

**TASK FORCE FOR RECOVERY  
OF PUBLIC LAND AND ITS  
PROTECTION**

***GREED AND CONNIVANCE***

CHAIRMAN'S REPORT

**BANGALORE  
JUNE 2011**

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## PREFACE

Encroachment of government and public lands belonging to statutory and local bodies is rampant in Karnataka. Especially in Bangalore Urban and Bangalore Rural districts, due to the high value of lands, large areas of government land like *gomal*, *gunduthope*, *tank-beds*, parks and civic amenities sites have been extensively encroached upon and converted into building sites and buildings have come up illegally. Therefore, the Karnataka Legislature had constituted a Joint Legislature Committee in July 2005 for Bangalore Urban District under the Chairmanship of Shri AT Ramaswamy to enquire into the matter and suggest solutions to prevent future encroachments. The JLC made detailed enquiries and submitted two Reports to the Legislature. After the dissolution of the Karnataka Legislative Assembly in 2007 no action was taken to implement the recommendations of the JLC.

In July 2009, after discussions in the Legislature on the same issue of encroachments, Government constituted the Task Force for Recovery and Protection of Public Lands in September 2009 with the jurisdiction of the entire State of Karnataka including all the government lands and lands belonging to the statutory and local bodies. The Task Force has no legal powers but has acted through the Heads of Departments, Deputy Commissioners and Chief Executive Officers of statutory and local bodies who have been empowered under various Acts for removal of encroachments.

In the past 20 months, the Task Force has been instrumental in identifying about 12 lakh acres as under encroachment and for the removal of about 47,000 acres. This is hardly 4% of the total area identified.

The Task Force has brought to the notice of Officers of all departments and statutory and local bodies the relevant judgements of the High Courts and the Supreme Court and have urged them to take action as per law and as directed by the Courts.

The identification and removal of encroachment of public lands is a mammoth task. It requires a commitment of Government and all its officers, especially by the Departments of Forest and Revenue, if any worthwhile result is to be obtained. A Task Force without any legal powers and no control over the Departments will not be able to do this work effectively as explained in this Report. The bringing into force the Karnataka Land Grabbing (Prohibition) Act which is pending for President's assent since four years will, to a large extent, be able to recover these lands through the Special Court proposed. However, this is pending for over four years now without any initiative being taken to bring it into force.

Essentially, the Task Force has strongly recommended the formation of a permanent Joint Legislature Committee on the lines of the Public Accounts Committee, SC/ST Welfare Committee, Assurances Committee, etc. with the

Karnataka Public Lands Corporation as its Secretariat which alone will be able to bring about the much needed effective supervision over the Departments and Statutory Bodies in protecting the public lands.

This Report could not have been prepared but for the immense contribution by Shri M.R.Hegde, Member-Law, Shri G.N.Nayak, Special Officer of KPLC, Shri R.S.Basappa, Special Deputy Commissioner, Enforcement Cell and General Manager of KPLC, Shri A.L.Pujar, Head of Legal Cell of the KPLC and all the staff. All the Deputy Commissioners in the State and Heads of Departments have cooperated with the Task Force and have given valuable information. My thanks are also due to the Member-Secretary of the Task Force during the tenure of the Task Force namely, Ms.V.Manjula IAS, Shri MA Sadiq IAS, Dr.S.M.Jaamdar IAS, Shri Jayaramaraje Urs IAS, and currently Shri A.K.Monnappa IAS.

BANGALORE  
30-6-2011

V.BALASUBRAMANIAN  
CHAIRMAN, TASK FORCE FOR RECOVERY  
AND PROTECTION OF GOVERNMENT LANDS

## CHAPTER 1

### INTRODUCTION

#### A. SOME BASIC INFORMATION.

1. The geographical area of Karnataka is 484 lakh acres of which the net area cultivated in a normal year is 265 lakh acres on average. The extent of Government land such as *gomal*, *gramthan*, *gundothope*, *tankbeds*, burial grounds and lands under forests, animal husbandry (*kaval*), education, agriculture, sericulture, Muzrai, Wakf Board, etc. as shown in Survey Department and other records is 109 lakh acres which is about 22.5% of total geographical area and 41% of net cultivated area. Such large area originally under government was because of the concept of grazing land at the rate of 30 acres per 100 heads of cattle, with 6 goat and sheep counting as equivalent of one head of cattle. According to the 2007 Livestock census, the cattle population in the State was 105 lakhs and the sheep population 95 lakhs and goats 61 lakhs. Hence, the requirement of grazing land for these animals is about 40 lakh acres. Besides, the then Mysore State Government reserved large extent of land for development of cattle (*kaval*) under the control of the Animal Husbandry Department. There are also about 38,000 lakes and tanks, the original tank beds (*kere angala*) being under the control of the Revenue Department. The Mysore State also had large areas of *gunduthopes* (fruit orchards and village wooded areas) as Commons under government control. At present the area under forests (Reserve Forests, District and other notified forests (*kiru aranya*, etc.) is 78 lakh acres or about 16% of the geographical area. [Source: Karnataka at a Glance 2008-2009 published by the Directorate of Economics and Statistics, Bangalore.]
2. Of the land nominally under government, the area under encroachment as reported by officers of the Revenue Department, Forest Department and other Departments and statutory bodies is 11.07 lakh acres or about 10% of the total government land. This is obviously an under-reporting because, for instance, the Belgaum Division consisting of seven districts is reporting an encroachment of only 49,800 acres and the Gulbarga Division reports 125,000 acres under Revenue Department's jurisdiction while the Mysore Division has 447,352 acres and Bangalore Division 301,708 acres. As the Belgaum and Gulbarga divisions are larger in area and cattle-heads, the community lands under the Revenue Department should be proportionately higher and so also the encroachment. By a conservative projection the total encroachment of all government lands would be in the range of 12 to 15 lakhs of acres. This will amount to about 12 to 15% of the total extent of government lands.
3. For Bangalore Urban District consisting of the five taluks of Bangalore North, Bangalore North Additional, Bangalore East, Bangalore South and Anekal taluks, some detailed figures are available according to which the total government land including forests is 130,000 acres the classification being:

Gomal and Waste ( <i>kharab and beelu</i> )	-	88,355	acres	
Tank bed ( <i>kere angala</i> )	-	26,468	"	
Roads, <i>Raja kaluves</i> , waste weirs	-	3,246	"	
Graveyards ( <i>Smashana</i> )	-	599	"	
Forests	-	8,486	"	
Others, including statutory & local bodies	-	3,000	"	(approx.)
	<b><u>TOTAL</u></b>	<b><u>130,154</u></b>	"	

Of this area, the encroachments reported to the Joint Legislature Committee in 2006 was 27,336 acres or 21% valued conservatively even at Rs.1.5 crore per acre on average, costing Rs.40,000 crores.

- The extent of government lands in the State under major departments and the encroachment district-wise is shown in **Annexure 1**.

## **B. JOINT LEGISLATURE COMMITTEE**

- From being a pensioners' paradise, Bangalore has become an urban sprawl and infrastructure nightmare since the 1990s. The *Newsweek* magazine called it a Boom City in the early 1990s. It has now a population of 8.5 million in an expanded area of 776 square kilometres compared to its original 125 km<sup>2</sup> three decades ago and 250 km<sup>2</sup> till 2006. Bangalore has been growing at a compound rate of 4.9% annually for the past two decades and there is no sign of this growth rate coming down. In 1941 it was the 16<sup>th</sup> largest city in India with a population of 4.11 lakhs. In 2011 it is the fifth largest city with a population of 85 lakhs. Due to its still salubrious climate and comparatively better law and order, most affluent and middle class Indians, from all over India have come to Bangalore, built residential houses and commercial properties making it a cosmopolitan city. As a result, the property value in Bangalore is next only to Mumbai and Delhi.
- This scramble for land has resulted, especially during the past twenty years, encroachments on government and public land and land grabbing by powerful builders and land Mafia with active involvement of persons in power – in politics, administration and real estate. Alarmed at the vanishing public spaces and land-grabbing, there were heated discussions in the Karnataka Legislature in March 2006 and the Hon'ble Speaker of the House, constituted a Joint Committee of the Legislature (JLC) in June 2006 with 17 members belonging to all parties to go into the details of the problem such as the magnitude of land grabbing in Bangalore Urban District, the nature and extent of encroachments, names of encroachers and land-grabbers and solutions to resume the land and measures to prevent future encroachments. Shri AT Ramaswamy, MLA, was appointed as the JLC's Chairman and V.Balasubramanian IAS, Retired Additional Chief Secretary as the JLC's Adviser.

7. The Committee during its tenure of 18 months received 1,101 complaints, held 40 meetings, visited 90 spots of encroachments on 20 days, conducted over 200 Internal Review Meetings and submitted two Reports, on 1 February 2007 and 26 July 2007, to the Legislature. All the complaints were registered, acknowledged and enquired into. Twenty Eight Departments and Statutory Bodies were summoned before the JLC who explained the cases referred to them. Also, the Adviser to the Committee, the Secretary for Parliamentary Affairs and Legislation and the Principal Secretary to the Revenue Department visited Hyderabad to study the functioning of the Special Court established under the Andhra Pradesh Land Grabbing (Prohibition) Act, the manner of preventing encroachments by the Hyderabad Urban Development Authority (HUDA) and the Municipal Corporation of Hyderabad (MCH). As a result, the Karnataka Land Grabbing (Prohibition) Bill 2007 was prepared and was passed by the Karnataka Legislature unanimously. Besides, the Revenue Department also piloted a legislation incorporating an addendum to the Karnataka Land Revenue Act to make land grabbing and its abettors liable for imprisonment and fine vide Section 192 A to the Act.
8. Under the JLC's directions, the Deputy Commissioner of Bangalore Urban District consisting of five taluks and the other Heads of Departments and Statutory Bodies such as the BDA, BBMP, KHB, etc. identified 27,336 acres encroached by 33,812 persons valued at about Rs.40,000 crores (which was the size of Karnataka's annual Budget) at a guidance value of Rs.1.5 crores per acre which is itself an under-valuation.
9. In its second Report, the JLC concluded as follows:

***“ PROTECTION TO THE GUILTY DUE TO THE INACTIVE ADMINISTRATION:***

*The instances narrated in this Report clearly show that the land-grabbers carry on their illegal activities with the help of fake documents concocted by the officials. These illegal activities of evil design are well-planned and executed by the land-grabbers resulting in huge loss to the public. It is a shame that Government have failed to use its powers to prosecute these criminals. The Committee has not come across a single instance in which the Government have proceeded against the land-grabbers. All that has been done is taking action against some poor and small encroachers. Because of the inaction of the Government to let go the crooked land-grabbers, real estate agents and their daring abettors, ordinary citizens have come to lose faith in government and administration. It is therefore the considered opinion of this Committee that it is absolutely essential for Government to take stringent action against land-grabbers and their abettors as narrated above.*

*In the Sovereign Democratic Republic created by the Constitution in independent India, lofty principles such as Rule of Law, Equality before Law, Due Process,*

*Majesty of Law, Dignity of Courts, Inalienable Fundamental Rights, Directive Principles, etc. are enshrined. But, if it appears to the common man, who experiences harassment, torment and injustice in his daily life at the hands of the privileged few belonging to the Establishment, that while all persons are said to be equal before law, but in reality some are much more equal than others to whom the law will apply only partially if at all, then, the weighty principles of law and justice of which we are justly proud of will abort all of their pregnant meaning and will become mere words scratched on flowing water.*

*Therefore wherever the guilt of the encroachers and their abettors are proved, Government should take stringent action. “ [Page 69]*

### **C. CONSTITUTION OF TASK FORCE FOR REMOVAL OF ENCROACHMENT AND PROTECTION OF GOVERNMENT LANDS.**

10. After the dissolution of the Legislative Assembly and the termination of the JLC, during the President's Rule in 2008 there was no progress in the recovery of public lands from encroachment nor any review of the action taken by the different departments and organizations of the Government to implement the recommendations of the JLC. There was also no Government Order issued directing the concerned departments to implement the recommendations of the JLC.
11. After the elections in 2008 when the new Government was formed also there was no progress nor any review of public land encroachment matters. However, a government company namely, the Karnataka Public Lands Corporation (KPLC) was incorporated with Rs.5 crores of paid-up share capital in December 2008. Its main objective is to protect the government lands recovered from encroachment. But the legal power to remove the encroachments vests with the various government functionaries such as in the Revenue, Forests, Animal Husbandry, etc. departments and CEOs of statutory bodies. In Bangalore Urban District an Enforcement Cell was created in the year 2006 which, along with a Special Police Task Force assists the KPLC in so far as Bangalore Urban district is concerned where encroachments are rampant due to the high land value.
12. Hence, during July 2009 there was again discussion in the Karnataka Legislature regarding the land encroachment matters and the Hon'ble Chief Minister assured the Houses on 27 and 28 July 2009 that to implement the recommendations of the JLC not only in the Bangalore Urban District but in the entire Karnataka State, a TASK FORCE will be constituted under the Chairmanship V.Balasubramanian IAS (Retired). Accordingly the Task Force was constituted vide G.O.No.RD 556 LGB 2009 dated 19-9-2009 as shown below:

1. V.Balasubramanian, IAS Retd.	-	Chairman
2. Additional Chief Secretary to Govt.	-	Member
3. Principal Secretary, Revenue Dept	-	do
4. Principal Secretary, Urban Dev. Dept	-	do
5. Principal Secretary, Finance Dept	-	do
6. Principal Secretary, Forest Dept	-	do
7. Principal Secretary, E-Governance	-	do
8. Commissioner, BBMP	-	do
9. Commissioner, BDA	-	do
10. Commissioner, BMRDA	-	do
11. Commissioner, Survey and Settlement	-	do
12. Inspector General of Stamps & Registration	-	do
13. Addl.DGP, Law and Order	-	do
14. Regional Commissioner, Bangalore.	-	do
15. CEO, Lake Development Authority	-	do
16. Shri MR Hegde, Retired Law Secretary	-	do
17. Managing Director, K.Public Lands Corpn.	-	Member-Secretary

Further, Government included the Regional Commissioners of Mysore, Belgaum and Gulbarga regions as members vide G.O.No.RD 500/LGB/2010 dated 3-8-2010.

- 13.** The Task Force is not a Committee to make recommendations. As per terms of the Government Order, it is the duty of the Task Force to give directions to the various departments and statutory bodies to take suitable action to remove encroachments, to coordinate with government departments all such action and advise government. Also, the jurisdiction of the Task Force is all the districts and statutory bodies and Boards in the state. The G.O. containing all the duties and responsibilities is shown in RD 556/LGB/2009 dated 19-9-2009 in **Annexure 2**.

## CHAPTER 2

### METHODOLOGY OF WORK BY THE TASK FORCE

#### A. PROCEDURE OF ATTENDING TO COMPLAINTS.

1. The Task Force is not clothed with any direct legal powers nor is it constituted under any legislation. Hence, it has to discharge its responsibilities through the various government departments and officers such as Regional Commissioners, Deputy Commissioners etc. of the Revenue Department and Heads of Departments and Chief Executives of Statutory Bodies and Boards. The only full-time members of the Task Force are the Chairman and Member-Legal Adviser besides the Managing Director of Karnataka Public Lands Corporation and Secretary of Revenue Department who is the Member-Secretary of the Task Force.
2. In October 2009, the Task Force issued public notices in the newspapers having wide circulation in the state inviting complaints from the public regarding encroachments either in writing, telephone calls, emails or personal appearances. It was also made clear that the complainants need not necessarily give their names and anonymous complaints would also be enquired into. As a result, by the end of May 2011, the complaints received and registered in the Complaints Register stood at 1,508. All these complaints have been computerized and wherever the complainant has given the address, acknowledgments have been sent. Simultaneously, the complaints were sent to the concerned Deputy Commissioners, Tahsildars, Departmental heads in the districts and the CEOs of Municipal bodies and other statutory bodies. On receipt of replies from them, they were examined and if encroachments had been removed, a copy of the reply was sent to the complainant for his information and satisfaction. In a few cases the complainants have informed that the encroachments have continued inspite of the reply to the contrary in which case, the file is not closed but again sent to the officer concerned to attend to the complaint till closure. District-wise information of complaints received, replies received, replies accepted and replies pending are given in **Annexure 3.**

#### B. REVIEW MEETINGS AND SPOT INSPECTIONS

3. Task Force meetings were held on the following dates during which the work done by the Task Force and matters pending with different offices including at Government level were discussed. These meetings were attended by the Members of the Task Force in person or by their representatives. A statement showing the attendance by members in each meeting is given in **Annexure 4.**

## DATES OF TASK FORCE MEETINGS

1. 29- 9-2009
2. 17-11-2009
3. 8- 1-2010
4. 26- 3-2010
5. 1- 7-2010
6. 29- 9-2010
7. 23-12-2010
8. 25- 4-2011

4. In addition, detailed review meetings were held at the levels of Regional Commissioners, Deputy Commissioners, Tahsildars, Principal Chief Conservator of Forests, Muzrai Commissioner, Principal Secretaries of Education, Animal Husbandry, Agriculture, Horticulture, Health and Family Welfare, Stamps and Registration and Survey and Settlement Departments, Wakf Board, Housing Board, Slum Clearance Board, Commissioners of BDA and BBMP and in taluk offices in Bangalore Urban and Rural Districts and in Narasimharajapura in Chikmagalur district were held. In these meetings a review of encroachments pertaining to each of them and their response to complaints sent to them were done in detail and directions were given. The dates on which these meetings were held and venues are given in **Annexure 5**. Besides, spot inspections were conducted on serious and specific complaints received. Details of these spot inspections are given in **Annexure 6**.

## CHAPTER 3

### EXAMPLES OF SOME GLARING CASES OF ENCROACHMENT

1. There are many legal provisions in various enactments for the prosecution of encroachers of public lands including the Indian Penal Code and the Code of Criminal Procedure. Some of the other legislation after 1950 dealing with encroachments in Karnataka are:

- i. Land Revenue Act,
- ii. Land Reforms Act,
- iii. Forest Act, 1935,
- iv. Forest Conservation Act, 1980,
- v. Public Premises Act,
- vi. "Goonda" Act (Prevention of Prevention of Dangerous Activities of Bootleggers, Smugglers, Drug Offenders, Gamblers, Goondas, Immoral Traffic Offenders, Slum Grabbers Act, 1985),
- vii. Indian Penal Code,
- viii. Code of Criminal Procedure,
- ix. Wakf Board Act,
- x. Municipalities Act,
- xi. Municipal Corporations Act,
- xii. Panchayat Raj Act,
- xiii. Town and Country Planning Act,
- xiv. Bangalore Development Authority Act,
- xv. Urban Development Authorities Act,

A transcript of the relevant sections in the above Acts providing for prosecution and punishment of encroachers and abettors are given in **Annexure 7** for reference. The latest in the series of legal provisions is the amendment to the Karnataka Land Revenue Act by providing an addendum as Section 192 A in 2007 which provides for prosecution and punishment of both encroachers and abettors of all Government lands for imprisonment upto 3 years *and* fine. However, inspite of these various legal provisions, blatant encroachments of public land have become the rule than the exception due to the refusal to act or the incompetence of the various "Competent Authorities" which is due to ignorance of their legal powers, lethargy, fear of taking action, interference by powerful persons and, last but not the least, collusion with encroachers. Hence, the JLC had remarked in its report that these powers **vested** in the officers under the law are actually **wasted** on them. The Task Force has come across many such instances of glaring encroachments by powerful persons and builders mostly with the collusion and connivance of officers. Some of them are discussed below.

## A. LAUGHING WATERS APARTMENTS AND OWNERS ASSOCIATION

2. This is a case in which one can truly say that the Government have been made a *Laughing Stock* by builders and officers including, obviously, the then Secretary of the Revenue Department itself. The facts of this land grab of 46 acres in the prestigious industrial area of Information Technology Park in the Whitefield area are as follows: In the year 1966 records were created to show that 20 acres of Government *gomala* land is granted to one O.G.Rajulu for establishing a *chikori* plant in S.Nos.105 and 106 of Ramagondanahally village in what is now the Bangalore East taluk. Next year, in 1967, an *additional* 20 acres was given to the same person for the same purpose of *Chikori* plant. The first problem with this "Grant" is that, there is no file on the subject available either in the Government or in the Deputy Commissioner's office or in the offices of the Regional Commissioner, Assistant Commissioner or Tahsildar. The normal procedure is that even if Government receives an application directly for land grant, it is sent to the Deputy Commissioner and down the hierarchy to the Tahsildar and Revenue Inspector for verification of land availability, survey and sketch map, whether there are other applications from the landless scheduled castes and others, etc. After the grant, in the *Darkast* (Grant) Register maintained for over 75 years as a permanent record in the Taluk office, entries are made regarding the grant. In this case none of these papers, files or *Darkast* Register entries are available either in the Revenue Secretariat Department or in the field offices.

3. According to a decision of the Karnataka High Court in another case, when original records are not available with the Government, it is for the claimant to produce his proof in support of his claim. In their order dated 20-8-2010 in WP 3069/2008 (KLR) dated 20-8-2010 the Hon'ble HC observed as follows:

*"Para 16..... The Petitioners (claimants for the encroached Government land) should have been diligent in justifying the.....right to the properties when the revenue authorities had pointed out that there were no records in their custody...."*

In other words, where there are no files available with any of the functionaries of the Government (obviously because there was no grant), it is for the claimants to produce original grant records in *their* possession to prove that the land is legally theirs.

4. The second problem with this grant story is that, in 1989, i.e. after 23 years of the alleged grant (the chicory plant should have been established within 2 years from the alleged grant in 1966 and 1967), the claimant OG Rajulu goes before the then Revenue Secretary and is supposed to have pleaded that he is in financial difficulties and the entire land should be converted to Residential Purpose. The then Revenue Secretary, on the last day of his holding the post of Revenue Secretary namely 30-6-1989, allegedly gives permission for conversion to Residential Purpose for 30 acres of land. Again, no such file is available in the Revenue Secretariat. The problem with this alleged

Conversion Order is that the village and the lands have been notified in 1984 itself by the Government in the Urban Development Department as Planning Area under the Town and Country Planning Act vide Notification No.HUD 496/TTP/83 dated 16-3-1984 and according to the land-use under the Outline Development Plan the land comes under Agriculture Zone. Therefore, for any change in land use, the Revenue Department should have referred the matter to the Bangalore Development Authority even assuming there is such an order given by the Government. *[Coincidentally, the Secretary, Revenue Department handed over charge on 30-6-1989, which is also the date of the alleged order].*

5. A third problem with this theft of Government land is that a tri-partite agreement was entered into among OG Rajulu's son and successor Srivastav, Unique Constructions and the P.S.Developers (represented by Irfan Razaak and Rizwan who now happen to be connected with Prestige Group) and the Laughing Waters Apartments and Owners Association for developing the land. In 1991 they approached the Administrator of the Ramagondanahally Village Panchayat for a layout approval which is granted by the Village Panchayat though it has no powers for the same and ought to have directed the applicants to the BDA as the area came under the BDA in 1984.
6. A fourth problem in this episode is that there is a 'B Kharab' of four acres in this land consisting of a *Halla, kaludari*, cart-track, etc. which cannot be granted to anybody as it is reserved for public purpose. However, the Laughing Waters Association have built on this kharab land also, which irrespective of the grant or otherwise, belongs to the Government.
7. The Task Force visited the land on 21-7-2010. After getting the records checked and the land measured and also meeting the Laughing Waters Association, it has asked the Tahsildar, Bangalore East Taluk to issue notices under the relevant sections of the K. Land Revenue Act to show cause why the encroachment should not be removed. This is under process.
8. However, it is also seen that over a hundred villas have come upon this layout of about 450 sites. Some of them are said to belong to the rich and the famous such as Shri Venkatesh Prasad and Shri Rahul Dravid, Shri Azim Premji who owns 2 acres and many other rich persons mainly from the Information Technology industry. Each villa costs upto Rs.6 crores. The 40 acres was sold (allegedly) by Government only for Rs.400 per acre (that is, Rs.16,000 for 40 acres) and the current value of the land is Rs.2,800 per *square foot* at which rate the value of the 40 acres is worth a whopping Rs.488 crores.
9. **THIS IS A TYPICAL EXAMPLE OF HOW BUILDERS HAVE MADE FORTUNES WITH THE COLLUSION OF REVENUE, PANCHAYAT AND BDA OFFICIALS. THIS IS ALSO HOW A GREEDY OG RAJULU, A CUNNING BUILDER AND AN ABETTING SECRETARY TO GOVERNMENT HAVE MADE THE GOVERNMENT A LAUGHING STOCK WHILE THE PERPETRATORS AND THEIR ABETTORS LAUGH ALL THE WAY TO THE BANK !!**

**B. JOY(LESS) ICE CREAM – CHEATING GOVERNMENT  
OF 3 ACRES 23 GUNTAS IN S.No.42 OF PATTANDUR  
AGRAHARA VILLAGE, BANGALORE EAST TALUK.**

10. At the request of the Joy Ice Cream Company (JICC), the Karnataka Industrial Area Development Board (KIADB) requested the Government to transfer 3 acres 23 guntas of government land in Survey No.42 of Pattandur Agrahara village in Bangalore East Taluk to the KIADB for transfer to JIC. Accordingly, the Special Deputy Commissioner, Bangalore Urban district transferred the land to the KIADB for Rs.4.34 crores at 50% of market value on 31-3-2006, subject to the condition that the JIC should use the land only for the purpose of industry which it had applied for and it should not be alienated for any reason in which case the land will be resumed by the Government. The KIADB transferred the land by a Sale Deed to JIC on 21-7-2006 *without mentioning any of the conditions* subject to which the Special Deputy Commissioner had transferred the land to the KIADB.
11. Meanwhile, the JICC applied to the State Single Window Clearance Agency on 26-5-2006 for approval of a *SOFTWARE TECHNOLOGY PARK*, in 8 acres 7 guntas of land including the 3 acres 23 guntas of land transferred by the Special Deputy Commissioner to the KIADB. The Single Window Clearance Agency approved the application of JICC on 11-8-2006 for establishing a *SOFTWARE TECHNOLOGY PARK*. However, the JICC and another Wildflower Estate & Resorts P.Ltd. (which was not a party covered by the Special Deputy Commissioner's order of transfer of land to KIADB) sold the land to Prestige Estate Projects (PEP) on 30-8-2006 for Rs.6.97 crores.
12. Also, on 5-6-2008, it is seen that the KIADB without mentioning any reference to any application from JICC, informs it that as KIADB has already issued a Sale Deed, the JICC may approach the BDA for change of land use for residential purposes. In the first place, the KIADB not incorporating the condition of transfer for industry-only purpose in the Sale Deed for 3 A 23 G of government land at 50% of market value, was itself more than a mistake. Because the KIADB makes it an abetment by not pointing out to the JICC on 5-6-2008 that it cannot apply for change of land use to residential purpose from BDA because the land was sold for the purpose of establishing a Software Technology Park by JICC and not for selling to third parties for residential purpose. Such issue of NOC, in the light of the transaction, was clearly not an error but unmistakably a case of abetment to illegal sale defrauding the government.
13. The chronology of events in this fraud is as follows:
- |                                     |   |           |
|-------------------------------------|---|-----------|
| Transfer of land by Spl.DC to KIADB | - | 31-3-2006 |
| Transfer of land by KIADB to JICC   | - | 21-7-2006 |
| Approval of Single Window Clearance | - | 11-8-2006 |

Sale of land by JICC & a new party ]  
to Prestige Properties ] - 30-8-2006

14. Following this, the KIADB made no attempt to see whether the 3 A 23 G of land transferred to JIC and the approval given by the Single Window Clearance Agency to establish a Software Technology Park was complied with and whether the Software Technology Park had come up. In 2010, on the representation of Karnataka Dalitha Sangarsha Samithi that the JICC has sold the land to Prestige Properties in violation of the Government grant conditions, the Special DC wrote a letter to the KIADB on 18-8-2010 asking for a report within one week as to why the land should not be taken back to Government. There was no reply to this letter from the KIADB.
15. Referring to a news item on the matter in the *Prajawani* newspaper on 31-12-2010, the Chief Engineer of Lok Ayukta wrote a letter to the Deputy Commissioner, Bangalore on 12-1-2011 asking for a detailed report in this regard. It is only then, after 5 years of the fraud, that the KIADB stirred and requested the Advocate General for a legal opinion as to whether the land granted by government can be resumed. The AG vide his letter dated 8-3-2011 gave his considered opinion that as there were clear conditions mentioned in the government order transferring the land to the KIADB, the land can be resumed by the Special Deputy Commissioner after issuing due notice to the parties.
16. However, following this, the Special DC, Bangalore has not initiated any proceedings to resume the land. But, in a meeting conducted by the Principal Secretary, Revenue Department on 4-5-2011 when the Task Force for Protection of Government lands brought this subject to the notice of the Principal Secretary, RD, the learned Special DC who was also present observed that "the legal opinion given by the Advocate General is *"mischievous"*. [Emphasis added]. It is remarkable that while the opinion of Advocate General is binding on Government and even the Cabinet can only again seek for clarification from the AG, the Special Deputy Commissioner of Bangalore Urban District can dismiss the legal opinion of the Advocate General as *"mischievous"*. (In the same meeting conducted by the Principal Secretary, Revenue Department on 4-5-2011, the said Special Deputy Commissioner, Bangalore Urban District gave his legal-luminous opinions that **Tank Bed Lands Can be Granted, the Constitution of India does not prohibit Land Grabbing, Government Circulars will not be binding on Government Officers, etc.!!**)
17. The above narration would show that the KIADB, the Single Window Agency, the BDA and the officers of the Revenue Department have all conspired together and have ensured that the illegal sale of government land by the allottee and the builder has gone unchallenged. This is also an example of how various agencies of Government are helping Real Estate Developers of poaching Government land in the name of INDUSTRIAL DEVELOPMENT.

**C. THE SAGA OF SHANTHARAJU AND THE (NOT-SO-IMMACULATE) CHURCH OF IMMACULATE CONCEPTION— TYING UP GOVERNMENT LAND IN ENDLESS LITIGATIONS AND RENDERING THE SYSTEM A FARCE.**

18. S.No.154/11 of Bilekanahalli (Doresanipalya), Begur Hobli, Bangalore South taluk measured 11 acres 3 guntas of which 7 acres 32 guntas was 'B-Kharab' land namely a government tank and tank bed land. The Government vide G.O.No.RD 104 LGB 90 dated 20-8-1991 ganted 5 acres of this land to one Imperial Cancer Institute and the balance 2 acres 32 guntas vide G.O.No.RD 163 LGB 91 dated 20-10-1991 to the Apparel Export Promotion Council of the Government of India. The Church of Immaculate Conception, Bangalore challenged these grant orders in the High Court vide WP 25393/91. The Hon'ble High Court after hearing the case *dismissed* the writ petition on merits on 6-4-1993 and upheld the orders of the government granting the government land. Against this, the Church of Immaculate Conception filed a Writ Appeal No.884/1993 which also was heard and was *dismissed* by the Hon'ble High Court on 21-2-1994. The Church then instituted an original suit No.OS 2964/1994 before the City Civil Court. The Suit was also *dismissed* on merits by the City Civil Court by its order dated 18-7-2009. Against this the Church filed a RFA No.882/2009 in the High Court which is pending.

19. While the original suit No.OS 2964/1994 was still pending before the City Civil Court, the Church knowingly and unscrupulously executed a Sale Deed on 5-9-2008 in favour of one Shantharaju selling 1 acre 30 guntas of land from S.No.154/11 for Rs.1 crore. Shantharaju then constructed a commercial complex on this land. The Tahsildar, Bangalore South taluk issued a notice for removal for the unauthorized construction on the government land on 25-8-2009. Not receiving any response from the encroacher Shantharaju, the Tahsildar passed an order for removal of the structure against which he filed an appeal before the Assistant Commissioner who also passed an order No.RA (S) 248/2010/11 on 5-2-2011. Against this order the encroacher Shantharaju filed an appeal before the Karnataka Appellate Tribunal vide Revision Petition No.11/2011.

20. Suppressing the previous orders of the High Court and the City Civil Court, the Church also filed an application before the Karnataka Appellate Tribunal in Misc.Civil 17374/2009 in RFA 882/2009 and by misrepresenting and suppressing the facts, obtained an interim order from the Tribunal against removal of the encroachments. After hearing the case, the KAT cancelled the interim order on 2-4-2010. Meanwhile, Shantharaju approached the High Court in WP 14001/2010 (KLR) and suppressing the previous orders of the High Court, managed to get a stay order against the order of the Assistant Commissioner to remove the encroachment. After hearing the case, the Hon'ble High Court dismissed the Writ Appeal directing Shantharaju to approach the Assistant Commissioner while continuing the stay for 30 days from 29-10-2010. He filed an appeal before the

Assistant Commissioner in RA (S)248/2010-11. During its pendency, Shantharaju again filed a Writ Petition No.2212/2011 (KLR) before the High Court seeking interim stay. The Hon'ble High Court disposed off the WP directing the Assistant Commissioner to pass orders within three months and in the meanwhile not to dispossess him of the property.

21. The Assistant Commissioner accordingly issued notice for hearing and passed an order on 5-2-2011 for removal of encroachment. While the case was still pending before the Assistant Commissioner, Shantharaju again filed a Writ Petition No.WP 10241/2011 (KLR) before the High Court seeking directions from the High Court to the KAT to consider his application for interim stay. The High Court passed an order 22-3-2011 directing the KAT to consider the petitioner's plea within four weeks. Accordingly the KAT passed an order No.RP 11/2011 on 21-4-2011 concluding as follows:

*"So, the cumulative effect of all he Writ Petitions goes to show that he was well aware of the fact that the proceedings were going on because he has participated in the proceedings before R2 (Tahsildar, Bangalore South Taluk). In view of these facts it is clear that the Revision Petitioner has not come to the Tribunal with clean hands but only on the basis of technicalities the Revision Petitioner wanted to protract the litigation though he was well aware of the facts that he has no footing to stand. Therefore we are of the considered view that no grounds are made out to grant the interim order of stay."*

22. Now, if anyone is relieved that this is the end of the saga of Shantharaju and the (not-so-) Immaculate Church, he will be disappointed because against this order of the KAT, Shantharaju had again approached the Vacation Bench of the Hon'ble High Court and has obtained another order directing the KAT to dispose of the case within three months during which period he will not be dispossessed of the property.

23. So, what are the facts that emerge from the above narrative ? These are:

- i. Govt grants 7A 32 G of land to two parties in Govt Kharab land;
- ii. The Church goes to the High Court claiming the land, *loses the case*;
- iii. The Church files an Appeal *which also it loses*;
- iv. The Church files a Civil Suit *which also it loses*;
- v. The Church files an Appeal against the order of the Civil Court;
- vi. *During its pendency, the Church surreptitiously sells 1A 30G of land to Shantharaju for Rs.1 crore*;
- vii. When the Tahsildar and the Assistant Commissioner pass orders for removal of buildings which Shantharaju has built when the appeal against the original adverse decision for title is pending before the High Court, Shantharaju and the Church in tandem orchestrate filing petitions repeatedly before both the KAT and the High Court suppressing the fact of the pendency of the title case in the High Court and the Civil Court order and have managed to obtain interim stay repeatedly against removal of illegal constructions on

misrepresentations and legal technicalities (though false) such as notice not being served.

This is a typical example of how the land grabbers – including the Church of Immaculate Conception, no less – are using the loopholes in the legal system and are thwarting the attempts of the government to remove encroachments, rendering the system a farce.

**D. GRABBING 5 ACRES OF LAND ON BANNERGHATTA ROAD (OPPOSITE THE INDIAN INSTITUTE OF MANAGEMENT), VALUED AT Rs.44 CRORES FOR A “CANCER HOSPITAL” WHICH WAS NEVER BUILT.**

24. In December 1989, the Tahsildar, Bangalore South Taluk sent a proposal to the Assistant Commissioner that S.No.154/11 coming within Bilekanahalli village in Bangalore South Taluk (opposite the present Indian Institute of Management on Bannerghatta Road) is a tank bed land and 7 acres 32 gunas of land was available as 'Kharab' which can be granted for the purpose of constructing a Rest House for Revenue Officials and also providing house sites for them. While this proposal was being examined, Government also examined requests for granting 5 acres of land to one Dr.A.M.Nisar Syed for establishing a Cancer Hospital by name, *The Imperial Cancer Hospital and Research Centre* and 2 acres 32 guntas of land to *The Apparel Export Promotion Council* coming under the jurisdiction of the Ministry of Commerce, Government of India. The proposal for the Revenue Officials did not fructify and finally, Government granted vide GO. No.RD 104 LGB 90 dated 20-8-1991 5 acres of land for the Cancer Hospital and by another order No.RD 163 LGB 91 dated 20-8-1991, 2 acres 32 guntas to the Apparel Export Promotion Council. (Later, the Apparel Export Promotion Council declined the land and the land remained in the possession of the Government). But Dr.A.M.Nisar Syed who gave his address as *“Director, Imperial Cancer Hospital and Research Center, C/o 8, III Cross, Nandidurg Extension, Bangalore 560046”* paid the price fixed of Rs.1,000,075 (at the rate of Rs.2 lakhs per acre) on 1-10-1991 and took possession of the land on 23-10-1991.

25. The Preamble to the GO granting the land to the Cancer Hospital starts as:

*“A qualified Indian Doctor, who hails from Karnataka State, based in USA, intends to set up a Cancer Cure and Research Centre in Bangalore with the assistance of a few qualified doctors having experience in treatment and detection in early stages of cancer. The said doctor has requested the Government for grant of about 10-15 acres of suitable government land in and around Bangalore for establishment of the Imperial Cancer Hospital and Research Centre.”*

The Government took application at its face value and granted land. But the

Government Order also made clear that the grant of 5 acres of land was for the purpose of establishing the CANCER HOSPITAL. Following the GO, subsequently, the Special Deputy Commissioner, Bangalore District vide his order No.LND(S)CR.99/88.89 dated 5-10-1991 issued the land grant order subject to the following crucial conditions:

*i. That the land so granted should be utilized for the purpose for which it was granted within two years of taking possession;*

*ii. That the land shall not be appropriated for any purpose other than for which it was granted;*

*iv. That the land shall not be at any time by partition, inheritance, lease, mortgage or otherwise however transfer the said land or allow any portion of it to be cultivated, used or occupied by any other person so as to divide it.*

26. However, to this date no Cancer Hospital has been built. What is existing in the 5 acres of land granted for the Cancer Hospital, is the Apollo Group of Hospitals which is certainly not a Cancer Hospital and only a mult-disciplinary hospital. No permission of the government has been obtained by any one for the construction of Apollo Hospital in violation of the conditions of the Government Order.

27. It is also seen from the files that on 1-7-2003, a new Imperial Cancer Care Foundation with address D-77, Golden Enclave, Airport Road, Bangalore 560 017 has been registered as a Society by the Registrar of Societies, Bangalore District, vide Registration No.278:2003-04.

28. Further, on 28-3-2007 the same A.M.Nisar Syed gives a letter to the Chief Minister of Karnataka to the effect that to establish a Cyber Knife High End Medical System, which is used for treating smaller tumors situated in critical areas like Brain, Spinal Cord, a further 2 acres 32 guntas of land may be granted to the Imperial Cancer Care Foundation, which is a subsidiary to the Imperial Hospital adjacent to the 5 acres already granted. In this he gives the address as "Chairman, Bibi General Hospital & Cancer Center, Malakpet, Hyderabad 50024, India". This application recommended to the Chief Minister by Shri Y.S.V.Datta, MLC, has been duly forwarded to the Revenue Department and in turn to the Special Deputy Commissioner, Bangalore Urban district on 9-5-2007. The matter is pending before the Revenue Department.

29. It is also seen from the files that the Assistant Registrar of Companies, Karnataka, Bangalore, has given a Certificate of Incorporation on 15-9-2004 to the effect that the IMPERIAL HOSPITAL AND RESEARCH CENTRE PRIVATE LIMITED was originally incorporated ON 19-3-1990 and the Company is limited, vide No.08/11781 of 1990.

30. There is also an Auditors Report dated 7-6-2006 for the year ending 31-3-2006 certified by Shri Vinay Mrutunjaya, Member No.201022, Parter Vinay and Keshava, Auditors, No.12, 1<sup>st</sup> Floor, Temple Court Apartments, 3<sup>rd</sup> Temple Road, 15<sup>th</sup> Cross, Malleswaram, Bangalore 560 003 available in the files. The audit relates to the financial transactions of the Imperial Cancer Hospital & Research Centre Ltd, **154/11, Opp. IIMB, Bannerghatta Road, Bangalore 560 076.** On page 1 of the Annexure to the Auditors Report, the auditor certifies in paragraph 2

*"As the Company is yet to commence its commercial operations...paras (ii)(a), (ii)(b) and (ii)(c) are not applicable.*

31. On 18-10-2009, to a query of the Tahsildar, Bangalore South, A.M.Nisar Syed writes in the letter-head of Apollo Hospitals printed as a UNIT OF IMPERIAL HOSPITAL AND RESEARCH CENTRE LTD (*It is noteworthy that the crucial word CANCER is omitted on this letter !*), 154/11 Opp.IIM, BANNERGHATTA ROAD, BANGALORE 560 076 and giving the phone numbers and website of [www.apollohospitals.com](http://www.apollohospitals.com) as follows:

*"The (Imperial) Hospital has entered into the Subscribers-cum-Shareholding agreement with Apollo Hospitals Enterprises Ltd vide dated 12 December 2005 to run a multi-speciality hospital in the said premises.*

*Pursuant to the said agreement vide Clause 14 it is mutually agreed upon between the parties to use and run the hospital in the name of Apollo Hospitals, Bangalore for all its operational purposes. However, the property continues to be in the name of M/s Imperial Hospital and Research Centre Ltd."*

32. The Revenue Secretary and Managing Director of the Karnataka Public Lands Corporation who is also the Member-Secretary of the Task Force for Protection of Government Lands, while inspecting the said land on 13-8-2009 found that the land grant of 5 acres to AM Nisar Syed for establishing a Cancer Hospital has been misused and the conditions of the grant were violated. The Managing Director wrote to the Special Deputy Commissioner, Bangalore Urban district on 24 August 2009 pointing out to the violations of the land grant and asking him to initiate steps to cancel the original land grant and also not to process the application for a further grant of 2 A 32 G. The Special Deputy Commissioner issued a notice to the Imperial Cancer Care Foundation at No.D 77, Golden Enclave, Airport Road, Bangalore which was replied by someone without mentioning any name, in the letter-head of Imperial Cancer Hospitals & Research Centre admitting that *a huge building has been constructed for establishing multi-speciality hospital which has been handed over to the Apollo Hospitals Enterprises for efficient management.* [Emphasis added].

33. After this, no further action has been taken by the Special Deputy Commissioner to cancel the grant of land to the Imperial Cancer Hospital.

34. The foregoing narration would show the following aspects of land grabbing and the inaction of the Revenue Department to cancel the grant:

a. The original grant was made by the government on the mere application of a person claiming to be an Non-Resident Indian and an "expert" in cancer for establishing a Cancer Hospital and Research centre, without verifying the background of the applicant;

b. After the grant in October 1991, no action was taken by the grantee to establish a Cancer Hospital till 2011, nor has the Revenue Department checked whether the grantee has taken steps to establish the Cancer Hospital within two years of grant inspite of the same survey number being inspected by the Revenue Department officers at various times;

c. When no Imperial Cancer Hospital came into existence, the Government kept on referring to the hospital by the same name as if it existed;

d. Without any Cancer Hospital coming into existence, AM Nisar Syed has used the land illegally to be made over to the management of Apollo Hospitals which is in violation of the grant conditions;

e. AM Nisar Syed has committed a fraud on the Government for 20 years now and has been obviously benefiting from collecting his rent/ dividend/ income from Apollo Hospitals;

f. The belated action to be taken by government (even now) is to cancel the grant made to The Imperial Cancer Hospital and Research Centre represented by AM Nisar Syed and proceed criminally against him for misrepresentation, fraud and cheating;

g. The 5 acres of land granted for Rs.10 lakhs is now worth Rs.25 crores according to the Auditors Report;

h. Since Apollo Hospitals is a reputed medical institution operating a Corporate multi-disciplinary hospital, though also collecting huge fees at market price, the government may re-grant the land to the Apollo Hospitals collecting the market price and a penalty for occupying government land all these years and making illegal gains. In the alternative, the Hospital should be forfeited to the Government as provided in Section 94 (3) of the Karnataka Land Revenue Act and run as a government hospital as a lesson to the other aspirants of grabbing government land.

## CHAPTER 4

### FOREST ENCROACHMENTS

1. The total geographical area of Karnataka State is 190,498 km<sup>2</sup> of which 30,718 km<sup>2</sup> is classified as forests. This is equal to about 76 lakh acres of forest land in the state. The major forest districts are:

Uttara Kannada	-	20	lakh acres
Shimoga	-	6.83	"
Chikmagalur	-	4.95	"
Kodagu	-	3.32	"
Dakshina Kannada	-	3.17	"
Udupi	-	2.47	"
Bellary	-	2.39	"

Together, these seven districts have 43 lakh acres of forest land. Three Review meetings were held with the Principal Chief Conservator of Forests and his officers in his office which were attended by the Additional Chief Secretary/ Principal Secretary, Forests, Environment and Ecology Dept and also the Secretary in charge of Forests. According to the details furnished by the Forest Department, the forest area under encroachment is 165,796 acres. The major area of encroachments are as under:

Shimoga Circle	-	40,178	acres
Chikmagalur circle	-	35,946	"
Uttara Kannada	-	28,373	"
Gulbarga Circle	-	12,940	"

2. In spite of repeated reviews there has been absolutely no progress in removal of encroachments in the forest area. The Task Force had visited Chikmagalur district on 15<sup>th</sup> and 16<sup>th</sup> July 2010 and held a detailed review meeting and a few spot inspections along with the Conservator of Forests and the Deputy Commissioner. It was seen that the Forest Department has booked 7,846 Forest Offence Cases (FOCs) under the K. Forest Act involving about 30,000 acres. Of these only in 1,193 cases the concerned Assistant Conservators of Forests have issued orders which have been routinely appealed against before the Conservator. The ACFs have not issued orders in the balance 6,653 cases even though these cases have been booked since four years. Most distressingly, in no case the encroachment has been removed.
3. It was also seen during the inspection in Koppa taluk, that most of these encroachments have been committed not by poor or small, marginal farmers and landless but by coffee plantation owners who have extended coffee cultivation into government forest land. After the review of the Task Force and

following up the matter, the influential encroachers have managed to get an *Advisory* letter from the Principal Secretary to the Chief Minister dated 19-11-2010 which advises the district officers not to take "*precipitative action*". Though the dictionary meaning of "*precipitative action*" is "*action taken unexpectedly, prematurely or without warning*", and in all these encroachment cases, FOCs have been filed and the K.Forest Act and the Karnataka Land Revenue Act provides due process of law of giving notices, hearing the offenders and passing of orders which have all been done and no stay orders have been issued by courts, the district officers have taken shelter under the above said letter and no action is taken for removal of forest encroachments. The fact that Government have no powers to issue any such "stay orders" and only a Court of Law can issue such order is totally lost on the administration. A copy of the letter referred to above is shown in **Annexure 8**.

**A BLATANT CASE OF SENIOR OFFICERS OF FOREST DEPARTMENT REFRAINING FROM REMOVING ENCROACHMENT BY A FORMER SPEAKER OF KARNATAKA LEGISLATIVE ASSEMBLY.**

4. During a review meeting in the office of the Regional Commissioner, Bangalore Division consisting of nine districts on 13-1-2010, the Deputy Commissioner of Kolar district and the Forest Department officers brought to the notice of the Task Force that they are not able to remove encroachments by influential persons. They gave the specific example of an encroachment of about 60 acres of forest land in the border area between Karnataka and Andhra Pradesh in Janagalkunte forest by a former Speaker of the Legislative Assembly. They informed that even though the Assistant Conservator of Forests had passed order on 30-3-2007 for removal of this encroachment, it is appealed against before the Conservator who had ordered for a joint measurement of the encroachment by a team of officials from the Forest and Revenue Departments vide his order on 16-7-2008. However, on the days fixed for the joint inspection, the minions of the encroacher did not allow the team to enter the area. The officers also said that there is "pressure" from above on them not to proceed in this case.
5. The Task Force therefore inspected the spot of encroachment on 21-1-2010 and found that this forest land had been surveyed in detail by the Forest surveyors for a long time and clear maps are available showing the extent of forest. The plea of the encroacher was that he had purchased lands from grantees of gomal lands which overlaps with forest land. Even, agreeing to this plea there cannot be an obstruction for a survey by the Forest and Revenue Department officers after giving due notice to the concerned persons. It was this survey the encroacher was obstructing. Hence, the Task Force directed the survey with police help. This was fixed for 3-2-2010 onwards till it was complete. Notices were duly served on the encroachers and the survey was done from 3<sup>rd</sup> to 5<sup>th</sup> February 2010. Even though it showed the encroachment, the Conservator of Forests again issued an order for another re-survey on 16-9-2010. This was also done. The encroacher has now approached the Hon'ble High Court misrepresenting the facts that he has

“purchased” the alleged encroached lands and that he was not present during the surveys. The Hon’ble HC has ordered on 16-12-2010 for another survey of the land by Deputy Conservator of Forests, the Deputy Commissioner of the district and the Deputy Director of Land Records during which the presence of the petitioner-encroacher is “mandatory”. This umpteenth survey has also been done in April 2011 with due notice given to all interested parties with the Deputy Conservator of Forests himself being present on the spot for five days. The exhaustive survey confirmed the encroachment by this important person. It is now back to the court-room.

6. The foregoing narration would show that it is not the lack of legal powers which comes in the way of Forest Department to remove encroachments of forests. It is but the inability of officers to implement existing laws. In spite of repeating *ad nauseum* the Godavarman Thirumalpad case and in spite of the Supreme Court having appointed the Central Empowered Committee to monitor the serious cases of forest encroachments, nothing has happened to recover the forest lands encroached in the state.

## CHAPTER 5

### ENCROACHMENT OF LAKES AND WATER BODIES

#### A. BACKGROUND

1. There are about 38,000 lakes in Karnataka. In Bangalore Urban district alone there are about 600 lakes. As some lakes fall under two adjoining survey numbers belonging to two villages in the Revenue records the number of lakes in Bangalore Urban district has been shown as 937 though the water body is only one. The Supreme Court and the High Courts have passed various orders directing the Government to protect the lakes and water bodies. Some of the important case reference in this regard are:

*Jaipal Singh & Others vs.State of Punjab (Civil Appeal No.1132/2011(a) SLP(C)No.3109/2011*

*Hindlal Tiwari vs.Kamala Devi & others, AIR 2001 SC 3215*

*MK Balakrishnan & Oths. Vs.State of Karnataka, WP No.31 2000/2001*

*MK Balakrishnan & Oths. Vs. Union of India & Oths. WP (Civil) No.230/2001*

*Environment Support Group vs. State of Karnataka & Oths.WP No.817/2008*

#### B. THE FORTHCOMING WATER FAMINE IN BANGALORE BEFORE THE YEAR 2020 AND THE IMMEDIATE NEED FOR RESTORATION OF LAKES

2. In 1791, a British soldier in the Lord Cornwallis' army, marching from Madras and capturing Bangalore wrote, "the climate of Bangalore is extremely temperate and salubrious and the soil is fruitful and produces the necessaries of life in great plenty." The mild climate of Bangalore is mainly due to its elevation and the large number of lakes and water-bodies. There is not much of an underground water source for Bangalore because of its elevation of nearly 3,000 feet and the gentle downward slope of the surrounding land. It is thus dependent on rainfall which is about 900 mm per annum normally. Therefore the need for creating water bodies from surface runoff for the maintenance of Bangalore was felt since 1537 when Kempe Gowda established Bangalore. Major Sankey, the Chief Engineer of Mysore in the 1800s, established tanks in a cascading system of flood control and water use. Bangalore was described as the Land of Thousand Tanks by the British as mentioned in the book *Deccan Traverses – The Making of Bangalore's Terrain* by architects Anuradha Mathur and Dilip Da

Cunha, 2006.

### **PRESENT STATE OF TANKS AND LAKES IN BANGALORE URBAN DISTRICT:**

3. However, the Land of Thousand Tanks has now become a Land of Thousand "Sewage Tanks." Many of the tanks have been breached and have been illegally encroached upon by builders and others. The high-rise apartments surrounding these tanks are letting in the sewage into these tanks with impunity. The builders dump debris in these tanks without any fear of law and the filled up tank bed gets encroached in course of time. The seven erstwhile City Municipal Councils (CMCs), two TMCs and 110 villages have become part of Brihat Bangalore Mahanagara Palike (BBMP) in 2006 and its area was extended to 776 km<sup>2</sup> from 250 km<sup>2</sup>. These erstwhile local bodies and the Bangalore Development Authority (BDA) have been granting permissions for high-rise buildings of Ground plus three floors and above without caring for the width of the roads or ensuring sewage disposal system. These Urban Local Bodies and the BDA have treated the once-existing thousand tanks as the sump tank for the domestic waste of these apartment dwellers. The Pollution Control Board was not even aware of its power to control the pollution of tanks till the Joint Legislature Committee on Land Encroachments took it to task.

Government itself have wilfully and wantonly breached many tanks for housing and other purposes as in the following cases "after carefully taking all matters into consideration and in public interest" as GOs routinely claim cynically ! :

1. Breaching of Kodihally tank (8.06 hectares) and Chikamarehally tank (10 hectares) for allotment to SPACE Department, Indian Institute of Science and BDA;
2. Breaching of Challaghatta tank (50 hectares) for the benefit of playing golf by the members of Karnataka Golf Association;
3. Allotment of Kalagondanahally tank (11 hectares) to the Amedkar Medical College;
4. Allotment of Kadirenahally tank (3.87 hectares) to Cooperative Training College;
5. Allotment of Kurubarahally tank to Police Department for construction of staff quarters;
6. 99 year lease of Shoolay tank (14 acres) to the Karnataka Football Association who have sub-leased 1.5 acres of it to Raheja Builders for commercial complex ;
7. BDA forming "layouts" in tanks at Kacharakanahalli, Chikmarenahalli, Saneguruvanally, Sarakki, Binnamangala, Geddarahally, etc.
8. A large number of "Private Layouts" formed by middlemen and realtors in gross

violation of law in tanks such as Vijnapura (11 hectares), Sannathammanahally (10 hectares), Krishnarajapuram (7 hectares), Mahadevapura (2.5 hectares), V.Narayanapura (6 hectares), Kaikondarahally (6.3 hectares), etc.

9. Encroachments for commercial purposes such as in Konena Agraha tank occupied by IBM and others;

10. Encroachment of Byrasandra tank (6 hectares) by private person and the Indian Overseas Bank giving loan to one Sierra Developers taking the tank bed land as "security"!

11. Large number of encroachments by hoteliers, timber merchants, shop-keepers, and builders of "instant" temples.

#### **THE EXTENT OF ENCROACHMENT IN TANK BED LANDS IN BANGALORE**

4. Of the total of 937 tanks which exist even today in the records of the Revenue Department – and it tallies with the epithet of Bangalore being "Land of 1,000 tanks", 842 tanks were surveyed in Bangalore Urban district in 2007, and the encroachment was found to be 1,848 acres by 2,488 persons as shown below:

Taluk	Tanks & Extent		No. of encroachers Already evicted			
	(No.)	(acres)	(No.)	(acres)	(No.)	(Acres)
B'lore South	248	4791	297	142	28	10
B'lore North	159	2349	170	145	52	98
B'lore N-Addl.	190	7164	827	474	39	223
B'lore East	139	4682	173	437	8	69
Anekal	201	7482	1,021	650	52	272
Total	<u>937</u>	<u>26,468</u>	<u>2,488</u>	<u>1,848</u>	<u>179</u>	<u>672</u>

(The details of encroachment of tanks, lakes and water-bodies showing the names taluk-wise, names and addresses of encroachers, extent of encroachment, value, etc. containing 199 pages are shown in Annexure 1 to the Report of the Committee). In addition to this, the structures built unauthorizedly by encroachers surveyed on just 29 *Rajakaluves* alone is 708, blocking drains and flood waters. (*Rajakaluves* are the channels built by the ancient rulers of Bangalore to drain the flood waters to the tanks and ultimately to the streams and rivers).

#### **LAKSHMAN RAU COMMITTEE REPORT OF 1988**

5. The Government formed in 1985 an Expert Committee under the Chairmanship of late Shri N.Lakshman Rau IAS (Retd.) who was once the Administrator of the Bangalore City Corporation, with the objective of examining all drawbacks and problems relating to preservation and restoration of tanks existing in the then Bangalore Metropolitan area and make suitable recommendations. After the Committee submitted its report, the Government, accepted all its recommendations and issued a G.O. vide PWD 82 IMB 85 dated 11-2-1988. The gist of Government Order are:

(a) The 46 disused tanks should be handed over to the Horticulture and Forest

Department and Ornamental Parks and Tree Parks should be raised in these unused tank beds;

(b) The 81 Live Tanks should not be breached but should be protected by foreshore planting and they should be used for irrigation or for recreation purposes to preserve environment:

(c) The 262 tanks in the Green Belt should be protected and maintained as the 81 Live Tanks;

(d) The Forest Department was handed over 90 tanks and lakes exclusively for preservation and 24 other lakes should be preserved jointly by the Forest Department and Karnataka State Tourism Development Corporation and Tourism Department (12), BDA (6), BWSSB (4), Minor Irrigation (1) and BBMP (1);

(e) In addition to Cubbon Park and Lal Bagh, six to eight Regional Parks should be developed in disused tank beds, if necessary by acquiring additional adjoining lands:

However, all these pious recommendations were implemented in the breach than in observance.

#### **FAILURE OF FOREST DEPARTMENT AND OTHER AGENCIES IN PROTECTING TANKS, LAKES AND WATER BODIES IN BANGALORE**

6. Even though the Karnataka Forest Act 1963, gives powers to the Forest Department, after an amendment of Section 64A on 11-5-1998, to prosecute any encroacher on any land under the control of the Forest Department and the perpetrator being liable for a penalty of imprisonment and fine under sections 73 and 104 of the said Act, the Department had not taken any effective action to bring to imprisonment after prosecution even a single encroacher.

It was noticed by the Committee in a high level meeting held on 27-8-2007 that even some senior officers of the Department have "doubts" regarding Forest Department's powers to take action against encroachers on tank bed lands. Some of them even argued that these tanks were not "handed over" to the Forest Department. The Government by its Order dated 11-5-1988 have fixed responsibility on the Forest Department for maintaining 114 of these water bodies and it was pointed out by the Committee that it is too late in the day for the Forest Department in 2007 to say that they have no powers or the tanks have not been "handed over". Nobody can lift a water body or a dried up land by hand and put it in the palms of the Forest Department officials. All such "handing over" and "taking over" are by records and *mahajar* and in this case, the Government itself, after a detailed report of the Lakshman Rau Committee, passed an order entrusting these tanks to the Department for protection and maintenance. The Committee noticed that the Forest Department has been highly irresponsible in protecting the tanks, lakes and water bodies under their control in Bangalore.

#### **ACTION TO BE TAKEN BY THE REVENUE DEPARTMENT TO REMOVE TANK BED ENCROACHMENTS**

7. The Lakshman Rau Committee had confined itself to lakes and tanks within the jurisdiction of the then Bangalore City Corporation and it recommended for removal of encroachments and maintenance of only 114 tanks by Forest Department and other agencies. However, the total number of tanks and lakes in Bangalore Urban District is 937. Out of this, 528 are nominally under the control of Zilla Panchayats, 209 with the Grama Panchayats, 72 with Minor Irrigation Department, 13 with BMP and 1 with Horticulture. There are encroachments in almost all these tanks also. These local bodies and other departments (except the Forest Department in a few cases) have not taken any action to prevent or prosecute encroachers. The Karnataka Land Revenue Act has been amended in 2007 under which an encroacher of any government land can be prosecuted and is liable for an imprisonment of a minimum of one year which may extend upto three years besides fine. Hence, the 2,488 encroachers of tank bed lands who have encroached 1,848 acres of land according to the survey of the Revenue Department should be prosecuted and punished with imprisonment, besides removal of encroachment including buildings and fixtures constructed on them.

#### **INACTION BY LAKE DEVELOPMENT AUTHORITY AND NEGLIGENCE OF THE KARNATAKA STATE POLLUTION CONTROL BOARD**

8. Karnataka State has the unique distinction of having a Lake Development Authority (LDA) registered under the Karnataka Societies Act with the objective of protecting, maintaining and developing the lakes in the state. It is a high-powered Authority with the Chief Secretary as Chairman and other senior officers of the Government and Commissioners of BDA and BBMP as members. However, in practice the LDA has been only a bystander and helpless onlooker of the tanks being encroached upon by builders, shop-keepers, hoteliers, layout-making and sites-selling realtors, timber merchants, educational institutions, instant overnight temple builders, political personalities, industrialists and sometimes even by the BDA. The LDA is a toothless body whose only objective is to give employment for a few officials and occasionally "allotting" the lakes to private Hoteliers and Realtors for them to make profit !

Similarly, even though the Karnataka State Pollution Control Board has enough powers under the Water Act to prosecute and close down the establishments of the polluters, in not a single case has the PCB been able to bring these cases to the stage of filing charge sheet, let alone securing punishment. It is seen that the PCB is concentrating on issuing notices to industrial polluters and completely neglect water pollution of tanks and lakes which is going to affect the health of the citizens of Bangalore.

There is a long list of environmental diseases caused by water pollution. Apart from mosquito breeding and malaria, Bangalore already suffers from asthmatic and respiratory disorders caused by flower pollen. According to the National Institute of Environmental Health Sciences, the long list of diseases caused by environmental deterioration are Asthma, Dermatitis, Emphysema, Goiter, Lead and Mercury Poisoning, Nervous System Disorders, Osteoporosis, Pneumoconiosis, Queensland Fever, Tooth decay, Vision problems, Xeroderma Pigmentosa, Yusho Poisoning and Zinc Poisoning. Therefore, unless the Pollution Control Board prevents immediately the conversion of Bangalore's tanks and lakes into Sewage

Tanks and sump-drains, this city will become a cesspool of filth and foul matter causing major health diseases. The PCB should therefore use its enormous powers to protect the environment and ecology of Bangalore for which duty it is amply empowered in addition to concentrating on lucrative industrial polluters.

### **HIGH COURT ORDER PROHIBITING ALLOTMENT OF TANK-BED LANDS**

9. In 1995 a Writ Petition No.31343/95 was filed in the Karnataka HC by four noted environmentalists including a former Principal Chief Conservator of Forests against large scale and indiscriminate grant and unauthorized occupation of tank bed lands in and around Bangalore. The Hon'ble Justice Eshwara Prasad passed an interim order on 22-8-1995 directing the Government not to make any grant or allotment of lands situated within the Bangalore Metropolitan area. The order is still in operation. But Government itself have been violating this order and allotting whole tanks to township builders.
10. In a landmark judgment dated 26-11-2010 in a batch of Writ Petitions Nos.817/2008 and others filed from 2006 to 2008 by Environment Support Group and other voluntary organizations, the Hon'ble High Court constituted a High Court Committee on 26-11-2010 under the Chairmanship of Hon'ble High Court Justice Shri N.K.Patil to prepare an ACTION PLAN to protect the lakes of Bangalore metropolitan area. The HC Committee accordingly has prepared an Action Plan to protect and restore 189 lakes (BBMP 129, BDA 44, LDA 11, Forest Dept 5) by 2014. After its submission in March 2011, the Hon'ble High Court passed an order on 7<sup>th</sup> April 2011 directing that the proposals in the Action Plan namely, survey of lakes, identification and removal of encroachments and also silt and weeds and stoppage of sewerage into these lakes during the period 2011 to 2014 and also that the High Court Committee shall monitor the implementation of the Action Plan.
11. It is however, respectfully submitted that the admirable land mark judgment with a High Court Committee itself to monitor the implementation of the restoration of lakes which has been necessitated due to the administrative vacuum in attending to this vital task, the restoration of 189 lakes is only the tip of the iceberg as will be explained below:

### **AREA WHICH SHOULD BE COVERED BY THE ACTION PLAN:**

12. Bangalore Metropolitan area is growing at 4.21% per year. **It is not fully realized that its population will exceed 10 million before 2015** as its population was 87 lakhs in 2010 when the BBMP made a survey on account of the elections to the newly expanded 198 wards of BBMP. Having a democratic set-up and since the Constitution has enshrined the fundamental right of freedom of movement, there is no way in which the migration to Bangalore can be controlled, unlike China which has the "Iron

Triangle" of Work Permit (*Danwei*), Residential Permit (*Hukou*) and Police Clearance (*Dangan*).

13. THEREFORE, FOR A MEANINGFUL ACTION PLAN, THE AREA OF THE BANGALORE METROPOLITAN AREA DEVELOPMENT AUTHORITY (BMRDA), CONSISTING OF THE OLD COMPOSITE DISTRICT OF BANGALORE WHICH IS NOW DIVIDED INTO BANGALORE-URBAN, BANGALORE-RURAL AND RAMANAGARAM DISTRICTS SHOULD BE TAKEN AS THE PLANNING AREA FOR LAKE RESTORATION. BMRDA AREA IS ABOUT 8,000 km<sup>2</sup>. THE BBMP HAS AN AREA OF 776 km<sup>2</sup> AND THE BDA HAS AN AREA OF 1,306 km<sup>2</sup>. THE BBMP AREA WILL KEEP ON INCREASING, AS IT DID FROM 250 km<sup>2</sup> TILL 2007 TO 776 km<sup>2</sup> NOW.

### **RESTORATION OF LAKES AND DRINKING WATER SUPPLY TO THE GROWING METROPOLITAN CITY OF BANGALORE.**

14. While the restoration of lakes is very important for ecological reasons of salubrious climate, ground water recharge, need for birds and animals and the like, the most important point which is not realized by the myopic government departments and even by the environmental NGOs is the TICKING TIME BOMB of Water Famine staring at Bangalore. With the completion of the last phase of Cauvery Water Supply Scheme in 2012-2013, the total availability will be 1,310 Million Litres per Day (MLD) with an additional 70 MLD from Tippegondanahalli reservoir. From the total of 1,380 MLD 150 MLD is accounted by Non-Domestic use and another 450 MLD as "Unaccounted For (UFo)", euphemistically for leakage. With a net of 780 MLD this will be 78 Litres Per-capita per Day (LPCD) while the Government of India norm for metropolitan cities is 150 LPCD. Thus, Bangalore will have only about half of the per capita norm. As Bangalore's population will continue to grow beyond 10 million, it will reach 131 lakhs in 2020 which is just nine years from now. Without any additional supply, the per capita availability will be just 60 LPCD. Already there is acute scarcity of water in the newly added of 100 wards. This will be much worse by 2020 and various environmental diseases due to unhealthy water will plague the population of Bangalore.
15. There are no viable schemes of BWSSB to augment the water supply to Bangalore as the 19 tmc feet of water allocated by the Cauvery Tribunal for Bangalore has been exhausted with the current phase of Cauvery Water Supply Scheme. Government is vaguely talking about bringing water from Ethinakere rivulet in Hassan district, digging more borewells, creating new lakes for storing rain water, etc. which are only Contractors' dream projects with vested interests' share without benefiting the people.
16. **THE SOLUTION IS STARING AT OUR EYES. THE OBVIOUS ANSWER IS TO RESTORE LAKES FOR WATER SUPPLY AS BANGALORE WAS INDEED GETTING FROM LAKES BEFORE THE**

## **CAUVERY WATER SUPPLY SCHEME.**

The ACTION PLAN SHOULD TAKE INTO ACCOUNT THE FOLLOWING:

### **1. PREVENTION OF SEWAGE ENTERING LAKES OF BANGALORE.**

All the important big lakes in Bangalore such as Bellandur, Byramangala, Kalkere, etc. have become sewage tanks and in many cases BWSSB itself lets in sewage apart from householders and Apartment buildings. The BWSSB has about 800 MLD capacity of Sewage Treatment Plants (STPs) but none of them operate upto the capacity nor even are operated effectively because of the Annual Maintenance Contract firms saving money by not adhering to the contract conditions. There is no accountability by these AMC contractors and the BWSSB does not insist on the conditions. The upgradation of 800 MLD of STPs already installed by BWSSB and Water Treatment Plants will cost about Rs.1 crore each with a total cost of Rs.800 crores.

HENCE, THE 800 MLD CAPACITY STPs BUILT BY BWSSB SHOULD BE UPGRADED AND SHOULD BE MAINTAINCE UNDER THE PRIVATE-PUBLIC-PARTNERSHIP (PPP) MODEL AS BEING DONE BY THE BBMP AND BDA IN A FEW LAKES UNDER THEIR MAINTENANCE. THIS WILL ENSUR ACCOUNTABILITY. IT TAKES ABOUT Rs.2 CRORES PER MLD OF STP WITH TERTIARY TREATMENT AND WATER TREATMENT PLANT TO BRING IT TO POTABLE STANDARDS WITH RAINWATER ALSO BEING LET INTO THE LAKE (BUT NOT THE SEWAGE AS IT IS DONE AT PRESENT).

### **2. REMOVAL OF ENCROACHMENTS ON RAJA KALUVES AND STORM-WATER DRAINS AND COSNTRUCTION OF UNDER GROUND DRAINAGE (UGD) IN 840 km UPSTREAM OF LAKES.**

There are about 840 kms of Raja Kaluves and Storm Water Drains which have mostly been encroached upon and used as sewage channels. The "Dry Flow" of sewage though these 840 km length of Raja Kaluves take the sewage into the lakes making them toxic. A survey has already been made of these Raja Kaluves and Storm Water Drains. The encroachments have to be removed and the UGD should be constructed by the BWSSB if the Raja Kaluves and Storm Water Drains have to be made free of sewage. This will cost about Rs.2.5 crores per kilometre and therefore about Rs.2,500 crores will be the total cost of this alone.

CLEARANCE OF RAJA KALUVES AND STORM WATER DRAINS IS A VERY ESSENTIAL STEP IN RESTORING THE LAKES. UNLESS THIS UPSTREAM CLEARANCE IS DONE THERE IS NO HOPE FOR THE LAKES. THE POWER OF REMOVAL OF ENCROACHMENTS IS VESTED WITH BOTH THE REVENUE DEPARTMENT UNDER THE KARNATAKA LAND REVENUE ACT AND THE BBMP UNDER THE KARNATAKA CORPORATIONS ACT. THE

LAYING OF UGD IS THE RESPONSIBILITY OF THE BWSSB.

3. BOX DRAINS TO PREVENT FLOODING:

The consultants hired by the BBMP have prepared a comprehensive project to construct box drains and inlets and outlets to the tanks and water bodies in the BBMP area which are the natural drains for flood water so that the obstruction to the water bodies and Raja Kaluves can be removed. As usual the BBMP has taken up only one or two such box drain schemes cosmetically and for the record or for "study". This project should be speeded up and implemented in its entirety and sanction should be obtained under the JNNURM and work should be completed speedily so that the misery of the citizens of Bangalore can be mitigated.

4. INSTALLATION OF DUAL PIPING SYSTEM.

About 75% of the water supplied by the BWSSB for drinking water in Bangalore goes for non-drinking purpose such as toilet flush, cleaning, washing, etc. Dual Piping System refers to the installation of separate pipes for drinking water and for other purposes. While it may be difficult to lay dual piping in the core area of 250 km<sup>2</sup> of BBMP, in the newly extended area of the additional 526 km<sup>2</sup> of households where UGD is not yet laid, it is necessary for the BWSSB to lay the dual piping system and also for the households to install the same as many apartments have been doing it already for their supply from their borewells.

5. NEED FOR MAKING LAKE DEVELOPMENT AUTHORITY LEGALLY AND ADMINISTRATIVELY EFFECTIVE

At present the LDA is only a Registered Society under the Societies Registration Act without any legal powers to enforce its duties and responsibilities. To make it effective a Lake Development Authority Bill is in the anvil. Under its provisions, the LDA will be headed by a serving officer of the rank of Additional Chief Secretary with sufficient staff and a Governing Council consisting of the Commissioners of BBMP, BDA, BWSB, Revenue, Minor Irrigation and Urban Development Departments and eminent Environmentalists of all-India and global reputation. It is proposed to have powers of enforcing all steps necessary for restoring, maintaining and developing lakes and the offences are to be cognizable. At present the Lakes are no one's responsibility with BBMP, BDA, BWSSB, Revenue Department, Minor Irrigation Department and the Panchayats paying only part-time attention to Lakes as their main responsibility is not maintaining the health of Lakes. This can be remedied only if the LDA is made into a responsible body with legal powers.

## 6. FUNDING THE LAKES RESTORATION INCLUDING DRINKING WATER SUPPLY

The task of restoration of lakes in the BMRDA area of about 2,700 lakes will take, on a first approximation, in the range of Rs.10,000 crores and about 10 years to complete. To prepare a comprehensive Action Plan which will include all the above aspects it is necessary to have a competent consultant (such as the Public Utilities Board of Singapore which is a Public Sector Undertaking which has successfully reused water and reduced dependency on Malaysia to import drinking water – there are many other such competent agencies) who will have to give a Project Report with indicative funding. Such a project will have to be examined by the Government and LDA and should be posed for external assistance from Japan Bank of International Assistance (JBIC) and/or Asian Development Bank, World Bank, etc. The reason for such multi-lateral agencies' funding is the discipline which will be brought into the implementation with transparency in contracts including Global Tender procedures, independent Quality Control agency, effective review and periodic corrections when needed. Such measures are lacking when individual departments and organizations such BBMP, BWSSB, BDA etc. are entrusted with implementation solely with their own procedures and means of finance with inevitable corruption.

## 7. RESTORATION OF ALL LAKES IN BMRDA AREA WITH DRINKING WATER SUPPLY FROM A FEW LAKES.

While the removal of encroachment and restoration of lakes is very important from the ecological and environment aspects, the need for finding a reliable and cost-effective drinking water supply to the expanding Bangalore city is the single most important component of the Action Plan. Without sufficient drinking water, water-borne diseases will multiply and the population will suffer grimly. Without water to human beings, there will be no bird-watching, no proper living conditions for the people and no industry.

**IT SHOULD BE REALIZED THAT KINGDOMS HAVE DISAPPEARED DUE TO WATER FAMINE. THAT IS ALSO THE TICKING TIME BOMB FACING BANGALORE.**

## 17. RECOMMENDATIONS

1. Firstly, it should be mandatory that encroachment in tank-beds, lakes, water-bodies and Raja Kaluves should not be regularized. Such regularization should not even be thought of because, apart from favouring law-breakers and encouraging further encroachments, it will destroy whatever mild climate Bangalore still has and pave way for uncontrollable flooding and environmental diseases and will destroy the

very future of Bangalore.

- 2.** To prevent Bangalore, which was once described as the Land of Thousand Tanks, from becoming a Land of Thousand Sewage Tanks, all these lakes should be restored by stringent measures of removal of encroachments. There is no point in taking a soft line that “Poor people for their livelihood” have encroached upon tank beds and some other “Innocent Persons” have purchased plots in these tank beds from bogus documents prepared by unscrupulous middle-men and corrupt officials. Where public interest of saving a city is concerned there is no place for such misplaced sympathy and misdirected generosity.
- 3.** Those belonging to the Below-Poverty-Line classification who have encroached upon tank beds and water-bodies and built hutments and dwellings on small sites of 20 ft x 30 ft or so can be given sites in the Government’s Revenue Department land and BDA land encroached in Bangalore Urban district which is as much as 21,706 acres and 2,878 acres respectively. Especially, the Revenue Department has been auctioning the lands recovered from encroachment to builders and realtors. Instead, first preference should be given to allot such revenue lands recovered from encroachers to these tank-bed encroachers below Poverty Line and slum dwellers on removal of such tank-bed encroachments. Similarly, the 2,878 acres of BDA land under encroachment should be recovered by the BDA and the BPL tank-bed encroachers can be allotted sites in these recovered lands.
- 4.** The Lake Development Authority which is now functioning ineffectively should be made into an effective Statutory Authority like the BDA or BBMP with penal powers and funds to protect and maintain the lakes or it should be wound up.
- 5.** The Forest Department should use its enormous legal powers to protect the tanks and tank-beds under its control instead of shirking its responsibility.
- 6.** The BDA, BBMP, BWSSB and KSTDC which also have been given 24 tanks to be maintained should take the responsibility seriously and protect the lakes entrusted to them.
- 7.** The Karnataka Pollution Control Board should discharge its duty and responsibility under the Water Act to prosecute the persons and agencies polluting the water bodies. It should insist on all the apartment buildings to install Secondary Treatment Plants (STPs) which costs not more than Rs.20 per square foot of built up area which is insignificant in the cost of over Rs.1,500 per square foot of apartment flats.
- 8.** The BDA, BBMP and BWSSB should prepare comprehensive schemes for all the 937 tanks and lakes and all the Rajakaluves in Bangalore Urban

area under encroachment to remove the encroachments and for constructing durable inlets, and outlets and to restore and maintain the cascading chain of tanks as they existed once for smooth flow of drainage and flood water.

**9.** Government in the Urban Development Department should take active interest in getting plans prepared for Preservation of Water Bodies included specifically under the Mission Document of JNNURM, for Bangalore Urban area and get them sanctioned from Government of India and implement them within three years.

**10.** THE LAKE DEVELOPMENT AUTHORITY UNDER THE PROPOSED NEW LEGISLATION WITH A SERVING ADDITIONAL CHIEF SECRETARY AS CHAIRMAN TO ENSURE COORDINATION OF DIFFERENT DEPARTMENTS AND ORGANIZATIONS SHOULD BE FORMED TO REVIEW THE PROGRESS OF ACTION ON THE ABOVE LINES.

## CHAPTER 6

### COLLUSION OF GOVERNMENT OFFICIALS AND ELECTED PUBLIC OFFICIALS IN LAND GRABBING

1. It is well-known that widespread land grabbing cannot be done without the active collusion of government officials and public officials. It is for this reason that section 192 A was introduced by an amendment of the Karnataka Land Revenue Act which provides for the same punishment of imprisonment up to five years besides fine to both the offending encroachers and their collaborative abettors. The Task Force has been impressing upon the officers to launch prosecutions against both encroachers and abettors. However, inspite of such persistent follow-up by the Task Force, the number of prosecutions have been meagre as shown in the following statement:

District	Prosecutions u/s 192 A	Of which against Officials
Bangalore-Urban	357	2
Other Districts	148	6

2. **SPECIFIC COMPLAINTS REFEREED TO THE TASK FORCE BY UPA-LOKAYUKTA:**

#### A. ILLEGAL REGULARIZATION OF UNAUTHORIZED OCCUPATION OF LANDS IN HOLENARSIPUR TALUK IN HASSAN DISTRICT:

3. The Hon'ble Upa Lokayukta of Karnataka referred a complaint by one Shri Krishnaswamy on the above subject on 20-12-2010 and requested that the matter may be enquired into by the Task Force since it involves irregular regularization of certain lands. The Task Force organized a team under the Special Officer to the Karnataka Public Lands Corporation and the team submitted a Report which is shown in full in **Annexure 9**. The brief high-lights of the enquiry are as follows:

(a) In 290 cases of regularization of unauthorized occupation of *gomal* lands the applications received were simply bundled and kept without registering them in the prescribed register under the Rules. The Regularization Committee headed by non-officials nominated by government passed recommendations for regularizations even though these were not found in the Register of Appliations. [Para 5 of the Report.]

(b) During the meeting of the Committee on 6-10-2005, while the Committee purportedly passed resolutions, there is no signature of the Tahsildar for having attended the meeting. Under the Rules, the presence of the Tahsildar who is the Secretary of the Committee is mandatory and his absence will vitiate the proceedings. In this meeting 116 cases were recommended for regularization without the mandatory presence of the

Tahsildar which renders the recommendations null and void. *[Para 59(1) of the Report]*

(c) In one case of gross irregularity, the Committee recommended the regularization of 14 acres 30 guntas of land in S.No.10/2 of Hangarahosur village in favour of four persons which was reserved for Government Agricultural Seed Farm. In fact, these four persons had not even applied for the land. *[Para 6(1) of the Report.]*

(d) In another case, Government land in S.Nos.16, 18 and 113 of Singapura village, which was reserved for grant to land-losers in Hemavathy Irrigation Project, was recommended for regularization in favour of four persons even though their names are not found in the Applications Register. *[Para 6(ii) and 6(iv) of the Report.]*

(e) It was also seen that in some of the proceedings the Tahsildar-Secretary has inserted his remarks with signature even though he has not attended the meetings. *[Para 5(2) of the Report.]*

(f) Many over-writings and insertions were found in the original Resolutions Book. *[Para 5(3) of the Report.]*

4. In conclusion the Task Force recommended to the Upa Lokayukta prosecution of the then Tahsildar Shri Kadaiah (retired on 31-12-2007), Surveyor Shri Lingaraju, the First Division Clerk Smt.Sunitha and the Revenue Inspector Shri Altaf Hussain (since retired) under sections 464 (Making a false document), 466 (Forgery of Public Record), 468 (Forgery for the purpose of cheating), 471 (using as genuine a forged document), 474 (possessing forged document and intending to use it as genuine), and 477A (Falsification of Accounts). The matter is before the Upa Lokayukta.

#### B. ILLEGAL REGULARIZATION OF UNAUTHORIZED OCCUPATION OF LANDS IN NARASIMHARAJAPURA TALUK IN CHIKMAGALUR DISTRICT:

5. In the above case the Upa Lokayukta forwarded on 19-2-2010 to the Task Force a complaint received from Shri MR Ravishankar of Narasimharajapura taluk in Chikmagalur district. The complaint gave details of irregularities by the Committee for Regularization of Unauthorized Occupation of Government Lands in NR Pura taluk with the collusion of officials. The Task Force had also directly received the same complaint upon which a team was sent to NR Pura Taluk and the matter was enquired. On receipt of the complaint from the Lok Ayukta, the original records were brought by the officers concerned and the Task Force enquired the matter in detail. A Report of the Enquiry was sent to the Upa Lokayukta on 7-4-2011 which is shown in **Annexure 10.**

6. The enquiry found that there were many irregularities committed by the Committee. The highlight of the enquiry are:

(a) In respect of 147 applications for regularization, they were received after the due date of 19-9-1991 but yet they were accepted and regularized:

(b) In respect of 31 cases, the names of applicants were changed and new names were written;

(c) In respect of 27 cases, even though there are no entries in the Applications Received Register, yet the Committee recommended them for regularization;

(d) In respect of 9 applications, the recommendations were made twice that is, on 31-8-2007 and again on 4-10-2007. This shows the casual manner in which the matter of regularization was dealt with.

7. The Task Force found the following officials and non-officials (Members of the Committee) responsible for committing the irregularities:

A. GOVERNMENT OFFICIALS:

1. Shri Venkataramana Hegde, Tahsildar, NR Pura taluk (8-9-2003 to 5-5-2005)
2. Shri G.Ramesh, Tahsildar, NR Pura taluk (12-10-2006 to 9-4-2008)

B. NON-OFFICIAL MEMBERS OF THE COMMITTEE:

During 2004:

1. Shri Gangahar	-	Chairman
2. Smt.Susamma	-	Member
3. Shri Giddiah	-	Member
4. Shri Shoukath Ali	-	Member

During 2007

1. Shri DN Jivaraj	-	Chairman
2. Shri Nagaraj Puranik	-	Member
3. Shri Ramesh s/o Surappa		Member

The Task Force also recommended that prosecution of both the officials and the non-officials should be launched under the same provisions of the Indian Penal Code as mentioned in paragraph 4 above.

## **FLOUTING OF THE PROVISIONS OF THE LAND REVENUE ACT IN REGULARIZING UNAUTHORIZED CULTIVATION OF LANDS**

8. The Land Revenue Act was amended on 20-3-1991 to prohibit regularization of unauthorized cultivation of lands within 18 kilometers of Bangalore Municipal Corporation limits, 10 kms from the limits of the Corporations of Hubli-Dharwad, Mysore, Belgaum, Mangalore and Gulbarga and 5 kilometers of every City Municipalities in the State. With effect from 6-7-1994 the 5 km limit was extended to all towns with a population of more than 50,000. The prohibition of such regularization within any municipal body's limit and also within 3 kilometers from the limits of Town Municipal Councils was already in existence under Rule 10(iv) of the Land Grant Rules. According to the provisions of the amendment, the applications for such regularization should be given by the unauthorized cultivator in Form 50 (till 19-9-1991) and in Form 53 (till 30-4-1999) to the Tahsildar. The Tahsildar is the ex-officio Secretary of the Regularization Committee of which the either the jurisdictional Member of the Legislative Assembly or his nominee is the Chairperson and there are three other non-officials nominated to the Committee. [If the recommendation of the Committee is not in accordance with law, the Tahsildar-Secretary has to report the matter to the Assistant Commissioner who can reverse the decision of the Committee.]
9. The receipt of the applications should be entered chronologically in the Register and after the last date for the applications was over, the Register should be closed with the signature, date and seal of the Tahsildar (R.108C). This is to ensure that no applications are entertained after the last due date. The Tahsildar should then check the application with reference to its legal validity and if satisfied should send it to the Deputy Commissioner.(R108cc(2)).

The Deputy Commissioner should then inspect the land and satisfy himself that there is a genuine case for regularization. This is mandatory. He then has to send it back to the Tahsildar who then puts it up to the Committee. The Committee should deliberate the application and may either recommend for the regularization or for its rejection. If recommended, the Tahsildar issues the Saguvali Chit after collecting the upset price. (108 cc(3) and d(3)). Only after this procedure is completed the regularization process is valid or complete.

HOWEVER, IT IS NOTICED BY THE TASK FORCE THAT IN NO CASE THIS LEGAL PROCEDURE HAS BEEN ADHERED TO EITHER BY THE TAHSILDAR, DEPUTY COMMISSIONER OR THE COMMITTEE.

10. All the applications received in Form 50 or Form 53 are **routinely and mechanically** put up before the Committee by the Tahsildars without examining the legality and without sending them to the Deputy Commissioner. Even where the lands are situated within 18 kilometers limit of the Bangalore Municipal Corporation such applications are routinely put up before the Committee by the Tahsildars and in many cases have been regularized also.

The Task Force made a detailed examination of such illegal regularizations in the Bangalore Urban District where almost all of the villages come within the 18 kilometer limit of BMP/BBMP. The very objective of such prohibition of regularization within 18 km limit was due to the high value of land in and around Bangalore and to prevent the misuse of land which are mostly not under cultivation at all and in many cases already made into illegal layouts. The following is the position in Bangalore Urban District where such illegal regularization has already been done and are also "pending" before the Committees. Such "pendency" is also inoperative since the Committees can never regularize such lands due to the prohibition by law.

Taluk	Apns. Recd.	Acres	Regularized		Pending	
			No.	Acres	No.	Acres
B'lore East	2,941	4,864	141	232	157	227
B'lore North	4,748	8,732	53	65	274	536
" Nth.Addl	8,121	14,450	1,173	1,273	762	2,137
B'lore South	13,760	19,949	1,844	2,112	1,021	1,474
Anekal	<u>13,606</u>	<u>24,586</u>	<u>2,063</u>	<u>2,153</u>	<u>4,434</u>	<u>10,177</u>
TOTAL	<u>43,176</u>	<u>72,581</u>	<u>5,274</u>	<u>5,835</u>	<u>6,648</u>	<u>14,551</u>

11. As can be seen from the above statement, 5,835 acres have been regularized which are almost all illegal. There is not a single village coming outside the 18 km limit of Bangalore City Corporation in Bangalore South taluk and yet 2,112 acres have been regularized. Similarly in Anekal taluk, barring a few villages all the rest come within the 18 km limit and yet nearly 2,000 acres have been regularized which is illegal. None of these lands are under cultivation. As to the pending applications, the Regularization Committees are keeping them pending inspite of knowing that these villages come within the 18 km limit and therefore the lands cannot be regularized.
12. **The value of these 20,000 acres lands not eligible for regularization is not less than Rs.20,000 crores. The Task Force has asked the Tahsildars to return the ineligible applications to be returned to the applicants in "pending cases" and has asked the Assistant Commissioners to cancel the grants made illegally in cases within the 18 km limit.**

#### **THE ILLEGAL CASE OF REGULARIZATIONS IN DEVANAHALLI TALUK IN BANGALORE RURAL DISTRICT**

13. The taluks of Devanahally, Hoskote, Nelamangala, Doddaballapur and parts Ramanagaram are as urban as any taluks in Bangalore Urban District and the land value are as high. Especially in Devanahally taluk the land value is particularly high due to the Bangalore International Airport having come into existence. While inspecting Devanahally taluk it was seen that there are no original records for the recommendation of the Committee or applications for regularization of about 830 acres of land as informed by the Tahsildar during the visit of Task Force to the taluk office.

## **ILLEGAL CREATION OF "MISSING RECORDS" BY BY REVENUE OFFICIALS TO ABET LAND GRABBING**

14. The basic proof for land grant is the entry made in the *Dharkhast* (Land Grant) Register and the Saguvali Chit Register maintained in the Taluk Office from which after payment of the upset price (if the grant is not free for SC/ST persons) by Treasury Challan, the Saguvali Chit is issued. Prior to this, the applications for land grant has to be verified by the Taluk Office regarding eligibility, availability of excess gomal, local enquiry by Revenue Inspectors regarding objections, preparing sketch maps, etc. But it is seen that in many cases, especially in Bangalore Urban District and surrounding urbanized taluks even though there was no land grant made following the provisions of the Land Grant Rules, the Revenue officials make entries in the RTC forms. On that basis the land grabbers claim for Grant Certificates and Saguvali Chits. The Taluk Office then prepares "Missing Records" with the illegal interpretation that the records in the taluk office are missing. It has been verified by the Task Force that the original Dharkhast and Saguvali Chit Registers are not at all missing and are very much available in the Record Rooms. What is "missing" is the entry relating to the claimant because, in reality, no such grant was made. Such factual position is concealed by the officials deliberately and "*MISSING RECORDS*" are built up as if grant records are not available in the taluk office and orders from Deputy Commissioner or even from government are then obtained for the grant.
15. In some cases bogus Saguvali Chit itself is created which is an offence of fraud and creation of false evidence under the Indian Penal Code apart from the provisions of the Land Revenue Act. In one such case in Kengeri hobli in Bangalore South taluk it was found that the Saguvali Chit is issued by the Bangalore *South* tahsildar in the year 1939 and recommended by the Village Accountant. The fraudsters did not verify that Bangalore Taluk was bifurcated into *North* and *South* only in 1940 and the post of Village Accountant was created only in 1968 and till then there were only *Shanbogues*. However, on the basis of such bogus saguvali chits many persons have grabbed lands in the State and have even obtained decrees from Civil Courts.
16. Even though the Government have issued detailed instructions to the Revenue officers vide circulars dated 30-10-2002, 20-10-2008, 6-8-2009 and 17-9-2009 directing the officials to verify the original and basic records before confirming any lands as *KABJEDAR* of any land, the practice of not verifying the original records and flouting of government circulars has continued resulting in large scale land grabbing abetted by officials. Hence, the Joint Legislature Committee during 2006-07 had specifically asked the Revenue officials in Bangalore Urban district to report such cases under section 136(3) of the Land Revenue Act to the Deputy Commissioner. Section 136 deals with the Presumption of the Entries in the RTC form which is a REBUTTABLE PRESUMPTION. Where there is doubt about such entry, the Deputy Commissioner can enquire into matter and after giving due notice to the

claimants and can pass orders to cancel such wrong entries under section 136(3). This power of the Deputy Commissioner and subsequent cancellation has been upheld by the Courts in various cases.

17. For instance in WPs.17470 of 2007 (KLR-RES) and No.11676 of 2007 (KLR-RES) dated 15-9-2008 the Hon'ble High Court of Karnataka held that:

*" 8. In so far as the Writ Petition of Vasudeva Rao is concerned, admittedly he has not produced the grant certificate. He has not produced the Saguvali Chit....The tahsildar on enquiry found that the (mutation) entries were made without any basis (and) he is duty-bound to bring the same to the notice of the Deputy Commissioner and he has requested the Deputy Commissioner to take action under Section 136(3) of the Act which confers power on the Deputy Commissioner to initiate suo moto proceedings....In fact for such initiation of proceedings there is no time limit. All this is done to protect the public interest....He (the Writ Petitioner) will be evicted in accordance with law by initiating proceedings under the Act...The Writ Petitions are dismissed."*

18. In another land mark judgment No.WP 3069/2008 KLR dated 20-8-2010, the Hon'ble High Court held that even if the Tahsil Office does not produce the original records, it is still mandatory on the part of the claimant of the land to produce the original documents issued to him entitling him to the land. In this case the Hon'ble High Court held:

*" The Petitioners should have been diligent in justifying the revenue entries (in the RTC and Mutation Register), and the right to the properties when the revenue authorities have pointed out that there were no records in their custody."*

In other words, it is not always necessary for the Revenue Department to produce the original records if they are not available with it, but it is still necessary for the claimant to prove his title.

19. Following these orders the Task Force had written detailed letters to the Deputy Commissioners, Assistant Commissioners and Tahsildars to initiate proceedings before the Deputy Commissioner concerned under section 136(3) and had asked the Deputy Commissioners to verify the original registers such as the Dharkahst Register and Saguvali Chit Register as these are difficult to manipulate and tampering with them can be easily made out and not to just rely on the RTC entries or actual possession by the claimant and to initiate proceedings to evict the land grabbers.

#### **ILLEGAL ORDERS PASSED u/s 136(3) BY THE SPECIAL DEPUTY COMMISSIONER, BANGALORE URBAN DISTRICT**

20. It came to the notice of the Task Force that in a large number of cases the Special Deputy Commissioner has passed orders u/136 (3) conferring title to the claimants disregarding the reports of the Tahsildars and violating the

Government instructions to follow the procedure of verification of original documents. It was seen that in just four taluks of Bangalore Urban district, the Special Deputy Commissioner had passed orders favouring the claimants in 428 cases involving 1,042 acres valued at least Rs.1,500 crores. In all these cases the government would have lost the lands to the land grabbers. However, to establish his intransigence, the Task Force requested the Regional Commissioner, Bangalore to examine the procedure followed in these cases and whether there were original grants. The Regional Commissioner constituted 18 teams of Revenue Auditors to examine each of these 428 cases and submitted a detailed report in February 2011 to the Government and to the Task Force that in none of these cases the original documents were examined and government lands were conferred on the claimants merely on the basis of entries in the RTC forms and Mutation Entries, etc.

21. To reverse the orders of the Special Deputy Commissioner, government have to file Writ Petitions only before the High Court. As the cases were numerous and the lands involved are very valuable, the Task Force felt that such large number of cases cannot be handled by the regular Government Advocates who are over-burdened, and therefore met the Advocate General who kindly recommended 10 Special Advocates to handle these cases. Accordingly the 10 Special Advocates have been appointed to take up these cases before the High Court by providing them with all necessary documents.
22. As there are still about 7,000 cases pending under section 136(3) of the Act, Government have appointed 3 Special Deputy Commissioners who, in addition to the existing Special Deputy Commissioner of the District, have to dispose of these cases. The Task Force has impressed upon them by letters and by meetings the need to follow the correct procedure of verifying the original registers and documents while disposing of these cases.
23. Incidentally, the then Special Deputy Commissioner who had passed orders in the 428 cases in favour of the land grabbers is under suspension, having been arrested by the Lok Ayukta under the Prevention of Corruption Act in October 2010.

## CHAPTER 7

### BANGALORE DEVELOPMENT AUTHORITY

#### **BACKGROUND**

1. The City Improvement Trust Board (CITB) was constituted in 1945 to plan for Bangalore city's improvement including developing new housing extensions and layouts, industrial suburbs, etc. In the 1970s urban development accelerated in Bangalore. To meet adequately the needs of Bangalore's planned growth and housing needs, the Bangalore Development Authority (BDA) was established in 1976 vesting in it both planning and developmental functions. The BDA covers 1,306 square kilometers of the Bangalore Urban District area comprising of the Brihat Bangalore Mahanagara Palike (BBMP-- which now includes the erstwhile seven City Municipal Councils), the Anekal and Kengeri Town Municipal Council and 387 villages. It consists of 21 members including two from BBMP and five nominated members, others being government officers. The BDA is also notified as the Planning Authority in its jurisdiction under the Town and Country Planning Act, 1971.
2. In addition to the Planning functions, the BDA has to implement schemes to provide sites for Residential, Commercial, Industrial purposes, Civic Amenity Sites, Parks and Playgrounds and major infrastructural facilities.
3. The main function of the BDA is to acquire private land, form residential development known as Layouts or Extension and allot sites to applicants on objective eligibility criteria. In addition, the BDA also approves Layouts and Extensions submitted to it by House Building Cooperative Societies and private developers according to the same norms as for BDA layouts. According to the Town Planning norms till June 2007, out of the total area of a layout only 50% can be allotted as sites, 10% to be reserved for Civic Amenities, 15% for parks and open spaces and the balance of 25% for roads. Since June 2007, the CA Sites, Parks and Open Spaces should be 25%, Roads 20% and 55% for distribution as sites. The Civic Amenities sites are for public service purposes such as post office, school, fair price shop, library, bus stand, cultural institutions, hospitals, bank, etc. These CA sites have to be relinquished to the BDA by the institutions approaching the BDA for layout approval. The BDA has to invite tenders for leasing the CA sites by giving wide publicity. The sites meant for Parks and internal roads are handed over to the BBMP for ownership and maintenance.

#### **ACQUISITION OF LAND BY BDA, ALLOTMENTS OF SITES AND ENCROACHMENTS**

4. It is to be stated that, ebbs and flows of irregularities and lapses notwithstanding, the BDA in its three decades has done yeoman service to the middle class people in providing housing sites, both by acquiring lands by itself

and by approving Extensions and Layouts formed by the House Building Cooperative Societies, despite justifiable criticism of lacunae and acts of omission and commission, the BDA has enabled the quadrupled population of Bangalore to get house sites but for which the urban chaos of Bangalore would have been far worse. According to the BDA it has distributed over 110,000 sites in Bangalore from its inception in 1976. An abstract of lands acquired, BDA layouts formed, Private Layouts formed, CA sites allotted, BDA lands encroached, its value, etc. are shown below:

(i) Total land acquired by BDA since inception <b>(in Acres)</b>	19,613
Area De-notified <b>(in Acres)</b>	2,813
(ii) Number of Layouts formed by the BDA	432
(iii) Number of Private Layouts approved by BDA	567
(iv) Extent of BDA land encroached <b>(in Acres)</b>	2,878
(v) Market value of encroached land at Rs.1,000 per sq.ft. <b>(in Crore Rs)</b>	12,375
(vi) Extent of Parks & Playgrounds in BDA Layouts <b>(Acres)</b>	780
(vii) do in Private Layouts <b>(Acres)</b>	471
(viii) Number of Civic Amenities Sites	1,031

The total extent of BDA's land encroached is 2,739 acres according to BDA's own estimates. Out of this, the BDA has reported that 333 Acres (which is a meager 12%) of land has been recovered by removing encroachments since July 2006, when the Joint Legislature Committee was formed. The value of 2,739 acres of land encroached, on a conservative market value of Rs.1,000 per square foot, is about Rs.11,000 crores. The BDA currently allots land at Rs.500 per square foot except for certain category of sites auctioned.

#### **LACUNAE, ACTS OF OMISSION AND COMMISSION OF BDA NOTICED BY THE TASK FORCE**

##### **5. Absence of Property Registers:**

The BDA, like so many other Departments and Local Bodies, does not even have an updated Property Register in the absence of which it is not even possible for BDA to know the extent of encroachment of its lands. Many organizations such as the Army, Indian Institute of Science and the BBMP of late, have an Estate Officer (in many cases a qualified officer of the rank of Joint Director of the Survey Department) whose duty it is to maintain a complete record of lands belonging to the organization. In the Hyderabad

Urban Development Authority (HUDA), there is an Estate Officer's section with ten officers whose duty it is to inspect the HUDA lands and submit a weekly report to the Commissioner and Vice Chairman of HUDA. As soon as any encroachment is noticed, the Enforcement Wing headed by a Police Officer removes the encroachment. Therefore, encroachment of HUDA land is as rare in Hyderabad as it is common in Bangalore.

**6. Unreliability of information from BDA:**

For an Authority entrusted with the development of a city known as the Silicon Valley and Information Capital of India, the BDA's system of information pertaining to its own duties and functions is abysmal. For instance, the number of CA sites has been shown as 1,031 when it is noticed that in one layout namely, the Judicial Employees House Building Society Layout itself the number of CA sites should have been 404. A simple calculation would show that out of the 15,165 Acres "handed over" to the Engineering Section of the BDA, 10% or 1,516 Acres should be CA sites as per BDA Rules in BDA-layouts alone. The area covered by the CA sites is not forthcoming from the BDA. It is said that till now the BDA added together the CA sites and Parks and Open Spaces and the total area together is shown as 31.53 lakh sq. meters equivalent to 780 acres. As the Engineering Wing has taken possession of 15,165 acres and formed layouts, 10% of this area should be CA sites and another 15% should be Parks, Playgrounds and other open spaces – in all 25% of the total area. This comes to 3,791 acres as against which the BDA has said it is in possession of only 780 acres. Judging by the absence of an Estates Division till recently and the least importance attached to removal of encroachments, it is quite possible that the BDA land under encroachment shown as 2,739 acres is only a conjecture.

**7. Absence of a Procedure to protect CA sites and Parks:**

The Task Force has noticed that there are many private layouts where the Associations or Cooperative Societies have distributed sites for housing but have not conformed to the legal requirement of relinquishing 10% of total layout area for CA sites, 15% for Parks and Open spaces and 25% for roads. The main reason for this is, the BDA is not insisting on relinquishing these sites by a Registered Deed nor insist on the private Layouts to fence and handover the public purpose lands to the BDA before approving the distribution of sites. Such a precaution is taken in other Authorities like HUDA where 25% of the sites should be fenced, relinquished and handed over before approval of site distribution is given by the Authority. Even for apartment houses, the HUDA insists on handing over one entire floor to HUDA which will not be returned to the builder for sale till the building is complete in all aspects and complying with all legal requirements. The inclination of private layouts in Bangalore to sell away the CA and Park sites is understandable. In one acre of 43,560 square feet, only 55% of the area can now be sold as sites (earlier it was 50%, till June 2007) and the balance of 45% should be relinquished at the rate of 15% for Parks, 10% for CA sites and 20% for roads. This means that in 55%

of the area which is 23,958 sq. ft. only about 20 sites of 30 feet x 40 feet or 10 sites of 40 ft.x 60 ft. can be formed. By not providing for about 20% of the area meant for public purposes, another about 8 sites can be sold. The BDA has not been able to discharge its statutory duty of ensuring 45% of layout area as open space and civic amenities.

The most notorious example of this violation is that of the Karnataka Judicial Employees Cooperative Society where 404 CA sites should have been relinquished but not one has been handed over by the Society which has been analyzed in detail in the Joint Legislature Committee's Report submitted to the Legislature in July 2007.

According to the judgment of the High Court of Karnataka, CA sites once legally required to be provided in a layout as per norms of the Town and Country Planning Act, belong to the BDA, irrespective of whether they were handed over to the BDA or not. The BDA has not taken any action to enforce this ruling and has allowed the law-breakers to go scot-free.

#### **8. Notifying lands with existing buildings:**

According to the BDA, an area of 1,275 acres acquired by it have buildings already constructed on the lands by persons to whom the sites have not been allotted. This has resulted in a large number of litigations by the building owners.

The Engineering and Land Acquisition Wings of the BDA do not inspect the lands under acquisition in the first place and exclude the buildings already in existence and the Land Acquisition, Engineering and Legal Wings of the BDA do not advise for the exclusion of the buildings included in the Preliminary Notification or final Notifications. In many cases the Task Force has noticed that even though only about 10% to 20% of the area acquired already has built-up area, because of the stay orders from such owners pending in the Courts for a long time, the BDA is unable to distribute all the sites in the acquired land. Apart from the land acquisition becoming infructuous, the BDA also spends a lot of efforts and expenditure in the form of legal fees in this avoidable misadventure.

The Task Force has brought to the notice of the BDA the provisions of the Karnataka Land (Restriction on Transfer) Act 1991, which prohibits transfer of lands acquired. Section 3 of the Act reads:

*" No person shall purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any area which has been acquired by the Government under the Land Acquisition Act or any other law providing for acquisition of land for a public purpose".*

There are innumerable cases pending against the BDA where the Civil Courts have admitted suits filed by persons in lands already acquired and taken

possession of by the BDA. The Task Force has brought to the notice of the BDA the judgment of the Supreme Court in State of Bihar vs. Dharendra Kumar and Others SC 1995 AIR 1995, 1995 SCC (4) 229 and 1995 SCALE (3) 700 dated 27-4-1995 in which it was held that:

*".... By necessary implication the power of the civil court to take cognizance of the case under s.9 of the CPC stands excluded and a civil court has no jurisdiction to go into the question of the validity or legality of the notification under s.4 and declaration under s.6 except by the High Court in a proceeding under Article 226 of the Constitution. So the civil suit itself was not maintainable. When such is the situation, the finding of the trial court that there is a prima facie triable issue is unsustainable. Moreover, possession was already taken and handed over to the Housing Board. So, the order of injunction was without jurisdiction. The injunction granted by the civil court and confirmed by the High Court are thus illegal".*

Even though the Task Force has brought this judgment to the notice of the BDA and a copy of it was given in February 2010 itself no progress has been made by the BDA to get the large number of such suits pending before the civil courts dismissed. In all such cases the lands have been acquired and taken possession by the BDA and the land acquisition has been held valid in higher courts. In spite of this clear legal position, the BDA has not been able to get the suits dismissed and distribute the sites.

#### **9. Inability of Legal Wing to advise BDA knowledgeably and defend cases effectively in Courts:**

It is seen by the Task Force that the Legal Wing headed by a retired senior Judicial Officer is not able to advise the BDA on legal issues correctly nor is able to pursue and defend successfully the large number of cases pending in Courts. The totally illegal advice given by the Legal Wing in the infamous Turahally Forest Acquisition case, where a Notified Forest land within 18 kilometers of the BBMP limit was "acquired" by BDA and Award was passed in favour of encroachers has been narrated in detail by the Joint Legislature Committee's Interim Report Part II submitted to the Legislature in July 2007. In this case, the Legal Wing advised the Land Acquisition Wing that it is correct to pass the Award even though it was a forest land. It did not point out that admittedly it is Forest Land, that it is within 18 kilometers of BBMP limits and therefore no "regularization" of land is legal assuming even that it was unauthorizedly cultivated, that the High Court did not hold the Revenue Department's mutation entry as incorrect, etc. Instead, it simply sided with the Land Acquisition Wing to pass an illegal award.

In some cases the Legal Counsels appointed by the BDA collude with the encroachers and unauthorized builders in the BDA land and act inimically, betraying the BDA. For instance, when the JLC visited the HBR Layout on 19-4-2007, it was noticed that in a land acquired by the BDA, the former owner

was constructing a compound wall and it was seen from the file of the BDA that the Advocate of the BDA had submitted before the Civil Judge in OS No.7433/98 that the ***BDA has no objection for the petitioner-builder to continue with the construction of the compound wall !*** It is astounding that neither the Engineering Wing nor the Legal Wing nor anyone else in the BDA, even after they knew that the JLC was inspecting the place, took any care to read their own file. It was left to the JLC to write to the BDA about the misdemeanour of the Advocate. After being pointed out this unethical behaviour, all that the BDA did was to discontinue the services of the Advocate but did not report the matter to the Bar Council as an example for others in the large number of cases going against the BDA.

### **Illegal De-Notification of Lands Taken Possession indulged in by Government:**

10. The BDA has reported that 2,813 acres have been de-notified by Government from the lands notified by the BDA. It is well-known that irregularity is rampant in "De-Notifying" the lands under acquisition at Government level because of pressure brought by land owners. While there may be justification in a few cases to denotify an entire piece of land notified because of unsuitability, there can be no justification in deleting lands within a total layout on a selective "pick and choose" method. Patently illegal is the denotification of a land already taken possession. Section 48 of the Land Acquisition Act, 1894 says:

*48 (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of **which possession has not been taken....***

### **An Example of illegal Denotification of CA site:**

Government acquired 10 Acres 22 Guntas of land on behalf of the Bharat Heavy Electricals Ltd House Building Cooperative Society in S.No.15 of Laggere Village, Bangalore North Taluk in 1979. **Possession of the land was taken by BDA on 5-9-1984.** The layout was approved by the BDA and five CA and Park sites were handed over to BDA on 7-9-1994 by the Society. Then, one Tara w/o Ramakrishne Gowda applied to Government to allot an extent of 68.5 ft x (70 + 87) / 2 ft. to herself on the ground that she is residing in a "shed" on that land. The Government, after the usual "thorough examination of the case in all its aspects" and due consideration, denotified 54 ft x 50 ft vide Notification No.UDD 670 MNX 2001 dated 18-11-2002. The site denotified was shown in the Layout as Civic Amenities site. In a further show of private benefit at public cost, the BDA on its part, in addition to the denotified area, allotted 86.6 ft x 73.3 ft. adding from another adjoining CA site also to her. It was noticed by the JLC during its spot inspection on 20-9-2006 that a five storey apartment building was under construction by a builder.

The irregularities noticed in this instance are: Illegal denotification of land

after possession of land was taken; allotting CA site to an individual in violation of the Town Planning and BDA norms; using the CA site for residential or commercial purpose in violation of Supreme Court Order in Bangalore Medical Trust case in AIR 1991 SC 1902 where it was held that use of public park for any other purpose such as for establishing a private nursing home is illegal.

In almost all cases of such denotification, Government have violated the law.

### **ABDICATION OF RESPONSIBILITY BY BDA UNDER THE TOWN & COUNTRY PLANNING ACT:**

11. In respect of the large number of private layouts (567), for which the BDA has to approve the layout plan and take possession of the CA sites, it is noticed that in many such private layouts, the BDA has not discharged its responsibility of taking possession of the land to the extent of 45% for CA sites and other public amenities in all the layouts. While the CA sites will be under the control of the BDA, the Parks, Playgrounds, Open Spaces and Roads have to be handed over to the BBMP. It was highlighted in the JLC's Interim Report of July 2007 that in the case of the Judicial Employees House Building Cooperative Society, the BDA did not take possession of over 400 CA sites. That HBCS did not even obtain the mandatory approval of its layout from the BDA as per law but distributed sites meant for Civic Amenities to influential persons and members of higher judiciary whom the High Court itself thought to be ineligible. In spite of this, the BDA, apart from issuing ritualistic and periodic notices to the HBCS, has taken no action to resume the CA sites and other public sites. There are many cases pending for a long time regarding the irregular allotment of sites by this House Building Cooperative Society.

### **The Strange case of the Unapproved Layout in 7 Acres 10 Guntas of land belonging to the defunct Mysore Machinery Manufacturers Ltd, Byatararanapura on Bangalore-Mysore Road:**

12. It is noticed that in many cases where influential persons are concerned, the BDA develops cold feet to implement the law. On seeing a report in the newspaper that 7 acres 21 guntas of prime land on the Bangalore-Mysore Road belonging to the defunct Mysore Machinery Manufacturing Company has been sold to some important persons and this land has been formed into 112 plots and sold away without the layout having got the approval of the BDA nor the CA and other public sites have been relinquished to the BDA, the JLC wrote to the BDA on 19-9-2006 to enquire into the same and report. After many reminders the BDA replied on 21-4-2007 to the effect that the said Company had applied for approval of a housing layout in 7 Acres 10.4 Guntas of their land in S.Nos.7/2 and 7/3 of Byatarayanapura village on 21-7-2003. The BDA resolved on 30-12-2003 to approve the same and asked the Company to remit Rs.13,29,500 towards various fees leviable. But the applicant did not remit the same and therefore the BDA cancelled its earlier resolution approving the formation of layout on

26-2-2005. According to the BDA, it also wrote to the BBMP on 1-4-2005 that the sites in the layout should not be given Khatha since the BDA has not approved the layout. The Applicant had again on 27-4-2005 and 19-5-2005 informed the BDA that it was withdrawing the application for approving the layout. This withdrawal application was also approved by the BDA on 6-6-2005 subject to the condition that before developing the land into layout, the applicant should seek the approval of the BDA afresh.

**The BDA further reported that as the BDA has now learnt that the layout development is coming up on this land without the approval of the BDA as required by law, it has issued a notice under Section 17(4) of the Town and Country Planning Act on 7-4-2007.** There is no further report from the BDA as to what has happened to its notice and the action taken by the BDA regarding the unapproved layout.

Under section 17 of the said Act, the BDA can remove any structure which has come up without BDA's approval and the cost of such removal can be recovered from the violators. As per decision of the High Court in A.S. Vishveshwariah vs. BDA 2004(8) KLJ p.277, if the layout is not approved by the BDA and the site owners go ahead and distributes sites and buildings are built, the BDA, in addition to prosecution, can also take possession of the buildings and use them for its own purpose, lease them out or sell to the public.

**The sad case of misuse of Four Park Sites relinquished by Vidyapeeta ITI Layout in Survey No.10 (New Survey No.120) of Kathriguppe Village by the BDA:**

13. An area of 17 Acres 16 Guntas was acquired for the formation of the above layout and the site owners relinquished 3 Acres 15 Guntas of land out of this total area for the purpose of four parks. This was also shown as Parks in the approved Comprehensive Development Plan. However, the JLC had found during its spot inspection on 20-9-2006 that all the four Parks were converted into non-park purposes and in two of them sites were also distributed to private persons. The Vidyapeeta Welfare and Cultural Association has been fighting for the retention of the park-sites as only for parks since 1995 to no avail. While many private layout Associations and House Building Societies do not relinquish Park and CA sites and BDA has not taken any action to resume them, here is a case of four Park sites relinquished by a private layout to the BDA and the BDA has failed to give them to BBMP for Parks.

**An Attempt to Steal 21,900 sq.ft. of CA site in HAL II Stage, Indira Nagar by the Family Members of a Former Chairman of The Land Army Corporation:**

14. The BDA leased 21,900 square feet of land bounded on three sides by roads, between 1<sup>st</sup> and 2<sup>nd</sup> Cross Roads, 10<sup>th</sup> Main Road, in HAL II Stage to the Indiranagar Social Welfare Trust, 254 Defence Colony, Indiranagar. The name

of the President of the Trust is shown in the Lease Deed as Smt. Prabha Naib, wife of Sri.VP Naib, 254 Defence Colony, Indiranagar. The Lease Deed dated 27-11-1991 states that the lease period is 30 years, that the rent is Rs.2 per annum, that the Lessee should start construction of Educational Institutes, Cottage Industries, Specific Small Scale Industries, Consumer Stores and such other activities which will directly or indirectly benefit the women, children and the under-privileged classes. The Lease Deed further stipulated that the Lessee should start construction activities within six months from the date of the Lease Deed and should complete the same within two years. Further, the Lease Deed states that if the Lessee violates these conditions, the Lessor-BDA shall resume the property.

In June 2002, that is after eleven years of the Lease Deed, the Balagara Udyanavana Sangha, an Association of citizens of Indiranagar, gave a petition to the BDA that the CA site is vacant and is being used for throwing garbage by residents and since the Lessee which itself is a Trust for the benefit of just one family, did not comply with the conditions of the Lease, the BDA should resume the land and allot it to the Bangalore Water Supply and Sewerage Board (BWSSB) which can construct water supply infrastructure and also a park to protect the environment instead of the land being a garbage dump. The BDA did not take any action.

In August 2007 the office bearers of the Association submitted before the authorities that the Lessee, apart from violating the conditions of the Lease for which the BDA has not taken any action, was now trying to negotiate with a builder to construct a commercial complex for his benefit. The CA site of 21,900 sq. ft. is close to the already commercialized 100 Feet Road of Indiranagar and even at a conservative Rs.5,000 per square foot its value would be over Rs.10 crores.

## **15. RECOMMENDATIONS:**

1. The BDA should immediately reconstruct and maintain a Property Register. The position of an Estate Officer has been created recently in the BDA. This Wing should be made fully competent with qualified staff and computer facilities so that information of CA Sites, Open Spaces, Parks, etc. will be readily available for each layout.
2. The BDA should publish in the form of booklets and on its website the details of CA sites, Parks, Playgrounds, Open Spaces, etc. for the information of the public. The interested public will come to know of this and would be of assistance to the BDA in protecting them.
3. The Information Technology application in the BDA requires to be modernized and updated. The Development Authority of a city boasting itself as India's Silicon Valley, is unable to furnish even the basic

information such as the total number of sites distributed by the BDA since its inception in 1976. The BDA should have a comprehensive training programme for all its officials in advanced computer literacy and not merely using computers mostly just for typing work.

4. The Chief Executive and senior officers of the BDA should visit the Development Authorities of at least Hyderabad, Mumbai, Chennai and New Delhi to learn how those cities protect their properties. Such widespread encroachment of BDA lands as exists in Bangalore is unheard of in other cities. The high value of land in Bangalore is next only to Mumbai and Delhi. Such valuable land should be protected by BDA. The CA sites, Parks, Playgrounds and Open Spaces in Bangalore are mostly under encroachment, besides the beds of lakes and tanks resulting in flooding.
5. To ensure that the BDA is in possession of all CA sites as per norms, it should insist on their relinquishment with the deeds to be registered and handed over with fencing before it approves allotment of sites. This practice is followed by other Development Authorities such as HUDA.
6. CA sites, Parks and Playgrounds should be used only for the purpose approved in the Comprehensive Development Plan and should never be allotted as sites for the benefit of individuals. Such change of land-use is manifestly illegal.
7. The officers of the Engineering Wing should regularly inspect all the layouts, including the private layouts and should report the coming up of the "unapproved layouts" and unapproved buildings which appear to be a peculiar malady of only Bangalore compared with other cities.
8. The BDA should make use of its enormous powers under its own Act and the Town and Country Planning Act to demolish buildings and structures which have come up without any approvals illegally and in blatant violation of law.
9. Section 33-A was added to the BDA Act by an amendment dated 26-6-1984 which gives powers to the BDA to prosecute any unauthorised occupation of BDA's land and, on conviction, the punishment is upto three years and with fine. This powerful legal provision has not been made use of by the BDA.
10. The Legal Wing of the BDA requires close supervision. There are cases pending over fifteen years in different courts without the BDA's counsels pursuing the cases for speedy disposal. Where the BDA's counsels act inimically to the interests of the BDA, it should report such unethical cases to the Bar Council and should not be content with just removing the counsel.
11. The Commissioner of the BDA should review the important cases and long-pending cases every month seriously. The strictures passed by the

superior courts against BDA's conducting of the proceedings before them make sad reading.

- 12.** Illegal de-notification of land acquired and taken possession should not be recommended by the BDA as it is functioning under a statute and not under the whims of the Secretariat. In all such cases, the Government is seen to be asking for the opinion or recommendation of the BDA. The BDA should discharge its statutory duties by pointing out law and should not meekly toe the line in anticipatory obliging.

## CHAPTER 8

### NEED FOR IMPROVED ARRANGEMENTS TO DEFEND LAND ENCROACHMENT CASES

1. The existing procedure in defending government cases is for the Government Advocates to take notice of the petitions against the government at the stage of admission and, after obtaining information and affidavits from the concerned officers, to appear before the courts and defend the cases. In exceptional cases, due to the special nature or importance of the case the concerned Department employs Special Advocates with the approval of the Advocate General.
2. In 1996 the Government issued an order No.DPAR 425 SGO 95 dated 1 January 1996 creating Legal Cells defining the duties and responsibilities of the Legal Cells in the Annexure II to the G.O. Items 5 and 9 of this Annexure reads as follows:

*Monitoring of pending litigation and furnishing the required information and documents to the Law Officer.*

*To take follow-up action on receipt of files after review by the Law Department.*

There are seventeen Legal Cells appointed by the Government to the departments to pursue effectively the litigations involving the government. However, these cells have not been effective in monitoring the important cases, nor even aware of what their duties are as the Report of the Joint Legislature Committee has said. The JLC therefore suggested that the concerned Secretaries to Government Departments under whom the Legal Cells are working should have monthly meetings with them to review the cases within the department itself.

Clause 65-A of the Karnataka Government (Transaction of Business) Rules 1977 was inserted in the year 2000 and it reads:

*It shall be the duty of the Law Department to review, at least once in a month, the pending Government litigation. For this purpose, the Secretary to Government, Law Department, shall hold monthly meetings with all the heads of legal cells and the Law Officers of the Office of the Advocate General. The Secretary to Government, Law Department shall report the result of such review to the Chief Secretary in a proforma specified by that Department in that behalf.*

The provisions mentioned above would indicate that monitoring the pending cases and furnishing the information monthly to the Law Secretary for his monthly review also fall within the purview of the Legal Cells and Law

Department. However, this is not happening mainly because the concerned Secretaries to Government do not conduct review meetings with the concerned Government Advocates and their Heads of Legal Cells to review the cases. Only in cases involving contempt of court, the Secretary to Government pays particular attention in attending to it.

3. In the case of land grabbing proceedings before the High Court and Civil courts, the Task Force found that the Tahsildars and Deputy Commissioners are not even aware as to how many cases are pending before the various courts. Except in a few selected cases, in most cases para-wise remarks are not furnished to the Government Advocates and the officers do not meet and brief the Government Advocates. As a result, In Bangalore Urban district alone in over 1,000 cases the Civil Courts and the High Court have passed *ex-parte* orders. These are all involving land grabbing and the loss to government is over Rs.2,000 crores in these *ex-parte* orders alone. Such is the case in the neighbouring districts also as taluks like Devanahally, Nelamangala, Hoskote, Doddaballapura, Ramanagaram, Chikballapura, etc. are equally urbanized.
4. Even in the distant Gulbarga it is noticed that the valuable land of 5 acres in the old demolished Jail area which has been converted into a Shopping District is claimed by some *ex-inamdars* on the basis of a manifestly illegal Land Regrant Committee order and the case was pending in the High Court for the past 4 years. When the Task Force reviewed the encroachments in Gulbarga, this was noticed and, on the recommendation of the Deputy Commissioner a competent Special Advocate to defend this case in the Dharwad Bench of the HC was appointed. *He found out that the case was already dismissed for want of prosecution!* Now efforts are being made for the restoration of the case. The land here is worth Rs.4 crores per acre. Such is the attention paid to defending important cases involving valuable government land by the district administration and the Government Advocate, at least in this case.
5. The Deputy Commissioner's office does not think that defending the cases is primarily its duty. The DC simply sends the papers to the Tahsildar who sends to the Revenue Inspector for preparing the para-wise remarks to the Writ Petition. The DC and the Tahsildar think that it is the duty of the Government Advocate to prepare the para-wise remarks and defend the case. The Government Advocate has a large number of such cases and is not fully equipped to defend the case even if he gets all the facts of the case given to him by the Tahsildar. Especially in Bangalore the Task Force has seen that in all the cases where the Court has passed *ex-parte* order, the DC or the Tahsildar have not sent the para-wise remarks to the Government Advocate and, worse, they are not even aware that *ex-parte* orders have been passed till the Task Force and the Legal Section obtained the information from the City Civil Court.

6. The tragic situation is that the DC and Tahsildar are totally negligent of this important aspect of their work. They are all extremely busy organizing functions or attending meetings or appearing before the HC in contempt proceedings. In September 2010 the Revenue Department has issued an order authorizing the DCs to appoint on contract basis a retired District Judge as Legal Adviser. As there are no retired "District Judges" as almost all of them get promoted as Principal District Judge, the Task Force requested the Revenue Department to issue a corrigendum to the G.O in October 2010 to include retired Principal District Judge also being eligible for being appointed as Legal Adviser. Even after the corrigendum has been issued no Legal Adviser has been appointed in any district except in Bangalore Urban and Gadag districts. Even appointing a Legal Adviser by itself is also not going to solve the problem of defending the cases successfully. Only a review by the DC with the ACs and Tahsildars of all cases pending before the Courts at least once in a month with the Legal Adviser may help the cases being defended successfully. Also, the DCs should be empowered to employ Special Advocates in important cases.
7. The Government Advocates' enhanced remuneration for each case, clerical help in the form data entry operators, contingency expenditure, etc. have been sanctioned one year ago. But the tragic situation is that the Government Advocates are not able to draw the amount as the Head of Account has to be operated by the Advocate General and the entire amount has been used for Cauvery Water Tribunal litigation, it is said, when the Task Force met the Law Secretary in this connection.

#### **CREATION OF A CELL IN REVENUE DEPARTMENT ON THE MODEL OF THE COMMERCIAL TAX DEPARTMENT**

8. In the Commercial Taxes Department, a Legal Affairs Division has been created headed by a senior Joint Commissioner of Commercial Taxes assisted by a Deputy Commissioner of Commercial Taxes, four Assistant Commissioners, one Commercial Tax Officer and ten supporting staff. Appeals against the orders of the Assessing Officers lie before the Joint Commissioners (Appeals) of whom there are 17 in the State. Appeals against their orders lie before the Karnataka Appellate Tribunal.
9. There are 4 Benches for Commercial Tax Department in the KAT and each Bench consists of an Additional Commissioner of Commercial Taxes and a District Judge. The number of cases pending before the 4 Benches is in the range of 2,000 in January 2011. Before each Bench, a State Representative of the rank of Deputy Commissioner from the Commercial Taxes Department represents the Department. There are about 4,000 cases pending before the four exclusive Commercial Taxes benches of KAT.
10. Against the orders of the KAT, Revision Appeals lie before the Division Bench of the High Court. There are two Division Benches, one for Writ Petitions and another for Appeals and Revision. For each of the High

Court Benches there is an exclusive 'Litigation Conducting Officer' of the rank of Assistant Commissioner of Commercial Taxes. In January 2011 there were only 550 such cases pending before the two High Court Benches relating the Commercial Taxes Department. The Assessing Officers against whose first orders the litigants have before the Courts, prepares the basic para-wise remarks. The Advocate General has assigned two Government Advocates exclusively before the Division Bench and one Government Advocate before the Single Judge for Writ Petitions.

11. The Legal Affairs Section of the Department monitors every case pending before the KAT, High Court and the Supreme Court. The two Litigation Conducting Officers who assist the three Government Advocates ensure that all the information required by the Government Advocates are furnished to them.
12. Due to such systematic organization of defending Commercial Taxes cases, very few of the cases are lost by the Department and there is not a single case of ex-parte order.

#### **POSITION IN THE REVENUE DEPARTMENT**

13. In contrast, the number of cases relating to Revenue Department pending before the two Revenue Benches of KAT is 6,800, while there are four exclusive benches for the 4,000 cases of Commercial Taxes Department. More importantly, the Revenue Department is represented before the KAT by only one officer of the rank of Tahsildar as State Representative. The other post of Assistant Commissioner is vacant for more than a year as on February 2011.
14. In the High Court, there is no Special Bench for Revenue Department cases nor is there any 'Litigation Conducting Officer' exclusively by being present in the Court. Besides, there are about 350 Civil Courts in the State which also admit cases relating to the Revenue Department. There are about 5,000 cases pending before these Civil Courts of which about 1,500 are relating to Bangalore Urban district alone. Altogether, the Task Force has estimated that the number of cases relating to the Revenue Department pending before the Courts starting from Taluk level to the Supreme Court is about 15,000.
15. The Advocate General allocates work among the Government Advocates and the Government Pleaders who number about 60. This is unlike the Commercial Taxes Department where three Government Advocates specialize in arguing Commercial Tax matters.

## **SUGGESTIONS FOR IMPROVING THE SYSTEM IN THE REVENUE DEPARTMENT**

16. There is no single 'Head of Department' outside the Secretariat for Revenue Department as is the case with Commercial Tax Department which has a Commissioner of Commercial Taxes. However, the Revenue Department has four senior Regional Commissioners who are of the rank of Secretary to Government. Each RC is assisted by two Additional RCs and Assistant Commissioners and a large number of Tahsildars and supporting staff numbering altogether 144 persons. It is therefore feasible and necessary that in each Regional Commissioner's Office, one Additional RC is exclusively entrusted with all court cases and he should be assisted by one Assistant Commissioner and two tahsildars and supporting staff. In the case of Bangalore Region, due to the large number of cases and high land value, additional staff in the form three Assistant Commissioners and necessary supporting staff should be provided. It should be the duty of the Legal Affairs Section in the Regional Commissioners' office to take stock of the number and status of court cases pending in all courts and ensure that all information as required by Government Advocates and Government Pleaders are furnished to them.
17. Similarly, in each Deputy Commissioner's office, an Assistant Commissioner should be designated exclusively to deal with court cases pertaining to the district and to liaise with the Legal Affairs Section in the Regional Commissioner's office and with the Tahsil office. He should see that the para-wise remarks and other information as required by the Government Advocates and Government Pleaders are sent without delay and in all cases.
18. On the same lines, at the Taluk Office level there should be one Sheristedar exclusively dealing with Court cases. It should be his duty to ensure that all information relating to each case is furnished to the Government Advocates.
19. It should also be made mandatory that wherever ex-parte orders are issued, the concerned officials responsible should be made to reimburse the value of the land. In many cases, for condoning the delay, the courts impose a fine. Such fine should also be recovered from the concerned officials pro-rata.
20. This important matter has been brought to the notice of the Chief Secretary and the Principal Secretary, Revenue Department by the Task Force. However, there is no reply from the government, much any action taken by the government. Very often it is said that there is no *POLITICAL WILL* for bringing about basic improvements in administration. The above matter of defending court cases involving thousands of crores of rupees of land value requires only an *ADMINISTRATIVE WILL*.

21. which is unfortunately grossly lacking in the state once known for progressive administration.

## CHAPTER 9

### NEED FOR CITY SURVEYS IN BANGALORE AND OTHER CITIES

1. The Government is unable to protect the government land or the *Commons* such as *gomal, gunduthope, tankbeds, etc.* mainly because there is no accurate or updated surveys made and records kept. In their absence, the traditional Record of Rights, Tenancy and Crops (RTC or *pahanis*) form the basis for presumptive ownership of land. It is common knowledge that these RTCs are issued for illegal consideration in many cases, especially in urban areas like Bangalore. On the basis of this, sale deeds are registered and government lands come to be lost. There are some ingenious methods by which government lands come to be grabbed with the stamp of court orders. In an instance in Kengeri hobli in Bangalore South Taluk it was noticed that two persons claimed disputed ownership of six acres of what was government land on the basis of RTC forms before the Civil Court and after one year of hearings, both filed a "compromise" petition before the Court that they have agreed to share the land three acres each. The Court graciously agreed to the compromise deed filed before it and thus the grabbing of government land become "legal" in the absence of the Tahsildar being made a party to the case of which he was not aware. Such land grabbing becomes possible because the Sub-Registrar of the Registration Department does not verify the title the land from the seller/ buyer even though the time-honoured legal principle is that the buyer does not get a better title than the seller.
2. The present system of Registration of documents is capable of being misused quite freely as the Task Force found in many instances and have filed Writ Petitions in the High Court to recover these lands. This is mainly because the system we follow is the **Registration of Deeds** in contrast to the **Registration of Titles** established under the **Torrens System**. Sir Robert Richard Torrens (1814-1884) was an Irishman who went to Australia and established the land title registration system in South Australia in the 1850s. Under the Torrens system what is registered is not the Sale Deed but a Deed of Title to Property. Thus, land and property titles are no longer passed on by the execution of deeds but by the registration of title in a public register. Once registered, the title of a purchaser became indefeasible unless he was guilty of fraud; and innocent dealers with interests in registered land were guaranteed their interest in the land. To put Torrens system into operation it is necessary to enquire into the title of the property in an exhaustive manner. Once this is done, it becomes easier to incorporate all the further changes in title ownership. The Torrens system is followed in varying degrees in most developed countries and also in a few developing countries such as Canada, most

European countries barring the United Kingdom, Malaysia, Kenya and many states in the United States.

3. To bring about this improvement it is not necessary to make amendments to the Registration Act. The Karnataka Land Revenue Act provides for detailed City Survey under which the lands and properties in cities such as Bangalore (BBMP) can be done accurately and the Deputy Director of Land Records after an enquiry with one month's public notice to interested parties will issue Property Ownership Card for each property. While this by itself will not completely eliminate disputes before the courts, in the case of government lands it becomes a *prima facie* proof that government owns the land and the onus of proof otherwise lies with the disputing litigant or land grabber. Such a detailed City Survey was done in Bangalore City in the 1960s when the city area was only 125 km<sup>2</sup>. The BBMP area is now 776 km<sup>2</sup> with about 18 lakhs properties.
4. At present neither the BBMP nor the BDA nor the Revenue Department has any idea as to who are the property owners, what are the property boundaries and which are the Government, BBMP and BDA properties. Government lands within the Bangalore Urban district is as much as 150,000 acres of which about 24,000 acres valued at Rs.40,000 crores, were under encroachment as reported to the Joint Legislature Committee. The BDA alone should have about 3,000 acres of open space such as CA sites and parks from the layouts against which they have are in possession of less than 1,000 acres the rest being encroached or disputed,
5. In December 2010, Hon'ble Justice Shailendra Kumar wrote in a judgement that "*ALL SUB-REGISTRARS AND MOST SPECIAL DCs IN BANGALORE DISTRICT ARE CORRUPT*". While this may be harsh, yet there is a good deal of truth in it. Most of the Government lands in Bangalore Urban district have been illegally converted into sites by developers and sold. This is because there is no proper survey, title-determination and protection of government lands.
6. **The only way to check this colossal corruption, loss of government land and untold misery to the ordinary citizens is to have a City Survey done for Bangalore Metropolitan area.** The Revenue Department has already taken up such a detailed survey, under the Urban Property Ownership Records (UPOR) Project in the Public Private Partnership mode, the five cities of Mysore, Shimoga, Bellary, Mangalore and Hubli-Dharwad. Under this PPP model, the Government has initially provided 20% of the project cost of Rs.40 crores and the Service Providers (who are selected on the basis of transparent competitive bidding) recover the cost in the form of fee for the issue of the Property Card as fixed by the Government. However, though started two years ago the UPOR has made snail's progress (except in Mysore City) because of the inability of the Survey Department to fill up the vacancies of Surveyors' Posts even though the Government have sanctioned 1,600 posts of Surveyors two years ago.

It is said that the recruitment process is shortly to commence with the Karnataka Examinations Authority conducting the examinations. It is to be hoped that the process will not come to a standstill by some Licensed Surveyors moving the Courts. The process of filing *Caveat* and defending such important cases through the Advocate General himself or a Special Advocate is well known and it is only hoped that the Survey Department will finalize the recruitment of Surveyors and complete the UPOR in 2011.

7. Such a UPOR project is essential for Bangalore City. In Bangalore every square foot of land fetches anywhere from Rs.1,500 to Rs.22,000 (that is, one acre equivalent being Rs.6 crores to Rs.88 crores), and therefore encroachment is rampant. (The Lok Ayukta's unearthing of the KIADB scam in November 2010 is only the proverbial tip of the iceberg). Under the PPP mode, for about 20 lakh properties in the eight zones of BBMP, the project will cost a total of not more than Rs.100 crores with a government initial contribution of Rs.20 crores and the Service Provider can recover the entire cost of Rs.100 crores (and pay back the government's upfront cost) just by charging Rs.500 per Property Card which any citizen will be happily willing to pay for a Property Card with an accurate map and measurements. Already, such Property Card issue on payment has great public acceptance in Belgaum city where the City Survey was done a few years ago.

**SUCH A STEP WILL BE A PERMANENT IMPROVEMENT IN THE LAND ADMINISTRATION SYSTEM WHICH IS NOW PLAGUING THE BBMP, BDA, THE REGISTRATION AND THE REVENUE DEPARTMENTS AND THE CITIZENS.**

8. The City Survey Enquiry will still not render the title document as absolute and indisputable. In fact, under the Constitution of India, according to the original and appellate jurisdiction of the High Courts and Supreme Court, any dispute including property disputes, howsoever perfect the title may be, can be admitted upto the stage of a full Constitutional Bench. Even then it need not be final because the Supreme Court can reverse its own decision on a later date in important matters. Therefore, what is important to note in this proposal of Accurate Survey by Total Stations plus City Survey Enquiry of Title to Property is the high dependability of the Property Ownership Card in place of the highly undependable RTC (Pahani) document issued by the Village Accountant and the Registered Sale Deeds by the Sub-Registrar which are often written or registered so incorrectly and on extraneous consideration that many a time it is not worth the paper on which it is written, even though on its basis havoc is played in toying with khatha changes, registration of documents, etc. An elaborate exercise of accurate survey and printing of land and property records by modern methods and a detailed City Survey Enquiry giving due public notice will result in property title documents which are certainly much more dependable than the kind of documents issued or registered at present. What is of prime importance is that the proposed

system will give property titles a high dependability in place of the current fickle, capricious and often false documentation.

### **NEED FOR SURVEY OF GOVERNMENT LANDS IN BMRDA AREA**

9. Finally, such detailed survey of land and property should be extended to the erstwhile composite District now trifurcated to Bangalore Urban, Bangalore Rural and Ramanagaram districts, for at least the Government land, to start with. These three districts are also current jurisdiction of the BMRDA. According to the 2011 Census the BBMP area with 776 km<sup>2</sup> has a population of 85 lakhs and it is increasing at 4.2% annually. All the five revenue taluks of Bangalore Urban district is fully urbanized. In addition, the taluks of Bangalore Rural district namely, Devanahally, Hoskote, Nelamangala and Doddaballapur are no longer rural but fully urbanized and so is the Ramanagaram taluk. Due to the inevitable process of urbanization, within ten years the entire BMRDA area will be an urban megalopolis. Even beyond BMRDA, due to the construction of the Bangalore International Airport near Devanahally on National Highway 7, areas upto Chikballapur town will also be as urbanized as Bangalore.
10. In the BMRDA area alone about 5 lakh acres of government land is still available. Before long most of these lands will also be lost to the Government. Therefore, it is necessary that at least the extent of government lands are taken up for detailed survey and the lands protected. It is the experience world over that the original city centre becomes Central Business District and "Down-town" and people inevitably start living in suburbs. Therefore the taluks outside the now-existing BBMP will require lands for housing, educational institutions, sports stadia, non-polluting light industries and other common facilities. If the still available 500,000 lakhs acres or so of government land disappears government will have to acquire lands for such public purposes with the impending high land cost and litigations. It is necessary that the BMRDA anticipates such forthcoming need and plans appropriate land use and reservation of at least government lands.

## CHAPTER 10

### AUCTIONING OF GOVERNMENT LANDS

11. Closely connected to the problem of future land use of government lands including the lands recovered from encroachment, is the matter relating to the auctioning of recovered government land. In Bangalore Urban District the area recovered after removal of encroachment after the formation of the Joint Legislature Committee is reported as 9,000 acres. Of this 3,615 acres were allotted to different government departments and organizations such as BBMP, BMTC, Slum Clearance Board, Housing Board, Education Department etc, though much of this allotted has not been taken over or occupied by them due to unsuitability from their point of view. An extent of 1,640 acres (604 parcels) in were auctioned by the Deputy Commissioner on an *AS IS WHERE IS* condition for a total amount of Rs.533 crores. Out of this Government confirmed only 643 acres (in 250 parcels) for the final bid amount of Rs.338 crores. This was because unless the final bid was at least 1 to 1.5 times the Guidance Value fixed by the Registration Department, the auction was not confirmed but the lands were to be re-auctioned. The highest bid for a land was in Jakkur village in Bangalore North taluk which went for Rs.7 acres per acre. The procedure was the successful bidder will deposit 25% of the auction amount and the balance 75% will be paid by him after the government confirms the auction. As a result, after the refund of the deposit in unconfirmed cases, the actual net amount retained by government was only Rs.293 crores and the amount refunded was Rs.45 crores. Also, the 75% balance amount still to be received in respect of confirmed bids is Rs.215 crores.
12. Out of the area of 643 acres confirmed, only 350 acres could be handed over to the bidders and 290 acres could not be handed over due to litigation, refusal of bidders to honour bid, objections from local people, etc. In most of the cases the auctioned lands was not handed over because of the bidders insisting on change of land use (in the Comprehensive Development Plan of the BDA the land use was shown as Agricultural) while the bidders wanted the land for housing. Though the condition of the tender for auction was *AS IS WHERE IS* which means it is for the bidder-buyer to get the land use changed, yet the Revenue Department obliged the bidders that the Revenue Department will write to the BDA for the change of land use and this is still not received.
13. The above narration will show that for all the efforts made, only 350 acres could be auctioned and only Rs.293 crores was received and Rs.215 crores is still to be received. This raises the following important questions:
  - A. Whether the Revenue Department has the competency to make

successful auction of recovered government land ?

- B. Whether it is worthwhile to auction 350 acres of land and receive Rs.293 crores (and not recovering the balance Rs.215 crores) ?
- C. Whether it is advisable to get into litigation with bidders for refund of Interest amounting to Rs.14 crores on the delayed refund of 25% of bid amount to unsuccessful bidders ?

### **THE INTERESTING CASE OF ONE BIDDER YOUSUFF SHARIFF IN FIVE OTHER NAMES.**

14. In 2008-09 there was agitation by the landless people and political parties against auction of lands and Government also realized that most of the bidders were real estate agents and their *benami* representatives. Hence, the auctions were stopped in 2009 and no further auctions have taken place.
15. The Task Force has noticed that the auction procedure by the Revenue Department was irregular. The basic requirement for a successful auction is wide publicity all over India. For this purpose, advertisements should have been given in all editions of widely circulated newspapers such as *Times of India, Hindustan Times, Indian Express, The Hindu, Economic Times, Business Standard* etc. and also in the Television so that citizens, the corporate sector, educational institutions and others interested can bid. This procedure was not followed and advertisement was given only in one or two Bangalore-based newspapers with only local/ state circulation. Secondly, holders of General Powers of Attorney and agents representing more than one principal were allowed to take part in auctions. This has led to collusion, rigging and cartelization. The following is such an interesting case:
  16. In Gomal S.No.80 of Kithaganoor village of Bangalore East taluk 12A 24G of land recovered from encroachment was auctioned on 25-11-2008. The successful bidder was one Yousuff Shariff who got the entire land for Rs.494 lakhs at Rs.40 lakhs per acre. However, only 5A 37G acres could be handed over to him due to local agitation of villagers as for the balance area of 6A 27G of land there was some demand from the villagers for allotment of sites. Before the matter could be settled by Revenue officers and the balance land could be handed over, he represented to Government that he cannot take possession of the balance land.
  17. In another case, on 29-10-2007, in Government Gomal S.No.46 of Doddajala village in Bangalore North (Additional ) Taluk - about 3 kilometers from the Bangalore International Airport – 9A 20G was auctioned dividing it into 9 blocks. In respect of four blocks of this land (4A) Yousuff Shariff was the highest bidder at Rs.76 lakhs per acre and in

respect of the remaining five blocks some other persons were the highest bidders at about Rs.77 lakhs per acre. However, the Government in the Revenue Department cancelled the auction on the ground that the value of the land was much higher than was offered by bidders and accordingly ordered re-auction of the land on 24-11-2007.

18. The Re-auction of this land in Doddajala village was fixed on 5-9-2008 and the auction commenced. Though there were 13 bidders including Yousuff Sheriff, yet for reasons not recorded the re-auction was cancelled.
19. On 16-9-2009, Yousuff Shariff represented to the Hon'ble Minister of Revenue Department, that the land in Doddajala village S.No.46 (for which both the first auction and the re-auction was cancelled) may be given to him IN EXCHANGE OF THE LAND IN KITHAGANOOOR VILLAGE WHICH HE COULD NOT TAKE POSSESSTION. The Deputy Commissioner, Bangalore Urban district vide his letter No.VG(JADA)Haraju/CR 23/2007-08 dated 24-2-2010, informed Government that the land in Doddajala village is required for Drivers and Group D employees.
20. Nevertheless, the Revenue Department forwarded his representation to the Deputy Commissioner for exchange of the land in Doddajala village vide letter No.RD 18 LGB 2010 dt. 15-2-2010. The then Managing Director of Karnataka Public Lands Corporation (KPLC) wrote to Government vide letter No.KPLC/LND/205/2009-10 dt.10-3-2010 that there is no provision for such exchange of land and Government land can be sold only by auction as indeed re-auction had been scheduled earlier on 5-9-2008. But the Government reiterated vide letter dated 20-3-2010 that 6A 27G of the Doddajala land should be given to Yousuff Sherif in exchange, AT THE RATE OF Rs.60 LAKHS PER ACRE. The then MD of KPLC again wrote to Government vide letter dated 25-3-2010 that such exchange will involve loss to the government as the market value of the land was Rs.90 lakhs according to sale deeds and the Government-fixed value was only Rs.60 lakhs per acre. However, Government again directed vide letter No.RD 18 LGB 2010 dt. 1-4-2010 that the land should be given in exchange at Rs.60 lakhs per acre.
21. The following are the glaring illegalities and improprieties in this matter:
  - (i) There is no provision for "Exchange" of land in favour of a bidder. It is like "exchanging" land in say, Hosakote for a land in Palace Orchard; Lands in Doddajala village (near Bangalore International Airport) are much more valuable than land in Kithaganoor in Bangalore East Taluk; The actual market value in Doddajala village is Rs.3 crore per acre.

(ii) In respect of the Dodajala land Yusuf Sherif was himself the bidder at Rs.76 lakhs per acre which auction the Government cancelled on the ground that the bids were lower than the market price. Yet the same land is now being ordered by government to be given to him at Rs.60 lakhs per acre. Even taking the rejected bid value of Rs.76 lakhs per acre, the minimum loss to government is Rs.106.8 lakhs [Rs.76 lakhs – 60 lakhs = Rs.16 lakhs \* 6A 27G = Rs.106.8 lakhs.] Taking into account the market rate even at least Rs.1 crore per acre (there are sale deeds for Rs.90 lakhs and sale deeds are known for suppressed value) the loss to government is at least Rs.2.97 crores [Rs.1 crore – Rs.60 lakhs = Rs.40 lakhs \* 6A 27G = 297 lakhs.

(iii) All the auctions were held on an "AS IS WHERE IS" condition and there is no obligation on government to give any land in "exchange" of some other land. This is illegal on the face of it.

(iv) After cancelling the first auction of the Doddajala land for the reason that Rs.76 lakhs per acre is low and ordering re-auction which was fixed on 5-9-2008 there is no reason forthcoming on the files as to why this re-auction for which there were 14 bidders (one of whom was the same Yousuff Shariff) which would have been a highly competitive bidding, was cancelled. After this cancellation, Yousuff Shariff approaches Revenue Department which orders giving the land to him without auction at Rs.60 lakhs per acre which is less than the amount of Rs.76 lakhs he himself offered in the earlier auction. This is an act of impropriety apart from being illegal.

22. Apart from this particular episode, there are many other disquieting aspects to the auction of government lands. The total extent of lands auctioned by Deputy Commissioner, Bangalore Urban district from 2005 to 2009 and confirmed by Government is 643 acres for Rs.540 crores. Of this, 283 acres have been confirmed in favour of Yousuff Sherif (he is General Power of Attorney holder for five other companies namely, Umrah Brothers, Afnan Developers, Hill Land Properties, MVR Securities and TopNotch Infrastructure) for an amount Rs.280 crores. He is thus the single biggest beneficiary of the auctioned lands. Most of these auctions appear to be rigged in the sense that he is the bidder on behalf of these companies which were participating in the auctions.

23. Even though the auctions were notified and held on the condition of "AS IS WHERE IS", yet where it was noticed in other cases that some of these lands come under the Agriculture Zone of the BDA, on the representation of Yousuff Shariff, the Revenue Department decided to approach the BDA for change of land use and also to REFUND THE BID AMOUNT to Yousuff Shariff and the amount so refunded to him is Rs.33

crores. More disturbingly, he filed Writ Petitions in the High Court claiming interest from the government on these refunded amounts. The interest so claimed by him comes to Rs.4 crores. WHEN THERE WAS AN "AS IS WHERE IS" CONDITION OF AUCTION, GOVERNMENT ACCEDING TO HIS REQUEST TO REFUND THE BID AMOUNT IS OUTSIDE LAW AND CAUSED LOSS TO GOVERNMENT.

24. **IN NONE OF THESE CASES THE FILES HAVE BEEN REFERRED BY THE REVENUE DEPARTMENT TO EITHER THE LAW DEPARTMENT OR TO THE FINANCE DEPARTMENT. THIS WILL GIVE AN IMPRESSION THAT YOUSUFF SHARIFF HAS SOME HOLD ON REVENUE DEPARTMENT AND CAN GET ANY ORDERS ISSUED IN HIS FAVOUR EVEN CAUSING LOSS TO GOVERNMENT. THE TASK FORCE HAD BROUGHT THIS IRREGULARITY TO THE NOTICE OF THE PRINCIPAL SECRETARY, REVENUE DEPARTMENT, THE CHIEF SECRETARY, THE LAW SECRETARY AND THE FINANCE SECRETARY VIDE LETTERS DATED 4 & 5 OCTOBER 2010. HOWEVER NO ACTION HAS BEEN TAKEN BY GOVERNMENT TILL NOW TO FIX RESPONSIBILITY AND RECOVER THE LOSS TO GOVERNMENT. (Annexure 11)**

#### **VIEWS OF THE JOINT LEGISLATURE COMMITTEE**

25. Except for the Income Tax Department and Commercial Banks recovering dues from their defaulters, the State Government normally does not auction lands such as *Gomal* (grazing), tank beds, *Gunduthope* (village tree-lands with fruit bearing trees), etc. The Revenue Department sometimes gives community lands on Lease for five years (*Panch-sal gutha*) by auction or allotment but does not sell away lands by auction, especially valuable lands. Only land-grants are made in accordance with the Land Grant Rules to eligible persons and institutions. However, the Government of Karnataka had in 2005-06 declared its policy of getting revenue by selling in auction the public lands recovered from encroachers. This was mainly to augment public revenue and expend it on generally populist schemes. However, the JLC was not in favour of Government auctioning the recovered lands. In its Interim Report II submitted to the State Legislature on 26 July 2007, the JLC said on pp 26-27 as follows:

*" Even assuming that the lands under encroachment is only 30,000 acres as reported by the departments so far, this is a very big area... These lands are scattered over the entire Bangalore Urban district from small plots to large extent of clusters of fifty and above (acres). While it may be necessary to auction small plots of land within the BMP area, auctioning away all the lands and allotting some lands to different government departments in a haphazard manner will not be advisable. It is also seen that most of the bidders are builders and real estate agents. Hence, if all the government lands are auctioned, the government will lose*

*the lands permanently to the benefit of the builders.*

*The Committee therefore is of the strong opinion that a Committee of Town and Country Planning experts, architects, leading citizens and representatives of important departments should take stock of the location and extent of the total government lands, encroached lands and recovered lands and should prepare a Master Plan for the use of these lands in future. Instead of a haphazard and ad hoc allotment of land to individual departments, it is necessary to prepare and identify these lands on a detailed map and determine the land use for these lands keeping in mind the future growth and requirements of infrastructure and other facilities such as stadiums, parks, schools, playgrounds, etc. Bangalore is growing at 3.3% per annum even now and with the formation of Ramanagaram as Bangalore South District and renaming of existing Bangalore Rural as Bangalore North and Bangalore Urban as Bangalore Central, this entire area of the composite Bangalore district will become one huge urban agglomeration and a Megalopolis. For such a future development the land requirement by government, local bodies and private sector will be very high. Hence, if the available government lands are auctioned away in a hurry to the builders, there will be nothing left in future for genuine requirements. This is like disposing of the Family Jewels for immediate benefits in short sight disregarding the needs of future.*

*The Committee therefore strongly recommends that a Master Plan should be prepared for the available government lands in Bangalore Urban district, identifying the needs of the future and reserving them for such needs.* (Emphasis added).

26. The above narration will show that apart from the need for retaining public lands for public purposes and as Family Jewels, the auctioning of such land will inevitably benefit only the builders, real estate *mafia* and people behind them.

## CHAPTER 11

### THE KARNATAKA (LAND GRABBING) PROHIBITION BILL, 2007

1. Andhra Pradesh is the only State which has tried to control encroachment of public lands. It enacted the *Andhra Pradesh Land Grabbing (Prohibition) Act* in 1980 itself. After obtaining the Presidential Assent the Andhra Pradesh Act is in force for nearly 30 years now. As a result, encroachment of public lands have been controlled to a very large extent as the Special Court and its benches alone inquire into such cases and final orders are passed in six months time. Against the orders of the Special Court, only Writ Appeals lie to the High Court, thus eliminating the innumerable litigations filed by the encroachers in numerous courts as in Karnataka, tying the hands governments from removing the encroachments and recovering the public lands.
2. During the tenure of the Joint Legislature Committee, in 2007 the then Principal Secretary of Revenue Department, the Secretary for Legislation and Parliamentary Affairs and the Adviser to JLC (and currently the Chairman of the Task Force) visited Hyderabad and met the Chairman of the Special Court who is of the rank of a High Court Justice (retired) and the other members who are two District Judges and the Revenue Member of the rank of Secretary to Government in the Revenue Department and studied the working of the Special Court and the implementation of the Andhra Pradesh Act. Following this, the *Karnataka Land Grabbing (Prohibition) Act, 2007* was piloted and passed unanimously by both Houses of the Karnataka Legislature. It was then submitted to the Union Home Ministry for obtaining President's Assent in July 2007.
3. The salient features under the Karnataka Act are:
  1. It applies to all lands belonging to Government, local authority, a statutory or non-statutory body and includes a Company, Trust, Society or association of individuals.
  2. Land-grabber includes whoever unlawfully takes possession of the land or assists in taking possession and also an abettor such as public servants.
  3. Land-grabbing is punishable by the Special Court with a minimum of 1 year's imprisonment and a maximum of three years and with fine upto Rs.25,000.
  4. The Special Court will initially consist of a Chairman of the rank of serving or retired High Court Judge and two Judicial Members of the rank of District Judges and two other Revenue Members not below the rank of Deputy Commissioner of District.
  5. Additional Benches can be constituted with a Judicial Member as Chairman

and a Revenue Member.

6. All land grabbing cases in the State will be tried only by the Special Court and the decision of the Special Court will be final.
  7. The Special Court will have powers of the Civil Court and the Court of Session.
  8. Where it is proved *prima facie* that the land is owned by the Government, the burden of proof that the land is not grabbed lies with the accused.
  9. In areas where Special Court is not constituted, a Magistrate of the First Class can be empowered by the Government to try offences under this Act.
  10. This Act overrides all other laws. All cases of land-grabbing nature before any other Court or Authority stand transferred to the Special Court under this Act.
4. As per procedure, the Home Ministry sent the Bill to various Ministries for their opinion. A few Departments such as the Company Affairs required clarifications as to whether lands allegedly encroached by Companies also are covered under the Bill which was clarified in the affirmative. However, the major clarification sought was from the Department of Minority Affairs which wanted a specific provision to be made in the Bill to include the lands belonging to the Wakf Board. The Revenue Department clarified that as there is already a separate enactment, the *Wakf Board Act* which provides for the removal of Wakf Board lands, there may be no need for a specific inclusion under the proposed Bill and, in any case, the definition of *Land* in the Bill covers all lands belonging to Government and other statutory bodies which will cover Wakf Board lands also. However, the Home Ministry has returned the Bill to the Government of Karnataka for a specific inclusion of Wakf Board lands.
5. All this has taken four years during which Government did not take any active steps to pursue the matter diligently with the Government of India. After its formation, the Task Force pursued the matter with the Resident Commissioner of Karnataka at New Delhi requesting the RC to meet the concerned officers in the Government of India and personally clarify the matter. The Task Force also brought the matter to the notice of the Chief Secretary to send the concerned Secretaries of Government of Karnataka to meet with the officers of the Government of India to clarify the doubts and get the Bill cleared. The Chariman and Member-Law of the Task Force also met the Hon'ble Union Minister of Law and Justice during his visit to Bangalore on 18-1-2011 and submitted the detailed information regarding the Bill. All this yielded no response nor results and the Government of India has on 4-3-2011 asked the Government of Karnataka to effect the necessary inclusion of the lands of Wakf Board and resubmit the Bill after getting it passed in the Karnataka Legislature. Since then the Task Force has been pursuing the matter with the Department of Legislation and Parliamentary Affairs and the Revenue Department to pilot the revised Bill in the Karnataka Legislature and

resubmit it to the Government of India after its passage. The matter is still pending with the Revenue Department as on May 2011.

6. The foregoing narration would indicate the scant importance attached by the Government to control encroachment of public lands. The contrast is with that of the neighbouring Andhra Pradesh where such an Act is in force since 1984 and the Special Court has been able to concentrate before it all litigations pertaining to land-grabbing defeating the strategy of land-grabbers in tying the Government in multifarious litigations in innumerable Courts. In spite of the Joint Legislature Committee having been instrumental for the passage of the *Karnataka Land Grabbing (Prohibition) Act, 2007*, in the Legislature in July 2007, the nodal Revenue Department has not considered it important to pursue the matter with the Government of India and obtain the President's assent. This matter was also brought to the notice of the Chief Secretary since November 2009 whenever the Chairman of the Task Force had called on him.
7. However, with the Bill being returned by the Government of India after a lapse of four years, the matter is now back to square one. Meanwhile, during the interregnum encroachers of public lands have frustrated the efforts of Deputy Commissioners and Heads of Departments by continuing to file innumerable civil suits and appeals and obtaining stay orders even in cases of tank bed encroachments in spite of the orders of the Supreme Court and High Court to the Government that tank beds have to be protected.

## CHAPTER 12

### CONCLUSION

1. Unlike the Joint Legislature Committee (JLC), the Task Force for the Protection of Public Lands has not been very effective. This is for the following reasons:

#### **A. ATTENDANCE OF MEETINGS:**

2. The JLC was a "Mini-Legislature" with seventeen member belonging to all political parties and had all the powers of the Legislature. It was answerable only to the Legislature and the Hon'ble Speaker. The Task Force, on the other hand, is only an informal body with a Retired Additional Chief Secretary as Chairman, a retired Law Secretary and State Election Commissioner as Member-Legal and the Managing Director of the Karnataka Public Corporation as Member-Secretary. All other members as mentioned in Paragraph 13 of Chapter 1-C are part time and members in their official capacity of Secretaries to Government, Heads of Departments and heads of departments and Chief Executive Officers of Statutory and Legal entities.

As can be seen from Annexure 4 to this Report (Attendance of Task Force Meetings), in the eight meetings of the Task Force held till April 2011, excluding the permanent Members of Law and Member-Secretary, the average attendance was only 34%. For instance, the Additional Chief Secretary who is the senior-most Member of the Task Force never attended a single meeting out of the eight meetings inspite of the Chairman of the Task Force requesting every time by a personal letter to grace the meetings. This is in contrast to the JLC meetings where all the Secretaries to Government and Heads of Departments were obliged to attend every one of the meetings to which they were requested to attend. Even the Chief Secretary had attended the JLC meetings three times when he was requested. As the Task Force does not obviously have the status of a Legislature Committee most of the Officer-Members chose to send their junior representatives instead of attending the meetings in person which defeats the very purpose of appointing them as members.

#### **B. STAFF FACILITIES:**

3. Secondly, while the JLC had its own staff of about ten persons including the Adviser, two Deputy Secretaries, Under-Secretary and Personal Assistants and Stenographers, the Task Force did not have even have a full-time Stenographer and Assistants with computer-knowledge. The Public Lands Corporation (KPLC) which was to provide necessary staff does not itself have full complement of staff. Repeated requests to fill up the vacant posts have not yielded any results. The JLC had only the five taluks of Bangalore Urban District as its jurisdiction. But the Task Force has the entire State with 30

districts and all the Local Municipal Corporations and Councils besides all the Departments as its jurisdiction. The Task Force has so far received 1,600 complaints besides the over 700 pending files of the erstwhile JLC transferred from the Legislature Secretariat. The staff of the Enforcement Cell which is meant for only the Bangalore Urban District is being used to handle the complaints relating to all the other 29 districts and the local bodies. This is a severe limitation. Hence, the Enforcement Cell, expanded to cover the entire state, should be on deputation to KPLC and should form part of it.

### **C. INADEQUATE RESPONSE FROM DEPUTY COMMISSIONERS AND HEADS OF DEPARTMENTS REGARDING COMPLAINTS SENT TO THEM.**

4. Thirdly, out of the 1,600 complaints received and sent to the Deputy Commissioners and other Heads of Departments, only about 400 have been finally disposed off after receiving compliance from the districts and statutory bodies. The balance of 1,200 which is 75% remains inconclusive inspite of several reviews at the district and departmental levels and letters. In many cases, the Deputy Commissioners have not sent any replies inspite of demi-official letters and reminders.

### **THE EXAMPLE OF RAICHUR DISTRICT**

5. To take one example, the number of complaints received from Raichur district is 31 as at end of May 2011. All these have been forwarded to the Deputy Commissioner, Raichur for enquiry and report. But only 5 have been attended to by the Deputy Commissioner and 26 or 84% are pending. Several D.O. letters were written to the Deputy Commissioner but not in a single case any reply was received. The official convention and protocol is that a D.O. letter should be replied by a D.O. letter by the officer receiving it, even if it is only an interim reply. This convention has been given a go-by by most of the Deputy Commissioners and Heads of Departments except for a few.
6. Some of the complaints from Raichur district were quite serious. In one case, the Headmaster of the Government Higher Primary School at KEB colony in Raichur complained to the Task Force on 5-5-2010 that Government had acquired 10A 10G of private land as early as 1968 and a compensation of Rs.17,681 was paid to the land holders. Out of the land acquired, 1 acre was allotted for the construction of Government Higher Primary School which was also built. But one Veeralingaswamy claiming to have purchased 20 guntas of this land through an unregistered sale deed filed a suit No.OS 279/2006 against the Education Department. His suit and his appeals were dismissed by all courts. But, nevertheless he had constructed commercial buildings in this land and when the High School constructed a hall for Mid-day Meals serving, the encroacher demolished the compound wall of the hall also. In spite of the High School approaching the Police and the Deputy Commissioner, Raichur, no action was taken to remove the encroacher and restore the government land to the High School. Hence, the High School approached the Task Force.

7. Repeated letters and reminders to the Deputy Commissioner, Raichur did not yield any results. As an example a copy of letter dated 9-3-2010 is shown in Annexure 12. After this, letters were sent to the DC on 12-5-2010, 30-7-2010, 16-9-2010, 10-11-2010, 15-12-2010. The Regional Commissioner who was also pursuing the matter with the DC, Raichur gave his hands up and informed the Task Force vide his letter dated 19-10-2010 (Annexure 13) that he is unable to have the DC adhere to instructions. The Chairman of the Task Force had to even inform the DC that if no action is taken to remove this blatant encroachment, the Task Force will be constrained to report the matter to the Loka Ayukta as the inaction obviously indicates abetment of encroachment. This also produced no results. Hence, the matter was taken up with the Chief Secretary and the Principal Secretary, Revenue Department who also wrote to the DC, Raichur to take immediate action.
8. In spite of all this, it is remarkable that to this day the DC, Raichur has not replied any of these letters. However, the Task Force came to know that the encroachment has been "voluntarily" removed by the encroacher on 12-4-2011 from the copy of a letter written by the Tahsildar to the DC on 13-4-2011. However, the story has not yet ended as, on 25-4-2011 the encroacher has issued a legal notice through counsel to the Managing Director, KPLC that property worth Rs.50 lakhs has been demolished movables worth Rs.15 lakhs also has been destroyed by the Tahsildar and this should be made good. It is to be ascertained whether the encroachment was *voluntarily* removed as informed by the Tahsildar, Raichur or has been *demolished* as claimed by the encroacher or whether a game is being played by all concerned. The Task Force has therefore written to the Head Master, Government Higher Primary School who is the original complainant as to the facts.

#### **D. LACK OF POWERS AND FACILITIES WITH KARNATAKA PUBLIC LANDS CORPORATION (KPLC)**

9. The KPLC is a comparatively new Government Company, having been formed in December 2008. Being a Company, it has no legal powers to remove encroachments and have to request the Deputy Commissioners and Heads of Departments who only are the Competent Authorities under the various Acts. The KPLC has been informally using the staff of the Enforcement Cell for this purpose. But the Enforcement Cell is only for the Bangalore Urban district and it has no jurisdiction over the other 29 districts. Hence, there should be an expanded Enforcement Cell for the entire state working under the KPLC. The Task Force being entirely dependent upon the KPLC had therefore to correspond directly with DCs and Heads of Departments in respect of the complaints of the 29 other districts and statutory bodies. This is a severe limitation.
10. As in the case of BDA, an officer of the rank of Deputy Commissioner should be posted to the Enforcement Cell on deputation to the KPLC to exercise the powers under the Land Revenue Act and other relevant Acts as the Competent Authority. It is customary for Government to post Special Deputy

Commissioners to Bangalore District to exercise the powers under the various legislation relating to land administration. Due to the very high value of land it is well known that many officers with vested interest get posted to these posts. For instance, the Special Deputy Commissioner of Bangalore Urban district was arrested under the Prevention of Corruption Act and charge-sheeted by the Loka Ayukta in October 2010. The Task Force also examined the 428 orders passed by this Special Deputy Commissioner under Section 136 (3) of the Land Revenue Act (Enquiry regarding entries in the Record of Rights, Tenancy and Crops – RTC). The Regional Commissioner, Bangalore formed 18 teams of Revenue Auditors who examined the original records such as Grant Register, Saguvalli Chit Register, Treasury Challans for payment of upset price, Mutation Register, initial enquiry by the Revenue staff at taluk level on the application for land grant, etc. and found that in all these cases the Special Deputy Commissioner had passed defective orders without referring to the original documents which alone would be the conclusive proof of the land grant. It is well known that the RTCs (*Pahanis*) are written on extraneous consideration. The area covered by these defective orders is 1,041 acres, all in Bangalore Urban district, valued at about Rs.1,500 crores.

11. The Task Force therefore approached the Advocate General for advising appealing against this large number of orders. The AG suggested ten Special Advocates as the regular Government Advocates will find it difficult to devote special attention to these numerous cases. On his advice, eight Advocates have been appointed by the KPLC to file Writ Appeals before the High Court.

The functioning of the Special Deputy Commissioners in Bangalore Urban district (there are no Special DCs in other districts and the DCs themselves exercise the powers relating to land legislation), has been so abysmal that the Hon'ble Judges of High Court have observed that the post itself should be abolished. The reports appearing in the newspapers in this regard and shown in Annexure 14. Therefore, it is necessary that officers of integrity belonging to the Indian Administrative Service are appointed as Special DCs in Bangalore Urban district and also in the KPLC heading the expanded Enforcement Cell, working under the Managing Director and Revenue Secretary of the KPLC.

## CHAPTER 13

### RECOMMENDATIONS

In the Chapters above many recommendations have been made to effectively control encroachments. Out of them the following are high-lighted in addition to the recommendation of forming a Permanent Legislature Committee as Government-appointed Committee or Task Forces are ineffective.

#### 1. PERMANENT LEGISLATIVE COMMITTEE ON PROTECTION OF PUBLIC LANDS.

The problem of encroachment of public lands – *Gomal, Lakes and Tanks, Gunduthopes, Smashana, etc.* – is extremely serious. The Supreme Court in a Haryana case was constrained to observe that these *Commons* are precious lands for public use and therefore should be protected by all means and directed the Chief Secretaries of all States to file quarterly reports regarding action taken by them to remove the encroachments in them. In Karnataka this problem is especially alarming as at least 12 lakhs acres already identified including 104,000 acres deciduous forests in Western Ghat districts are under encroachment and absolutely no action has been taken to recover these lands from big encroachers. The Task Force being an informal Committee without any legal powers or authority over the officers has been able to persuade the Deputy Commissioners to recover only less than 50,000 acres of gomal and tank bed encroachments. This is less than 5% of the total government lands under encroachment.

HENCE, IF THESE PRECIOUS COMMON LANDS HAVE TO BE PROTECTED, THERE SHOULD BE A PERMANENT JOINT COMMITTEE OF THE LEGISLATURE LIKE THE PUBLIC ACCOUNTS COMMITTEE, PUBLIC UNDERTAKINGS COMMITTEE, SC/ST WELFARE COMMITTEE, TO PROTECT THE PUBLIC LANDS. THE JLC FOR PROTECTION OF PUBLIC LANDS SHOULD HAVE JURISDICTION TO DEAL WITH COMPLAINTS REGARDING ALL GOVERNMENT AND PUBLIC LANDS. THE KPLC HEADED BY THE REVENUE SECRETARY AND MANAGING DIRECTOR SHOULD BE THE PERMANENT SECRETARIAT TO THIS LEGISLATURE COMMITTEE. UNDER THE JLC, THE KPLC SHOULD HAVE POWERS TO REMOVE ENCROACHMENTS AND ALSO TO PROTECT SUCH LANDS AFTER RECOVERY. TO GIVE SUFFICIENT AUTHORITY TO THE KPLC, IT SHOULD BE HEADED BY THE UPGRADED POST OF PRINCIPAL SECRETARY WHO SHOULD ALSO BE THE CHAIRMAN AND MANAGING

**DIRECTOR.**

**2. REGULAR REVIEW OF PROTECTION OF PUBLIC LANDS BY SECRETARIES TO GOVERNMENT.**

At present the Deputy Commissioners and Heads of Departments and Chief Executive Officers of Statutory Bodies and Local Municipal Bodies have no priority of attention to public lands in their custody. After the giving up of the traditional *Jamabandi* the Revenue Department does not keep watch of government lands and the encroachments on them. The Municipal Corporations, City Municipal Councils, Town Municipal Councils, Town Panchayats and other statutory bodies do not even have updated Property Registers and do not know the extent of encroachment of their lands and property. The Forest Department has been strangely shy of protecting forest lands apart from making periodical, ritual recitation of the landmark *Godavarman Tirumalpad* verdict by the Supreme Court. The Muzrai Department has lost most of the lands belonging to the institutions under it to encroachers and the Department does not have any staff to protect its property.

**THEREFORE, IN ADDITION TO THE FORMATION OF A PERMANENT LEGISLATURE COMMITTEE, THE GOVERNMENT HAVE TO INSTRUCT THE REGIONAL COMMISSIONERS, DEPUTY COMMISSIONERS AND THE REVENUE OFFICERS, HEADS OF DEPARTMENTS AND CEOs OF STATUTORY AND LOCAL BODIES TO IDENTIFY, PROSECUTE THE ENCROACHERS IN EXERCISE OF THE LEGAL POWERS VESTED IN THEM AND PROTECT THE RECOVERED LANDS BY FENCING THEM. THE SECRETARIES TO GOVERNMENT SHOULD REVIEW THE POSITION EVERY MONTH. THE WORK DONE BY THEM IN THIS REGARD SHOULD FIND A PLACE WHILE THEIR ANNUAL CONFIDENTIAL REPORTS ARE WRITTEN.**

**3. IMPLEMENTATION OF THE LAND GRABBING (PROHIBITION) ACT, 2007 AFTER OBTAINING PRESIDENT'S ASSENT**

This Bill, passed by both Houses of the Karnataka Legislature in 2007 unanimously, is languishing for four years without any action being taken by the nodal Revenue Department to pursue with the Home Ministry and obtain President's assent. In contrast, Andhra Pradesh has passed the Andhra Pradesh Land Grabbing (Prohibition) Act in 1984 itself (after which the Karnataka Bill has been prepared) and has established Special Court to try all land encroachment cases which has prevented multiple litigations by encroachers tying up government in various courts.

**THEREFORE, THE CHIEF SECRETARY SHOULD DIRECT THE CONCERNED SECRETARIES TO GOVERNMENT TO MEET THE OFFICERS IN THE GOVERNMENT OF INDIA AND OBTAIN THE PRESIDENT'S ASSENT AND**

## **TAKE STEPS TO ESTABLISH THE SPECIAL COURT IN KARNATAKA.**

- 4. CREATING A LEGAL SECTION IN REVENUE, FOREST AND MUZRAI, WAKF DEPARTMENTS ON THE MODEL OF THE COMMERCIAL TAXES DEPARTMENT TO DEFEND GOVERNMENT LAND CASES.**

The existing one-person (shared) Legal Cells in the Secretariat Departments have not been able to effectively defend land cases in the civil courts and higher courts. Important Departments such as the Revenue, Forest, Muzrai and Wakf Departments which have in their custody large extent of land should constitute Legal Sections at their Heads of Department level (in the case of Revenue Department at the Regional Commissioners level) on the model of the Commercial Taxes Department. It does not require any new staff for this purpose. Within the staff of every Department such Legal Sections can be established. Most of government's cases fail because the Government Advocates do not get the draft replies of para-wise remarks, factual position, appearance of the concerned officers to file affidavits, etc. which is entirely administrative work.

**HENCE, LEGAL SECTIONS SHOULD BE ORGANIZED IN IMPORTANT DEPARTMENTS OWNING LANDS AND BENCHES SHOULD BE EXCLUSIVELY CREATED IN THE KAT AND HIGH COURT FOR LAND MATTERS AS IN THE CASE OF COMMERCIAL TAXES DEPARTMENT.**

- 5. POSTING OF YOUNGER OFFICERS OF INDIAN ADMINISTRATIVE SERVICE AS SPECIAL DEPUTY COMMISSIONERS IN BANGALORE URBAN DISTRICT UNDER THE REVENUE DEPARTMENT.**

As mentioned in para 11 of Chapter 10-D above, officers with little competency and less integrity are getting posted to Bangalore Urban district on extraneous consideration. With the land value being very high in Bangalore Urban areas the harm done by these officers is immense and difficult to be undone. A Special Deputy Commissioner and a Special Tahsildar have been arrested under the Prevention of Corruption Act by the Lok Ayukat and are under prosecution. In para 20 in section on ILLEGL ORDERS PASSED u/s 136(3) OF KLR ACT of Chapter 5 no less than 428 orders passed by the Special Deputy Commissioner involving 1,400 acres and valued at Rs.1,500 crores, had to be scrutinized and having been found illegal, had to be appealed against in the High Court.

The High Court has in many cases in recent times have passed strictures. In one case the Hon'ble Judge was constrained to observe that the very post of Special Deputy Commissioner should be abolished and officers from the Indian Administrative Service should be posted in dealing with quasi-judicial matters, as shown in Annexure 14.

IT IS THEREFORE NECESSARY THAT GOVERNMENT TREAT THE OBSERVATIONS OF THE HIGH COURT SERIOUSLY AND POST OFFICERS OF PROVEN COMPETENCY AND INTEGRITY AS SPECIAL DEPUTY COMMISSIONERS OR ABOLISH THE DISREPUTED POST OF SPECIAL DEPUTY COMMISSIONER AND, INSTEAD, POST YOUNGER COMPETENT OF THE CADRE OF INDIAN ADMINISTRATIVE SERVICE AS ADDITIONAL DEPUTY COMMISSIONERS TO DEAL WITH REVENUE LAW MATTERS. THEY CAN ALSO BE DESIGNATED AS ADDITIONAL DISTRICT MAGISTRATES SO THAT THEY CAN ALSO TAKE ACTION TO PROTECT GOVERNMENT AND PUBLIC LAND UNDER THE PROVISIONS OF THE CODE OF CRIMINAL PROCEDURE IN ADDITION TO THE VARIOUS PROVISIONS OF THE LAND REVENUE ACT. THIS ALONE CAN PREVENT ILLEGAL DISPOSAL OF VALUABLE GOVERNMENT LAND BY ABUSE OF PUBLIC OFFICE FOR PRIVATE GAIN.

**6. URGENT NEED FOR TAKING UP CITY SURVEY IN BANGALORE METROPOLITAN REGION DEVELOPMENT AREA**

Government have not realized the extent of rot and corruption that has set in the system of Revenue Department, BBMP, BDA, KIADB and the Muzrai Department in making entries in favour of encroachers and land-sharks in the form of *Pahanis, Khathas, Illegal Layouts, Building Plans and Real Estate Proposals masquerading as Industrial Projects*. In the BMRDA area of Bangalore Urban, Bangalore Rural and Ramanagaram districts, still about 5 lakhs acres of public land is available. In Bangalore Urban district, most of this land has been encroached or claimed by unauthorized and ineligible persons. It is necessary to survey and protect these lands and prepare a Master Plan for future public purposes.

HENCE, IT IS OVER DUE THAT THE GOVERNMENT TAKES UP CITY SURVEY OF BANGALORE METROPOLITAN AREA UNDER THE URBAN PROPERTY OWNERSHIP RECORDS (UPOR) PROJECT WHICH IS ALREADY UNDER WAY IN FIVE CITIES OF KARNATAKA. TO START WITH GOVERNMENT AND PUBLIC LANDS SHOULD BE SURVEYED IN THE BMRDA AREA.

**7. RESTORATION OF LAKES NOT JUST FOR ECOLOGICAL REASONS BUT FOR SUPPLY OF DRINKING WATER ITSELF TO BANGALORE CITY**

The impending water famine of Bangalore before 2020 is not realized by the Government, BWSSB or the citizens yet. With the 19 tmc feet of allocation of Cauvery Tribunal having been exhausted and the huge *Contractors' dream plans* of bringing water from Almatti, from West-flowing rivers digging more borewells not being practical or cost-effective, the obvious solution of restoring lakes in the district requires immediate execution. The Action Plan prepared under the

direction of the High Court does not address the problem and cost of removing encroachments in the 840 km length of Storm Water Drains which act as Sewage Drains taking sewage to the lakes and making the lakes Sewage Tanks. This is a mammoth problem and involves removal of encroachments, diverting sewage, constructing STPs, Tertiary Plants, installing Reverse Osmosis system, etc. and cannot be done in three years time as the hasty Action Plan stipulates and certainly not within the budgets of the participating bodies such as BBMP, BWSSB, BDA, Minor Irrigation Dept etc. The Bill to create an effective Lake Development Authority with legal powers has to be passed and the LDA should be formed to implement Restoration of Lakes as the multifarious agencies are incapable of acting in a unified manner and their efforts will be fissiparous.

**THEREFORE, AN APEX BODY IN THE FORM OF LAKE DEVELOPMENT AUTHORITY SHOULD BE FORMED AND A COMPREHENSIVE ACTION PLAN SHOULD BE PREPARED WITH EXTERNAL ASSISTANCE WHICH WILL BE IN THE RANGE OF Rs.10,000 CRORES IN TEN YEARS OF EXECUTION.**

**8. PROSECUTION OF ENCROACHERS AND PUBLIC OFFICIALS ABETTING THE OFFENCE AS PROVIDED UNDER THE LAW.**

Even though the Forest Act, Land Revenue Act, the BDA, and Corporations Act (for BBMP), besides the Indian Penal Code provide for prosecution of encroachers and their abettors (both government officials and the public officials such as the elected representatives), practically no prosecution of government and public officials has been done in spite of the Task Force insisting on the Departments and Deputy Commissioners to initiate action.

The JLC had strongly recommended this in 2007, as shown below:

*“The duty of the Administration is to uphold rule of law. The purpose of the Fence is to protect the Crops; to act as the Guardian, Trustee and a Sentinel. But the few examples in the above paragraphs show that the Fence itself is eating the Crops, the Guardian himself is molesting the Ward, the Trustee is robbing the Beneficiary and the Sentinel is looting the Citizens. If these Illegal, anti-social and Unethical acts go unpunished, honest citizens will lose all faith in Government and the very Social Contract on which the State is founded will crumble as castles built on foundations of sand.*

*It is therefore necessary to proscribe and prosecute public servants – both officials and non-officials – wherever they are involved in land grabbing, under the Indian Penal Code. Recently, on the recommendations of this Committee, the Karnataka Land-Grabbing (Prohibition) Act has been passed. It contains provisions to prosecute*

*public servants committing or abetting land-grabbing. These must be vigorously implemented. Till the Rules and administrative machinery under this Act come into force, the existing provisions in the Indian Penal Code for creation of false documents, false evidence and abetting such violations should be invoked.” (p12 of the JLC Report II)*

**IT IS THEREFORE ESSENTIAL THAT GOVERNMENT TAKES THIS MATTER SERIOUSLY AND INSTRUCTS THE OFFICERS EMPOWERED TO LAUNCH PROSECUTIONS AGAINST BOTH OFFENDERS AND THE ABETTORS UNDER THE VARIOUS PROVISIONS OF LAW.**