to the PS informing that there was nothing to add to the legal opinion given earlier.

There were no major developments in this case till December 2008 when the wife of the deceased owner represented to the CM that though the Government had denotified the land during 2003, the Urban Development Department did not publish a Gazette notification. The PS submitted (June 2009) the file to the CM, noting that complete information related to the case was available in paras 156 to 162. However, citing paras 35 to 43, wherein the Law Department had opined that issue of notification under Sec 16(2) was invalid, the CM ordered (January 2010) to denotify 2-05 acres of land. While doing so, the CM not only glossed over the notings of the PS that the possession of the land had been taken under Sec 16(1) but also disregarded the well settled law that non-publication of notification under Sec 16(2) or any infirmity in the said notification would not vitiate the acquisition proceedings.

Further audit scrutiny showed that the land owner sold the denotified land immediately thereafter (March 2010 to May 2010) to five persons for a sale consideration of ₹ 5.27 crore against the guidance value of ₹ 8.40 crore. Thus, the irregular denotification of land had evidently been done by subjugating public interest to private interest to facilitate the sale of the land by the owner.

3.6 Denotification of 1-1.2 acres in HSR Layout

Land measuring 1664-21 acres acquired (November 1986) by BDA for forming the HSR Layout had included 0-30 acre and 0-20 acre in Sy.No.30/6B and Sy.No.31/1 respectively of Rupena Agrahara village. While award had

been passed for 0-30 acres in Sy.No. 30/6B on 4 June 1988, the award for only 0-11.5 acre in Sy.No.31/1 was passed on 23 October 2009. The land in these two survey numbers had been taken possession under Sec 16 (1) and handed over to the Engineering Section of BDA in July 1988 and November 2009 respectively.

After issue of the final notification, the Joint Director of Town Planning of BDA irregularly issued (November 1992) an NOC to the owner permitting him to improve and develop the petrol bunk existing in Sy.No.30/6B and 31/1. When BDA tried (November 2000) to demolish the existing structures for forming a road, the owner filed a suit in the Court against BDA and obtained an injunction in November 2000. While vacating (January 2001) the injunction, the Court ordered that BDA was at liberty to take over possession of the land in Sy.No.31/1 under due process of law. BDA took possession of land in Sy.No.31/1 on 6 November 2009, eight years after the directions from the Court.

When the owner attempted to get the lands denotified by representing to the CM in December 2000, the Commissioner, BDA informed (April 2001) the Government that there was absolutely no provision in the LA Act to denotify the land in favour of the original owner, as the land had been legally acquired, possession had been taken and 28 sites of different dimensions had also been formed.

There was no further development till February 2010, when the Joint Secretary to the CM desired (February 2010) submission of the file related to Sy.No.30/6B and 31/1 as per the directions of the CM.

After obtaining the status report from BDA, the PS informed (February 2010) the CM that there were legal hurdles in denotifying the land as possession taken under Sec 16(1) had been handed over to the Engineering Section on 6 November 2009, though notification under Sec 16(2) had not been issued. After the notings of the PS in the file, there was an unsigned noting to the effect, "Denotify 0-30 acres in Sy.No.30/6B and 0-11½ acres in Sy.No.31/1" and the CM approved it.

Accordingly, the Government denotified (May 2010) lands measuring 1-1.2 acres in these survey numbers. Acting on the requests made (July 2010 and January 2012) by BDA for cancellation of denotification order on the ground that seven intermediary sites of 40' x 60' dimension and three corner sites of odd dimensions had already been formed on these lands, the ACS resubmitted the file to the CM on 17 August 2010 for reconsideration of his orders. However, the Principal Secretary to the CM returned (March 2011) the file stating that the Government had changed.

Thus, though non-issue of notification under Sec 16(2) of the LA Act would not vitiate the acquisition proceedings, the Government irregularly reversed

the acquisition proceedings and reconveyed the acquired land to the owner pursuant to the orders of the CM.

3.7 Denotification of 0-33 acre in JP Nagar VIII Phase Layout

BDA had acquired (October 1994) 6-31 acres of land in Sy.No.24 of Kothnur village for the JP Nagar VIII Phase Layout. While land compensation had been awarded in January 1996, the possession of the land taken under Sec 16(1) had been handed over to the Engineering Section in February 1996. However, BDA had not published notification under Sec 16(2), reasons for which were not on record. The Engineering Section formed the layout on the land acquired in this survey number and BDA allotted sites and registered these during October 2000 to April 2005.

During May 2010, two persons representing a Trust requested the CM to denotify 0-33 acre of land in Sy.No.24 of Kothnur village on the ground that they intended to establish a school on this land. In response to the Government directions (May 2010), BDA had reported (May 2010) that the layout had already been formed. BDA also apprised the Government of issues related to award of compensation, handing over possession and non-publication of notification under Sec 16(2).

Ignoring the report of the BDA that a layout had already been formed, the Government irregularly denotified (June 2010) 0-33 acres of land in favour of these two persons. It was observed that BDA had formed 20 sites (12 sites measuring 30' x 40' each and 8 sites of 40' x 60' dimension) on 0-33 acre of land denotified by the Government. Out of 20 sites so formed, BDA had also allotted nine sites way back in October 2000 to April 2005. One of the allottees filed a writ petition (February 2011) before the High Court praying for staying the execution and operation of denotification order of June 2010 and the judgment in this case was awaited (July 2012).

The Government acted swiftly in this case as the denotification order was issued within one month from the date of submission of the application by the interested persons. Further, before denotifying the land, the Government also failed to ascertain as to whether these two persons possessed genuine title to the property, which stood in the names of different persons as per the final notification (October 1994). These two persons evidently purchased the notified land in violation of the Karnataka Land (Restriction on Transfer) Act which prohibited transfer of any land acquired for a public purpose under the LA Act.

Chapter-4

Denotification during the pendency of Court cases

In the cases listed in **Table-6**, the Government irregularly denotified land on the orders of the incumbent CMs after taking its possession under Sec 16(1) and during the pendency of cases in Courts:

Table-6 : Details of irregular denotification of land after taking possession

Sl No	Name of the layout	Extent of land denotified by Government (Acres-Guntas)	Sy No	Village	Taluk	Period of taking possession by BDA under Sec 16(1) of LA Act	Period of denotification
1	BTM VI Stage	2-10	23	Hulimavu	Bangalore South	July 2005	January 2010
2	JP Nagar VIII Phase	1-03	78/1	Kothnur	Bangalore South	June 1997	January 2010
3	HBR I Stage	1-00	222	Kacharakanahalli	Bangalore North	March 1987	January 2010
4	Arkavathy	0-28	100/3	Rachenahalli	Bangalore North	November 2004	May 2008
5	Further Extension of Banashankari VI Stage	0-26	19/3	Talaghattapura	Bangalore South	February 2004	January 2010
6	Nagarabhavi I Stage	0-25	46	Nagarabhavi	Bangalore North	January 1988	June 2010
	Total	**6-12**					

(Source: Denotification files of BDA and Secretariat)

Details of these cases are discussed below:

4.1 Denotification of 2-10 acres in BTM VI Stage Layout

The final notification issued on 28 June 1990 for acquisition of lands for the formation of BTM VI Stage Layout included 2-10 acres of land in Sy.No.23 of Hulimavu village of Bangalore South Taluk. While award had been passed in February1994, the possession of land taken under Sec 16(1) had been handed over to the Engineering Section only in July 2005 after dismissal (March 2005) of the case filed by the land owner against BDA challenging the acquisition proceedings.

The land owner later filed an appeal (RFA 875/2005) before the High Court of Karnataka and obtained a stay order (August 2005), restraining BDA from interfering with the peaceful possession and enjoyment of the property and demolishing the existing structures. Simultaneously, the land owner submitted a memorandum to the CM in August 2005 stating that he had been in

possession of the property for 57 years and running a poultry, employing about 100 persons and that 15 residential houses and labour quarters had been built on this land. When the CM's office sought a status report, BDA informed (December 2005) the Government that the interim stay order had been extended till further orders and was still in operation. When the land owner submitted (January 2006) another representation to the CM in this regard, it was decided (March 2006) by the PS that BDA could be informed to take suitable action after the disposal of the appeal by the Court. However, the file was reopened in October 2007, when the Secretary to the CM requested for submission of the concerned file for perusal by the CM. The PS submitted the file with the factual position and the CM returned (October 2007) the file without any remarks.

After a lapse of more than two years, the land owner submitted (May 2008) another representation to the Government seeking denotification on the ground that it was not feasible for BDA either to acquire or to form a layout on the land and no expenditure had been incurred by BDA on development of these lands. The file was submitted (December 2008) to the CM with the remarks of the PS that the temporary injunction was still in force, the possession of the land had also been handed over to the Engineering Section and it was not possible to denotify the land.

However, the CM recorded (August 2009) that notification under Sec 16(2) had been not published and he had come to a conclusion on the basis of the representation of the applicant that it had not been appropriate to acquire the land. He approved the denotification of the land subject to withdrawal of the case pending before the Court. Thereafter, the Government denotified (January 2010) 2-10 acres in Sy.No.23. The appeal was dismissed (June 2011) after the land owner filed a memo before the High Court subsequently.

Thus, the CM preferred to rely more on what had been stated by the land owner in his representation than on the legal position. In terms of the judgment given by the Supreme Court [1996(4) Sec 212 Kathri Education and Industrial Trust V/s State of Punjab], subsequent to taking possession of the land notified for acquisition, the retention of possession of the land by the owner would tantamount only to illegal and unlawful possession. Further, if the land acquired is not needed for a public purpose, the land should be put to auction (ILR 1997 Page 196- State of Kerala V/s Bhaskaran Pillai). The CM evidently disregarded the legal position and reversed the acquisition process to reconvey the acquired land to the owner, during the pendency of the case filed by the land owner. It would be pertinent to reiterate the fact that possession of land under Sec 16(1) had been taken before the stay order (August 2005) was given, pursuant to the appeal filed before the High Court.

4.2 Denotification of 1-03 acres in JP Nagar VIII Phase Layout

The final notification (October 1994) for acquisition of lands required for the formation of JP Nagar VIII Phase Layout included 3-18 acres of land in Sy.No.78/1 of Kothnur village. Award for this land had been approved in February 1996 and possession of land taken under Sec 16(1) had been handed over to the Engineering Section in June 1997.

The General Power of Attorney (GPA) holder for the land owner filed a suit (OS 8782/96) before the Additional City Civil Judge, Bangalore seeking permanent injunction on the ground that he had purchased the land during 1976, got it converted for residential purposes, formed sites and built a dwelling house for sale to the general public. The suit was dismissed (March 1999) on the ground that the acquisition proceedings had been completed and possession of land had also been taken. The GPA holder filed another suit (OS 4927/98) before the City Civil Judge, Bangalore and obtained (June 1998) a status-quo order, to be in force till BDA filed its objections to the application. Failure on the part of BDA to appear before the Court and file written objections resulted in extension of the *status-quo* orders from time to time (February 2009).

Meanwhile, the land owner appealed (July 2008) to the CM to denotify 1-03 acres on the ground that the land had been scattered and the then Commissioner and the DC had opined that it was not possible to form a compact layout. The PS recorded (August 2009) in the file that the possession of the land had already been taken by BDA under Sec 16(1) in June 1997, notification under Sec 16(2) could not be issued during the pendency of the court case and it was, therefore, not permissible to denotify the land according to the judgment of the Supreme Court. The file was then submitted to the CM.

Recording that the applicants had not been disbursed land compensation and that notification under Sec 16(2) had also not been issued, the CM ordered (September 2009 and November 2009) denotification of the land as a special case, subject to the applicant withdrawing the case filed in the Court. When the PS resubmitted (September 2009) the file to the CM with a suggestion for obtaining the opinion of the Law Department before denotification, the CM recorded that he had noticed in another file that the Law Department had opined that the Government could cancel the notification by exercising power under Sec 21 of the General Clauses Act, 1897. On this ground, the CM ordered (January 2010) denotification of 1-03 acres of land. However, Audit scrutiny of the file referred to by the CM showed that the Law Department had opined that land could be denotified under Sec 21 of the General Clauses Act, 1897 only if the possession of land had not been taken under Sec 16(1) in accordance with law.

The exercise of power by the Government under Section 48(1) of the LA Act to denotify the land on grounds of non-payment of compensation and non-issue of publication under Sec 16(2) was invalid as the land vested absolutely with the Government after making an award under Section 11 and taking possession of land under Sec 16(1). Non-issue of notification under Sec 16(2) would not vitiate the acquisition proceedings.

Audit scrutiny further showed that even while the *status-quo* order of the Court was in force, the land owner had formed sites on the land and sold seven sites of different dimensions measuring 12600 sq ft between December 2004 and June 2006 for a sale consideration of ₹ 36.20 lakh. After the denotification, the land owner further sold another six sites for a consideration of ₹ 85.72 lakh. These sale transactions evidenced that the land owner had been seeking denotification of this land mainly to regularize the sale of sites he had illegally made during the pendency of the Court case. The irregular denotification order not only regularized the illegal sale of sites but also facilitated sale of other sites by the land owner after the denotification.

4.3 Denotification of one acre in HBR I Stage Layout

A person submitted an application in November 2002 to the CM stating that he had constructed a house on land in Sy.No.222 of Kacharakanahalli village of Bangalore North Taluk and had been living on the land with his family members, BDA had not taken possession of one acre of land till date and the property continued to be in his possession. On these grounds he requested the CM to denotify one acre of land in this survey number.

BDA had acquired (March 1985) eight acres of land in Sy.No.222 of Kacharakanahalli village for the formation of HBR I Stage Layout. Possession of the land taken under Sec 16(1) had been handed over to the Engineering Section on 4 March 1987 and notification under Sec 16(2) had been issued in July 1987. However, the layout formed by BDA had consumed only seven out of eight acres in this survey number.

The Denotification Committee, while deliberating (October 2003) upon the request of the land owner for denotification of the unutilized land of one acre in this survey number, did not take any decision after learning that cases related to this land had been pending before the Court. The file was submitted (July 2004) to the CM with the notings that the recommendation of the Denotification Committee was to await the outcome of the Court proceedings and a decision could be taken thereafter. The CM returned the file (February 2006) without any remarks.

The person submitted another application (May 2007) to the Commissioner, BDA and the Government requesting for denotification of the land. BDA gave (June 2007) an endorsement to the land owner that there was no

provision in the law to denotify the said land as it had vested with BDA. Thereafter, the person submitted yet another representation (December 2008) to the CM in this regard.

The file was again submitted (February 2009) to the CM, highlighting the earlier developments and clarifying that several cases filed in the Court were yet to be disposed of. Though the CM observed that the cases were pending disposal and no action could be taken, he nevertheless ordered (June 2009) to denotify the land, as a special case, on the ground that the land owner requested to denotify one acre and that the land acquisition related to very old period.

However, the PS resubmitted (June 2009) the file to the CM suggesting that the opinion of the Law Department be taken before denotification, as notification under Sec 16(2) had been published in this case. The file was referred to the Law Department in July 2009 as per the orders of the CM. The Law Department opined (December 2009) that the land could be denotified if the possession of the land had not been taken in accordance with law. BDA clarified (November 2009) that possession of eight acres of land in Sy.No.222 had been taken in March 1987 in accordance with law and handed over to the Engineering Section. It was further clarified that notification under Sec 16(2) had also been published.

When the PS resubmitted (November 2009) the file to the Law Department with the clarification furnished by BDA, the latter informed (November 2009) the PS to take action as per the legal opinion already given. However, the CM recorded in the file that BDA had not taken physical possession of one acre which was still in the physical possession of the applicant. It was further recorded that though BDA had claimed to have taken possession, the possession had not been taken as per law. On these grounds, the CM denotified (January 2010) one acre of land, as a special case. As discussed already in Paragraph 4.1, subsequent to BDA taking possession of the land, retention of possession of the land by the owner was unlawful. Thus, the CM disregarded the legal position and the Law Department's opinion and denotified the land to favour the applicant.

The Government denotified (January 2010) one acre of land in Sy.No.222 of Kacharakanahalli village in favour of the applicant who was not the khatedar as per the final notification. Thus, the denotification order reconveyed the denotified land in favour of a person who was not the original owner of the land. He subsequently sold (September 2010) this one acre of land to another person for a consideration of ₹ 1.50 crore. The irregular denotification had been evidently done to facilitate the sale of land acquired for a public purpose.

4.4 Denotification of 0-28 acre in Arkavathy Layout

The total extent of land available in Sy. No.100/3 of Rachenahalli village was 1-28 acres. Against this, BDA had acquired (February 2004) 0-28 acre for the Arkavathy Layout. While award for 0-28 acre had been passed on 12 October 2004, the land taken possession of under Sec 16(1) had been handed over to the Engineering Section on 6 November 2004.

The spot inspection conducted in pursuance of orders issued in November 2005 by the High Court showed that BDA had formed a layout on this land. A cooperative house building society submitted (June 2006) a representation to the CM that they had formed a layout already on a portion of land in this survey number, after getting it duly converted for residential purpose and sites had also been allotted to its members. The Society requested for a survey sketch of the land it had developed as well as the land that had not been acquired by BDA in this survey number. The CM's office referred (June 2006) the representation to BDA for compliance.

The survey sketch of land in Sy.No.100/3 showed that BDA had formed sites over 0-28 acre and a compound wall had been constructed along its periphery by the society to secure the land it had purchased, beyond the portion developed by the BDA. Though no representation for denotification had been received, BDA resolved (April 2008) to recommend to the Government for denotifying 0-28 acre in Sy.No.100/3 on the ground that a layout formed by the Society had existed on the land and the sites had also been registered in favour of the purchasers. Though two suits had been pending before the Court in respect of this land since 2007, BDA requested (May 2008) the Government to denotify the land. Accordingly, the Government denotified (May 2008) 0-28 acre in Sy.No.100/3 in favour of the original khatedar.

Denotification of 0-28 acre of land was irregular after taking possession under Sec 16(1).

4.5 Denotification of 0-26 acre in Further Extension of Banashankari VI Stage Layout

In respect of 1-23 acres of land in Sy.No.19/3 of Talaghattapura village, Bangalore South taluk acquired by BDA through a final notification (September 2003) for the formation of further extension of Banashankari VI Stage Layout, award had been passed in December 2003 for 1-03 acres[4] and the possession of the land taken under Sec 16(1) had been handed over to the Engineering Section on 19 February 2004.

[4] No award had been passed for 0-20 acre on which a temple had existed

The land owners submitted (June 2004) a representation to an elected representative requesting for denotification of 26 guntas of land in Sy.No.19/3 belonging to them on the ground that 10 residential houses had been constructed and some portions of the land had been gifted by them to their daughters at the time of their marriages. In turn, the elected representative recommended (July 2004) to the CM for denotification of the land.

The Government obtained (November 2004) an inspection report from BDA and placed the matter before the Denotification Committee. Considering the various judgments of the Supreme Court, the Committee resolved (January and March 2005) to recommend against the denotification. The CM was also apprised of the position and the Government closed the file (November 2007).

Meanwhile, the land owners through the GPA holder filed a suit (OS 1483/2005) before the City Civil Court, Bangalore seeking permanent injunction among other reliefs. The Court ordered (November 2005) maintenance of *status-quo*, restraining BDA from interfering with the petitioner's peaceful possession and enjoyment of the property.

The PS apprised (February 2009) the CM of the developments and the CM ordered (March 2009) that suitable action, as per law, be taken. After a meeting (July 2009) with the Commissioner, BDA, the Government decided not to consider the application for denotification, as there was absolutely no provision under law to denotify the lands. Further, as a case had also been pending before the Court, the Government decided to await the orders of the Court.

Audit scrutiny showed that the land in the meanwhile had been sold to the GPA holder in November 2004 as per the encumbrance certificate obtained from the jurisdictional sub-registrars. When the file was submitted (October 2009) for CM's information, he ordered (December 2009) that the land be denotified on humanitarian grounds, subject to withdrawal of the case filed in this behalf before the Court. Thereafter, the Government denotified (January 2010) 0-26 acre of land in favour of the GPA holder who was not the original land owner, subject to the condition that the cases pending in the Court should be withdrawn. However, the GPA holder did not withdraw the case and pursued it before the Court, which granted (April 2010 permanent injunction against BDA. Thus, denotification of land in favour of the purchaser above after taking possession under Sec 16(1) and during the pendency of the Court case was irregular. Further, there was no provision in the LA Act for reversing the acquisition process on humanitarian grounds.

4.6 Denotification of 0-25 acre in Nagarabhavi I Stage Layout

BDA had passed (January 1988) the award for 11-19 acres in Sy.No.46 of Nagarabhavi village for the formation of Nagarabhavi Layout I Stage. The possession of the land taken under Sec 16(1) had been handed over to the Engineering Wing in January1988 and notification under Sec 16(2) had also been published on 6 July 1991.

Between August 1997 and July 2002, the owners of 0-25 acre of land in this survey number illegally sold the acquired land in favour of three persons. The sale was illegal in terms of the Karnataka Land (Restriction on Transfer) Act, 1991 which prohibited transfer by sale, mortgage, gift, lease or otherwise of any land acquired by the Government for a public purpose. These three persons further sold (February 2006) this land for ₹ 1.32 crore to two other persons (purchasers) who got the title of the land also transferred in their favour and commenced construction activity on this land. When BDA objected to the construction activity, the purchasers obtained (November 2009) permanent injunction from the Court, restraining BDA from demolishing the structures and dispossessing them of the property.

BDA on its part filed a Regular First Appeal (RFA) before the High Court, which directed (March 2010) both the parties to maintain *status-quo*. During the pendency of the case, the purchasers represented (April 2010) to the CM, requesting for denotification of the land on the ground that they had purchased the land in February 2006 and got the title transferred in their favour and also got building plans sanctioned from Bruhat Bangalore Mahanagara Palike (BBMP).

Though the ACS apprised (May 2010) the CM of the pendency of the Court case, the latter ordered (May 2010) denotification of 0-25 acre. The Government issued necessary denotification orders in June 2010 in favour of the purchasers and the Court case was dismissed in August 2010 on the basis of the denotification order.

Thus, the reversal of the acquisition process almost 19 years after the completion of the acquisition proceedings was irregular, especially when the provisions of the KLRT Act had been violated by the purchasers and the appeal filed by BDA had been pending in the Court.

Chapter-5

Denotification of land purchased after notification for acquisition

The Karnataka Land (Restriction on Transfer) Act, (KLRT Act) had been enacted in 1991 with a view to impose certain restrictions on transfer of land which had been acquired by the Government or in respect of which acquisition proceedings had been initiated by the Government.

The salient features of the Act are:

- No person shall purport 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 LA Act, or any other law providing for acquisition of land for a public purpose.
- No person shall, except with the previous permission in writing of the competent authority, transfer, or purport 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 Sec 19 of the BDA Act, 1976 or Sec 19 of the Karnataka Urban Development Authorities Act, 1987.
- No registering authority appointed under the Registration Act, 1908 shall register any such document unless the transferor produces before such registering office a permission in writing of the competent authority for such transfer.
- If any person contravenes these provisions, he shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

All preliminary notifications for acquisition of land issued by BDA stipulated that any contract for disposal of the notified lands by sale, lease, mortgage, assignment, exchange *etc.,* without the sanction of the Deputy Commissioner, Bangalore after the date of publication of preliminary notification would be disregarded by the officer assessing compensation for such lands.

Scrutiny showed that in the cases listed in **Table-7** the lands notified for public purpose had been transferred in violation of the KLRT Act to several persons who subsequently got these lands denotified either in their favour or in favour of the erstwhile land owners.

Table-7: Details of land purchased after final notification

Sl. No	Name of the layout	Extent of land denotified by Government (Acres-Guntas)	Sy. No.	Village	Taluk	Period of taking possession by BDA under Sec 16(1) of LA Act	Period of denotification
1.	Arkavathy	1-12 0-16	55/2 56	Rachenahalli	Bangalore North	Not taken	November 2008
2.	RMV-II Stage	0-14 0-09	10/11F 10/1	Lottegollahalli	Bangalore North	August 1998 August 1988	December 2009
3.	East of NGEF	4-20	50/2	Benniganahalli	Bangalore East	Not taken	May 2010
4.	Gnanabharathi	0-22	77 78	Nagadevanahalli	Bangalore South	August 1997 & September 1997	September 2009
		7-00 3-00	20	Nagadevanahalli		NA	June 2007 September 2007
5.	BTM IV Stage	1-17	5/1 6/3	Bilekanahalli	Bangalore South	Not taken	December 2009
6.	Arkavathy	2-19	55/1	Thanisandra	Bangalore North	December 2004	August 2009
		2-29	101/2				October 2007
	Total	**23-38**					

(Source: Denotification files of BDA and Secretariat)

The Government overlooked the violations of KLRT Act before denotifying the lands. The pattern of transactions in these cases evidenced that prime land notified by BDA but remaining unutilized for a variety of reasons had been targeted for illegal purchases in violation of the provisions of KLRT Act and unjustified denotification of such lands by the Government not only regularized the illegal transactions but also facilitated exploitation of such prime land for commercial purposes in a few cases.

5.1 Arkavathy Layout

BDA had acquired (February 2004) 1-12 acres and 1-06 acres of land in Sy.No.55/2 and 56 respectively, in Rachenahalli village for the Arkavathy Layout. While award for land in Sy.No.56 had been approved on 6 September 2004, the same had not been approved for land in Sy.No.55/2.

The original files related to the above survey numbers maintained at the Secretariat as well as BDA had been handed over to the State Lokayuktha on 13 January 2011 for investigation. Scrutiny of photocopies of documents given by the Lokayuktha before taking over the original documents for investigation showed the following:

- Four persons were the khatedars of land in Sy.No.56. Another person (P1) after acquiring the title to the property on 5 March 2007 submitted an application in August 2008 to the Commissioner, BDA, seeking denotification of 0-16 acre of land in this survey number on the ground that the land had been purchased for the family needs.
- P1, who was also the GPA holder for land in Sy.No.55/2 submitted a representation to BDA in September 2008, seeking deletion of 1-12 acres in Sy.No.55/2 from acquisition on the same ground. BDA submitted a status report to the Government during September 2008.

In their notings, the case worker, the Section Officer and the Under Secretary, Urban Development Department had placed on record that there were no legal hurdles in denotifying the land in Sy.No.55/2 as the award had not been passed. They, however, recommended that the matter be placed before the ensuing Denotification Committee meeting in respect of land in Sy.No.56 as the award had already been passed. However, the Joint Secretary, Urban Development Department in his notings observed (October 2008) that there were no legal hurdles as the possession of the land had not been taken and suggested submitting the file directly to the CM as directed by the Joint Secretary to the CM. However, the PS endorsed the views of the Under Secretary and marked (October 2008) the file to the CM, who ordered (October 2008) denotification of the land in these two survey numbers on the ground that there were no legal hurdles.

Accordingly, the Government denotified (November 2008), both 1-12 acres and 0-16 acre of lands in Sy.Nos. 55/2 and 56 respectively.

Scrutiny showed the following:

- P1 had been appointed the GPA through a registered deed dated 26 April 2003 for 1-12 acres of land in Sy.No.55/2 by the erstwhile land owners. This transaction had taken place after the issue of preliminary notification by BDA on 3 February 2003. P1 sold 0-20 acre of land in Sy.No.55/2 through a registered sale deed dated 22 March 2006 in favour of two persons (₹ 20 lakh), who in turn sold (November 2010) it to a company for ₹ 10 crore.
- In another sale deed dated 21 April 2006, P1 had sold another 0-20 acre (₹ 20 lakh) in the same survey number to another person. This person sold this land to the company above for ₹ 10 crore.
- After denotification of 0-16 acres of land in Sy.No.56, P1 sold the land on 5 May 2009 to another company.

Thus, while denotification of land in Sy.No.55/2 regularized the illegal purchase of the notified land after preliminary notification, the denotification of land in Sy.No.56 facilitated the sale of land to a company. The grounds on which denotification had been sought were evidently false.

5.2 RMV II Stage Layout

BDA had acquired lands in the following survey numbers of Lottegollahalli village for the formation of RMV II Stage Layout.

Details	Sy.No.10/11F	Sy.No.10/1
Date of final notification	31 August 1978	31 August 1978
Total extent of land notified (Acres-Guntas)	1-03	0-18
Land taken possession under Sec 16(1)	29 August 1988	2 April 1988
Notification under Sec 16(2) published	13 February 1992	13 February 1992

Long after completion of the acquisition process, the land owners requested (June 2002 in respect of land in Sy.No.10/1 and June 2006 in respect of land in Sy.No.10/11F) the Commissioner, BDA to denotify portions of land not utilized by BDA in these survey numbers. Though BDA sent (November 2002 and July 2007) proposals to the Government recommending deletion of the unutilized portions of land from the purview of acquisition, the Government rejected (September 2008) the proposal on the ground that the question of denotifying land for which notification under Sec 16(2) had been issued would not arise in view of the judgment delivered in several cases by the Courts.

The land owners pursued (October 2009) the matter again by representing to the CM, who relied on the recommendation by the BDA sent earlier to the Government in November 2002 and July 2007 and ordered (December 2009) denotification of 0-14 acre in Sy.No.10/11F and 0-09 acre in Sy.No.10/1. Accordingly, Government issued the denotification orders in December 2009.

Further scrutiny showed that immediately after BDA had sent proposals (November 2002 and July 2007) to the Government recommending denotification of the unutilized land, the land owners registered the unutilized land in favour of a person. While 0-09 acre in Sy.No.10/1 had been registered on 26 February 2003 (₹ 3.42 lakh), 0-14 acre in Sy.No.10/11F had been registered on 12 November 2007 (₹ 41.25 lakh), though the sale in these two cases violated the provisions of KLRT Act. However, the purchaser registered a Gift Deed on 27 August 2011 in favour of BDA, gifting the lands purchased by him. The reason adduced in the gift deed for gifting the lands was that certain baseless and frivolous allegations had been made in respect of purchase of the property and attempts were made by his political rivals to tarnish his image. The gift in favour of BDA had, therefore, been made to keep his record straight and to dispel the public and his political rivals from pointing an accusing finger at him.

The denotification was invalid as it had been done after possession of the land had been taken evidently to regularize the irregular transfer of title of the

property. The gifting of the land to BDA did neither reverse the process of denotification nor regularize the violation of KLRT Act.

5.3 East of NGEF Layout

BDA had issued (October 1986) the final notification for acquisition of 523-03 acres of land in Banaswadi and Benninganahalli villages for the formation of East of NGEF Layout. The land included 5-11 acres in Sy.No.50/2 of Benniganahalli village.

Against 5-11 acres notified in Sy.No.50/2, award had been passed only for 0-25 acres, under the orders of the Commissioner, BDA, on the ground that an industrial unit had been set up over 4-20 acres in the survey number and that the land had been got duly converted for industrial purpose before BDA had notified the land for acquisition. The Commissioner had taken the decision at his level and had not initiated any action to withdraw the acquisition proceedings in respect of 4-20 acres, which, therefore, stood notified for acquisition and covered by the provisions of the KLRT Act.

An elected representative submitted (September 2005) a representation to the CM and the Commissioner, BDA requesting for denotification of 4-20 acres in Sy.No.50/2 on the ground that the land had been converted for industrial purpose and BDA had not utilized the land. BDA apprised (December 2005) the Government of the factual position. Though the file had been submitted (January 2006) to the CM, no orders were passed and the file was closed.

Subsequently, the elected representative submitted (May 2009) another representation to the Commissioner, BDA requesting for denotification. BDA referred this representation, along with a status report, to the Government (July 2009).

Though the Section Officer in the Secretariat suggested that the matter be placed before the Denotification Committee for a suitable decision, the PS submitted (August 2009) the file directly to the CM endorsing the views of the Under Secretary that there were no legal hurdles to denotify the land in question, as award had not been passed and possession of the land had also not been taken. The CM approved (May 2010) the proposal and the Government denotified (May 2010) 4-20 acres of land in Survey No 50/2 in favour of the owner of the land.

The denotification had been not justified for the following reasons:

- Scrutiny showed that the elected representative had purchased (₹ 1.62 crore) this land from the land owner, through a registered sale deed dated 18 December 2003, much after the land was notified for acquisition. This had been precisely the reason why the purchaser had approached the BDA/CM for denotification of the land.

- After the lands had been denotified in May 2010, a company requested (November 2010) BDA to fix the boundaries for this land and provide the survey sketch for 4-20 acres.
- Scrutiny of records obtained by Audit from the jurisdictional sub-registrar showed that even before the land had been denotified, the elected representative entered into a Joint Development Agreement (10 May 2004) with the company and appointed the latter as Power of Attorney. Subsequently, the Power of Attorney appointed another company to undertake the work of development of the land. These three parties entered (March 2011) into a Joint Development Agreement for construction of a residential apartment building complex on the property.

All these developments were violative of the provisions of the KLRT Act, when the land stood notified for a public purpose.

5.4 Gnanabharathi Layout

(a) BDA had notified (March 1994) 4-00 acres in Sy.Nos.77 and 78 of Nagadevanahalli village of Bangalore South Taluk for the formation of Gnanabharathi Layout. Though award had been passed (July 1997) for these lands, the compensation had neither been disbursed to the land owners, nor deposited in the Civil Court, reasons for which were not on record. The possession of the land taken under Sec 16(1) had been handed over to the Engineering Section in August 1997 and September 1997 and notification under Sec 16(2) had also been issued in June 1998.

Scrutiny showed that the Engineering Wing had not developed these lands and there were no recorded reasons. The owners of these lands had submitted several representations since March 2001 to the CMs, seeking denotification of their lands on the ground that BDA had not utilized the acquired land for the formation of layout and the possession continued to vest with them. However, these representations had not been acted upon.

During June 2009, the land owner submitted a representation to the Government informing that he had sold 0-22 acre of land in these survey numbers and that the purchaser had already constructed nursing college, students' hostel and school buildings on the land. He requested for denotification of the land sold by him on the ground that Government had already deleted 34 acres of surrounding lands in December 2000.

While submitting the file to the CM, the PS observed (June 2009) that there was no provision to denotify the land as per the Supreme Court orders as BDA had taken possession of the land way back during 1997. However, the CM ordered (September 2009) denotification of 0-22 acre on the following grounds:

- "On the basis of the recommendation made (October 2000) by a former Minister, the then CM ordered denotification of 33-37 acres in several survey numbers, excepting 4 acres in Sy.No.77 and 78, in favour of a Society, although final notification had been issued on 19 January 1994.
- Another former CM had ordered (January 2006) denotification of 0-22 acre in Sy.Nos.77 and 78 as educational institutions had been established and sites had not been formed on this land by BDA.
- Yet another former CM after noting the existence of the nursing college and school buildings *etc*., had ordered (October 2007) that if found necessary, the Government might issue notices to BDA as well as the applicants, conduct enquiries and take further action in the matter.
- In view of this position and also considering that BDA had not formed and allotted sites and since educational institutions were already functioning, it is ordered to denotify 0-22 acre."

Scrutiny of copies of sale deeds available in the Secretariat file showed that the land owner had sold two sites to the purchaser during September 2004 after the issue of the final notification and these two sites had been carved out of land acquired by BDA in Sy.No.78. The details are shown in the **Table-8:**

Table-8: Details of sites sold after final notification

Date of registration	Site No	Area (in sq ft)	Sale consideration (in ₹)	Document No
4.9.04	50	2,490	2,73,900	22306/2004-05
4.9.04	47,48,49	21,177	23,29,525	22308/2004-05
Total		**23,667**		

(Source: Copies of sale deeds)

After selling these two sites, the land owner had executed a rectification deed in March 2005 in favour of the purchaser to the effect that though the land sold had been notified for acquisition by BDA, the Urban Development Department cancelled the same in March 2005. Audit scrutiny showed that this was factually incorrect as the Government had not denotified the land in March 2005.

Thus, the denotification of 0-22 acre regularized the illegal purchase of land in violation of the KLRT Act.

(b) The Government issued (March 1994) the final notification for acquisition of lands required for the Gnanabharathi Layout. The lands so notified included 12-13 acres of land in Sy.No.20 of Nagadevanahalli village, Bangalore South Taluk. The award for the land in this survey number had been passed in June 2001. Ten out of 12-13 acres in this survey number had been granted by the Government under the Karnataka Land Grant Rules, 1969 to three persons before acquisition.

One person (P1) had purchased (January 2003) seven acres of land in Sy.No.20 from the grantees in violation of the provisions of the KLRT Act and executed (August 2004) General Power of Attorney (GPA) in favour of another person (P2). Yet another person (P3) also irregularly purchased (June 2004) three acres of land in the same survey number from the grantees in violation of the provisions of the KLRT Act.

P2 and P3 represented (17 March 2006) to the CM requesting for denotification of the lands purchased by them on the ground that BDA had not developed these lands and had not taken over possession. The Denotification Committee, which examined (August 2006) the case of P3 recommended against denotification as the land was required by BDA for the layout. Though the case of P2 had not been referred to the Denotification Committee, the PS recommended (August 2006) for the rejection of the request for denotification on the same ground.

However, the CM ordered (May and September 2007) denotification of 10 acres in this survey number (three acres in favour of P3 and seven acres in favour of P2, the GPA holder) citing that BDA had not taken possession of the lands. Thereafter, the Government denotified (June 2007) seven acres of land, in favour of P2 and three acres in favour of P3 (September 2007).

Though the denotification made by the Government was *per se* legally valid as possession of land had not been taken, the reconveyance of the land to persons who were not the khatedars and who had violated the provisions of the KLRT Act by purchasing the land notified by BDA for a public purpose, was irregular.

5.5 BTM IV Stage Layout

The Government denotified (December 2009) 1-17 acres in Sy.Nos.5/1 and 6/3 of Bilekanahalli village of Bangalore South Taluk, which had earlier been notified by BDA for acquisition through a final notification dated 3 November 1990 for the formation of BTM IV Stage Layout. The lands were denotified in favour of the owners on the basis of information furnished (July 2007) to the Government by BDA that land compensation had not been awarded and that possession of the lands was also not taken. The reasons for not making an award and not taking possession of land for 18 years were not on record. Scrutiny showed that several persons had represented (November 2003, February 2004, December 2004 and February 2007) to the Commissioner/ Government/CM that they had purchased sites formed on these lands after the issue of preliminary notification in August 1988 and requested for denotification of land in these survey numbers.

The Denotification Committee directed (August 2007) BDA to place the matter before the Authority and then come up with an appropriate decision.

Pending scrutiny by the Denotification Committee, the PS apprised (October 2009) the CM of the status of the land and the CM ordered (December 2009) denotification of the land as BDA had not passed award and possession had also not been taken. Failure to pass award and take possession of the notified land facilitated uncontrolled development of the land and its sale in violation of the KLRT Act. The denotification by the Government regularized the illegal transactions.

5.6 Arkavathy Layout

BDA resolved (May 2006) on the basis of orders (November 2005) of the High Court to allot an alternative site of 30'x40' dimension for each of the revenue sites acquired for the Arkavathy Layout subject to the condition that the revenue site holders should have registered the sites prior to the date of issue of preliminary notification for acquisition of lands. The costs of the alternative sites so allotted were to be adjusted against the compensation payable to the revenue site holders.

In the case of lands (excluding sites) acquired for the Arkavathy Layout, the High Court judgment (November 2005) permitted denotification of the land belonging to any of the following six categories:

(i) Land situated within the green belt area

(ii) Land totally built-up

(iii) Land wherein buildings had been constructed by charitable, educational or religious institutions

(iv) Nursery land

(v) Factories, and

(vi) Lands similar to the adjoining land which had not been notified for acquisition.

For determining the eligibility for denotification, the status of the land as on the date of preliminary notification was to be reckoned.

During October 2007, BDA requested the Government to denotify 15-15 acres of land notified for the Arkavathy Layout in six survey numbers in four villages. The proposal also included 2-19 acres of land in Sy.No.55/1 of Thanisandra village. The proposal was made by BDA as acquisition of revenue sites in these lands would necessitate allotment of an alternative site for each of the revenue sites so acquired and this would result in huge financial burden on the BDA.

With the approval of the CM (August 2009), the Government denotified (August 2009) acquisition of 2-19 acres of land in Sy.No.55/1 of Thanisandra village in favour of a person who was different from the khatedars notified in

the final notification, implying that the person had violated the provisions of the KLRT Act and purchased the land after the issue of the final notification.

The denotification in this case had been proposed by BDA on the basis of an inspection report (November 2006) of the Revenue Inspector who had reported that 55 revenue sites, each of 30'x40' dimension had been formed on this land and acquisition of these revenue sites would necessitate allotment of 55 alternative sites, which was not financially viable. It was further reported that these 55 revenue sites had also been sold to several persons. However, a spot inspection committee of BDA consisting of Additional LAO, Executive Engineer, Deputy Superintendent of Police, Revenue Inspector and Surveyor had inspected this land earlier during April 2006 and found that the entire land was vacant and suitable for forming the layout. Following the inspection, the DC informed (June 2006) the land owners figuring in the final notification that their request for denotification of the land had been rejected by the Authority in its meeting held on 31 May 2006 as the land was vacant and the land did not satisfy any of the six criteria laid down by the High Court for denotification. Thus, the inspection report of the Revenue Officer given in November 2006 was factually incorrect. Further, there was no need for the Revenue Inspector to inspect the land in November 2006 when a full fledged spot inspection committee had earlier found the land vacant and suitable for acquisition.

Scrutiny of the Encumbrance Certificate obtained by Audit in respect of this survey number from the jurisdictional sub-registrar showed the status of this property as land only as of September 2010 and not as revenue site. Further, the person in whose favour the Government denotified the land entered into a development agreement for this land only on 2 September 2010 with a private company after the land had been denotified.

Further, the denotification in this case was irregular as on the date of preliminary notification (3 February 2003), the land had remained vacant and did not meet the eligibility criteria laid down by the High Court for denotification. Further, the possession of the land under Sec 16(1) had also been taken by BDA in December 2004. Thus the denotification in this case had been facilitated by incorrect reporting of the status of the land and fraudulent practices could not be ruled out. The matter, therefore, requires investigation.

Though the denotification process in unavoidable circumstances is expected to reconvey the acquired land to its original owner, the denotification in this case facilitated reconveyance of the land to a person, who had irregularly acquired title to the land by violating the provisions of the KLRT Act.

Similarly, the Government denotified (October 2007) another 2-29 acres in Sy.No.101/2 of the same village. This was a sequel to a representation submitted (August 2007) by the land owners to the CM requesting for

denotification of the land on the ground that many lands acquired for Arkavathy layout had been subsequently deleted from acquisition after publication of final notification. Though BDA reported (September 2007) to the Government that the possession of the land in this survey number had already been handed over to the Engineering Wing in December 2004 and the land did not fall under any of the categories eligible for denotification as per the criteria laid down by the High Court, the CM considered (October 2007) the applicant's request sympathetically and denotified the land as notification under Sec 16(2) had not been published. The CM's order glossed over the well settled law that non-publication of notification under Sec 16(2) would not vitiate the acquisition proceedings.

Chapter-6

Denotification of land despite Courts upholding the acquisition proceedings

In the cases listed in **Table-9**, the Government irregularly denotified land even after the Court had upheld the acquisition proceedings:

Table-9: Details of denotification of lands even after Court upholding acquisition proceedings

Sl No	Name of the layout	Extent of land denotified by Government (Acres-Guntas)	Sy No	Village	Taluk	Period of taking possession by BDA under Sec 16(1) of LA Act	Period of denotification
1	Further Extn of Anjanapura	6-29	126, 127/1, 127/2	Gottigere	Bangalore South	NA	August 2007
2	Gnanabharathi	4-08	77/1, 77/2	Valagerahalli	Bangalore South	February 2006	October 2007 October 2010
3	RMV II Stage	0-33	1/1	Lottegollahalli	Bangalore North	September 1986	January 2010
4	HRBR III Stage	1-20	6/2A, 6/2B, 7	Guddadahalli	Bangalore North	September 1989 November 1989	January 2010
5.	Scheme between Banaswadi and Hennur Road	0-15	100/1 100/2	Challakere	Bangalore East	January 1983 February 1983	January 2010
	Total	**13-25**					

(Source: Denotification files of BDA and Secretariat)

Details of these cases are discussed below:

6.1 Further Extension of Anjanapura Layout

The final notification (March 2002) for acquisition of 487 acres in Gollahalli, Kembathahalli and Gottigere villages of Bangalore South Taluk for the formation of Further Extension of Anjanapura Layout included 6-29 acres in Sy.Nos.126, 127/1 and 127/2 of Gottigere village. Award for these lands had been passed in March 2005 and the khatedars were directed to hand over possession of the land taken on 17 March 2005.

Earlier, the land owner had represented (February 2003) to the Government seeking denotification of lands belonging to her. In the report submitted to the Government, BDA had informed (May 2003) that it was difficult to form a layout on the said lands as these had been fully covered with fruit bearing trees, a clinic, a pump house and a labour shed. This report is to be viewed in

the light of the fact that the same owner had agreed (October 2001) to give up her land before issue of the final notification and sought a compensation of ₹ 10 lakh per acre as a special case. Thus, existence of structures and fruit bearing trees on the land had been within the knowledge of BDA even before issuing the final notification and the land had been included in the final notification only after hearing objections of the land owner. The CM approved (January 2006) the denotification of the land on the basis of the recommendations (May 2003) of the Denotification Committee.

Though the PS approved (February 2006) a draft denotification order subject to the condition that the land should be utilized only for the purpose of growing plantation/cash crops, the Deputy Secretary withheld the issue of the order, reasons for which were not forthcoming. Thereafter, an elected representative represented (July 2007) to the CM complaining that though the former CM had ordered denotification of land, necessary orders had not been issued. The incumbent CM directed (August 2007) to implement the orders of his predecessor. Denotification order was issued in August 2007, removing the condition stipulated in the draft denotification order approved during February 2006.

Earlier, the land owner had filed a writ petition during 2005 challenging the acquisition of land and the High Court dismissed (June 2007) the writ petition on the following grounds:

- The petitioner had challenged the acquisition proceedings after passing of the award;
- There had been inordinate delay of more than three years from the date of publication of declaration in filing the writ petition; and
- The acquisition proceedings had already been finalized by BDA.

Thus, denotification orders were issued after the High Court had dismissed the writ petition challenging the acquisition proceedings.

6.2 Gnanabharathi Layout

The final notification (January 1994) for acquisition of 729-31 acres of land in Valagerahalli and Nagadevanahalli villages of Bangalore South taluk for the formation of Gnanabharathi Layout included 5-10 acres in Sy.No.77/1 and 77/2 of Valagerahalli village. Awards for the land in Sy.No.77/1 and 77/2 were passed in August 1996 and January 1997, respectively. Possession of the land measuring 3-10 acres in Sy.No. 77/1 taken under Sec 16(1) had been handed over to the Engineering Section on 18 January1997 and notification under Sec 16(2) had been also published on 12 March 1997.

While disposing of the writ petition filed by the owner challenging the acquisition of 5-10 acres in Sy.No.77/1 and 77/2, the High Court had upheld

(February 2004) the acquisition proceedings on the ground that acquisition could not be quashed merely on the ground that petitioner had not participated in the award proceedings. At the same time, the High Court quashed the awards passed on 12 August 1996 and 28 January 1997 on the ground that the petitioner had not been served with any notice and no opportunity had been given to the petitioner to participate in the award proceedings. The High Court directed BDA to issue a fresh notice to the petitioner and proceed to pass the awards after hearing. Revised award had been passed for 2-34 acres in Sy.No.77/1 and 0-16 acres in Sy.No.77/2 on 19 December 2005. The possession of these lands taken under Sec 16(1) had been handed over to the Engineering Section on 8 February 2006 and notification under Sec 16(2) had also been issued on 24 August 2006.

The land owner represented (July 2007) to the Commissioner, BDA and the CM stating that his land had been acquired for the Gnanabharathi layout and BDA had permitted him to utilize two acres of land, (0-16 acres in Sy.No.77/1 and 1-24 acres in Sy.No.77/2), by restricting the award and that BDA had not published a Gazette notification for these two acres in their possession. He requested the CM to publish a Gazette notification deleting these two acres from acquisition. Responding to the representation, the Commissioner, BDA confirmed (August 2007) that out of 5-10 acres acquired in these survey numbers, award had been passed only for 3-10 acres.

In the file submitted to the PS, the Joint Secretary observed (September 2007) that BDA had given up two acres at the stage of preliminary notification itself and the applicant had been merely requesting that the area given up by BDA be gazetted. It was further recorded that though the request had been unconventional, there was no harm in denotifying the land given up by BDA and the Government had no objection to the request made by the applicant for denotifying the land. The proposal of the Joint Secretary was approved by the PS and the CM and the Government denotified (October 2007) two acres in Sy.Nos.77/1 and 77/2. It would be pertinent to mention here that BDA had not been vested with powers under the LA Act to restrict the award after final notification and award should be made for the entire land notified. Further, BDA had not given up the land at the preliminary notification stage itself as stated by the Joint Secretary and the final notification for the land had been issued in January 1994 for 5-10 acres.

Subsequently, during August 2010, the land owner submitted one more representation to the CM stating that BDA had not formed the layout on the remaining 3-10 acres of land in Sy.No.77/1 and 77/2 of Valagerehalli village and that a tomb of his father and several valuable trees had existed on the land. As BDA had already given up acquisition of two acres, he requested to denotify the remaining land in these survey numbers also. BDA submitted a status report informing, inter alia, that two acres in these survey numbers had already been denotified by the Government on 6 October 2007. Though the

ACS apprised (September 2010) the CM of the status of 3-10 acres of land and recorded in the file that there was no provision under law to denotify the land as its possession had been taken, the CM denotified (October 2010) another 2-08 acres of land in these survey numbers, on the ground that the surrounding lands had already been denotified and the land was, therefore, not suitable for forming a layout.

Thus, while on the one hand, the land owner got two acres of land denotified due to the restricted award passed, he got another 2-08 acres denotified on the ground that it was adjacent to the land denotified earlier. While the first denotification would be legally valid as possession of land had not been taken, the second denotification of 2-08 acres of land was irregular as the acquisition process had been completed in all respects with the issue of notification under Sec 16(2) in August 2006. The remaining 1-02 acres out of 5-10 acres had not been denotified as it was kharab[5] land belonging to the Government. Thus, irregular passing of the award and the invalid denotification order helped the land owner get his entire land reconveyed to him by subjugating public interest to private interest.

Further scrutiny showed that land owner had irregularly sold (November 2004) a part of the denotified land (0-26 acre in Sy.No.77/1) in violation of the KLRT Act even before the revised award was passed in December 2005.

6.3 RMV II Stage Layout

In respect of 3-33 acres in Sy.No.1/1 of Lottegollahalli village notified (August 1978) for the formation of RMV II Stage Layout, BDA took possession of the land under Sec 16(1) on 29 September 1986 and published notification under Sec 16(2) on 30 July 1987.

When the Government had denotified (October 1996) a portion of land in the same survey number after forming and allotting sites, several allottees had filed writ petitions challenging the denotification order. While quashing (February 1997) the denotification order of October 1996, the High Court was critical of the action of the Government in denotifying the acquired lands 18 years after the issue of final notification, after the High Court and Supreme Court had upheld the acquisition proceedings.

However, Government denotified (January 2010) 0-33 acre of land in Sy.No.1/1 in favour of one person on the basis of his representation to the CM though the khatedar as per the final notification was different. Evidently the person had purchased this land after issue of the final notification in violation of the KLRT Act. However, the CM ordered (December 2009) denotification of the land on the ground that there were several other cases wherein similarly

[5] Barren land

placed lands had been denotified earlier. Thus, denotification of the land 22 years after issue of notification under Sec 16(2) and 13 years after a similar denotification order had been quashed by the High Court evidenced that the denotification had been done it on extraneous considerations without regard for the legal position.

Further audit scrutiny showed that the wife of the deceased person submitted an application to DC, Bangalore Urban seeking change of land use for 0-38 acre instead of 0-33 acre denotified by the Government in Sy.No.1/1A of Lottegollahalli. DC, Bangalore Urban requested (January 2012) BDA to confirm whether the land had been acquired by BDA and to issue a NOC for the change of land use, if the land had not been acquired. Meanwhile, BDA received a photocopy of another denotification order (September 2010) issued by the Government denotifying an additional 0-05 acre in the same survey number in favour of the same person. This was supplied to BDA by the editor of a local newspaper. As BDA was not aware of this denotification order, it sought (February 2012) clarification from the Government as to whether such an additional order had been issued. Government's clarification was awaited (July 2012). Audit scrutiny of the concerned file at the Secretariat showed that the file had been closed on 23 April 2010 with the issue of the denotification order of January 2010. As fraudulent practices in this matter could not be ruled out, the matter requires investigation.

6.4 Hennur Road and Bellary Road III Stage Layout

The Government denotified (January 2010) land measuring 1-20 acres in Sy.No.6/2A (0-22 acre), 6/2B (0-10 acre) and 7 (0-28 acre) of Guddadahalli village of Bangalore North taluk. These lands had earlier been acquired by BDA through a final notification (February 1989) for the formation of a layout called Hennur Road & Bellary Road III Stage. The possession of the land taken under Sec 16(1) had been handed over to the Engineering Section in September and November 1989. Notification under Sec 16(2) had been issued in January 1992.

Earlier, the High Court had dismissed (October 2003) the writ petition challenging the acquisition proceedings on the ground that it was not appropriate for the Court to disturb the acquisition proceedings of the year 1978 and 1989 and that it was open for the petitioners to move the State Government for denotification.

Except for one letter dated 18 May 2004 addressed to the Secretary, Urban Development Department by two persons who claimed to be the joint owners of land in Sy.No.7 and a letter dated 21 May 2004 from the Government, endorsing this representation to the Commissioner, there was no other correspondence in the file maintained by BDA. As regards Sy.No.6/2B, the last correspondence in the file ended on 8 March 2000.

Audit scrutiny showed that BDA had not submitted the status report desired by the Government in May 2004 and the two applicants were also not the khatedars of Sy.No.7 as per the final notification. It was further seen that an elected representative had requested (October 2005) the CM to denotify the lands in Sy.No.6/2A and 6/2B on the ground that there were houses and a workshop on the land and BDA had not formed the layout. The file was closed by the Under Secretary (March 2006) as acquisition process had been completed and the land had vested with BDA.

The elected representative addressed (June 2008) a letter to the leader of the opposition party with a request to direct the authorities concerned, to denotify the land. The leader of the opposition party, in turn, requested (June 2008) the CM to consider the request for denotification. While the Joint Secretary in his notings suggested (September 2008) that the matter be placed before the Denotification Committee, the PS submitted the file to the CM, noting that there were legal hurdles in denotifying the land, as notification under Sec 16(2) had been issued in January 1992. However, the CM, citing other denotification cases, ordered (December 2009) that this land too be denotified on humanitarian grounds, treating it as a special case. It would be pertinent to mention here that the irregular denotification had been done in this case 18 years after completion of the acquisition process in disregard of the provisions in the LA Act.

Further, scrutiny of the latest Record of Rights, Tenancy and Crops Certificate (RTC) (April 2012) and Encumbrance Certificate showed that 0-27.5 acre in Sy.No. 7 had been sold to other persons after the denotification and changes in mutation entries in favour of the purchasers had been made during April and October 2011.

The denotification was done evidently to facilitate the sale of land notified for a public purpose.

6.5 Denotification of 0-15 acre in the Scheme between Banaswadi and Hennur Road

The final notification issued by the Government on 14 May 1980 notifying the acquisition of lands for the formation of a layout called "Scheme between Banaswadi Road and Hennur Road," included 2-16 acres and 2-20 acres of land in Sy.Nos 100/1 and 100/2, respectively, of Chellakere village of Bangalore East Taluk. Notification under Sec 16(2) had been published in July 1983.

The land owners had requested (May 1984 and June 1988) the Minister for Housing and Urban Development and the Commissioner, BDA, seeking exemption of 0-15 acre of land in Sy.Nos.100/1 and 100/2 from the acquisition process on the ground that three residential buildings and tombs of ancestors

existed on this piece of land. As their request had not been acted upon, they filed a writ petition before the High Court praying for directions to BDA to consider the applications. The High Court directed (December 1990) BDA to consider the application in accordance with law, within three months.

The file produced to Audit did not contain the developments that took place after this event and apparently no action had been taken on the orders of the High Court. As BDA failed to take appropriate action, the land owners filed another writ petition (19445/2007) before the High Court. During the course of arguments, BDA had submitted to the Court that it was willing to consider the representation of the petitioners. The High Court disposed (July 2009) of the writ petition with a direction to BDA to pass appropriate orders on the representation within two months and to maintain status-quo.

BDA resolved (December 2009) not to denotify the land, as the property had vested with BDA after the issue of notification under Sec 16(2). While BDA issued an endorsement to this effect to the land owners on 4 January 2010, the Government issued orders withdrawing 0-15 acre of land from acquisition on the same day.

Scrutiny of files at the Secretariat showed that an elected representative had recommended (June 2008) to the CM for denotifying the land in favour of the land owners and issuing directions to BDA. After obtaining a report from BDA, the PS referred (February 2009) the file to the CM, informing that there were legal hurdles in denotifying the land, as possession had been taken way back during January-February 1983 and notification under Sec 16(2) had also been published. However, the CM denotified (June 2009) the land on the ground that it had been not possible to form sites in the meagre area and that the land had been built up. When the file had been returned, the Under Secretary resubmitted (June 2009) the file to the PS after recording that the CM had issued orders for denotification, despite the clarification that notification under Sec 16(2) had been published and the land acquisition proceedings had been completed in all respects. The PS directed the Under Secretary to examine the issue in the light of the Supreme Court judgment and submit the file to the CM with proposal to seek the opinion of the Law Department. The Under Secretary noted that in view of the orders passed by the Supreme Court, it was not permissible to denotify the land as the possession had vested with BDA and there was no provision in the LA Act to re-grant such lands to the erstwhile owners. The PS endorsed the views and resubmitted (June 2009) the file to the CM. However, the CM insisted (June 2009) on denotifying the land, treating it as a special case. The Government issued necessary denotification orders in January 2010.

The exercise of power under Sec 48(1) of the LA Act by the Government in denotifying the land was invalid. The reversal of the acquisition process almost 23 years after its completion evidently subverted public interest and subjugated it to private interest.

Chapter-7
Denotification on other considerations

In the cases listed in **Table-10**, the Government irregularly denotified land on the basis of several unjustifiable considerations.

Table-10: Details of denotification of land on other considerations

Sl No	Name of the layout	Extent of land denotified by Government (Acres-Guntas)	Period of taking possession by BDA u/s 16(1) of LA Act	Sy No	Village	Taluk	Period of denotification
1	Banashankari V Stage	10-00	Not taken	121	Uttarahalli	Bangalore South	December 2009
2	BTM IV Stage	11875.75 sft	Not taken	7/8	Bilekanahalli	Bangalore South	November 2009
3	HAL III Stage	0-15	December 1979	62/3	Konena Agrahara	Bangalore East	May 2010
4	West of Chord Road IV Stage	1-16 ½	November 1986	69/2	Agrahara Dasarahalli	Bangalore North	August 2007
5	JP Nagar IX Phase	4-11	September 1996	21/1, 21/2, 21/3, 21/4, 21/5	Arakere	Bangalore South	March 2006
6	Arkavathy	2-16	June 2006	39/2B, 50/2, 50/4, 55/1	Rachenahalli	Bangalore North	June 2010
7	Gnanabharathi	7-06	Not taken	80/1, 80/3	Valagerahalli	Bangalore South	October 2007
8	Nadaprabhu Kempegowda	4-00	Not taken	15	Sulikere	Bangalore South	April 2010
	Total	**29-24 ½ & 11875.75 sft**					

(Source: Denotification files of BDA and Secretariat)

Details of these cases are as under:

7.1 Banashankari V Stage Layout

BDA had issued (October 1999) final notification for acquisition of lands in several villages of Bangalore South Taluk for the formation of BSK V Stage Layout. Ten acres of land in Sy.No.121 of Uttarahalli village had also been included in the final notification. As BDA had rejected the objections filed by the land owner, he filed writ petition before the High Court challenging the acquisition proceedings and praying for consideration of his proposal to develop the notified land for group housing in terms of Government order of November 1995 (as discussed in Para 8.1 subsequently).

The High Court had granted interim stay, which had remained in force till 15 April 1998. Further developments in this case were not on record. Though the LAO had passed an award in March 1998, which was also approved by the DC, the compensation had not been deposited in the Court, reasons for which were not forthcoming from the records.

During July 2009, the land owner's son submitted an application to the CM seeking denotification of 10 acres of land, on the ground that they were the rightful owners of the land and that their group of institutions and hospitals catered to the needs of the area and they intended to provide housing to staff members working in their institutions. BDA informed (July 2009) the Government that the award had been approved, the possession of the land had not been taken, and notification under Sec 16(2) had also not been published. It was further reported that the entire land had remained vacant, a compound wall had been erected and BDA had not formed the layout on these lands.

The CM ordered (December 2009) that the land be denotified and the Government issued (December 2009) necessary orders, denotifying 10 acres of land in Sy.No.121 of Uttarahalli village, without even ascertaining the status of disposal of the writ petition and enquiring as to why possession of land notified for acquisition 10 years ago could not be taken by BDA after passing of the award and why compensation had not been disbursed or deposited in the Court. Further, even before denotification of the land by the Government, BDA had released 1.5 acres out of 10 acres to the owner during September 2000 by collecting betterment tax of ₹ 1.24 lakh, though BDA had not been vested with the power either to restore the possession of the notified land to the owner or collect betterment tax for notified land.

7.2 BTM IV Stage Layout

Land measuring 241-06 acres in Devarachikkanahalli and Bilekanahalli villages of Bangalore South Taluk notified (November 1990) for the formation of BTM IV Stage Layout included 0-13 acre in Sy.No.7/8 of Bilekanahalli village. Though award for this land had been belatedly prepared by the LAO in December 1996, approval of the Deputy Commissioner for the award was not obtained and possession of the land was also not taken. Reasons for not making the award and not taking possession of land were not forthcoming on record.

The GPA holder for the owner of this land submitted a copy of the order (November 2009) issued by the Government denotifying 11875.75 sq ft (0-11 acre) of land in the survey number and requested BDA to issue a NOC for obtaining khatha from the BBMP. BDA was not aware of this denotification till the GPA holder submitted a copy of the denotification order. On the basis of the copy of the denotification order, BDA issued (January 2010) an endorsement to the GPA holder intimating that 11875.75 sq ft, out of 0-13

acre notified for acquisition in Sy.No.7/8 had been denotified by the Government in November 2009. Thus, denotification of land had been done without the knowledge of the acquiring agency.

Though the denotification would be legally valid as the award had not been made and possession of land had not been taken, the reasons for BDA not making the award and not taking of possession of land for 29 years had not been examined before denotification. As the justification for notifying the land for acquisition was the overwhelming public interest, the lapses on the part of the BDA in not passing the award and taking possession of the notified land facilitated denotification of this land by subjugating public interest to private interest.

7.3 HAL III Stage Layout

Out of 457-12 acres of land acquired (July 1971) by BDA in 6 villages of Bangalore East taluk for the formation of HAL III Stage Layout, 2-35 acres in Sy.No.62/3 of Konena Agrahara village belonged to a person. While the possession of the land taken under Sec 16(1) had been handed over to the Engineering Section in December 1979, notification under Sec 16(2) had been issued in December 1983. BDA did not make use of the land in Sy.No.62/3 for forming the layout, the reasons for which were not on record.

During June 1994, BDA noticed that the old buildings which had existed on the acquired land had been demolished by a private company claiming possession and title to the property. BDA immediately filed a suit against the company seeking permanent injunction.

While disposing of the suit, the City Civil Court observed (June 2008) that BDA was unable to establish that it had been in lawful possession of the property as on the date of filing the suit. The Court further observed that BDA had called upon the company to remit ₹ 6500 on 24 December 1991 in relation to its request for change in the use of land, which indicated that the company had been in possession of the schedule property.

Thus, though possession of land had been taken in December 1979, BDA failed to establish before the Court that possession had been taken in accordance with law under Sec 16(1). The injudicious intimation given by the Town Planning Section of BDA for change of land use after completion of the acquisition process worked against BDA in the Court. BDA did not prefer any appeal against the orders of the Court for which no reasons were on record.

The company complained (February 2010) to the CM that though the Court had dismissed the suit filed by BDA, the matter relating to denotification of their land remained unsettled as BDA had failed to furnish relevant information sought by the Government.

On the directions of the CM, the Government obtained a report from BDA which highlighted (May 2010) that acquisition process had been completed with the publication of notification under Sec 16(2) on 14 December 1983. It was further reported that though the land had been handed over to the Engineering Section on 22 December 1979, the layout had not been formed, the entire area had been covered with unauthorized buildings and multi-storeyed buildings existed on the land sought to be denotified. However, the report did not explain why the layout had not been formed and how the unauthorised buildings came up on the land in the possession of BDA.

Though the Joint Secretary observed that it was not possible to denotify the land as notification under Sec 16(2) had been published and the PS also endorsed this view, the CM ordered (May 2010) denotification of 0-15 acre of land in Sy.No.62/3 in favour of the land owner from whom the company had purchased the land.

A spot inspection conducted by BDA during 1993-94 showed that the area had only seven old buildings. The second inspection conducted in August 1996 showed that there were 44 buildings, which included RCC residential buildings and multi-storeyed commercial complexes. All these buildings were unauthorized as they had been constructed on the land that had vested with BDA. BDA had evidently failed to check these unauthorized constructions after acquisition of the land and take timely action against the encroachers. These lapses facilitated denotification of 0-15 acre of acquired land almost 27 years after completion of the acquisition process. BDA did not furnish the status of the remaining portion of the land in Sy.No.62/3.

7.4 West of Chord Road IV Stage Layout

In respect of 4-30 acres of land in Sy.No.69/2 of Agrahara Dasarahalli village of Bangalore North taluk, BDA had taken possession of the land under Sec 16(1) in November 1986. However, the Government irregularly denotified (August 1998) 2-20 acres of land in Sy.No.69/2 on the untenable grounds of pending litigation related to this land, subject to the condition that the owner of this land should develop it as per Government guidelines of November 1995 (as discussed in Para 8.1 subsequently). As the owner failed to develop this land, the Government withdrew (April 2006) the denotification order of August 1998. After obtaining a stay by filing a writ petition (WP5406/2006) before the High Court, the owner requested (August 2006) the CM to annul the Government Order of April 2006 as he had formed sites on the land and sold these to several persons. The owner had evidently formed sites irregularly on the land after the Government withdrew the denotification order.

BDA informed the Government (November 2006) that it had already utilised 1-03½ acres of land in the survey number for formation of roads and the

owner was thus left with only 1-16½ acres. It was further reported that BDA had already transferred the title of these 1-16½ acres to the owner and had also sanctioned the plan for construction of compound wall on the land. In the notings submitted to the CM, the PS observed (February 2007) that as BDA had already utilised 43 *per cent* of the land for roads and had also collected land tax besides permitting the construction of the compound wall in the remaining portion of the land, the Government order of April 2006 withdrawing the denotification could be cancelled. The CM approved (June 2007) the proposal for denotifying 1-16½ acres of land in Sy.No.69/2. The Government issued necessary denotification orders in August 2007 and the owner withdrew the writ petition in December 2008. Thus, BDA's unjustified action to transfer the title of the land in favour of the owner, collect land tax and sanction the plan for construction of the compound wall even when the land owner had not fulfilled the condition prescribed by the Government in August 1998 facilitated restoration of the land notified for a public purpose to the land owner by subjugating public interest to private interest.

7.5 JP Nagar IX Phase Layout

Before issuing the preliminary notification (November 1988) for acquisition of 4-11 acres of land in Sy.Nos.21/1 to 21/5 of Arakere village of Bangalore South taluk, BDA had issued (September 1988) an NOC to the land owner for construction of industrial buildings in Sy.No.21/1, 21/2 and 21/3. The High Court, while considering the writ petition filed by the owners challenging the acquisition, directed (March 2002) the Government to consider the request of the owners for denotification of the land on merits. BDA resolved (March 2005) to reject the request citing judgments of the Supreme Court as the possession of land had been taken in September 1996. Earlier, BDA had inspected (December 2004) the land in question and found the land vacant and suitable for the formation of the layout.

The PS submitted the file to the CM who ordered (February 2005) denotification of the land on the ground that the High Court had directed to consider the request of the owners. Thereafter, the file was referred to the Law Department for legal opinion. The Law Department, while observing that the High Court had directed the Government only to consider the request of the applicant, recommended (August 2005) against denotification of the land. On a perusal of another legal opinion given (November 2005) by the land owner's advocate, the Law Department modified (February 2006) its opinion to the effect that notification dated 1 June 1998 under Sec 16(2), which had been published in the Gazette only on 18 March 1999 during the pendency of the court case, was defective. On the basis of this modified legal opinion, the Government denotified (March 2006) 4-11 acres in these survey numbers subject to the condition that the land should be used only for industrial purposes, failing which BDA should resume acquisition proceedings. The

modified legal opinion given by the Law Department glossed over several landmark judgments given by various Courts that recording of a *panchanama* in the presence of witnesses would evidence the fact of taking possession of land and non-publication of notification under Sec 16(2) would not vitiate the acquisition proceedings. This inconsistent opinion of the Law Department facilitated denotification of the land.

Scrutiny of the Encumbrance Certificate obtained from the jurisdictional sub-registrar and RTC for the land showed that the land owner sold the denotified lands in these survey numbers to two persons. The details of sale were as shown in **Table-11**:

Table-11: Details of land sold after denotification

Sy.No	Date of denotification	Date of transaction	Extent (Acre-Gunta)	Sale consideration (₹ in lakh)
21/2	2.3.06	21.3.2007	0-28	30.00
21/5		15.3.2007	1-16	67.50
21/3		20.12.2006	0-26	31.25
21/4		20.12.2006	0-25	30.00
21/1		26.7.2005	0-35	22.50

(Source: Encumbrance Certificates obtained from the Sub-Registrar)

In respect of Sy.No.21/1, the land had been sold even before denotification was approved by the Government. Further, 3-35 acres of land in Sy.No.21/1 to 21/4 were subsequently got converted (October 2010) for residential use as per the RTC for the years 2010-11 and 2011-12. Though the condition prescribed at the time of denotification that the denotified land should be used only for industrial purpose had been violated by the owner, BDA had not taken any action to resume the acquisition proceedings as ordered by the Government.

7.6 Arkavathy Layout

In a joint representation (November 2009) to the CM, nine persons requested for denotification of 7-35½ acres of land in several survey numbers of Rachenahalli village. The status report obtained (March 2008) by the Government from BDA showed that the award had been passed and possession of the land handed over (June 2006) to the Engineering Section in respect of land measuring 2-16 acres in four (39/2B, 50/2, 50/4 and 55/1) survey numbers.

However, the PS apprised (January 2010) the CM that barring the land measuring 1-30 acres in three survey numbers (39/2B, 50/2 and 50/4), the remaining land could be denotified as possession had not been taken. The CM ordered (May 2010) to denotify the land without mentioning the survey numbers and the extent of land. While submitting the draft declaration denotifying 7-35½ acres, the Joint Secretary sought (June 2010) specific

orders of the ACS[6] regarding the extent of land to be denotified as the CM's order had not mentioned it. However, the ACS approved (June 2010) the draft declaration without any remarks. Accordingly, the Government issued (June 2010) necessary orders denotifying 7-35½ acres of land including 2-16 acres in four survey numbers.

The CM's order was pursuant to the notings made by the PS that barring the land measuring 1-30 acres in three survey numbers, the remaining land could be denotified. When the CM ordered to denotify the land, the order evidently meant that the extent of land as proposed by the PS was to be denotified. Thus, the action of the ACS to denotify 7-35 acres instead of 6-05½ acres proposed by the PS was irregular. Further, while BDA had reported that possession of 2-16 acres had been taken in four survey numbers, the PS mentioned in his notings that 1-30 acres had been taken possession of in only three survey numbers. This lapse facilitated unjustified denotification of 0-26 acre in Sy.No.55/1. Further scrutiny showed that Government had withdrawn (May 2008) acquisition proceedings in respect of 43-09 acres of land in several survey numbers of Rachenahalli and Dasarahalli villages where award for the land had not been made. Though owners of land in these four survey numbers had also requested (March 2008) for denotification on that occasion, their requests had not been considered as possession of lands had been taken. However, the lapses on the part of the Additional Chief Secretary led to irregular denotification of 2-16 acres of land, possession of which had been taken.

7.7 Gnanabharathi Layout

The final notification (October 1997) for acquisition of 183-08 acres for the formation of Gnanabharathi Layout included 5-30 acres and 1-16 acres in Sy.Nos.80/1 and 80/3 respectively of Valagerahalli village of Bangalore South taluk. Awards for these lands had been passed on 21 February 1998 and 31 March 1998 respectively.

After eight years, the land owners jointly submitted (June-July 2006) a petition to the CM, seeking denotification of their lands as BDA had not formed the layout in the surrounding areas, adjoining lands in Sy.No.80/2 had been deleted already from acquisition, and the land in Sy.No.80/3 had already been got converted before the lands had been acquired by BDA.

In the status report submitted to the Government during August 2006, BDA had reported that the land belonged to BDA and notification under Sec 16(2) had not been published. Thereafter, the Government decided (October 2006) to place the matter before the Denotification Committee. Even before the matter could be placed before the Denotification Committee, an elected

[6] The Additional Chief Secretary was posted in place of the PS

representative requested (May 2007) the CM to denotify lands in Sy.Nos.80/1 and 80/3 and the CM desired submission of the related file to him. Though the PS apprised the CM of the status of the land as reported by BDA in October 2006, the CM recorded (September 2007) in the file that notification under Sec 16(2) had not been published and the adjoining land in Sy.No.80/2 had been denotified already. Considering the applicant's request sympathetically, the CM irregularly ordered denotification of 7-06 acres. The reason adduced by the CM for the denotification was not valid as non-publication of notification under Sec 16(2) would not vitiate the acquisition proceedings as held by the Karnataka High Court.

7.8 Nadaprabhu Kempegowda Layout

An elected representative had requested (November 2008 and October 2009) the CM for deletion of 4 acres of land in Sy.No.15 of Sulikere village, in respect of which preliminary notification had been issued by the Government in May 2008 for the formation of Nadaprabhu Kempegowda Layout. He had requested for deletion on the ground that the land owner was his close relative, poor, exploited and belonged to a particular community. Deletion of lands in the neighbouring Bheemanakoppa village from acquisition was cited as one of the grounds. When the Government directed (December 2008) BDA to submit the file, BDA informed (January 2009) the Government that the preliminary notification had been issued and the acquisition process was being finalized.

The CM ordered (June 2009) deletion of 4 acres from acquisition on the ground that only the preliminary notification had been issued. However, BDA issued (5 January 2010) an endorsement to the elected representative stating (December 2009) that the request for deletion of 4 acres would be reviewed as per the rules along with similar applications received from other land owners. Though BDA subsequently decided (January 2010) to delete this land from the final notification as per the directions of the Government, this land was inadvertently included in the final notification issued in February 2010. Subsequently, on the basis of BDA's report that the said land had been erroneously included in the final notification, the Government issued another notification in April 2010 denotifying these four acres of land from the purview of acquisition.

The CM had evidently ordered deletion of the land from acquisition on the basis of the recommendations of the elected representative that the land owner belonged to a particular community and was very poor. However, scrutiny showed that the land owner had purchased these four acres of land in February 2007 for a registered value of ₹ 46.48 lakh. The claim that the land owner was poor was evidently false. Further, the land owner had not submitted any application requesting for deletion of his land.

Chapter-8
Denotification of land for group housing and site development

8.1 Government order disregarded while entering into agreement with developer

With a view to encouraging investment in housing projects by private and co-operative sectors, the Government issued an order (November 1995) with the approval of the Cabinet. In terms of this order, in cases where the acquisition proceedings in respect of the notified lands had not been completed and the land had not vested with BDA, the owner of the land was free to develop the land with the approval of the Government either for formation of sites or for group housing. While, in the case of group housing projects, the developer should relinquish 12 *per cent* of the total built up area to BDA, in case of formation of sites, the developer should hand over 30 *per cent* of the sites formed as per the approved plan. In addition, the areas earmarked for parks and civic amenities and open spaces in the approved plan should be relinquished in favour of BDA as per the Zoning of Land Use and Regulations, BDA-1995. Further, where the land owners undertook group housing projects, their proposals should include provision for the construction of Low Income Group (LIG), Middle Income Group (MIG-II) and High Income Group (HIG)-I & II houses and the number of LIG and MIG houses should not be less than 25 *per cent* of the total number of houses proposed to be built up. However, the Government order of November 1995 had not prescribed any time frame for completion of the project by the developer.

BDA had approved (September 2004) the composite project proposal received (February 2004) from a developer for implementing a group housing scheme over 28-05 acres of land and developing sites over another 12-06 acres of land in Kothnur and Raghuvanapalya villages of Bangalore South taluk. The land sought to be developed had already been notified (October 1999) for acquisition by BDA which approved the project proposal in terms of Government order of November 1995. The areas to be relinquished by the developer to BDA as per the Government order of November 1995 were as shown in **Table-12:**

Table-12 : Details of area to be relinquished by the developer to BDA

	Group housing	Development of sites
Area proposed for development	28-05 acres	12-06 acres
Area to be earmarked for parks, civic amenities	3.06 lakh sq ft	2.38 lakh sq ft
Developed area to be relinquished	12 *per cent* of the built-up area	0.87 lakh sq ft

(Source: Zoning of Land Use and Regulations, BDA-1995)

Against this, the developer relinquished (September 2004) only 2.63 lakh sq ft towards parks and civic amenities and 2.56 lakh sq ft of the developed site area. No built-up area in respect of the group housing scheme had been handed over. However, BDA glossed over the huge shortfall in the area relinquished by the developer.

Further, the Authority had accorded (November 2004) sanction for the construction of multi-storeyed apartments, comprising 15 wings in four blocks, each wing consisting of basement, ground plus 14 floors and a separate building for Recreation Centre, consisting of ground plus 2 floors. BDA irregularly approved the development plan though there was no provision for construction of apartments for LIG and MIG[7] in the approved plan. The carpet area of the flats as per the approved plan ranged from 1500 to 1950 sq ft. Thus, the flats were designed to target only the HIG and did not cater to the needs of LIG and MIG, though prescribed in the Government Order of November 1995.

As the project had been implemented on lands notified for acquisition, these were to be withdrawn from the acquisition proceedings after fulfillment of the terms and conditions prescribed in the Government order of November 1995. The developer requested (June 2007) BDA to send proposals to the Government for denotifying 40-11 acres as 30 *per cent* of the land had been relinquished. BDA forwarded (August 2007) the proposal to the Government for denotification and the Government denotified 41-31 acres in September 2007. Further scrutiny of the case showed the following:

- The work order issued (November 2004) by BDA to the developer failed to mention any time frame for completion of the project. It did not also mention that the developer was to hand over to BDA 12 *per cent* of the built up area and 30 *per cent* of the sital area in addition to parks and civic amenity sites.
- Though the terms and conditions of Government order of November 1995 had been violated by the developer resulting in substantial loss to BDA, these violations had not been reported to the Government by BDA at the time of sending proposals for denotification. Against 6.31 lakh sq ft of area to be relinquished, the developer had relinquished only 5.19 lakh sq ft. In addition, BDA did not get 12 *per cent* of the built-up area of the apartment constructed.
- Though the developer had relinquished 214 residential sites measuring 255802.25 sq ft in April 2005, BDA could take possession of only 146 sites, as the area where the remaining 68 sites had been formed by the developer was under litigation;

[7] Houses ranging from 600 sq ft to 1200 sq ft are classified under MIG category, while houses with built up area of 500 sq ft fall under the definition of LIG category

- At the time of according sanction to the layout plan, BDA had already developed 14-04 acres of land in Sy.No.5 and 9 of Raghuvanapalya village. Though BDA had resolved (January 2003) to recover the cost of development from the developer after ascertaining the expenditure from the Engineering Section, details of recovery of the cost were not on record; and
- Mandatory Slum Cess at the rate of ₹ 25000 per hectare aggregating ₹ 4.18 lakh for 41-31 acres had also not been recovered from the developer.

Out of four blocks of apartments sanctioned, the construction of only one block had been completed so far (August 2012).

Against 393 residential apartments sanctioned in each of the four blocks, the developer had constructed only 270 units in the block so far completed. Thus, failure of BDA to enforce the conditions prescribed in Government order of November 1995 resulted in the developer relinquishing less than the required area and not handing over any built-up area. The developer also made maximum use of the land by exploiting it for construction of multi-storeyed apartments designed to suit the needs of the HIG without making any provisions for LIG/MIG. Further, as no time-frame had been prescribed by BDA for completion of the development scheme, the developer had staggered the development to make the best use of unprecedented growth of the real estate sector and the increasing demand for residential space in Bangalore.

8.2 Unjustified concession extended to a developer

The Government denotified (December 1996) eight acres of land in Sy.No.19/1, 20/5 and 27/3 of Rupena Agrahara village in Bangalore South taluk in favour of a company for developing it in terms of Government order of November 1995. After a lapse of nine years, the company informed (November 2005) the CM that they were unable to form the layout as they had

to incur huge expenditure on continuous litigation and requested for relaxation of the condition prescribed in the Government order of November 1995 that the developer should hand over 30 *per cent* of the sites formed to BDA. Instead, the company offered to pay, in lieu of the sital area, 50 *per cent* of the prevailing rate at which BDA was allotting sites to the general public.

The Commissioner informed (January 2006) the Government that it could consider the request of the company subject to levy of auction price for 30 *per cent* of the land, in addition to collection of betterment charges and charges for layout plan approval. When the PS apprised the CM of the BDA's proposal, the CM ordered (January 2006) that the condition stipulated earlier be withdrawn by collecting 200 *per cent* of the prevailing BDA allotment rate for 30 *per cent* of the land, in addition to other charges/cess to which BDA was legally entitled.

The PS recorded (March 2006) in the file that once the purpose of getting the land had been achieved, the company wanted to avoid the obligation of giving 30 *per cent* of the sites to BDA. The PS opined that the condition as per the Government order of November 1995 could not be relaxed and the request of the developer deserved to be rejected. The file with the observation of the PS was submitted to the new CM, who overruled the objection of the PS and ordered (March 2007) implementation of the orders of the previous CM and issue of necessary notification for collecting 200 *per cent* of the allotment rate for 30 *per cent* of the land.

Accordingly, the Government issued (May 2007) necessary orders relaxing the condition, as ordered by the CM. BDA raised (May 2007) a demand on the company for ₹ 2.24 crore, which was duly paid in May 2007. Subsequently, the company, instead of submitting plans for a layout or a group housing scheme, submitted a development plan for a commercial complex with four basements, ground floor and five upper floors over an area of 24128.93 sqm (6-04½ acres) in Sy.No. 19/1 and 27/3 for approval. This was because the land was hugging the Outer Ring Road and the whole area had been classified as "Mutation Corridor" in the Revised Master Plan–2015 (approved in June 2007) and the land use now permitted in this zone was commercial activity. Thus, while, on the one hand, the company profited from the relaxation given by the Government, it stood to gain, on the other hand, from the delay in developing the land during which the land use got changed from residential to commercial. Further, in the case of development of a layout or a group housing project, the developer ought to earmark areas for parks, civic amenities and open spaces, restricting the area available for development to 55 to 75 *per cent*. However, in the case of commercial complexes, the developer enjoyed the advantage of constructing the building as per the bye-laws without earmarking any space for civic amenities, parks *etc*. Thus, the change in land use benefitted the company greatly and the Government glossed over these advantages accruing to the company at the time of relaxing the conditions in

May 2007. BDA approved (September 2008) the development plan of the company and the construction work was in progress (June 2012).

Rules 20(1)(a) and 21 of the Karnataka Government (Transaction of Business) Rules, 1977 prescribe that all cases which require modification or alteration or revision of decisions already taken by the Cabinet should be brought before the Cabinet. Relaxation/revision of any of the conditions already approved by the Cabinet would necessarily require consent of the Cabinet. However, when the Government relaxed the condition in favour of the company, the order was issued under the orders of the CM without placing the concession for Cabinet approval.

The proposal of BDA made to Government in January 2006 to recover auction rate from the company for 30 *per cent* of the land was fully justified as evidenced by the fact that BDA had auctioned several sites in HSR Layout-Sector VII on 11 June 2007, the period during which the concession had been extended to the company. The rate realized by BDA was in the range of ₹ 39,000/sqm to ₹ 85,000/sqm. The average of these rates worked out to ₹ 52820/sqm against ₹ 4200/sqm recovered from the company at twice the allotment rate of ₹ 2100 per sqm. Thus, against the potential revenue of ₹ 51.30 crore, BDA realized only ₹ 2.24 crore for 30 *per cent* of the land, resulting in a loss of revenue of ₹ 49.06 crore. The loss would be much higher, if the benefits accruing from non-provision of space for parks, civic amenities *etc*., were also considered.

Further, even while reckoning the amount to be collected from the company, BDA had calculated the sital area at 30 *per cent* of 4-16 acres (being 55 *per cent* of the total area), after excluding areas for civic amenities, parks *etc*. However, what BDA glossed over was that the development plan submitted by the company was for construction of a commercial complex and there was no need for the company to earmark 45 *per cent* of the area for civic amenities, parks *etc*. and relinquish these areas to BDA. Thus, BDA ought to have calculated 30 *per cent* of the sital area on the entire eight acres and not just

4-16 acres. The irregular calculation resulted in short recovery of ₹1.83 crore from the company.

The joint-inspection (June 2012) of the property by Audit and officers from BDA showed that the basement had been completed. Thus, though the land was denotified during December 1996 for a group housing project/ residential layout, the company delayed its implementation as Government order of November 1995 had not prescribed any time for completion. Instead of enforcing the conditions prescribed in the Government order of November 1995, the conditions for development of the land were relaxed pursuant to the CM's order which resulted in a loss of ₹ 49.06 crore as above to BDA.

8.3 Sites not handed over to BDA after development

Government denotified (October 1999) 2-20 acres of land in Sy.No.1/2 of Lottegollahalli village subject to the condition that land owner should develop this land as per Government Order of November 1995.

Scrutiny showed that the owners had neither submitted any layout plan for BDA's approval nor relinquished the sites to BDA. BDA, on its part, failed to monitor the development of the area by the owner. When Audit enquired about the status of the land, the Executive Engineer, North Division conducted (July 2012) a survey of the area which showed that the land owner had utilized the entire land for formation of sites, without earmarking any area for roads, parks, civic amenities *etc*. He had formed 40 sites (dimensions not furnished) on the denotified area and utilized the roads already formed by BDA in the layout to provide access to the sites. The photographs of the area taken by BDA showed that it had been fully built up.

The cost of 12 sites (30 *per cent*) not relinquished by the owner in favour of BDA worked out to ₹ 16.31 crore[8]. Inaction on the part of the BDA to monitor the development of the land after denotification facilitated disposal of all the sites by the developer without BDA getting its share of sites valued at ₹ 16.31 crore and the areas required to be earmarked for parks, civic amenities *etc*.

[8] As per the rates obtained in the auction conducted by BDA in the Layout in August 2007

Chapter-9

Denotification of huge tracts of land

9.1 Government denotified huge tracts of land to favour a company

The High Level Committee of the Department of Commerce and Industries had sanctioned (September 2000) eight acres of land to a Company for setting up an IT project in Bangalore and the Government issued (March 2001) directions to the Karnataka Industrial Areas Development Board (KIADB) to acquire eight acres for the company. However, the company requested (November 2000) KIADB to acquire 100 acres of land on consent basis as it proposed to set up a composite project housing IT park and residential area. Without referring the request of the company to Karnataka Udyog Mitra (KUM), the nodal agency for clearance of projects mooted by private entrepreneurs, especially in the context of the company seeking 100 acres against eight acres of land sanctioned by the High Level Committee, KIADB resolved (November 2000) to acquire 97-21½ acres of land on behalf of the company in Rachenahalli and Nagavara villages. KIADB acquired (August 2002 to March 2003) 99-13 acres in these two villages and handed over these lands to the company between January 2003 and February 2007.

Meanwhile, in a meeting (December 2001) chaired by the CM, a decision had been taken to acquire a Biotech Park to be developed by the Company over 130 acres of land. This park was meant for the Department of IT/BT. When BDA issued (February 2004) the final notification for acquisition of 2750 acres of lands required for the Arkavathy Layout, the CM ordered (May 2004) deletion of 131-07 acres in three[9] villages from the final notification as the company's proposal to set up an IT/BT park over this land had been approved in December 2001. However, the Urban Development Department noticed (May 2004) that the Department of IT/BT had earlier requested (July 2003) BDA to delete only 50 acres of land from the acquisition process for the park to be set up by the company, while the CM ordered (May 2004) deletion of 131-07 acres in three villages for the same purpose. When the matter was referred to the Department of IT/BT, it clarified (June 2004) that the IT/BT project proposed to be established by the company on its behalf had been shelved and that it was planning to set up the park on its own on the land to be acquired by KIADB near the Electronics City.

[9] Dasarahalli, Nagavara and Rachenahalli

When the company's request for denotification of 131 acres was placed before the Denotification Committee, the Committee took note (June 2004) of the views expressed by the Commissioner, BDA that these lands had been included in the final notification for the mega Arkavathy Layout and in case these lands were denotified, the project would be crippled and would also adversely affect the formation of the layout by BDA. The Committee, therefore, recommended for rejection of the request of the company for denotification of the land.

The PS in the file submitted (January 2006) to the next CM observed that "If lands keep getting denotified, BDA will have no land for formation of sites. If open lands of such extent are left out, it would be inequitous and unjust to insist on acquisition of lands belonging to small holders only. Considering all these factors, the request for denotification should be rejected."

However, the CM noted that the plea of the company should be given due consideration as development of IT/BT sectors had been a thrust area of the Government as these sectors had brought international repute, enormous impetus to the State's economy and also provided direct/indirect employment to several lakhs of Kannadigas. The CM ordered (January 2006) implementation of the orders passed by the previous CM in May 2004, by limiting the denotification to 60 acres. BDA was directed to go ahead with the acquisition process in respect of the remaining lands. Accordingly, the Government denotified (May 2007) 60 acres of land in favour of the company in Rachenahalli village.

Before denotifying 60 acres, the Government failed to consider the following:

- KIADB had already acquired 99-13 acres to facilitate establishment of a IT/BT park by the company against eight acres approved by the High Level Committee.
- In the project proposal submitted (July 2000) by the company to KUM for setting up a IT park, the company claimed to be in possession of 190 acres of land and requested for acquisition of only 5 acres by the KIADB to have direct access to its land from the ring road. Against this, the High Level Committee approved acquisition of eight acres by KIADB. The 99-13 acres of land acquired by KIADB formed part of 190 acres claimed by the company to be in its possession. Thus, while the KIADB had already acquired huge tracts of land for the company to set up the IT/BT park, denotification of another 60 acres in favour of the company for the same purpose was not justified.

Thus, the denotification of 60 acres pursuant to the orders of CM was not based on merits. As the justification for acquisition of land for the Arkavathy Project was the overwhelming public interest, denotification of 60 acres in favour of the company subjugated public interest to private interest.

After 60 acres of land were denotified, the company filed (March 2008) an application with the KUM requesting for acquisition by KIADB of only 27-22½ acres of land in Rachenahalli village for setting up a Special Economic Zone in Information Technology/Information Technology Enabled Services. Of these 27-22½ acres, 25-24½ acres formed part of 60 acres denotified in May 2007. Evidently, though 60 acres of land had been denotified to enable the company to set up the IT park, only 25-24½ acres were needed by the company and the remaining 34-15½ acres had been got denotified unnecessarily.

Meanwhile, several land owners represented (September 2007) to the CM requesting for denotification of lands belonging to them on the ground that similarly situated lands had been denotified in favour of the company during May 2007. However, these representations had not been acted upon. In March 2008, the land owners submitted a joint representation to His Excellency, the Governor of Karnataka, complaining that the Government had not acted upon their representations submitted in September 2007. On the basis of information furnished by BDA, the Government apprised the Governor that out of 48-39 acres for which requests for denotification had been received, award for 43-09 acres had not been passed and possession had also not been taken. However, the Denotification Committee rejected (May 2008) the proposal for denotification as the lands sought to be denotified were very vast. The file was then submitted (May 2008) to the Special Secretary to the Governor.

The Governor recorded (May 2008) that since denotifying the land would help poor farmers, it was desirable to denotify in public interest 43-09 acres of land in respect of which award had not been passed and possession not taken. On this ground, the Governor ordered (May 2008) that necessary orders to this effect be issued immediately. In pursuance of these orders, the Government denotified (May 2008) 43-09 acres of land in different survey numbers of Rachenahalli and Dasarahalli villages.

Though denotification had been done in favour of the land owners, the company requested (June 2008) BDA to issue an NOC in its favour for these 43-09 acres to proceed with the project execution without furnishing any details of the project. The NOC issued (July 2008) by BDA in favour of the company proved in no uncertain terms that the company planned to utilise the denotified land for commercial purposes.

Thus, the company was shown undue favour on three occasions.

- On the first occasion during August 2002 to March 2003, the company got 99-13 acres of lands acquired by KIADB for the IT park, against eight acres approved by the State High Level Committee.

- On the second occasion in May 2007, the company got 60 acres of land withdrawn from acquisition proceedings for the Arkavathy Layout for the same purpose. Of these, the company proposed to use only 25-24½ acres.
- On the third occasion in May 2008, though 43-09 acres had been denotified in favour of farmers, the company planned to utilise these lands for commercial purpose.

Chapter-10
Cancellation of denotification orders

Though it has no power to withdraw acquisition proceedings once possession of land has been taken, the Government irregularly denotified land in the cases listed in **Table-13**. In six out of seven cases, denotification was done after possession of land had been taken. In all these cases, Government irregularly denotified the land initially but subsequently cancelled its orders of denotification, without assigning any reason in three cases.

Table-13 : Details of cases of irregular denotification of land subsequently cancelled

Sl. No.	Name of layout	Name of village	Sy.No	Extent	Date of final notification	Date of taking possession under Sec 16(1)	Date of Denotification under Sec 48(1)	Date of withdrawal of the denotification order
1.	BSK V Stage	Halage vaderahalli	251	5-00	9.5.1994	26.6.2002	12.1.2010	4.11.2011
2.	Nadaprabhu Kempegowda	Challaghatta	45/2 48/1	2-10 2-33	18.2.2010	Possession not taken	29.9.2010	19.10.2010
3.	RMV II Stage	Mathikere	109	0-37	2.8.1978	15.4.1982	30.12.2009	20.10.2010
4.	BTM VI Stage	Arakere	80/1	3-00	28.7.1990	12.8.1994	22.9.2010	13.6.2011
5.	Further Extension of Mahalakshmi layout	J B Kaval	1	1-00	30.8.1979	8.7.1988	12.1.2010	8.2.2012
6.	Arkavathy	Thanisandra	80/2B	3-16	23.2.2004	30.12.2004	29.9.2010	19.10.2010
			81/3B	0-24		10.11.2004		
7.	Nagarabhavi	Nagarabhavi	78	5-13	16.8.1985	27.6.1988	2.6.2010	19.10.2010
	Total			**24-13**				

(Source: Information collected from the files of BDA and Secretariat)

Scrutiny showed that the Urban Development Department had obtained legal opinion (March 2012) on the issue of cancellation of denotification orders. Relevant extract from the legal opinion is reproduced below:

"It is now a settled issue that legally once a denotification is issued, there cannot be a cancellation of the same and if BDA wants the land back, it has to start fresh proceedings for acquisition."

The Division Bench of the Hon'ble High Court of Karnataka had held in the case reported in ILR 2005 KAR 2539 (M/S Vijaya Leasing Ltd v/s State of Karnataka & others) that "once a denotification has been issued, it cannot be withdrawn by another notification and that if the Government or the acquiring body wants to withdraw the denotification, they will have to issue fresh preliminary notification and final notification to acquire the property…".

Thus, action of the Government in irregularly denotifying the lands in these cases in the first instance and later cancelling the denotification orders was legally invalid. Scrutiny of these cases showed the following.

10.1 Banashankari V Stage Layout

BDA had acquired (May 1994) 6-18 acres of land in Sy.No.251 of Halagevaderahalli village of Bangalore South taluk for the formation of Banashankari V Stage Layout. Though award for the land had been approved in November 1997, BDA had not deposited the land compensation with the Court. After a number of cases related to this property had been disposed of by the Court in favour of BDA, the possession of the land was handed over to the Engineering Section on 26 June 2002.

BDA developed a residential layout on this land by incurring an expenditure of ₹ 30 lakh. The layout comprised 66 sites of various dimensions and a 12 metre wide road on 5 acres of land in this survey number. Though the sites were ready for allotment, BDA was unable to allot the sites, as the persons who purchased this land after issue of preliminary notification had filed a case before the Court, seeking permanent injunction. The City Civil Court initially granted (July 2008) an interim order of status-quo but subsequently modified (July 2008) its order directing BDA not to demolish the structures existing on a part of the land till further orders.

In the intervening period, the purchasers of the land had submitted a representation to the CM during February 2004 seeking denotification of the land on the ground that they had purchased the land during 1991 with the primary objective of imparting free education to children belonging to poor families.

On the directions of the CM, the Government sought (February 2004) a status report from BDA. BDA reported (February 2004) that the possession of the land had been handed over to the Engineering Section on 26 June 2002, the notified khatedar was different from the applicant and 10 ACC sheet houses, a borewell and 9 RCC buildings had existed on the land, besides tombs, a well and a pumphouse. When the matter was placed before the Denotification Committee, it resolved (June 2004) to reject the request for denotification, as possession of land had been taken by BDA. The file was referred to the CM on 9 August 2004 with the recommendation for rejecting the request and the file was returned to the Administrative Department without any remarks. Subsequent developments showed the following:

Between June 2007 and October 2009, many elected representatives recommended to the CM for denotification of this land. After obtaining a status report (February 2009) from the BDA, the PS submitted the file to the CM on 13 November 2009, informing about the status of the land, besides

recording that there was no information on the publication of notification under Sec 16(2). However, the CM ordered (December 2009) denotification of the land as an exceptional case on humanitarian grounds as notification under Sec 16(2) had not been issued.

Accordingly, the Government denotified (January 2010) 5 acres of land in Sy.No. 251 of Halagevaderahalli in favour of the land owner. After the denotification, the purchasers got these lands converted (July 2010) for non-agricultural purpose on the basis of NOC for conversion issued by BDA (July 2010). Thereafter, they sold (October 2010) the land to different persons, who obtained khatha from the BBMP in their favour by paying prescribed betterment charges and property taxes. The purchasers also had got the building plan sanctioned and constructed an apartment, consisting of five floors in accordance with the sanctioned plan.

At the time of denotifying the lands in question, the cases filed by the petitioners seeking permanent injunction had been pending before the City Civil Court. The Commissioner, BDA, therefore, requested (January and June 2010) the Government to withdraw the denotification order in view of the fact that the *status-quo* order of the Court was in operation, the land had vested with BDA and a layout had already been formed incurring huge expenditure. The Commissioner also expressed apprehension that if the denotification order was not withdrawn, it would set a precedent and there were chances of other land owners also approaching the Government for denotification of their lands on similar grounds.

Following this report, the Government withdrew (November 2011, the denotification order issued earlier. BDA informed (November 2011) BBMP of the withdrawal of the denotification order and requested it to cancel immediately the khathas and building plans sanctioned in relation to this survey number. In response to these instructions, the Additional Commissioner, BBMP, cancelled (November 2011) all the khathas and building plans sanctioned earlier.

Aggrieved by the withdrawal of denotification order and the subsequent developments, the purchasers of the land filed writ petitions before the High Court seeking quashing of the Government order cancelling the denotification. The High Court observed (December 2011) that no satisfactory explanation was forthcoming from the Government as to why the earlier decision of denotification was reversed at this stage. The High Court quashed the Government notification of November 2011, cancelling the denotification order of January 2010. Though BDA obtained (January 2012) a legal opinion from an advocate of the High Court, which suggested filing of an appeal, BDA did not prefer any appeal, the reasons for which were not record.

The denotification of five acres of land was irregular as possession of land had been taken under Sec 16(1) and the Denotification Committee recommended

against it. The cancellation of the denotification order was also equally irregular as it lacked legal validity and the High Court quashed the cancelation order.

The purchasers of the land had sought denotification (February 2004) on the ground that they had purchased it with the primary objective of imparting free education to the children, belonging to poor families. On the contrary, after getting the lands denotified, they sold (October 2010) the land to various persons at a time when the guidance value of the land was ₹ 2500 per sq ft. Thus, the irregular denotification only helped the sale of the land notified for a public purpose by subjugating public interest to private interest.

10.2 Nadaprabhu Kempegowda Layout

BDA had issued preliminary notification (21 May 2008) for acquiring 4814-15 acres of land in 12 villages located in the Bangalore North and South taluks for the formation of Nadaprabhu Kempegowda layout. The land included 2-10 acres in Sy.No.45/2 belonging to one person and 2-33 acres of land belonging to another person in Sy.No.48/1 of Challaghatta village.

Three months before the issue of the preliminary notification, another person (purchaser) had entered into a sale agreement (10 February 2008) with the owners of these lands. Subsequently, after the preliminary notification, the original owners represented (July 2008) to the Minister for Urban Development, Law and Parliamentary Affairs as well as the Commissioner, BDA seeking denotification of the land on the ground that their livelihood had been entirely dependent on the agricultural income from the land. Simultaneously, the husband of the purchaser, an elected representative, requested (June 2009) the Government to denotify 5-03 acres of land acquired in these survey numbers on the ground that the owners were known to him and had been enjoying the ancestral property for 40 to 50 years. He further reported that there were several valuable trees like coconut, mango *etc*., an ancient temple, two bore wells and two houses on the land.

Survey of the land taken up (February 2010) by BDA at the instance of PS to the CM showed that only a Honge tree and a Neem tree had existed in Sy.No.45/2 and there were trees (type and numbers not mentioned) in Sy.No.48/1. BDA informed (March 2010) the Government of the position. Meanwhile, BDA issued the final notification (18 February 2010) which included the land in these two survey numbers. On the same day, the elected representative addressed a letter to the CM and requested for denotification of the land on the ground that they had developed a garden, a nursery, besides constructing a building on the land and that they had been cultivating the land as members of the joint family.

The CM ordered (September 2010) denotification of 5-03 acres of land and the Government issued (September 2010) necessary orders for denotification. However, within the next 20 days, the CM recalled the file and cancelled the denotification order, without assigning any reason. Accordingly, the Government withdrew (October 2010) the denotification order issued earlier.

The subsequent representation (September 2011) of the elected representative requesting denotification of the land was not acted upon. However, the purchaser got the property registered (1 December 2011) in her favour for ₹ 2.54 crore, though the sale violated the provisions of the KLRT Act. The registering authority also overlooked the provisions of the KLRT Act, which prohibited the registering authority from registering any land notified for public purpose without permission of the competent authority.

10.3 RMV II Stage Layout

BDA completed the acquisition process initiated for acquisition of 2-09 acres in Sy.No.109 of Mathikere village of Bangalore North Taluk for the formation of RMV II Stage Layout by gazetting the fact of taking possession of land under Sec 16(2) on 8 September 1983.

Out of 2-09 acres acquired in this survey number, land measuring 1-16 acres belonged to a person. BDA had utilized only 0-19 acre for the road and the remaining 0-37 acre had remained unused. After the demise of the owner, his son submitted several representations since January 2001 to various Ministers, including the CM, seeking denotification of the unused land of 0-37 acre, stating that he had no other source for livelihood and had continued to be in possession of the unused land. However, the representations had not been acted upon.

Meanwhile, the legal heir irregularly sold (November 2004) 0-37 acre of land in favour of five persons. Later, two of these five persons sold (August 2005) their share of land to an elected representative. All these sale transactions violated the provisions of KLRT Act, 1991 and the registering authorities irregularly registered these sales. The building plan had also been got sanctioned by BBMP for developing the land.

When BDA interfered (November 2007) with the possession of the land, the present owners of the land filed a suit before the Court of Additional City Civil Judge which granted (May 2008) a temporary injunction, restraining BDA from interfering with the possession of the property, pending disposal of the suit. Scrutiny showed that the injunction had been given by the Court as BDA failed to produce the possession *mahazar*, survey sketch, details of compensation deposited in the Court *etc*.

The Principal Secretary to the CM requested (January 2009) the Urban Development Department to submit the related file, as per the orders of the CM. The PS suggested that opinion of the Law Department be sought before

denotifying the land. However, the CM irregularly denotified (December 2009) the land, citing the Court order granting temporary injunction. Subsequently, the CM recalled (October 2010) the file and ordered (October 2010) cancellation of the denotification order without assigning any reason. Thus, the initial denotification and its subsequent withdrawal betrayed disregard of the provisions of the LA Act and KLRT Act.

However, the present owners of the land challenged (January 2011) the cancellation before the High Court in a writ petition (781/2011). It was contended in the writ petition that the cancellation of the denotification order had resulted from a letter dated 6 October 2010 written by the elected representative to the Governor of Karnataka expressing "No Confidence" in the CM. The case had been pending before the Hon'ble High Court (May 2012).

Further scrutiny showed that BDA had approved (February 2005) the modified development plan of a society. In the approved plan, the area of 0-37 acre in Sy.No.109 of Mathikere village had been reserved for roads, civic amenities and park. BDA failed to clarify as to how the development of a private layout on land belonging to it had been approved by it.

10.4 BTM VI Stage Layout

In respect of 1-03 acres and 3-36 acres of land in Sy.Nos.79 and 80/1 respectively of Arakere village acquired (July 1990) by BDA for the formation of BTM VI Stage Layout, notification under Sec 16(2) had been issued in October 1994 in respect of Sy.No.79 and in June 1994 in respect of Sy.No.80/1. The request for denotification of these lands had been turned down by the Government/CMs on two occasions during July 2004 and May 2010.

When the land owners requested (May 2010) the CM for denotification of lands for the third time, the PS submitted the related file to the CM emphasizing that it was not permissible under law to denotify the land, layout had been formed on the land and sites had also been allotted to the general public. However, the CM recorded on the file that the applicants were in physical possession of the land, they had no other property and BDA had utilized only 0-36 acres out of 3-26 acres acquired in Sy.No.80/1 for road. The CM ordered (September 2010) denotification of three acres of land in Sy.No.80/1 on humanitarian grounds, as a special case, which was irregular

BDA had earlier carved out 107 sites of 20' x 30' and 30'x40' dimension over 3 acres of land in Sy.No. 80/1 and allotted these sites to the general public during 1994-95. BDA had also issued khata and executed absolute sale deeds in favour of several allottees. The layout had also been handed over to BBMP for maintenance and the allottees had also obtained khata from BBMP. BDA had also auctioned (September 2007) 12 corner sites formed in these survey

numbers. In view of these developments, BDA requested (October 2010 and June 2011) the Government to withdraw the denotification order. However, the Government did not act upon the request of BDA.

The allottees of these sites approached the High Court, seeking quashing of the denotification order. The Government withdrew the denotification order on 13 June 2011 before the case came up for hearing on 14 June 2011. The High Court disposed of the writ petition on the ground that the relief sought by the petitioners had been granted.

Thus, an irregular denotification order was cancelled by another equally irregular order and these two orders betrayed lack of regard for law governing acquisition.

10.5 Further Extension of Mahalakshmi Layout

The Government denotified (January 2010) an extent of one acre of land in Sy.No.117 (old Sy.No.1) of J.B.Kaval village of Bangalore North taluk. This one acre of land had been notified by BDA in August 1979 and possession of this land was taken in July 1988.

Scrutiny showed that a person addressed a letter to the CM and also to the DC (Land Acquisition) on 1 October 2007 and 2 November 2007 respectively seeking information whether a layout had been formed on Sy.No.117 and whether notification under Sec 16(2) had been issued. BDA informed (December 2007) the Government that the property in question comprised 12 ACC sheds, a school and some portion of vacant land. After a lapse of 21 months, the Government sought (October 2009) a status report of the same land from BDA, as the owner had requested the CM for denotification of the land. Without verifying the current status of the land, the BDA reiterated (December 2009) the facts that had been already conveyed to the Government. On the basis of this information, the Government denotified (January 2010) one acre of land pursuant to the orders of the CM.

However, the information furnished to the Government by the DC was factually incorrect. The unauthorized structures existing on the land had been demolished under the orders of the Commissioner on 7 January 2006. Thereafter, a draft layout plan for formation of 19 sites on the said land was prepared by BDA and these sites were also approved for auctioning on 26 March 2007. BDA had also formed two roads of 30 feet width and 165 feet length on the said land. As a suit filed by the land owners after demolition of the unauthorised structures had been pending before the Court, the auction process was stalled. Thus, misrepresentation of the facts by BDA facilitated the denotification.

Meanwhile, an elected representative filed a Public Interest Litigation (37938/2010) before the High Court alleging that the CM was instrumental in denotifying one acre of land in Sy.No.1 of J B Kaval in a fully developed layout and it was a clear case of land grabbing by land mafia with the connivance of the CM, as there was no school building. When the case was posted for final hearing on 23 January 2012 before the High Court, the Government issued (February 2012) a notification withdrawing the denotification order. The High Court disposed of (March 2012) the case as the relief sought by the petitioner had been granted.

Thus, incorrect reporting of the status of the land culminated in an irregular denotification which was cancelled through another order lacking legal validity.

10.6 Arkavathy Layout

Land notified (February 2004) by BDA for the formation of Arkavathy Layout included 3-16 acres and 0-24 acre in Sy.Nos.80/2B and 81/3B respectively of Thanisandra village. Award for these lands had been passed during September-October 2004 and possession of the land taken under Sec 16(1) was handed over in November and December 2004 to the Engineering Section for the layout formation. However, notification under 16(2) had not been published.

BDA had carved out 106 sites on these lands, besides utilizing a portion of the land in Sy.No.81/3B for constructing two roads as shown in **Table-14**:

Table-14 : Details of sites and roads formed

Sy No	6 x 9 mtr sites	9 x 12 mtr sites	12 x 18 mtr sites	Odd dimension sites	Civic amenity sites	Roads
80/2B	65	16	--	18	1	--
81/3B	--	--	3	3	-	Partly utilized for 12 metre width road & 18 metre width road
Total	**65**	**16**	**3**	**21**	**1**	

(Source: Information furnished by BDA)

Of these, 89 sites had been registered in favour of the allottees as of August 2012. The land owners' attempt to seek legal remedy did not fructify as the Court held the acquisition valid. An individual requested (March 2008) the Governor of Karnataka to denotify the land in these two survey numbers on the ground that the land owners belonged to a very poor family and had no other property other than these lands. The matter was referred to the Government by the Governor's Secretariat for further action. The file with a brief on the status of land was submitted to the CM who returned (1 October 2009) it without any orders.

The land owners once again approached (August 2010) the CM for denotification on the ground that they intended to establish a hospital on the property. The Minister for Municipal Administration and Public Undertaking also recommended (September 2010) to the CM for considering the request of the applicants. After calling for the file concerned, the CM ordered (September 2010) denotification of land measuring 4-00 acres in these survey numbers as a special case and on humanitarian grounds as BDA had not taken over possession of the land which was in the physical possession of the applicants. The CM's observation that land had not been taken possession was incorrect as the land had been taken possession in November 2004 and the layout had also been formed on the land.

The Government then issued (September 2010) orders for denotification of four acres. However, 20 days after denotification of the land, the Government issued (October 2010) another notification cancelling the denotification order on the basis of the orders of the CM. Aggrieved by the cancellation of the denotification order, the land owners obtained a stay order from the High Court, stalling the cancellation of the denotification order. The allottees of sites had also filed objections, seeking to vacate the interim stay order. The case was pending before the Court (July 2012).

10.7 Nagarabhavi I Stage Layout

BDA had acquired 520-16 acres of land through a final notification (August 1985) for the formation of "Nagarabhavi I Stage Layout." The land acquired included 10-08 acres in Sy.No.78 of Nagarabhavi village. Notification under Sec 16(2) had been published in September 1991.

The cases filed by the owner challenging the acquisition before several Courts had been dismissed. Even the Supreme Court (January 2009) dismissed the Civil Appeal filed by the owners. On an application made (September 2008) by a person, the CM ordered (October 2009) submission of the related file. Though the PS observed that several cases filed by the petitioner had been dismissed by the High Court and the Supreme Court and it was not possible to denotify the land, the CM recorded (October 2009) that he had come across several instances where land under similar circumstances had been denotified.

Accordingly, the Government denotified (June 2010) 5-13 acres in Sy.No.78 in favour of the khatedar. However, the Commissioner, BDA requested (June 2010) the Government to cancel the denotification order. He reported that the petitioners had been unsuccessful in challenging the acquisition proceedings before the Supreme Court and the denotification would not only amount to contempt of Court, but would set a precedent for other erstwhile owners also to request for denotification of their lands. Thereafter, the Government withdrew (October 2010) the denotification order.

Chapter-11

Restricted awards/compensation

11.1 Exclusion of the notified area from the purview of the award

As per Sec 11 of the LA Act, 1894, the Deputy Collector shall make an award for the true area of the land, the compensation that should be allowed for the land and its apportionment among all the persons believed to be interested in the land. Sec 11A further prescribes that the award shall be made within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. The genesis of the power of the DC to pass an award is the existence of valid declaration under Sec 6 of the LA Act with respect to the land. Once a valid declaration under Sec 6 has been made, the DC shall make an award for the land notified for acquisition. The LA Act does not confer any powers on the DC to exclude any part of the notified land from the purview of the award.

Scrutiny showed that LAOs/DCs of BDA had so far excluded 91-35½ acres of notified land in 94 cases while making the award for lands notified for acquisition. BDA did not furnish the details of the periods during which these lands had been excluded from the award. However, the broad reasons adduced by BDA for excluding these lands from the purview of the award were:

- Residential houses had been constructed before the issue of preliminary notification;
- The notified area had been built up;
- Existence of temple, revenue sites, swimming pool *etc*;
- The land owner agreed to part with the land free of cost for formation of road;
- Entire area was not required for layout formation;
- Land adjacent to village and built up;
- Exclusion as per the orders of the Commissioner/Deputy Commissioner; and
- Land acquired in excess of the requirement

These reasons were not tenable as Sec 6(1) of the LA Act envisages that the Government has to be satisfied that a particular land is needed for a public purpose and this satisfaction has to be made only after having considered and applied its mind to the report submitted by the DC under Sec 5(a) which provides for hearing of objections to the acquisition proceedings by the DC. In all these 94 cases, the objection of the land owners had been heard before issue of the final notification and land had been notified for acquisition only

after the LAOs/DCs satisfied themselves that the land was fit for acquisition. The developments cited by the BDA evidently occurred subsequent to the final notification and were unauthorised and illegal. The exclusion of these lands from the purview of the award by the LAOs was unauthorised as the LAOs/DCs had no power to exclude these lands from the purview of the award. Further, possession of the lands had not been taken by BDA in these cases as awards had not been passed. As the final notification had been done in the public interest in these cases, a reversal of that process by excluding the notified area from the purview of the award signified that the LAOs/DCs who had directed it subverted public interest by subjugating it to personal interest.

11.2 Payment of compensation not made for the entire area covered by the award

In 63 cases, BDA, instead of paying compensation for the entire area covered by the award, had restricted the payment to a reduced area. BDA did not furnish the information about the period to which these cases related. The area excluded from payment of compensation in these 63 cases aggregated 16-20 acres. As per Sec 31 of the LA Act, the Deputy Commissioner, upon making of the award, is bound to tender payment of compensation to the persons interested and entitled to receive the same under the award. Where he is unable to do so due to any of the contingencies referred to in Sec 31(2), the DC is required to deposit the amount of compensation in the Court. Withholding the payment of compensation after passing of award lacked lawful justification. On the ground of non-payment of compensation, BDA had not taken possession of these lands which did not, therefore, vest with BDA. Thus, the land owners in these cases continued to enjoy possession of the land for which award had been passed.

The ACS, Urban Development Department informed (July 2011) the Commissioner that it had come to the notice of the Government that BDA had, in several cases, passed award only for a partial area though there were no provisions in the LA Act to restrict the award to a lesser extent. He directed that all cases where restricted awards had been passed during the past 10 years be identified, including the officers under whose orders the award had been restricted and the matter be placed before the ensuing meeting of the BDA.

Pursuant to this direction, BDA resolved (October 2011) to:

- take immediate action to pass awards in respect of 94 cases involving 91-35½ acres; and
- take physical possession of 16-20 acres where payment of compensation had been made for a reduced area.

However, BDA had not taken any action in this regard (July 2012).

Chapter-12
Betterment tax

12.1 Legal framework for collection of betterment tax

The legal framework for collection of betterment tax as provided by the BDA Act, 1971 is as follows:

Sec 17: The preliminary notification, besides stating the fact of a scheme having been made and the limits of the area comprised therein, should contain a statement specifying the land in regard to which a betterment tax may be levied. Notices should be served within 30 days after publication of the preliminary notification, on every interested person in regard to any building or land in regard to which betterment tax is proposed to be collected.

Sec 20: Where, as a consequence of execution of any development scheme, the market value of any land in the area comprised in the scheme which is not required for the execution thereof has, in the opinion of the BDA, increased or will increase, the BDA shall be entitled to levy a betterment tax calculated at one-third of the increase in value of the land.

Sec 21: Where, in the opinion of the BDA, a development scheme is sufficiently advanced to enable the amount of betterment tax to be determined, BDA shall, by notification, declare that the execution of the scheme shall be deemed to have been completed and shall, thereupon, give notice to every interested person on whom a notice had been served under Sec 17 that BDA proposes to assess the amount of betterment tax payable. BDA shall then assess the amount of betterment tax payable by each person after giving an opportunity of being heard.

Where the assessment made by the BDA is not accepted, BDA shall make a reference to the District Court for determining the betterment tax payable.

12.2 Notified land deleted from the award after collecting betterment tax

As per the information furnished to Audit, BDA had collected betterment tax in 84 cases involving 162-07 acres of land during the last 10 years. The betterment tax collected in these cases and the period during which these had been collected were not furnished to Audit. Though betterment tax was to be collected as per the prescribed procedure only in respect of land specifically

notified for this purpose under Sec 17 of the BDA Act, 1971, BDA had irregularly collected betterment tax in respect of land notified for final acquisition under Sec 19 of the BDA Act, 1971, and on that ground, excluded such lands from the purview of acquisition. Scrutiny showed that 162-07 acres included in the final notification for acquisition had been deleted from the purview of the award by the Commissioner, after collecting betterment tax without the approval of the BDA, as shown in **Table-15**:

Table-15: Details of land deleted from the purview of the award

Sl. No.	Name of the Layout	Extent of land deleted from the purview of the award (In acres and guntas)
1.	Anjanapura township	72-30
2.	Further Extension of Banashankari VI Stage	38-25
3.	Further Extension of Sir M Vishweswaraiah Layout	11-23
4.	Banashankari VI Stage Layout	15-38
5.	Further Extension of Anjanapura Layout	23-11
	Total	**162-07**

(Source: Information furnished by BDA)

Though declaration under Sec 19 of the BDA Act, 1976 had been done in respect of these lands in public interest, the Commissioner of BDA interfered with the acquisition process, evidently on extraneous considerations and reversed it by collecting betterment tax. Other irregularities noticed in the levy of betterment tax were as follows:

- Except in the case of Anjanapura Township, the notification under Sec 17 of the BDA Act, 1976 did not contain a statement showing the land in respect of which betterment tax was proposed to be levied. In respect of two layouts (Sl.No.3 and 5 in Table-15), separate notifications under Sec 17 proposing to levy betterment tax had been subsequently issued only in respect of lands included in the preliminary notification but excluded from the final notification. However, in these two cases, other lands in the vicinity, the market value of which was bound to increase due to execution of the development scheme, had not been included in the separate notifications.
- Though betterment tax was to be calculated at $1/3^{rd}$ of the increase in the value of land on substantial completion of a scheme as per Sec 20 of the BDA Act, BDA collected betterment tax at rates ranging from ₹ 30 to ₹ 40 per sq ft on the basis of the tentative cost of development of the layout.

- No notices had been served on interested persons as required under Sec 21 of the BDA Act, 1976.

However, after collecting the betterment tax and issuing NOC, BDA had informed (April 2006) the land owners that it had no authority to collect betterment tax and directed them to take back the betterment tax paid by them. BDA had also informed them that it would proceed with the acquisition.

Several persons filed writ petitions during 2006 before the High Court challenging the validity of the betterment tax levied for five layouts and its subsequent withdrawal by BDA.

While disposing of the (February 2010) writ petitions, the High Court held that the decision of the BDA to collect betterment tax at ₹ 30 or 40 per sq ft was without authority of law. Quashing the resolutions passed by BDA fixing the rates of betterment tax, the High Court directed BDA to initiate appropriate proceedings under the BDA Act for levy of betterment tax in respect of lands which had been given up on the ground that these were not necessary while implementing the scheme. The High Court further directed that the amounts paid by the petitioners and similarly placed persons were to be held by BDA and adjusted towards betterment tax leviable after following the due procedure.

Thus, the action of the Commissioner in reversing the acquisition proceedings in respect of 162-07 acres of land by irregularly collecting betterment tax at an arbitrary rate was irregular. As BDA had collected betterment tax on the ground that the lands had not been required for implementing the schemes, it remained doubtful whether BDA could resume acquisition proceedings in respect of these 162-07 acres. The issue had remained unresolved as of July 2012.

Chapter-13
Payment of compensation

13.1 Payment of compensation not verified before denotification of land

During 2007-12, the Government had denotified 305-37 acres of land after passing awards under Sec 11 of the LA Act. In these cases, BDA had not verified before denotification, whether land compensation had been paid to the entitled persons either by the LAOs or by the Court. It was seen from the sampled status reports sent by BDA to the Government before denotification that the status of compensation, whether paid or not paid, had not been brought to the notice of the Government, which also failed to enquire about it before denotifying the land. BDA had failed to take action, wherever necessary, to recover the compensation already paid or to seek refund of money deposited with the Court for disbursing compensation. In the process, compensation had not been refunded in any of the cases denotified by the Government during 2007-12.

The possibility of land compensation in these cases having been disbursed by either BDA or the Court cannot, therefore, be ruled out. In the absence of any watch register for payment of land compensation, Audit could not assess the land compensation paid, if any, in respect of 305-37 acres of land denotified by the Government.

13.2 Development cost not recovered from persons in whose favour land had been denotified

Though lands in many sampled cases had been developed by BDA before these were denotified by the Government, BDA did not recover the cost of development from the persons in whose favour the land had been denotified. In the status reports sent to Government in cases relating to denotification, BDA failed to touch upon this issue. The Government also failed to examine this issue before denotifying the land. As a result, in none of the cases where developed land had been denotified, the development cost had been recovered. BDA did not furnish information on the developmental expenditure incurred by BDA on developing lands which were subsequently denotified.

13.3 Payment of land compensation through court not monitored

The CAO drew cheques either in favour of the khatedars or the Principal City Civil Judge, City Civil Court, as the case may be, on the basis of the bills

prepared by the LAOs and sent these cheques to the LAOs for issue. While the LAOs entered the details of the cheques in the land acquisition files concerned, they did not maintain any control register to keep track of progress in disbursement of compensation, especially in cases where funds had been deposited with the Court. The Finance and Accounts Wing and the Law Section also did not have information on the utilization of funds placed at the disposal of the Court.

Scrutiny of the General Ledger showed that BDA had drawn cheques for ₹ 10.32 crore during 2007-11 in favour of the Principal City Civil Judge, City Civil Court, Bangalore, as shown in **Table-16**:

Table-16: Details of amounts deposited with the Court during 2007-11

Year	Amount (₹ in crore)
2007-08	3.62
2008-09	2.65
2009-10	2.22
2010-11	1.83
Total	**10.32**

Details of compensation disbursed against the deposit of ₹ 10.32 crore were however, not available with the LAOs/Finance and Accounts Wing/Law Section. Though BDA had made an attempt during 2008-09 to reconcile the funds deposited with the Court, it failed to take it forward subsequently. Thus, BDA failed to monitor the disbursement of compensation against funds deposited with the Court.

Scrutiny showed that though the advocate representing BDA informed (September 2011) the Law Officer that the Court had ordered refund of the excess amount of ₹ 2.40 crore deposited by BDA in 13 cases, BDA had not taken any action to obtain refund from the City Civil Court (July 2012). Scrutiny of the Civil Deposit Register and the Register of Lapsed Deposits maintained at the City Civil Court, Bangalore for the period 2007-11 further showed that the Court had credited to Government account ₹ 1.42 crore during March 2007 to March 2011 as miscellaneous revenue. This amount represented residuary balances of deposits made by BDA with the Court for disbursing compensation, which had remained unclaimed by BDA for more than three years, after these became due for refund. BDA's failure to monitor the payment of compensation by the Court and seek timely refund of the unpaid balances of deposits from the Court resulted in remittance of BDA's funds to the Government account.

13.4 Court attached the funds of BDA due to delay in payment of enhanced compensation

In cases where the Court passed a decree awarding higher compensation in land acquisition cases referred to under Sec 30 and 31 of the LA Act and where BDA failed to execute the decree within prescribed time frame, the land owners filed Execution Petitions, whereupon the Court issued orders to the Canara Bank to attach specified sums of money out of the cash balances of BDA for payment to the decree holders. The Canara Bank had forwarded Demand Drafts for ₹ 52.46 crore in 666 cases, (December 2004 to March 2012) in favour of the Principal Judge/Additional City Civil Judge, by debiting the amount to BDA's account. Information prior to December 2004 was not available with BDA.

In a note submitted to the Commissioner during April 2008, the FM observed that in cases where enhanced land compensation had been awarded by the Court, the LAOs had not promptly processed the orders received from the Court and only a few cases had been processed and sent to the Finance and Accounts Wing. It was further observed that the delay in payment of enhanced compensation, besides resulting in financial loss to the BDA in the form of interest payable, led to filing of Execution Petitions by the land owners before the Court, resulting in attachment of the balances in the bank account of BDA. The FM highlighted that as the amount demanded in the case of Execution Petitions had been worked out by the land owners' advocates, chances of excess payments could not be ruled out. The Commissioner also reiterated (March 2009) the views of the FM and warned the DC that personal responsibility would be fixed for any financial loss caused to BDA due to delay in payment of enhanced compensation awarded by the Court.

Despite these instructions, ₹ 36.81 crore out of ₹ 52.46 crore had been debited to the BDA's bank account pursuant to the Court attachment orders during May 2008 to March 2012. This evidenced that payment of enhanced compensation had not been made in time even after specific instructions from the Commissioner/FM. Though huge amounts had been frequently debited to BDA's account by the bank, the Land Acquisition Section had not maintained any record for these payments. The land compensation debited to the bank account in execution cases came to light only at the time of monthly reconciliation of bank balances with those as per the cash book. BDA had not taken any action to verify the accuracy of land compensation payments made in these cases and fix responsibility for financial loss, if any.

13.5 Irregular retention of land compensation in the Revenue Deposit account of BDA

Till 2006-07, the compensation payable as per the award passed by the LAOs had been transferred to the Revenue Deposit (RD) account of BDA, where it had been retained for three months. If the entitled persons did not come forward to receive the compensation, this amount was transferred from the RD account and deposited with the Court.

A review of the RD Register and annual accounts of BDA showed that as at the end of March 2012, a sum of ₹ 3.81crore had been parked in the RD account. These amounts had been transferred to the RD account during the period October 1996 to December 2006. Evidently, the land compensation to the extent of ₹ 3.81 crore had neither been disbursed to the entitled persons nor deposited with the Court for periods ranging from six to 16 years.

Chapter-14
Possession of notified land not taken in full

14.1 Huge shortfall in taking possession of land notified for public purpose

Audit scrutiny showed that against 34527-17 acres of land notified for acquisition during the period from June 1948 to February 2010 for the formation of 54 layouts (**Appendix-1**), the possession of only 19049-02 acres (44 *per cent*) had been taken (April 2012). As possession of the land is to be taken after passing the award within two years from the date of final notification, the inordinate delay in taking possession was not justified. Possession of lands notified in June 1948 for the first layout viz., Further Extension of Jayanagar IX Block had not been taken in full even as of April 2012.

Since development of the scheme is possible only when the requisite land is available, failure to take possession of the notified land resulted in only partial development of the layouts by BDA. In this context, provisions of Sec 27 of the BDA Act assumes significance. According to this Section, BDA is to substantially complete the scheme within a period of 5 years from the date of publication of final notification, failing which the scheme is liable to lapse. It was seen that only in 20 out of 54 layouts, 75 *per cent* of the notified land had been taken possession of. In other layouts, the extent of land not taken possession of ranged from 26 to 100 *per cent*. BDA stated (September 2012) that many constructions had come up on the notified lands subsequent to the issue of preliminary notification and unscrupulous local people with the support of anti-social elements had formed revenue layouts on the lands and sold sites to various persons. These persons had approached Civil Courts and obtained injunctions against BDA. In view of these reasons, BDA was unable to take possession of the notified land. The reply was not acceptable as after the land is notified for a public purpose, no person can legally develop the land or transfer it by way of sale, mortgage, gift *etc*. The poor oversight of the lands notified for public purpose facilitated and encouraged development of the notified area unauthorisedly and this created scope for litigation. Further, though the KLRT Act prohibits the registering authorities from registering the land notified for public purpose in favour of any person, the registering authorities disregarded these provisions and registered the notified land in many cases (as discussed in the previous chapters). This also created scope for litigation in respect of the notified land.

Thus, poor enforcement of the legal provisions and poor oversight of the notified land created scope for uncontrolled and unauthorized development of the notified land. Further, huge shortfall in taking possession of the notified land also created scope for denotification of the land notified for public purpose.

PART-II

Allotment of sites by the Bangalore Development Authority

Chapter-15

Allotment of stray sites

The BDA (Allotment of Sites) Rules, 1984 define a stray site as a site which was once allotted but subsequently the allotment was either cancelled by BDA or surrendered by the allottee, or a site which has been formed on account of readjustment in the plan, subsequent to the issue of notification inviting applications for allotment of sites.

Further, BDA is to dispose of the stray sites in accordance with the guidelines issued by the Government. As per the Government guidelines (August 1997), the stray sites should be reserved for allotment under various categories at the percentages shown in **Table-17:**

Table-17: Reservation of sites under various categories

Sl. No.	Category	Description	Percentage
1.	A	Disposal by auction	30
2.	B	Persons who have won special recognition in the field of sports at international /national levels – persons of Karnataka domicile.	15
3.	C	Persons who have won special recognition in the field of Arts, Science, Literature, Education, Medicine and Public Administration at the national/ international levels.	10
4.	D	Ex-Military personnel, military personnel, persons of Karnataka domicile.	5
5.	E	Freedom fighters who are residents of Bangalore for a period of not less than 10 years.	5
6.	F	Dependents of Karnataka Government servants when the latter die during the performance of their duties	5
7.	G	Persons in public life as may be directed by Government.	30
		TOTAL	**100**

The stray sites in respect of categories A to F are to be allotted by a Committee consisting of the Chairman, Commissioner, Commissioner/BBMP and two other members of BDA. The allotment is subject to the final approval of the Authority. The Government on its own issued orders of allotment of stray sites under 'G' Category and BDA implemented these orders.

During the period 2007-2011, the Authority had allotted 438 sites only under 'G' Category. Sites under other categories had not been allotted during this period. The allotment of 'G' Category sites was also stopped on the basis of a judgement (December 2010) in which the High Court had held that the State Government had no power or authority under the BDA Act, 1976 and the BDA (Allotment of Sites) Rules, 1984 to direct the BDA to allot sites to any person under 'G' Category as per circular No.UDD.129.MNJ dated 6 August 1997.

Irregularities noticed in the allotment of stray sites under "G" Category are discussed below:

15.1 List of stray sites not prepared

According to the Government guidelines of August 1997, the list of stray sites available should be compiled by the Secretary, layout-wise and dimension-wise, and got approved by the Authority, at least once a year.

However, BDA had not prepared the list of stray sites during 2007-12. Audit could not, therefore, determine whether 438 sites allotted under 'G' Category during 2007-11 satisfied the definition of stray sites.

15.2 Allotments not made in accordance with the rules

During the period 2007-11, BDA had allotted 438 sites under "G" Category on the directions of the Government. As the list of stray sites had not been prepared by BDA, the proportion of the sites allotted under 'G' Category to the total number of stray sites available was not ascertainable. By failing to prepare the list of stray sites every year, BDA evidently disregarded the Government guidelines which prescribed a cap of 30 *per cent* on allotments under 'G' Category. Audit could not verify whether the sites allotted under 'G' Category had exceeded this cap.

15.3 Allotment of 'G' Category sites to ineligible persons

The year-wise allotment of sites under 'G' Category to various groups of persons were as given in **Table-18:**

Table-18: Year-wise allotment of sites under 'G' Category

Year	Number of sites allotted to various groups						Total
	MLA/MLC (percentage)	MP (percentage)	Ministers (percentage)	Artists (percentage)	Sports persons (percentage)	Others (percentage)	
2007	39(18)	3(1)	NIL	2(1)	1(1)	172(79)	217
2008	NIL	NIL	NIL	2(17)	NIL	10(83)	12
2009	83(65)	8(6)	10(8)	2(2)	NIL	24(19)	127
2010	11(18)	NIL	1(2)	1(2)	NIL	47(78)	60
2011	11(50)	1(5)	NIL	NIL	NIL	10(45)	22
Total	**144(33)**	**12(3)**	**11(3)**	**7(1)**	**1[1]**	**263(60)**	**438**

(Source: Information furnished by BDA)

[1] Negligible

Sixty *per cent* of the allottees under 'G' Category were other than MLAs/ MLCs/MPs/Ministers/Artists or sports persons. As the allotment under "G" category was to be made only for persons in public life, the allottees should have proven record in public life. In respect of 263 allottees under the group 'Others', BDA was in possession of the background information of only 28 allottees. Of these, 12 were Government officials, two house wives, four agriculturists, three businessmen, two private employees, one seer, one social worker, one doctor, one waiter and one professor. In all the cases of allotments under 'G' Category, BDA allotted the sites on the basis of Government orders and did not, therefore, have any opportunity to determine the merits of allotments.

15.4 Sites allotted to those having own houses and/or sites

The BDA (Allotment of Sites) Rules, 1984 prescribe that no person who or any dependent member of whose family, owns a site or a house, or has been allotted a site or a house by the BDA, or a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 or any other such Authority within the Bangalore Metropolitan Area, or has been allotted a site or a house in any other part in the State by any other Urban Development Authority or the Karnataka Housing Board or such agency of the Government, shall be eligible to apply for allotment of a site. While applying for allotment of a site, the allottees are to submit a declaration to this effect duly signed and attested by a notary.

Scrutiny of the sampled allotments under "G" Category during the period 2007-2011 showed that 10 applicants had declared that they or their dependents had their own houses and/or sites. Nevertheless, sites under 'G' Category had been allotted to them. The details are shown in **Table-19:**

Table-19: 'G' Category sites allotted to those who owned houses/sites

Sl. No.	Site No	Layout	Dimension of site (in feet)	Year of allotment
1	315	HBR I Stage, V Block	40x60	2007
2	306	HBR I Stage, V Block	40x60	2007
3	991	BTM IV Stage, II Block	30x40	2007
4	1214	BTM IV Stage, II Block	30x40	2007
5	1081	BTM IV Stage, II Block	30x40	2007
6	1229/L	BTM IV Stage, II Block	30x40	2008
7	17/Q	HSR Sec-III	50x80	2009
8	945	BSK VI / X Block	50x80	2009
9	413/C	HSR Sec-VI	50x80	2009
10	831	J P Nagar VIII Phase, I Block	30x40	2010

(Source: Information furnished by BDA)

These allotments were, prima facie, irregular. If these sites had been disposed of through public auction, BDA would have earned an additional revenue of ₹ 9.84 crore[2].

15.5 Allotment of corner and commercial sites under "G" category

The BDA (Disposal of Corner Sites and Commercial Sites) Rules, 1984 prescribe that whenever the Authority has formed an extension of layout in pursuance of any scheme, the Authority may, subject to the general or special orders of the Government, dispose of any or all the corner sites[3] or commercial sites[4] in such extension or layout by auction.

Scrutiny showed that four corner sites and 22 commercial sites had been irregularly allotted under 'G' Category during 2007-11 in violation of the Rules. BDA stated (September 2012) that as the Correct Dimension Reports (CDRs) furnished by the Engineering Divisions had not identified these sites as corner or commercial sites, allotments had been made under 'G' Category. The reply was not acceptable as these sites, as per the approved layout plans, were either corner sites or commercial sites which should have been disposed of only through auction. The Engineering Divisions should have referred to the approved plans before preparing CDRs. Failure to do so resulted in a loss of ₹ 23.67 crore[5] to BDA.

15.6 Allotment of sites under 'G' Category disregarding the High Court judgment

The High Court in its judgment dated 15 December 2010 had held that "the State Government has no power or authority under the provisions of the BDA Act, 1976 and the Rules made thereunder to direct the BDA to allot the sites to any person/ persons under "G" category as per the Circular No.UDD 129 MNJ dated 6-8-1997".

Scrutiny showed that BDA allotted 22 sites of various dimensions under 'G' Category in 2011, long after the judgment had been delivered in December 2010. BDA stated (September 2012) that as the Government had allotted these sites prior to the date of judgement, allotment letters were issued by

2 Based on the highest bids received for auction of sites in the same layouts.

3 A corner site is defined as a site at the junction of two roads having more than one side of the site facing the roads.

4 A commercial site is defined as any site formed for locating a commercial enterprise or undertaking. The Revised Master Plan 2015 prescribes that a site with an area of more than 240 sqm and abutting a road of more than 18 metre wide can be used for commercial purposes.

5 Based on the highest bids received for auction of sites in the same layouts.

BDA after the judgement. The reply was not acceptable as BDA failed to refer the cases back to the Government for cancellation of allotments.

15.7 Non-adherence to the terms of allotment

As per the BDA (Allotment of Sites) Rules, 1984, the allottee shall, within a period of 60 days from the date of receipt of notice of allotment, pay to the Authority, the balance sital value deducting the initial deposit. If the balance sital value is not paid within a period of sixty days, the Authority may, on application of the allottee, extend the time for payment for a further period not exceeding 60 days, and the allottee shall pay, in addition, interest at the rate of eighteen percent on the said amount for the first thirty days of the extended period and at the rate of twenty one percent for the next thirty days of the extended period. If the amount is not paid within such extended period also, the registration fee shall be liable to be forfeited and the allotment cancelled without prior intimation.

Further, after payment is made, the BDA is to call upon the allottee to execute a lease-cum-sale agreement. If the allottee fails to execute the lease-cum-sale agreement within 60 days after BDA has called upon him to execute such agreement, the registration fee paid by the allottee may be forfeited and the allotment of the site cancelled, and the amount paid by the allottee may be refunded, after deducting such expenditure as might have been incurred by BDA.

Scrutiny showed the following:

- In three out of 127 cases of allotments made during 2009, the allottees of sites under 'G' Category failed to pay the sital value after the expiry of the extended period of 60 days. However, BDA had not taken action to cancel the allotment of these three sites, with a sale potential of ₹ 2.88 crore.
- In eight out of 127 cases of allotments made during 2009, the allottees had not executed the lease-cum-agreements even after the expiry of the prescribed time frame. BDA had not cancelled the allotments of these eight sites with a sale potential of ₹ 11.02 crore.

15.8 Suspected fraudulent practices in the allotment of sites

(i) Smt. Sunila Bhookanakere Sangappa had represented (April 2010) to the CM requesting for allotment of a 30'x50' site in Suryanagar, II Phase of the KHB and the CM approved (April 2010) the allotment. However, BDA processed this application for allotment of a site under 'G' Category. While processing this request, the name of the applicant was changed to Smt.

Surekha Sangappa Bhookanakere while the dimension of the site to be allotted was altered as 60'x40'. Scrutiny showed that while the applicant was a resident of Belgaum, the person in whose favour BDA allotted the site was an employee of Life Insurance Corporation working in Mumbai. Thus, the actual allottee of the site was different from the one recommended to receive the site. Fraudulent practices in the allotment of the site with a sale potential of ₹ 72 lakh cannot be ruled out.

(ii) The Commissioner approved (May 2011) the allotment of a site measuring 60'x40' in HSR I Sector valued at ₹ 1.60 crore on the basis of a request from the applicant that BDA had failed to allot the site, despite a resolution having been passed by the Authority in June 1984 approving the allotment. It was further reported that he had filed a writ petition (WP13201/2002) before the High Court and obtained favourable orders. The applicant had also enclosed a copy of the judgement delivered by the Court in this case.

Scrutiny of the case by Audit showed the following:

- The writ petition had not been filed by the applicant but by another person who was allotted (October 2004) a 60'x40' site in HSR Layout as per the judgment;
- The allotment of site made to the applicant in June 1984 had been subsequently cancelled by BDA vide resolution No.68/2002; and
- No other documents like the original allotment letter, certified copy of GPA given by the land owner, etc., had been submitted by the applicant in support of the claim.

Thus, the possibility of fraudulent allotment cannot be ruled out.

15.9 Allotment on false affidavit

The Government had allotted (February 2005) a 60'x40' site under 'G' Category in HRBR Layout I Block to a journalist. BDA had issued the possession certificate for the site in January 2006. Acting on a complaint received against the allotment, BDA found (November 2006) that the journalist had earlier been allotted site No.94 in Gangenahalli, Hebbal measuring 40'x60' during 1972-73. However, the journalist defended (January 2007) the allotment on the ground that the site allotted earlier before the framing of the BDA (Allotment of Sites) Rules, 1984 had already been sold for a low price to settle his loans. BDA accepted the explanation of the journalist and sent a report to the Government in October 2008. It was seen that the erstwhile City Improvement Trust Board (CITB) had allotted a site to the journalist during 1972-73. As per the BDA (Allotment of sites) Rules, 1984, no person who had been allotted a site by any agency of the Government was eligible for a 'G' Category site. The rules did not make any distinction whether a site had been allotted before or after these Rules came

into effect. Thus, as a site had already been allotted by the CITB to the journalist in 1972-73, he was not eligible for a 'G' Category site again and he was irregularly allotted one with a sale potential of ₹ 1.58 crore.

15.10 Bulk allotment of sites under 'G' Category

On the basis of representation of the Convener, Dalit Kriya Samithi submitted to the CM in June 2004, the Government approved (October 2007) allotment of sites measuring 20'x30' to 46 members of the Dalit Kriya Samithi under 'G' Category. Accordingly, BDA allotted (April 2008) sites to these 46 members at the current allotment rate in well developed layouts which included Gnanabharati, BTM IV Stage, BTM VI Stage, HSR Sector III and Nagarbhavi Layouts.

Though Section 65 of the BDA Act empowers the Government to give directions to the Authority, this power is restricted to giving directions necessary for carrying out the purposes of the BDA Act. As there is no provision in the BDA Act for the Government to direct BDA to allot sites, the decision of the Government to approve the allotment of sites to members belonging to a particular community was irregular.

Further, the sites allotted to these 46 members were residuary intermediate sites available in the layouts after allotment to the general public. These intermediate sites could be allotted as alternative sites in cases where the possession of the sites originally allotted could not be given to the allottees by BDA. Otherwise, the intermediate sites were being auctioned by BDA. During 2007-12, BDA had disposed of 162 such intermediate sites through auction. As a result of the irregular bulk allotment of 46 intermediate sites to the members of the Dalit Kriya Samithi, the BDA, besides setting a precedent, lost the opportunity of disposing of these sites through auction and earning more revenue. The loss to BDA in these cases aggregated ₹ 11.08 crore.

Chapter-16
Allotment of alternative sites

The BDA (Allotment of Sites) (Amendment) Rules, 2003 provide the following framework for allotment of alternative sites:

- Where the Authority is unable to hand over possession of a site allotted to any allottee, due to stay orders of the Courts or for any other reason, the Authority may allot an alternative site to such allottee, subject to the following conditions;
- An alternative site may be allotted only where the mistake was on the part of the Authority while making the allotment of sites where possession of the sites originally allotted could not be given to the allottees;
- Alternative sites may be allotted by the Authority in the same layout in which the sites were originally allotted or in the layouts formed by the Authority subsequent to the formation of the layout in which the sites were originally allotted;
- Alternative sites shall not be allotted in layouts formed prior to the layout in which the sites were originally allotted, even if sites are physically available in the layout/s formed prior to the layout in which original allotment was made;
- While allotting alternative sites, sites bigger in dimension than the sites originally allotted shall not be considered for allotment. However, an alternative site upto ten percent over and above the area of the originally allotted site may be allotted. In such cases, for the extra sital area involved, additional sital value applicable in that layout for that site shall be collected by the Authority;

BDA had constituted an Allotment Committee as required under Rule 11 of BDA (Allotment of Sites) Rules, 1984 which verified the eligibility of the applicant before allotting the alternative site. The Committee was headed by the Commissioner and consisted of Town Planning Member, Engineering Member, Finance Member and Deputy Secretary. Subject to approval by the Authority, the decision of the Allotment Committee shall be final.

Scrutiny of the allotment of alternative sites showed the following:

16.1 Allotment of alternative sites in older layouts

In 34 cases detailed in the **Appendix-2,** alternative sites had been allotted in older layouts in violation of the rules. It was seen in all these cases that the alternative sites identified by the allottees themselves had been allotted by the Allotment Committee. In addition, the Commissioner had irregularly allotted 11 alternative sites in older layouts (**Appendix-3**) without the approval of Allotment Committee. As the older layouts had been fully developed in

comparison to the new ones, alternative sites allotted in the older layouts carried a higher market value and the allottees in these 45 cases profited substantially by getting the alternative sites allotted in the older layouts. The loss to BDA on account of these irregular allotments aggregated ₹ 36.83 crore.

16.2 Irregular allotment of alternative sites of higher dimensions

In two cases listed in **Table-20**, the Allotment Committee had irregularly allotted alternative sites of higher dimensions, the additional area being 20 to 40 *per cent* more than the area of the sites originally allotted against the maximum permissible limit of 10 *per cent*.

Table-20: Alternative sites of higher dimensions allotted

(Area in sqm)

Sl. No.	Name of the layout and alternate site No. allotted	Area of the alternative site in sqm against original allotment	Additional area allotted in sqm in excess of 10 *per cent*	Month/ year of allotment	Allotment rate of BDA (₹ per sqm)	Average auction bid received by BDA during the period of allotment (₹ per sqm)	Loss (₹ per sqm)	Total loss (₹ in lakh)
1.	MRC R-679	223.05(167.29)	39.03	9/07	2100	55100	53000	20.69
2.	RPC layout-3131	78.07(55.76)	16.73	12/07	2100	55100	53000	8.87
	Total							**29.56**

(Source: Information furnished by BDA)

If these alternative sites had been auctioned, it would have fetched BDA additional revenue of ₹ 29.56 lakh.

In three other cases listed in **Table-21**, the Commissioner had irregularly allotted alternative sites of higher dimensions without the approval of the Allotment Committee.

Table-21: Alternative sites irregularly allotted by the Commissioner

(Area in sqm)

Sl. No.	Name of the layout and alternate site No. allotted	Area of the alternative site in sqm as against original allotment	Additional area allotted in sqm in excess of 10 *per cent*	Month/ year of allotment	Allotment rate of BDA (₹ per sqm)	Average auction bid received by BDA during the period of allotment (₹ per sqm)	Loss (₹ per sqm)	Total Loss (₹ in lakh)
1	HSR III -1063	111.52(92.94)	9.29	4/2011	2100	70370	68270	6.34
2	HSR I- 1100	223.05(148.70)	59.48	3/2011	2100	68757	66657	39.65
3	HSR II -1695	194.52 (124.07)	58.04	1/2010	2100	69623	67523	39.19
							Total	**85.18**

(Source: Information furnished by BDA)

The irregular action of the Commissioner in allotting these sites of higher dimension as alternative sites instead of disposing of these through auction resulted in BDA incurring a loss of ₹ 85.18 lakh.

16.3 Irregular allotment of corner sites

As per the BDA (Disposal of Corner Sites) Rules, 1984, all the corner and commercial sites are to be disposed of only through auction. In the cases listed in **Table-22**, corner sites had been irregularly allotted as alternative sites:

Table-22 : Corner sites allotted as alternative sites

Sl. No.	Name of the layout and alternative site No. allotted	Area of the site allotted in sqm	Month/ year of allotment	Allotment rate of BDA (₹ per sqm)	Highest auction bid received by BDA during the period of allotment (₹ per sqm)	Loss (₹ per sqm)	Total Loss (in ₹ in lakh)
1	KMSL -4057/D	55.76	12/2009	2100	48000	45900	25.59
2	JPN IX- 75	111.52	4/2011	2100	27200	25100	27.99
	Total						**53.58**

(Source: Information furnished by BDA)

Though BDA noticed the irregularity subsequently, the sites were allowed to be retained by the allottees. BDA incurred a loss of ₹ 53.58 lakh as a result of allotting the corner sites as alternative sites instead of disposing of these through auction.

16.4 Alternative sites were allotted on request

In seven cases, alternative sites had been irregularly allotted (July 2007 to September 2010) by the Allotment Committee on the basis of requests made by the allottees, citing reasons of non-development of the layout. Further, the Commissioner had approved allotment of one alternative site in an older layout on the same ground without the approval of the Allotment Committee. All the requests had been considered favourably by the Allotment Committee/ Commissioner though the Rules did not permit allotment of alternative sites on grounds of non-development of the layout.

16.5 Allotment without the Allotment Committee's approval

Though only the Allotment Committee was empowered to decide on allotment of alternative sites, the Commissioner had irregularly allotted alternative sites in 45 cases while the Secretary had irregularly approved the allotment in one case. Had these sites been auctioned, BDA could have realized an additional revenue of ₹ 54.17 crore.

16.6 Allotment of alternative site after cancellation of the original allotment

A site allotted in HSR Sector VII during November 1988 had been cancelled in 1990 due to non-payment of the sital value. The allottee's request for allotment of an alternative site was favourably considered by the CM who

directed (August 2005) BDA to allot a site in the same layout. Though the Government did not have powers under the BDA Act/Rules to direct BDA to allot site, it nevertheless directed (May 2007) BDA to allot a site measuring 223.26 sqm in HSR Layout, Sector VI. However, the allottee sold the site within three months of allotment.

The allotment of the site in a well developed layout on the directive of the Government disregarding the prescribed Rules helped the allottee earn a fortune by selling it immediately after the allotment. While the allottee had paid ₹ 12.01 lakh to BDA for the site, the registered value of the site was ₹ 67.20 lakh. It would be pertinent to mention here that the sale potential of this site on the basis of highest bid received in June 2007 for auction of sites in this layout was ₹ 99.35 lakh. BDA stated (August 2012) that the allotment had been made on the basis of orders of the Government after the allottee had repeatedly represented through the Government, elected representatives and Ministers. It was further stated that only the prevailing allotment rate had been recovered from the allottee as there was no provision in the rules to levy the auction rate. The reply was not acceptable as the Government had not been vested with powers under the BDA Act/Rules to direct BDA to allot site to a person.

16.7 Allotment of commercial sites as alternative sites

The Commissioner, during his inspection (October 2009) of the BSK VI Stage (Further Extension), had ordered auctioning of the odd dimension sites on 80 feet wide road as commercial sites. After the proposal was cleared by the Town Planning Member, 10 commercial sites carved out of land in Sy.No.14/1 of Raghuvanahalli village had been approved for auction. EE, South Division notified (February 2010) these sites for auction.

The details of the sites offered for auction along with dimensions were as given in **Table-23**:

Table-23: Details of corner sites notified for auction

Sl. No.	Site No.	Area in sqm
1	3503	361.50
2	3504	354.75
3	3506	338.25
4	3507	333.00
5	3508	339.00
6	3509	366.75
7	3510	524.40
8	3515	333.00
9	3516	340.50
10	3517	348.75

(Source: Information furnished by BDA)

BDA had fixed the minimum bid amount at ₹ 50000 per sqm for the auction. During the auction, the bidders requested BDA to reduce the minimum bid price to ₹ 20000-25000 per sqm. However, BDA did not consider the request of the bidders who, therefore, abstained from the auction. The Auction Committee comprising the Chairman, Commissioner, Engineering Member and the Finance Member decided (February 2010) to wait for some more time and auction these sites later.

However, the Allotment Committee/Commissioner subsequently allotted (June 2010 to November 2010) four of these sites as alternative sites. Scrutiny of these four allotments showed the following:

16.7.1 Site No.3506

A person who had been allotted a 50'x80' site in Banashankari VI Stage IV-B Block requested (June 2010) for an alternative site on the ground that the site allotted to him was in a low lying area and that the site might also be taken over by the Forest Department. He requested for allotment of site No. 3506 available in BSK VI Stage, IV-H Block facing the 80 feet road. The Secretary suggested (March 2010) obtaining a report from the Engineering Division before placing the proposal before the Allotment Committee. However, the Commissioner ordered (March 2010) to place the request before the Allotment Committee straightaway and the Allotment Committee approved allotment of an alternative site in the same layout or in a layout formed subsequent to it. The Commissioner approved (June 2010) the Secretary's proposal to allot site No.3506 in Banashankari VI Stage, IV-H block. The allotment of the commercial site as alternative site was irregular for the following reasons:

- The claim of the allottee that the site might be taken over by the Forest Department had not been verified by BDA for its correctness as an alternative site should be allotted only where the mistake was on the part of BDA. As per the information furnished (November 2012) by the Engineering Division (South), the site did not come under forest limits and also remained vacant;
- Allotment of the commercial site as an alternative site was irregular as commercial sites should be disposed of only though auction; and
- While the value of the site was ₹ 90 lakh, the allottee paid only ₹ 7.56 lakh as the sital value, resulting in a loss of ₹ 82.44 lakh to BDA.

16.7.2 Site No. 3507

A person had been allotted a site measuring 60'x40' in Banashankari VI Stage, V Block as an incentive site for land losers. As the site had been taken over by the Forest Department, an alternative site in Anjanapura II Block was allotted by the Allotment Committee in November 2010. Thereafter, the allottee transferred the title of the site in favour of his wife through a gift deed. The wife of the allottee requested (August 2011) BDA for allotment of site

No.3507 in Banashankari VI/IV-H Block on the ground that this site was closer to her land and family. Though the proposed alternative site measured 333 sqm, i.e., 110 sqm more than the original site, the proposal of the Secretary, BDA was approved (November 2011) by the Commissioner. However, the Engineering Member requested (January 2012) for staying the allotment process as the alternative site was higher in dimension than the originally allotted site. Meanwhile, the allottee approached the CM and the CM's office referred (March 2012) the matter to BDA for further action. Thereafter, BDA registered the sale deed in April 2012 in favour of the wife, overlooking the objections raised by the Engineering Member. The allotment of the alternative site was irregular for the following reasons:

- The alternative site identified by the allottee was a commercial site which had earlier been auctioned. This had not been considered before the allotment was approved;
- The reason advanced for seeking the alternative site was that the allotted site was far away from the original site. This was not a valid reason as alternative site was to be allotted only in cases where BDA was unable to hand over possession of the originally allotted site;
- The Commissioner had approved the alternative site without taking the approval of the Allotment Committee; and
- The area of the alternative site was 49 *per cent* more than that of the originally allotted site. This was in violation of the rules for allotment of alternative site which prescribed a cap of 10 *per cent* for the additional area.

As a result of allotting a commercial site as the alternative site, BDA lost a revenue of ₹ 72.93 lakh.

16.7.3 Site No. 3508

A person had been allotted (January 2004) a site measuring 60'x 40' in Banashankari VI Stage, V Block under the incentive scheme for land losers. Subsequently, she sold (January 2006) the site to another person. However, the allotment of the site was cancelled (November 2010) by BDA as it was falling under the Forest area and an alternative site in Anjanapura II Block was allotted (November 2010) by the Allotment Committee. The new owner of the site represented (May 2011) for allotment of an alternative site citing non-development of the layout. Though the request was refused initially, the Commissioner approved (November 2011) the allotment of site No.3508 subject to the condition that the allottee would pay the sital value for the additional sital area of 116 sqm. The site was registered in favour of the new owner on 13 December 2011. The allotment of the site was irregular for the following reasons:

- The proposal for allotment had not been placed before the Allotment Committee;
- The allotted site was a commercial site which should have been disposed of only through auction; and
- The area of alternative site allotted was 52 *per cent* in excess of that of the original site which was not permitted by the Rules.

Considering that the allotted site was a commercial site, the Authority by allotting it as an alternative site instead of disposing it of through auction incurred a loss of ₹ 73.96 lakh.

16.7.4 Site No. 3510

A person had been allotted (October 2003) a site measuring 223 sqm in Banashankari VI Stage, V Block. The allottee sold the site in 2004 to another person. As the site was later handed over (February 2007) to the Forest Department, the Allotment Committee allotted (November 2010) an alternative site No.457 measuring 216 sqm in Anjanapura I Block. However, the new owner requested for allotment of Site No.3510 as the alternative site. The Commissioner approved (December 2011) the allotment of Site No.3510 after obtaining the CDR from BDA, South Division in November 2011. The CDR mentioned the area of the site as 216 sqm and accordingly, BDA recovered the sital value for only 216 sqm. Though the Engineering Member subsequently requested (January 2012) for cancelling the allotment as the site allotted was of higher dimension (279 sqm), no action had been taken. The allotment of the alternative site was irregular for the following reasons:

- The proposal for allotment had not been placed before the Allotment Committee for approval ; and
- The allotment had been made on the basis of the CDR of the Bangalore, South Division which mentioned the area of the site as 216 sqm. Subsequently, the Engineering Member had reported that the area of the site No. 3510 was 279 sqm. Thus, the incorrect CDR facilitated allotment of alternative site of higher dimension.

As per the auction notification of February 2010, the area of the site No.3510 notified for auction was 524.40 sqm while the area of site No.3510 allotted as an alternative site was only 216 sqm. The reasons for the reduced area were not on record.

By allotting a commercial site as the alternative site, BDA lost ₹ 68.89 lakh.

Chapter-17
Allotment of Civic Amenity sites

17.1 Provisions for Civic Amenity Sites

Civic amenity as defined in the BDA Act means and includes:

(i) A market, a post office, a telephone exchange, a bank, a fair price shop, a milk booth, a school, a dispensary, a hospital, a pathological laboratory, a maternity home, a child care centre, a library, a gymnasium, a bus stand or a bus depot ;

(ii) A recreation centre run by the Government or the Corporation;

(iii) A centre for educational, social or cultural activities established by the Central Government or the State Government or by a body established by the Central Government or the State Government;

(iv) A centre for educational, religious, social or cultural activities or for philanthropic service run by a cooperative society registered under the Karnataka Co-operative Societies Act, 1959 or a society registered under the Karnataka Societies Registration Act, 1960 or by a trust created wholly for charitable, educational or religious purposes;

(v) A police station, an area office or a service station of the Corporation or the Bangalore Water Supply and Sewerage Board or the Karnataka Electricity Board; and

(vi) Such other amenity as the Government may, by notification, specify.

The extent of reservation of land for parks and open spaces which include space for civic amenities (CA) is regulated by the approved Comprehensive Development Plans (CDPs). BDA had so far formulated two such plans viz., CDP 1995 and RMP 2015. As per CDP 1995, reservation of 45 *per cent* of the total area for roads, parks, playgrounds and civic amenities is necessary in residential layout plans and in the case of Group Housing plans, 25 *per cent* of the total area is to be reserved for civic amenities, parks and open spaces subject to a minimum of 15 *per cent* for parks and open spaces.

In the case of private layouts, no person can 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. Further, the ownership of the roads, drains, water supply mains and open spaces laid out in the private layouts should be transferred to BDA permanently without claiming any compensation therefor.

The developers of the private layouts and Group Housing schemes are further required to execute registered relinquishment deeds for transfer of ownership

of parks and CA sites besides roads, drains etc. as per the sanctioned plan before the issue of work order by BDA. The parks and open spaces in the private and BDA Layouts are to be transferred to BBMP on completion of the layouts for maintenance.

In the Revised Master Plan 2015 effective from June 2007, the areas to be earmarked for CA, park and open spaces were reduced in respect of Group Housing plans as shown below:

Park and open space: 10 *per cent* of the total area; and

Civic amenities: 5 *per cent* of the total area

Further, in respect of Group Housing Development Plans, the developer/owner is required to develop the area earmarked for CA and hand it over to the resident associations. However, BDA has the power to decide the mode of handing over the developed CA space to the resident associations.

17.1.1 Non-relinquishment of CA sites

It was seen that 18 CA sites measuring 32,584.61 sqm had not been relinquished by private house building co-operative societies in favour of BDA as of March 2012. The details of work orders issued to these private layouts were not on record. As the work order for developing a private layout was to be issued to the developer only after the relinquishment deed was registered in BDA's favour, the violation of the prescribed procedure in these cases had resulted in retention of these sites by the societies which would otherwise fetch a revenue of ₹ 16.29 crore to BDA if allotted on lease basis for 30 years. BDA did not have information on the status of these CA sites and the possibility of these CA sites being used for other than the intended purposes cannot be ruled out.

17.2 Legal framework for allotment of CA sites

The BDA Act empowers the BDA to lease, sell or otherwise transfer any area reserved for CA for the purpose for which such area is reserved.

The allotment of CA sites is governed by the BDA (Allotment of Civic Amenity Sites) Rules 1989. The rules have been framed in response to the High Court judgment that no CA site reserved for a particular purpose in any of the layouts formed by it should be disposed of for any other purpose except for the purpose for which it was reserved and in conformity with the provisions of the Act, and disposal of such sites should not be made unless necessary rules were framed.

The BDA (Allotment of Civic Amenity Sites) Rules, 1989 prescribe the following :

- Due publicity shall be given in respect of CA sites offered for leasing to the institutions, specifying their location, number, dimension, purpose and the last date of submission of applications by affixing the notice on the notice board of the office of BDA and by publishing the notification in not less than two daily news papers in English and Kannada, having vide circulation in the city of Bangalore. Further, for the purpose of selection of the institution for leasing out CA sites, the Authority is to constitute a "Civic Amenity Site Allotment Committee" (CASAC) headed by the Chairman, BDA and consisting of three official members and three non-official members. Subject to the approval of BDA, the decision of the CASAC shall be final.
- BDA, having regard to the particular type of amenity required to be provided in any locality, may offer such CA sites for the purpose of allotment on lease basis to any institution;
- The lease amount of the site to be allotted on lease basis in any area shall be fixed by BDA;
- Allotment of CA sites shall be on lease basis for a period of thirty years;
- The lessee shall complete the construction of the building within a period of three years from the date of registration of the lease agreement or such extended period, not exceeding three years, as BDA may permit subject to payment of penalty at such rates notified by the State Government. If the building is not constructed even within the extended period, BDA may, after giving reasonable notice to the institution, cancel the allotment, revoke the agreement and evict the lessee from the site and refund the lease amount paid by the lessee after forfeiting 12½ *per cent*.

As of March 2012, BDA had allotted 1234 sites of various dimensions for different purposes to different institutions. The irregularities noticed in the allotment, utilisation and renewal of lease of CA sites are discussed in the succeeding paragraphs.

17.3 Irregular allotment of CA sites

17.3.1 Procedure for Allotment of CA sites not transparent

A review of the minutes of the CASAC relating to allotments made during 2007-12 showed that recommendations made for the allotments of CA sites lacked duly recorded justifications. Where many applications had been received for allotment of a CA site and one of the applicants had been preferred over others, there were no recorded reasons as to why that particular applicant had been preferred. As the CA sites had been allotted on the basis of such recommendations without recorded justification, there was no transparency in allotment of CA sites.

17.3.2 Allotment of park as a CA site

CA site No.7 in RPC layout measuring 37625 sq ft had been allotted (October 1979) to a Trust for construction of a school building. The request made by the Trust for allotment of another CA site No.9 had been rejected (December 2006) by BDA. However, the Assistant Executive Engineer (West) reported (March 2008) to BDA that the Trust had encroached upon the entire area of 1692.79 sqm in CA site No.9. BDA resolved (September 2010) to allot the land encroached upon to the Trust on lease basis for 30 years by levying penalty suitably and recovering the lease amount at the prevailing rate, as agreed to by the Trust in July 2006. BDA approved (September 2010) the lease amount and penalty aggregating ₹ 4.80 crore as shown in **Table-24**:

Table-24: Lease amount and penalty as approved by BDA

Sl. No.	Particulars	Amount (In ₹)
1	Lump sum lease amount for 1692.79 sqm at the prevailing rate of ₹ 2500 per sq mtr	42, 31,975
2.	Additional lease amount - 1/10 of 1692.79 sqm = ₹ 169.28 x 30 years	5078
3.	Penalty for unauthorised occupation of 1692.79 sqm or 18221.19 sq ft at ₹ 2400 per sq ft being the guidance value fixed by the Government.	4,37,30,856
	Total	**4,79,67,909**

(Source: Information furnished by BDA)

On the basis of a request from the Trust for allotment of the CA site being used as a playground, without levy of penalty, the site was again inspected during March 2011 and it was found that the Trust had utilised 258.08 sqm for construction of a school building. On the basis of this report, BDA revised the amount to ₹ 88.57 lakh as shown in **Table-25:**

Table-25: Revised amount as approved by BDA

Sl. No.	Particulars	Amount (In ₹)
1	Lump sum lease amount for 258.08 sqm at the prevailing rate of ₹ 2500 per sqm	6,45,200
2.	Additional lease amount- 1/10 of 258.08 sqm = ₹ 26 x 30 years	780
3.	Penalty for unauthorised occupation of 258.08 sqm or 2777.97 sq ft at ₹ 2400 per sq ft being the guidance value fixed by the Government. Penalty for utilising 1434.71 sqm or 15443.21 sq ft unauthorizedly at ₹ 100 per sq ft	66,67,135 15,44,322
	Total	**88,57,437**

(Source: Information furnished by BDA)

BDA entered into a lease agreement in August 2011 and issued the possession certificate to the Trust for the entire area of 1692.79 sqm in September 2011.

The reduction of the dues from ₹ 4.80 crore to ₹ 88.57 lakh was not justified due to the following reasons:

(i) Site No.9 had been earmarked for park in the approved plan. The area earmarked for park had been allotted to the Trust to regularize the unauthorised occupation and encroachment. Allotment of the park to a private trust was irregular;

(ii) Though the entire area of 1692.79 sqm in site No.9 had been allotted to the Trust as per the possession certificate issued in September 2011, the lease amount had been recovered only for the area of 258.08 sqm over which a building had been unauthorisedly constructed by the Trust. The Trust had admitted that the site had been used as a playground. Recovery of the lease amount only for 258.08 sqm instead for the entire area of 1692.79 sqm allotted to the Trust resulted in unauthorised benefit of ₹ 35.87 lakh to the Trust;

(iii) The penalty for unauthorised use of site No.9 had been reduced from ₹ 2400 per sq ft to ₹ 100 per sq ft without any recorded justification. The reduction was adhoc and lacked justification; and

(iv) Commissioner approved the token penalty without placing the proposal before the Board.

BDA stated (September 2012) that the lease amount had been calculated on the basis of the area encroached upon. The reply was not acceptable as the entire area of 1692.79 sqm had been leased to the Trust as per the possession certificate and the lease amount should have been collected for the entire area.

17.3.3 Direct allotment of CA site to an institution

On the basis of the instructions of the CM on a representation made by an institution during December 2009, a CA site measuring 9062.50 sqm in Sadashivanagar was directly allotted (April 2010) to the institution by BDA for construction of yoga, gym and health related centre without notifying the CA site to the general public. The lease agreement was executed in June 2010 after the allottee had paid the lumpsum lease amount of ₹ 42.10 lakh. The allotment of this CA site violated the prescribed procedure. BDA stated (September 2012) that a suit had been pending in the Court against the allotment.

17.3.4 Direct allotment of CA site to a Homeopathy Foundation

A Homeopathy Foundation had submitted (November 2008) a representation to the CM requesting for allotment of a site in a developed layout for carrying out its activities. The Principal Secretary to the CM instructed (December

2008) BDA to identify the site. In his representation submitted to the Chairman, BDA, the Chairman of the Foundation had requested (March 2009) for allotment of site No.117 measuring 352.90 sqm in Dollars Colony, BTM Layout II Stage. The Government directed (September 2009) BDA to allot the site requisitioned by the Foundation on lease basis after recovering the allotment rate applicable for CA sites. The Commissioner allotted (September 2009) the site under the BDA (Allotment of Civic Amenity Sites) Rules, 1989. The allotment was irregular for the following reasons:

- The allotment had been made directly without following the procedure prescribed in BDA (Allotment of CA sites) Rules, 1989; and
- On verification of the sanctioned plan of BTM II Stage, it was seen that site No.117 was a residential site. The site, being an intermediate residential site, was to be auctioned as was being done by BDA in the case of other intermediate sites. This residential site measuring 352 sqm was allotted at a subsidized price of ₹ 5000 per sqm applicable for CA sites, while the average bid amount received during auction of a similarly placed site in BTM I Stage was ₹ 69,500 per sqm during 2007. The value of the site allotted to the Foundation, therefore, worked out to ₹ 2.45 crore while the Foundation had paid only ₹ 17.65 lakh to BDA.

BDA stated (September 2012) that the residential site had been allotted as a CA site as per the approval of the Government under Rule 6 of the BDA (Allotment of sites) Rules, 1984 which empowered the Authority to allot, on lease basis, sites other than those reserved for CA, public parks and play grounds to educational, religious or charitable institutions which were either societies registered under the Societies Registration Act or Trusts for public purposes. The reply was not acceptable for the following reasons:

- The Foundation had been allotted the site under the BDA (Allotment of CA sites) Rules, 1989 and not under Rule 6 of BDA (Allotment of sites) Rules, 1984; and
- The Foundation had not submitted any document evidencing that it was either a charitable institution registered under the Societies Registration Act or a Trust for public purposes.

17.3.5 Allotment of CA sites under inappropriate regulations

BDA had issued (February 2007) the work order to a developer for construction of high-end apartments/houses in Nagasandra Village, Yeshwantapur Hobli, Bangalore. As required under the Zoning of Land Use and Regulations, BDA-1995, the developer had relinquished 11,623.527 sqm for parks and 7749.01 sqm for civic amenities through a relinquishment deed registered in December 2006.

Acting on the request (November 2007) of the developer for allotment of two CA sites in the residential complex for construction of a club house for the

residents, BDA authorized the Commissioner to take Government permission for allotment of the CA sites under Regulation No.7-1-2 of RMP 2015. The Government conveyed (November 2011) its concurrence to the Commissioner's proposal (September 2011) for allotment of the CA sites to the developer. BDA issued (January 2012) the allotment letters fixing the lumpsum lease amount at ₹ 2.51 crore for CA site No.1 and ₹ 2.36 crore for CA site No.2. The developer was yet to pay these amounts to BDA (July 2012).

Allotment of these two CA sites to the developer under Regulation 7-1-2 of RMP 2015 was irregular as it had come into force only in June 2007 and the regulations contained therein were prospective. Further, allotment of these CA sites under RMP-2015 would not arise at all as the area earmarked for CA in projects covered by RMP-2015 would vest with the local residential associations and not with BDA. As the work order for the project had been issued in February 2007, when the Zoning of Land Use and Regulations, BDA-1995 was in force, the two CA sites should have been allotted after approval by the CASAC after following the prescribed procedure. As the allotment had been irregularly made under Regulation No.7-1-2, BDA's demand for the lease amount would not be enforceable.

Thus, irregular allotment of CA sites to the developer under inappropriate regulations had exposed BDA to the risk of non-recovery of the lease amount of ₹ 4.87 crore from the developer. BDA stated (September 2012) that the developer had filed a writ petition during February 2012 and action would be taken as per the decision of the Court. The reply was not acceptable as the litigation could be attributable to the irregular allotment under RMP-2015.

17.3.6 Unjustified concession given in the irregular allotment of a CA site

BDA issued (January 2009) notification for allotment of CA site No.3 measuring 8125 sqm in 5th Block, Banashankari VI Stage. BDA approved (March 2010) the allotment of the site to a trust for starting educational institutions. The allotment letter was issued on 7 April 2010. BDA had fixed the lease amount as follows:

1. Lease amount, if paid in lumpsum : ₹ 2,03,12,500;
2. Lease amount, if paid in thirty annual installments : ₹ 36,82,657; and
3. Additional lease amount to be paid annually: ₹ 24,390.

The lease amount was payable within ninety days of issue of the allotment letter. However, the Trust requested (June 2010) for reduction of the lease amount on the lines of the concessions extended (April 2010) by the Government for the welfare of the scheduled caste (SC)/scheduled tribes (ST). Considering the request, the lease amount was reduced under the orders (July

2010) of the Commissioner by 50 *per cent.* The details of the revised amounts fixed were as under:

1. Lease amount, if paid in lumpsum : Rs1,01,56,250;
2. Lease amount, if paid in thirty annual installments : ₹ 18,41,329; and
3. Additional lease amount to be paid annually: ₹ 24,390.

Though reduction of the lease amount by 50 *per cent* was applicable only from 20 April 2010 in respect of institutions established for the benefit of SC/ST, it was irregularly extended in this case where the allotment was approved by the Board on 26 March 2010. Further, the reason adduced by the allottee for claiming the reduction of the lease amount was that the Trust was managed exclusively by members of the SC/ST. However, Government order of April 2010 did not allow reduction of the lease amount in respect of Trusts managed exclusively by members of SC/ST. The decision to extend the concession available in the Government notification of April 2010 was, therefore, not justified, resulting in loss of revenue of ₹ 1.02 crore to BDA.

Further, the allottee had requested (September 2010) for an alternative site citing non-development of the layout as the reason. The request was considered favourably and BDA accorded (September 2010) approval for allotment of an alternative CA site available in II Block, BTM IV Stage measuring 8001 sqm. The allotment letter was issued to the allottee in October 2010 duly incorporating the 50 *per cent* concession available in the Government notification of April 2010. However, the BDA (Allotment of Civic Amenity Sites) Rules, 1989 does not have any provision for allotment of alternative CA sites. In this case, the alternative site was allotted irregularly at the request of the allottee which was aware of the location of the site and the status of the layout at the time of submitting application in response to the BDA's notification.

As per the land audit report of the Engineering Division (East), the alternative site remained vacant as of March 2012, evidencing that the proposed educational institution was yet to be established.

17.3.7 Irregular allotment of two alternate CA sites of higher dimensions

A society had been allotted a CA site in Banashankari III Stage, Srinivasangar II Phase, measuring 728.75 sqm for religious activities and the possession certificate was issued to the Society in November 2007. As the allotted site had already been in possession of the BBMP SC Workers Co-operative Society, the allottee requested (July 2009) for allotment of an alternative site in Bangalore South. Though BDA (July 2009) allotted an alternative CA site in Banashankari VI Stage, IV Block, the allottee refused to accept the allotment as the site was far away from the originally allotted site. Though the CASAC initially refused (October 2009) to consider the request, it subsequently allotted two CA sites identified by the allottee, one in Canara

Bank, HBCS, Kodigehalli Extension measuring 502 sqm and another in Raghuvanahalli village measuring 464.80 sqm. The possession certificates were issued to the allottee in January 2012. The allotment of these two alternative sites was irregular due to the following reasons:

- There is no provisions in the BDA (Allotment of Civic Amenity Sites) Rules for allotment of alternative CA sites; and
- The area of the two alternative CA sites together was 32 *per cent* higher than that of the original site allotted.

Further, BDA did not verify before allotment whether these two alternative sites had been earmarked for religious purpose in the approved plan. BDA had allotted these CA sites only on the basis of the request from the society. After the allotment, the Canara Bank Layout Welfare Association had requested BDA to cancel one of the two CA sites as it had been earmarked for a Government Hospital in the approved plan. BDA had not cancelled the allotment of this site so far (July 2012).

Thus, BDA failed to follow the prescribed procedure for allotment of CA sites.

17.3.8 Irregular allotment of a CA site for a corporate office

A Company had been allotted a CA site in Manyatha Promoters Layout, Rachenahalli village for construction of a corporate office. The site measured 5151.90 sqm and the allotment had been made by BDA on the basis of a Government order (December 2009). The lease agreement was executed in March 2010 and the possession certificate was issued by BDA in March 2010. The allotment was irregular due to the following reasons:

- A corporate office is not covered by the definition of civic amenity;
- The BDA Act or the BDA (Allotment of Civic Amenity Sites) Rules, 1989 does not permit allotment of CA sites directly to any institution. According to the rules, the details of the CA site along with its dimension and purpose are to be notified publicly. This had not been done in this case; and
- The allotment had been made on the basis of a Government order which had been issued on the directions of the CM. Though the Government is vested with powers to give directions to BDA as per Section 65 of the BDA Act, 1976, such power is restricted to giving directions only for carrying out the purposes of the Act.

17.4 Undue favours to allottees of CA sites

The BDA (Allotment of Civic Amenity Sites) Rules, 1989 prescribes that if the lease amount or the annual installment is not paid within a period of 90 days, further extension of time not exceeding 60 days may be given and the allottee shall pay in addition, interest at the rate of eighteen percent on the said

amount for the extended period. If the lease amount or the installment is not paid within such extended period also, then the registration fee and the initial deposit shall be liable to be forfeited and the allotment cancelled without any prior intimation. Further, there are no provisions in the Rules for waiver of any amount due including interest due.

A review of test checked files showed that BDA had waived the amount due or shown undue favour to the allottees in the following cases:

17.4.1 Waiver of interest

In the case of CA site measuring 2692.25 sqm allotted (April 2002) to a Parishad, BDA approved (February 2011) the waiver of interest of ₹ 14.13 lakh levied earlier for belated payment (March 2008 to December 2009) of the lease amount though there was no provision either in the BDA Act or the BDA (Allotment of CA Sites) Rules 1989 for waiving off the interest due.

17.4.2 Irregular contribution to a private trust

A CA site measuring 2412.60 sqm had been allotted (November 1979) to a Trust on lease basis for a period of 30 years. After the completion of the lease period of 30 years in December 2009, the site was inspected by the Engineering Division, South in January 2010. BDA renewed the lease period for a further period of 30 years from December 2009. BDA asked (August 2010) the Trust to pay the lease amount either in annual installments of ₹ 11.68 lakh or in lump sum of ₹ 64.42 lakh. However, the Trust requested (October 2010) for reduction of the annual installment to ₹ 50,000. BDA informed (October 2010) the Trust of its inability to reduce the annuity as there was no provision in law for reduction. However, based on the orders (October 2010) of the CM, BDA reduced (February 2011) the annual installment to ₹ 50,000. Thereafter, the allottee paid (July 2011) ₹ 15 lakh to BDA in lumpsum towards annual installments for the entire lease period of 30 years. BDA adjusted the unpaid amount of ₹ 49.42 lakh as donation to the Trust for construction of cine academy. The donation is to be viewed in the light of the fact that there is no provision in the BDA Act for making contributions to a private trust. Though BDA had acted on the orders of the CM, it would be pertinent to mention that any directive given either by the Government or by the CM should not be contrary to the provisions in the BDA Act. Thus, the favour extended to the Trust was unauthorised. BDA stated (September 2012) that the decision to treat the unpaid amount as donation had been taken on the basis of suggestions from the Finance Member. The reply was not acceptable as there was no provision in the BDA Act for making donations to a private Trust.

17.4.3 Unjustified renewal of the lease in advance

A CA site measuring 23092.02 sqm had been allotted on lease basis for 30 years to a Samithi in Sarakki Layout for construction of a college building and the lease agreement was registered on 17 May 1983. Though the lease was to be renewed only on 17 May 2013 on completion of the lease period of 30 years, the Commissioner approved (January 2011) the renewal of the lease for another 30 years after remittance of ₹ 13.23 crore at the prevailing allotment rate on the basis of the request made (October 2010) by the allottee.

Subsequently, BDA revised (December 2011) the lease amounts for CA sites on the basis of revised categorization of institutions. As per the revised rates, the allottee would have paid the lease amount of ₹ 21.12 crore, if the lease had been renewed on expiry of the initial lease period of 30 years in July 2013. As there was no provision in the rules for renewal of the lease before expiry of the previous lease period, the action of the Commissioner in renewing the lease in advance, besides being irregular, resulted in a loss of ₹ 7.89 crore to BDA. Whether the renewal of the lease in advance had been influenced by any impending proposal before the BDA for revision of lease amount, needs to be investigated as BDA had lost substantial revenue in this case.

17.5 CA sites used for unauthorised purposes

BDA entered into agreements with the allottees of CA sites in the standard lease agreement form forming part of the BDA (Allotment of CA sites) Rules, 1989. The provisions in the agreement prescribed that the lessee should use the CA site only for the authorized purpose. If the lessee were to violate these conditions, the lessor (BDA) was at liberty to resume the CA site with 30 days' notice to the lessee and the money, if any, paid by the lessee shall also be liable to be forfeited by the lessor.

Scrutiny showed that though CA sites had been used by the allottees for unauthorised purposes and such violations were within the knowledge of BDA, no action had been taken against the violations in terms of the agreemental conditions. There was also no mechanism in BDA for periodical inspection of the CA sites to ensure that the CA sites were used by the allottees only for authorized purposes. Cases of CA sites being used for unauthorised purposes noticed in sampled cases were as shown in **Table-26**:

Table-26 : Details of CA sites used for unauthorised purposes

Sl. No.	CA Site allotted with location and dimension	When allotted	Purpose for which allotted	Deviation noticed
1	Site No. 46 of Vasanthnagar measuring 1163.953 sqm	July 1958	Construction of school hostel	In addition to the hostel building, the allottee had constructed a commercial complex capable of generating a revenue of ₹ 4.81 lakh per month against the lease rent of ₹ 12 per month paid by the allottee to BDA. These deviations had been noticed by BDA in March 2008 and May 2011.
2.	Site No. 1B on Magadi Road measuring 1870.35 sqm	March 1977	Construction of society building and staff quarters	BDA's inspection in January 2007 showed that several buildings including a granite stone yard, a central library and car parking had been constructed unauthorisedly.
3.	Two earmarked CA sites measuring 21400 sq ft and 11450 sq ft in Jayanagar II Block	January 1964 and December 1965	Construction of a temple and school/ hostel	A Kalyana Mantapa and a school had been constructed by the allottee as per the report of the Executive Engineer, South Division given in Nov. 1997.
4.	Site No. 2 in Defence Layout measuring 4104 sqm	March 2002	Opening a Kannada medium school with a play ground	The allottee had been running an English medium school.
5.	Site No. 85/1 measuring 1637.63 sqm in Jayanagar IV Block	July 1981	Constructing a community hall and other developmental activities	The allottee had constructed a community hall, library, office building and bridge game sections in two floors. The lease was renewed in October 2011 despite complaints about gambling activities in the premises.
6	Site No. 10 measuring 3064 Sqm in HRBR II Block	April 1998	Establishing a Kannada medium school	The allottee had sublet the premises to an Academy.
7.	Site No. 2 measuring 832.65 sqm in Vinayaka HBCS, Bhoopasandra	July 2002	Establishing a Kannada medium school	A gas godown had been constructed by the allottee.
8	Site No.1 measuring 52650 sq ft in West of Chord Road II Stage	August 1977	Construction of college building	The allottee had encroached upon 2561.31 sq ft of the adjacent CA allotted to another institution.

17.6 Lease of CA sites not renewed or lease agreements not executed

In terms of the BDA (Allotment of Civic Amenity Sites) Rules, 1989, the allotment of CA sites shall be on a lease basis for a period not exceeding 30 years. If the lease is not renewed, or has been determined or terminated before the expiry of lease, the site allotted along with the buildings therein shall vest in the BDA and BDA shall have right to enter the premises and take possession thereof.

It was seen that in 71 out of 1234 CA sites allotted by BDA, the lease had not been renewed as of July 2012. The list included 60 private institutions and 11 Government institutions. The delay in renewal of leases ranged from eight to nine years in respect of Government institutions while it was 11 months to 32 years in respect of private institutions. BDA had not initiated action against the allottees for not renewing the leases, thereby allowing them to occupy the BDA properties without legal validity. Non-renewal of the leases in time deprived BDA of the opportunity of mobilizing ₹ 43.45 crore by way of lease charges recoverable. Non-renewal of the leases in sampled cases is shown in **Table-27:**

Table-27 : Cases where leases had not been renewed

(Amount: ₹ in lakh)

Sl. No.	CA Site No., location and dimension	Date of allotment	Date on which renewal of lease was due	Purpose for which allotted	Deviations noticed	Lease amount due calculated at the prevailing rate fixed by BDA
1	Site measuring 1739.77 sqm in Jayanagar IV T Block	18-12-1962	18-12-1992	Construction of post office	The lease had not been renewed for 20 years and BDA did not have records to evidence demand and collection of rent from the allottee	43.49
2	Site No.2 measuring 489.31 sqm in Jayanagar I and III East Block	29-12-1979	29-12-2009	Construction of Sanskrit school	The lease had not been renewed	12.23
3	Site No.1 measuring 7496.28 sqm in Jayanagar IV Block	14-12-1966	14-12-1996	Construction of Jain temple	BDA issued the renewal notice to the allottee only in January 2009 after a delay of 13 years. Though the lessee submitted the documents for renewal of licence in February 2009, BDA had not renewed the lease (July 2012).	187.40
4.	Site No. 1349 measuring 189.12 sqm in West of Chord Road Phase II	11-5-1977	11-5-2007	For association activities	The lease had not been renewed since May 2007. Though the allotment section had requested the Engineering Division in August 2008 to conduct the inspection of the site, it had not been done so far (July 2012)	4.73

Sl. No.	CA Site No., location and dimension	Date of allotment	Date on which renewal of lease was due	Purpose for which allotted	Deviations noticed	Lease amount due calculated at the prevailing rate fixed by BDA
5	Site No. 666 measuring 1121.34 sqm in West of Chord Road Phase II	21.-6-1973	21-6-2003	Construction of school	No action had been taken for renewal of the lease (July 2012)	2.80
6	Site No. 4 in Jayanagar IV Block measuring 1104.09 sqm	10-9-1975	10-9-2005	Temple and Kalyana Mantapa	BDA had not raised any demand on the lessee.	27.60
7	15 sites in different locations of Bangalore	21-1-98	Not applicable	Implementation of IPP	BBMP had paid only ₹ 7.71 lakh against the lease amount of ₹ 79.01 lakh. Lease agreements had also not been executed.	71.30
8	Site No.3 of HMT HBCS, Vidyaranyapura measuring 4428 sqm	23-12-2008	Not applicable	Construction of higher primary school	The Education Department after paying the first installment of ₹ 16.86 lakh requested for allotment of site free of cost, which was turned down by BDA. The lessee was yet to pay the remaining amount and execute the lease agreement (July 2012)	76.13
9	Site 6 (c) of RMV II Stage, HIG Layout measuring 27.87 sqm (Hopcoms)	30-8-1986	Not applicable	For construction of milk booths and vegetable outlets	The allottees had failed to pay the amount due to BDA and had not executed the lease agreements (July 2012)	1.08
	3(p) of OMBR layout measuring 33.33 sqm (Hopcoms)	8-5-1995				
	6 (c) of RMV II Stage HIG Layout measuring 27.87 sqm (KMF)	24-9-2003				
	Matadahalli Further Extension measuring 81.93 sqm	19.5.1997				
10	Site in Gayathri Devi Park	11-1-1978	NA	For construction of temple	The allottee had failed to execute the lease agreement (July 2012).	26.66
11	Site 10 A of Hosahalli Layout measuring 891.03 sqm	20-6-1966	20-6-1996	For Vidyapeeta activities	Even though the Commissioner had approved the renewal of lease in 2006, the lease agreement was yet to be executed (July 2012) . Besides, as per the inspection report (November 2005), the allottee had utilised 6121.25 sq ft more than the area allotted. Action was yet to be taken against the lessee.	36.50
	Total					**489.92**

17.7 CA Sites yet to be allotted

As of March 2012, 298 CA sites measuring 9.16 lakh sqm were available with BDA for allotment. These included 140 CA sites in 14 layouts developed by BDA and 158 CA sites in 61 private layouts. The oldest unallotted CA site was in HAL-III Stage Layout formed during 1975. The division-wise availability of CA sites was as shown in **Table-28**:

Table-28: Details of availability of CA sites

Sl. No.	Name of the Division	No. of sites	Area in sqm
Division-wise – BDA Layouts			
1	North	2	2805
2	South	26	78673
3	East	19	48846
4	West	93	304934
	Total	**140**	**435258**
Division-wise – Private Layouts			
1	North	64	117236
2	South	20	41474
3	East	35	63492
4	West	39	258277
	Total	**158**	**480479**

(Source: Information furnished by BDA)

Of these 298 CA sites, BDA had notified the purpose of the CA sites in only 24 cases and the notification for allotment of CA sites had been last issued by BDA during January 2009. Sub-optimal utilisation of the area earmarked for CA, besides resulting in lack of the intended civic amenities in the layouts, deprived BDA of the opportunity of generating substantial financial resources by leasing the CA sites with a revenue potential of ₹ 192.30 crore[6].

In addition, BDA could not allot 29 CA sites measuring 1.45 lakh sqm in four divisions due to litigation. The details on periods of pendency of litigation for these CA sites were not on record.

17.8 Non-utilisation of CA sites after allotment

Scrutiny showed that 110 CA sites allotted by BDA between January 1986 and January 2011 including 80 CA sites allotted during 2007-12 had not been used for the authorized purposes as the requisite infrastructure had not been created by the allottees (July 2012). The period of six years prescribed for setting up the requisite infrastructure had expired in 30 cases.

[6] At Rs.2100 per sqm

17.9 Encroachment/unauthorised construction on CA Sites

As of March 2012, 61 CA sites had been encroached upon. While temples had been constructed on 14 CA sites, another 30 sites including 15 in private layouts had been converted as parks or playgrounds.

Further, as per the conditions prescribed in the relinquishment deed for CA sites, the private developer/owner was to fence the CA sites before handing over these to BDA. It was seen that encroachment of 20 out of 61 CA sites had taken place in private layouts. The revenue potential of 61 CA sites encroached upon worked out to ₹ 60.73 crore on the basis of the lease amount for 30 years. BDA had not taken any effective action to evict the encroachers and restore its properties.

Chapter-18
Parks and Asset Management

18.1 Parks

18.1.1 Parks not relinquished by private developers

Three housing societies had failed to relinquish the 11 parks measuring 14634.20 sqm in four layouts (March 2012). The action taken against these societies along with the details of the work orders issued were not furnished to Audit.

18.1.2 Encroachment of parks

Three out of four BDA divisions had reported (March 2012) encroachment of parks. The total area encroached upon was 321180.60 sqm. Out of 56 parks encroached upon, 26 (46 *per cent*) were in layouts developed by BDA. Temples had encroached upon 26 parks, BBMP had encroached upon four parks, buildings had been unauthorisedly constructed in 15 parks, one park had been encroached upon by a private resort and the remaining parks had been encroached upon by schools, Bangalore Water Supply and Sewerage Board and Karnataka Power Transmission Company Limited.

Large scale encroachment of parks indicated that the system of safeguarding the assets was ineffective in BDA and this was fraught with the risk of BDA losing valuable land due to encroachment.

18.1.3 Irregular allotment of park to private institutions

A CA site measuring 300'x300' had been allotted to a club in HAL-II Stage. Acting on a representation received from the club in July 2004, the Chairman, BDA allotted (July 2005) additional area of 1525.10 sqm in a park adjacent to the club subject to the condition that the area would be maintained as a park.

The Assistant Executive Engineer had issued (May 2007) a show cause notice to the club on observing construction activity inside the park. BDA had also noticed that the club had informed its members about the opening of a lounge bar in the park area.

After issuing (January 2008) a show cause notice, BDA cancelled (May 2008) the allotment as the explanation of the club was not acceptable. Acting on the representation (May 2008) of the club, the Secretary, Estate Officer and the Deputy Secretary of BDA inspected the park and reported (July 2008) that no bar was functioning in the park. Thereafter, BDA revoked its order of cancellation in November 2008. The allotment of park to the club was irregular for the following reasons:

- There is no provision in the BDA Act or the BDA (Allotment of Civic Amenity Sites Rules), 1989 for allotment of parks to individuals or private institutions. As per the CDP 1995 and the RMP 2015, the parks are to be developed by BDA and later handed over to BBMP for maintenance. Parks being open spaces meant for use by the general public, the allotment of the park to a private club for the exclusive use of its members was, therefore, irregular.
- The club had informed its members through a letter dated 17 June 2007 about the opening of the lounge bar in the park. Thus, the revoking of the cancellation order was not justified.

Further scrutiny showed that the remaining area of the park measuring 713 sqm had also been irregularly allotted (July 2005) to a music sabha. The allotment had been made again on the orders of the Chairman, BDA. Thus, the entire park had been used for unauthorised purposes due to irregular allotments made by the Chairman.

18.2 Asset management

18.2.1 Differences in the land handed over

While the Land Acquisition Section claimed that 2874-18 acres had so far (March 2012) been handed over to the Engineering Division for the formation of four[7] layouts, only 2491-15.46 acres had been handed over as per the land audit reports (March 2012) and information furnished by the Engineering Division. The difference in area worked out to 383-12 acres. The reasons for the huge shortfall in taking possession of land by the Engineering Division were not forthcoming and the same had not been reconciled.

18.2.2 Differences in land developed

As per the information furnished by the Land Acquisition Section, the land developed in three[8] BDA layouts was 1711- ½ acres as of March 2012, while as per the land audit reports and information furnished by the Engineering Divisions, it was 1571-29½ acres. The difference of 139-11 acres had not been reconciled.

18.2.3 Unauthorised occupation and encroachments

BDA had not maintained Asset Register incorporating the details of the assets available. This omission had been commented upon persistently in the Separate Audit Reports on Certification of the Annual Accounts of BDA issued year after year. Out of the 149 layouts formed, details of land audit conducted in respect of only 13 layouts had been furnished to Audit (March 2012). Out of the four Engineering Divisions, South Division had not furnished any land audit report. Scrutiny of the available information showed that land to the extent of 1039 -33 acres had not been utilised for formation of sites as the same had been either built-up or encroached upon in 13 layouts formed between 1969 and 2002. The value of the land encroached upon aggregated ₹ 24075 crore[9].

18.2.4 Differences in area available for civic amenity

The information on the area of CA sites furnished by the Town Planning Section on the basis of approved plans was at variance with that furnished by the four Engineering Divisions as shown in **Table-29**:

[7] Koramangala, Sir M Vishweswaraiah Layout, East of NGEF Layout and JP Nagar VIII Phase
[8] Sir M Vishweswaraiah Layout, East of NGEF Layout and JP Nagar IX Phase
[9] Based on the highest bid obtained from auction held during the last five years

Table-29: Variations in the area of the CA sites

(Area in sqm)

Sl. No.	Name of the division	Area as per Town Planning Section	Area as per the Engineering Division	Difference
1	South	421232.57	219874.41	201358.16
2	West	180117.2	300603	120485.80
3	North	232183	487765	255582.00
4	East	99833.43	95532.75	4300.68

(Source: Information furnished by BDA)

The difference had not been reconciled. Huge difference in the availability of area for civic amenities was indicative of ineffective asset management by BDA.

18.2.5 Ineffective management of CA sites

The Authority had not devised any mechanism for periodical verification of the existence, maintenance and utilisation of the CA sites for authorized purposes. No efforts were also made to include the CA sites as assets in the Annual Accounts inspite of Audit pointing out this lapse year after year while certifying the Annual Accounts of BDA. Demand-Collection-Balance statements had not been prepared by BDA for CA sites. There was, therefore, no system to keep track of the demand and collection of dues from the allottees of CA sites. No system was also in place to monitor the renewal of the leases of the CA sites.

Chapter-19
Other topics of interest

19.1 Unjustified waiver of ground rent

The Army Welfare Housing Organisation (AWHO), registered as a society under the Societies Registration Act XXI of 1860, had submitted (November 2008) an application to BDA seeking approval of development plan for residential apartments to be built over 29 acres 26 guntas in Kanamangala Village, Bidarahalli Hobli, Bangalore East Taluk. BDA approved (April 2010) the development plan after the AWHO paid the development charges of ₹ 57.60 lakh. The AWHO had also relinquished (April 2010) 7628.13 sqm of land for road widening along with 12,102.49 sqm of land for parks and open spaces in favour of BDA. When AWHO submitted (May 2010) the building plans for 1524 dwelling units, BDA assessed the fees payable by AWHO at ₹ 8.09 crore as shown in the **Table-30**:

Table-30 : Fees payable by AWHO

Sl. No.	Particulars	Fees (₹ in crore)
1	Processing Fee	1.52
2.	Ground rent	1.52
3.	Development Charges	0.38
4.	Workers Welfare Cess	2.66
5.	Security Deposits	1.90
6.	Plan Copies	0.06
7.	Slum clearance cess	0.05
	Total	**8.09**

(Source: Information furnished by BDA)

The Commissioner sanctioned the plan in May 2010. The AWHO represented (November 2010) to BDA that the CM, during the foundation stone laying ceremony of the project on 12 August 2010, had assured of waiving off some of the mandatory charges to be deposited with BDA. The Principal Secretary to the CM had sought (June 2010) a report from BDA regarding the provisions available in this regard. When a similar request was made by AWHO earlier (June 2010), BDA expressed (July 2010) its inability to consider the waiver of fees as there was no provision in the BDA Act or regulations for such waiver. It was further reported that such a waiver might create a precedent for other cases in future. However, the Secretary to the CM, while conveying the decision of the CM, directed (August 2010) BDA to waive off ₹ one crore as committed. BDA resolved (November 2010) not to consider the proposal for waiver as such action would create a precedent for several other organizations to make similar demands. A report on these lines was sent to Government seeking specific orders for waiver of ₹ one crore from the plan processing fees and Government order was awaited (August 2012).

The AWHO had represented (December 2010) again to the Government requesting for waiver of the ground rent of ₹ 1.52 crore on the ground that the plant and stores for construction were being kept on the land belonging to them and no public land was being used.

The approved plans were released under the orders (December 2010) of the Commissioner after accepting the part payment of ₹ 1.48 crore made by AWHO subject to the condition that the organization would pay the remaining amount of ₹ 6.61 crore. AWHO subsequently paid ₹ 4.09 crore during 2012. BDA resolved (February 2011) to waive off the ground rent of ₹ 1.52 crore as a special case.

The waiver of ₹ 1.52 crore was not justified for the following reasons:

As per Para 3.8 of the Building Bye-Laws-2003 of BBMP, the ground rent is charged for stocking of building materials on public land as prescribed by BDA without causing obstruction to movement of vehicles and pedestrians subject to the permission of BDA. Para 3.9 stipulates that high rise buildings are not exempted from payment of ground rent irrespective of the setbacks and coverage. The ground rent is to be exempted only in the cases of individual residential bungalows, schools, colleges and other institutions, religious and cultural institutions, heavy industries and Government buildings. BDA stated (September 2012) that a detailed report had been sent to Government for taking a decision on waiving of ground rent and that occupancy certificate would not be issued to the organisation till receipt of approval from the Government.

The waiver of ₹ one crore from the plan processing fee was yet to be approved by the Government.

PART-III

Conclusion and Recommendations

Chapter-20
Conclusion

The denotifications discussed in the Report conclusively established that the well settled law that land cannot be denotified after taking possession had been bypassed, resulting in subversion of the acquisition process. The authority which directed these subversions subjugated public interest to private interest. Acquisition of property for a public purpose is a very serious issue as it culminates in the compulsory surrender of the land by its owner for a modest compensation in obedience of the law. In this context, reversal of the acquisition proceedings in favour of a few individuals in disregard of the law was discriminatory and had evidently been done on extraneous considerations. Most of cases of denotifications examined by Audit were found to be illegal and the Government needs to put an end to such acts.

Though the KLRT Act prohibits the registering authority from registering land notified for public purpose in favour of any person after issue of the final notification, the registering authority acted against law and registered land in many cases in favour of several persons after issue of the notification for acquisition. This showed that the controls prescribed for preventing illegal sale of the notified land were not functional and the administration of the Act was ineffective.

The LAOs on their part subverted the acquisition process by either not making award for the notified land or leaving out portions of the notified land while making payment of compensation. The effect of failure to pass the award within two years from the date of declaration was that the acquisition proceedings stood lapsed, restoring the notified land to its owners and defeating the public purpose.

The Commissioners of BDA subverted the acquisition proceedings and reconveyed the notified land to the erstwhile land owners by unauthorisedly collecting betterment tax from them for the land notified for public purpose.

The allotment of various categories of sites by BDA was not consistent with the extant rules, as 'G' category sites had been allotted to ineligible persons, allotment of alternative sites had witnessed several irregularities, CA sites had been allotted directly without notifying these to public and several unauthorised concessions had been extended to the allottees of CA sites. The

management of CA sites and parks by BDA was ineffective as may CA sites had been used for unauthorised purposes, the leases of many CA sites had not been renewed, a large number of available CA sites had not been notified to the general public and many CA sites and parks had been encroached upon.

Chapter-21
Recommendations

- The acquisition proceedings in respect of land notified for public purpose should not be reversed after its possession has been taken. To guard against recurrence of illegal denotifications, the State Government should enforce the LA Act appropriately and impose exemplary punishment on those who act against the provisions in the LA Act.
- The administration of the KLRT Act needs to be effectively managed to guard against illegal sale of land notified for public purpose. Government should take appropriate action against such illegal registrations.
- Any attempt to subvert the acquisition process by unauthorisedly deleting the notified land from the purview of the award or unauthorisedly collecting betterment tax should be frustrated by imposing exemplary punishment on those who resort to such subversions.
- The allotment of different categories of sites should be done strictly in accordance with the extant rules. This should be ensured by introducing appropriate oversight mechanism at the Government level. The irregular allotments, wherever made, should be reversed.
- The asset management requires a thorough overhaul and appropriate controls should be put in place to safeguard the assets and ensure their proper utilisation.

BANGALORE
THE 23 NOV 2012

(D. J. BHADRA)
Principal Accountant General
(General & Social Sector Audit)

COUNTERSIGNED

NEW DELHI
THE 26 NOV 2012

(VINOD RAI)
Comptroller and Auditor General of India

PART-IV

Appendices

Appendix-1
(Reference: Paragraph 14.1, Page 86)
Details of land notified for public purpose and taken possession of

Name of the layout	Date of final notification	Extent of land as per final notification		Extent of land taken possession of		Extent of land yet to be taken possession of	
		Acre	Gunta	Acre	Gunta	Acre	Gunta
HAL II Stage	19.8.64	428	10	335	34	92	16
Further extension of Jayanagar IX Block	28.6.48	39	30	32	15	7	15
Akkithimmanahally	13.12.63	63	39	34	3	29	36
Koramanagala	28.9.65	986	34	824	20	162	14
Sarakki	27.5.70	741	21	624	6	117	15
Pillanna garden II Stage	5.11.71	24	2	7	12	16	30
HAL III Stage	15.7.71	457	12	341	3	116	09
Matadahalli	25.6.74	192	37	107	17	85	20
Further extension of Matadahalli	30.11.77	43	6	32	2	11	04
BTM Layout	7.2.98	1703	10	987	18	715	32
Chandra Layout	10.5.78	646	11	367	7	279	04
RMV II Stage	2.8.78	1331	4	629	24	701	20
Kamakshipalya	21.6.79	520	24	97	35	422	29
Mahalaxmi layout	30.8.79	786	10	569	2	217	08
HRBR Layout	14.5.80	1129	2	859	31	269	11
OMBR Layout	13.11.80	341	7	244	26	96	21
Dr B.R.Ambedkar Nagar	27.12.80	176	2	55	21	120	21
Further extension of RMV II Stage	28.12.82	108	18	69	28	38	30
Further extension of HRBR Layout	15.12.84	113	36	46	33	67	03
	13.2.89						
HBR I Stage	9.1.85	872	28	645	3	227	25
HBR II Stage	28.2.85	1179	39	335	15	844	24
Nagarabhavi I Stage	16.8.85	520	16	239	31	280	25
Nagarabhavi II Stage	5.8.86	604	23	564	39	39	24
East of NGEF	23.10.86	466	19	194	23	271	36
HSR Layout	28.11.86	1664	21	1120	32	543	29
Shinivagilu Tank Bed	23.11.88	293	12	5	24	287	28
BSK IV Stage	27.1.89	364	2	167	9	196	33
HBR III Stage	2.2.89	433	32	194	8	239	24
BTM VI Stage	28.7.90	562	34	359	39	202	35
BTM IV Stage	3.11.90	241	6	166	10	74	36
Venkateshwara Layout	30.11.90	137	8	42	19	94	29
Further extension of east of NGEF	10.12.90	65	10	3	3	62	07
JP Nagar IX Phase	22.7.91	1111	36	525	31	586	05
Gnanabharathi	19.1.94	692	8	508	19	183	29
	7.10.99					00	00
	6.10.97					00	00
BSK V Stage	9.5.94	1458	21	648	14	810	07
JP Nagar VIII Phase	19.10.94	958	15	396	12	562	03
Iron & Steel market	24.1.96	181	20	167	3	14	17
Sajjepalya	24.5.96	160	0	32	1	127	39
HSR II Stage	29.5.96	158	25	0	0	158	25
Anjanapura township	28.8.00	507	3	396	3	111	0
	4.8.01						
BSK VI Stage	21.8.01	1603	17	1587	36	15	21

Name of the layout	Date of final notification	Extent of land as per final notification		Extent of land taken possession of		Extent of land yet to be taken possession of	
		Acre	Gunta	Acre	Gunta	Acre	Gunta
	24.5.02						
Further extension of Anjanapura	4.3.02	487	0	410	0	77	0
Sir M.Vishweshwaraiah layout	31.10.02	1337	22	1239	15	98	07
Further extension of Sir.M.Vishweshwaraiah layout	9.9.03	510	0	436	7	73	33
Further extension of BSK VI Stage	9.9.03	750	0	571	7	178	33
Arkavathy	23.2.04	2750	0	1289	31	1460	09
Nadaprabhu Kempegowda layout	18.2.10	4043	27	0	0	4043	27
Pillanna garden III Stage	24.12.71	92	19	49	32	42	27
Further extension of OMBR	4.12.88	3	11	3	11	0	0
Further extension of Domlur	20.6.1960	18	10	18	10	0	0
West of Chord Road I Stage	9.9.71	147	25	147	25	0	0
Mini Forest	7.2.78	14	22	14	22	0	0
Further extension of Mahalakshmi Layout	15.7.77	26	25	26	25	0	0
Kumaraswamy layout	29.5.78	274	26	274	26	0	0
		34505	**897**	**19026**	**922**	**15454**	**975**
Total		**34527**	**17**	**19049**	**2**	**15478**	**15**

Appendix-2
(Reference: Paragraph 16.1, Page 96)
Details of alternative sites allotted in older layouts

Sl. No.	Site Originally allotted		Alternate site allotted		Year of allotment	Dimension in sqm	Average auction rate during the period of allotment (per sqm)	BDA's allotment rate (₹ per sqm)	Loss to BDA (₹ per sqm)	Total loss (₹ in lakh)
	Site No.	Layout Name	Site No.	Layout Name						
1	1 BBC-716	HRBR I Block	3 M -735	OMBR	2008	223.04	38234	2100	36134	80.59
2	29 KG - 38	HBR II stage	27	BSK III stage(Avhalli)	2009	55.76	53600	2100	51500	28.71
3	413	HBR I stage/ II Block	5M-647	OMBR	2008	223.04	38234	2100	36134	80.59
4	122 KG-34	HBR II stage	2 BM -305	OMBR	2007	223.04	38234	2100	36134	80.59
5	81 NG - 10	HBR II stage	2 AM -702 /C	OMBR	2007	55.76	38234	2100	36134	20.15
6	467	HBR I stage/IV Block	4 CM -462	OMBR	2008	111.52	38234	2100	36134	40.30
7	925	HBR I stage	4C-319	OMBR	2008	111.52	38234	2100	36134	40.30
8	2 M-217	HRBR III Block	1549/B	BTM II stage	2007	55.76	53600	2100	51500	28.72
9	6 BM-412	HBR II Block	5 M -691	OMBR	2008	371.75	38234	2100	36134	134.33
10	4EC 226	HRBR III Block	5M-618	OMBR	2010	55.76	38234	2100	36134	20.15
11	1 M-411	East NGEF	2 C0 427	OMBR	2007	223.04	38234	2100	36134	80.59
12	1175	SMVL 8th Block	310	AJP XI Block	2011	111.52	27200	2100	25100	27.99
13	1777	SMVL 8th Block	501	AJP XI Block	2009	111.52	27200	2100	25100	27.99
14	1778	SMVL 8th Block	681	AJP XI Block	2011	111.52	27200	2100	25100	27.99
15	1779	SMVL 8th Block	687	AJP XI Block	2010	111.52	27200	2100	25100	27.99
16	1780	SMVL 8th Block	715	AJP XI Block	2011	111.52	27200	2100	25100	27.99
17	1781	SMVL 8th Block	736	AJP XI Block	2003	111.52	27200	2100	25100	27.99
18	1782	SMVL 8th Block	737	AJP XI Block	2011	111.52	27200	2100	25100	27.99
19	1784	SMVL 8th Block	1010	AJP XI Block	2011	111.52	27200	2100	25100	27.99
20	1785	SMVL 8th Block	1011	AJP XI Block	2011	111.52	27200	2100	25100	27.99
21	164	NB II stage/VIII Block	4C-307	OMBR	2007	111.52	38234	2100	36134	40.30
22	3131	RPC Layout	1589	MRCR Layout	2007	55.76	55200	2100	53100	29.61
23	1660	RPC Layout	679	MRCR Layout	2010	111.52	55200	2100	53100	59.22
24	406	JP IX phase / III Block	114	HSR Sector VI	2007	223.04	66350	2100	64250	143.31
25	49	JP IX phase /IV A Block	301	BTM VI stage/ I Block	2011	111.52	27200	2100	25100	27.99
26	182	AJP VIII block	4 C -307	OMBR	2007	55.76	38234	2100	36134	20.15
27	3010	SMVL I Block	196	JPVIII phase /I Block	2010	55.76	27200	2100	25100	14.00

Sl. No.	Site Originally allotted		Alternate site allotted		Year of allotment	Dimension in sqm	Average auction rate during the period of allotment (per sqm)	BDA's allotment rate (₹ per sqm)	Loss to BDA (₹ per sqm)	Total loss (₹ in lakh)
	Site No.	Layout Name	Site No.	Layout Name						
28	2645	SMVL I Block	501	JPVIII phase/I Block	2010	55.76	27200	2100	25100	14.00
29	955	BTM IV stage/ II Block	51	S T Bed, Koramangala	2009	223.04	40100	2100	38000	84.75
30	727	BTM VI stage/I Block	1020	BTM IV stage/ II Block	2011	55.76	30500	2100	28400	15.84
31	489	BSK VI stage/X block	1073	HBR I stage/V block	2009	371.75	49322	2100	47222	175.55
32	103	HSR Sector I	2 BM-739	OMBR	2009	223.04	38234	2100	36134	80.59
33	1343	JP VIII phase/III block	204 / A	HSR III Sector	2011	111.52	72680	2100	70580	78.71
34	135	BTM VI stage/ I block	1073	HSR III Sector	2009	111.52	66350	2100	64250	71.65
									Total	1742.60

(Source: Information furnished by BDA)

Appendix-3
(Reference: Paragraph 16.1, Page 96)
Allotment of alternative sites in older layouts without the approval of the Allotment Committee

Sl. No.	Site Originally allotted		Alternate site allotted			Month of approval	Average auction rate (₹ per sqm)	BDA Allotment rate (₹ per sqm)	Loss to BDA per sqm (₹ per sqm)	Loss (₹ in lakh)
	Site No.	Layout Name	Site No.	Layout Name	Dimension					
1	1565	SMVL II Block	1004	HSR Sector VI	371.75	Feb-11	**73100**	2100	71000	263.94
2	1317	BTM IV stage/II block	1006	HSR Sector VI	371.75	Feb-10	75300	2100	73200	272.12
3	1315	BTM IV stage/I block	1002	HSR Sector VI	371.75	Feb-11	73100	2100	71000	263.94
4	22	NB II stage/ VIII block	213/A	HSR Sector I	111.52	Jun-11	71067	2100	68967	76.92
5	1567	SMVL II block	1002	HSR V	371.75	Feb-11	73100	2100	71000	263.94
6	1350	BTM IV stage/II block	1210/A	HSR II	223.04	Mar-08	46571	2100	44471	99.19
7	541	SMVL V block	1151	HSR III	371.75	Jul-09	56000	2100	53900	200.37
8	3841	JPN IX phase/II block	365/A	HSR III	111.52	Dec-11	72680	2100	70580	78.71
9	1346 H	BTM IV stage/II block	688	HSR VI	223.04	Dec-09	66350	2100	64250	143.30
10	637	GB(Vhalli)	1014	HSR VI	223.04	Mar-11	73100	2100	71000	158.35
11	187	BTM VI stage/I block	112	HSR I	223.04	Oct-08	55730	2100	53630	119.62
									Total	**1940.40**