Executive Summary

1. Denotification of land by the Government

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

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

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

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

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

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

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

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

(Chapter 1)

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

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

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

(Chapter 2)

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

(Chapter 3)

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

(Chapter 4)

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

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

(Chapter 5)

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

(Chapter 6)

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

(Chapter 7)

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

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

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

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

(Chapter 8)

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

(Chapter 9)

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

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

(Chapter 10)

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

(Chapter 11)

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

(Chapter 12)

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

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

(Chapter 13)

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

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

(Chapter 14)

2. Allotment of sites by BDA

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

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

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

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

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

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

(Chapter 15)

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

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

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

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

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

(Chapter 16)

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

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

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

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

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

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

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

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

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

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

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

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

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

(Chapter 17)

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

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

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

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

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

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

(Chapter 18)

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

(Chapter 19)

3. Recommendations

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

(Chapter 21)