1. Introduction

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

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

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

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

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

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

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

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

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

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

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

(Source: Information furnished by BDA)

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

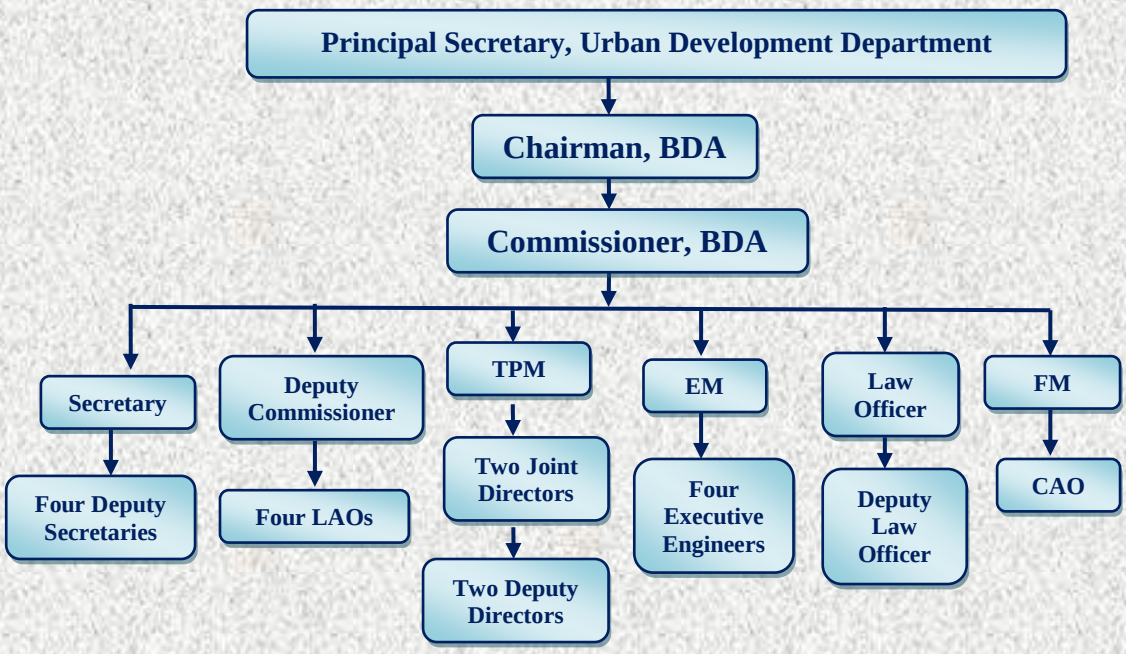
The BDA (Allotment of Sites) Rules, 1984, the BDA (Allotment of Civic Amenity Sites) Rules 1989 and the BDA (Disposal of Corner Sites and Commercial Sites) Rules, 1984 provide the framework for allotment of different categories of sites formed by BDA in the layouts.

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

2. Organisational arrangement

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

Organisational Chart



3. Audit scope and methodology

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

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

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

4. Audit objectives

Audit was taken up with the objective of ascertaining whether:

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

5. Audit criteria

The audit criteria were derived from the following sources:

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

6. Organisation of audit findings

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

Part-I: Denotification of land by the Government

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

7. Acknowledgement

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

PART-I

Denotification of land by the Government

Chapter-1

Overview of the legal framework for denotification of land

1.1 Power of the Government to withdraw from acquisition proceedings

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

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

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

1.2 Accepted mode of taking possession

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

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

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

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

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

1.3 Notification of the fact of taking possession not mandatory

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

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

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

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

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

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

1.5 Criteria for audit of denotification of land

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

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

Chapter-2
Denotification not approved by the Denotification Committee

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

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

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

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

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

(Source: Information furnished by BDA)

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

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

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

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

Chapter-3

Denotification of developed lands

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

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

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

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

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

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

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

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

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

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

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

3.2 Denotification of 3-08 acres in Arkavathy Layout

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

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

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

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

Scrutiny of the case showed the following:

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

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

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

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

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

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

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

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

(Source: Final notification dated 9 May 1994)

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

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

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

Table-5: Details of lands sold after denotification

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

(Source: RTCs from Revenue Department website)

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

3.4 Denotification of 1-17 acres in Arkavathy Layout

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

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

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

3.5 Denotification of 2-05 acres in HSR Layout

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

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

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

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

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

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

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

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

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

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

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

3.6 Denotification of 1-1.2 acres in HSR Layout

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter-4

Denotification during the pendency of Court cases

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

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

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

(Source: Denotification files of BDA and Secretariat)

Details of these cases are discussed below:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.3 Denotification of one acre in HBR I Stage Layout

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

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

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

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

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

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

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

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

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

4.4 Denotification of 0-28 acre in Arkavathy Layout

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter-5

Denotification of land purchased after notification for acquisition

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

The salient features of the Act are:

- No person shall purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which has been acquired by the Government under the LA Act, or any other law providing for acquisition of land for a public purpose.
- No person shall, except with the previous permission in writing of the competent authority, transfer, or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in any urban area which is proposed to be acquired in connection with the Scheme in relation to which the declaration has been published under Sec 19 of the BDA Act, 1976 or Sec 19 of the Karnataka Urban Development Authorities Act, 1987.
- No registering authority appointed under the Registration Act, 1908 shall register any such document unless the transferor produces before such registering office a permission in writing of the competent authority for such transfer.
- If any person contravenes these provisions, he shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

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

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

Table-7: Details of land purchased after final notification

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

(Source: Denotification files of BDA and Secretariat)

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

5.1 Arkavathy Layout

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

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

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

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

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

Scrutiny showed the following:

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

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

5.2 RMV II Stage Layout

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

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

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

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

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

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

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

5.3 East of NGEF Layout

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

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

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

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

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

The denotification had been not justified for the following reasons:

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

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

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

5.4 Gnanabharathi Layout

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

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

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

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

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

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

Table-8: Details of sites sold after final notification

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

(Source: Copies of sale deeds)

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

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

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

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

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

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

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

5.5 BTM IV Stage Layout

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

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

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

5.6 Arkavathy Layout

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

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

(i) Land situated within the green belt area

(ii) Land totally built-up

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

(iv) Nursery land

(v) Factories, and

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

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

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

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

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

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

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

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

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

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

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

Chapter-6

Denotification of land despite Courts upholding the acquisition proceedings

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

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

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

(Source: Denotification files of BDA and Secretariat)

Details of these cases are discussed below:

6.1 Further Extension of Anjanapura Layout

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

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

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

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

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

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

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

6.2 Gnanabharathi Layout

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

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

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

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

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

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

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

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

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

6.3 RMV II Stage Layout

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

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

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

[5] Barren land

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

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

6.4 Hennur Road and Bellary Road III Stage Layout

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter-7
Denotification on other considerations

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

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

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

(Source: Denotification files of BDA and Secretariat)

Details of these cases are as under:

7.1 Banashankari V Stage Layout

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

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

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

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

7.2 BTM IV Stage Layout

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

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

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

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

7.3 HAL III Stage Layout

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

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

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

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

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

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

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

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

7.4 West of Chord Road IV Stage Layout

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

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

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

7.5 JP Nagar IX Phase Layout

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

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

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

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

Table-11: Details of land sold after denotification

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

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

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

7.6 Arkavathy Layout

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

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

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

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

7.7 Gnanabharathi Layout

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

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

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

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

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

7.8 Nadaprabhu Kempegowda Layout

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

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

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

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

8.1 Government order disregarded while entering into agreement with developer

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

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

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

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

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

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

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

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

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

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

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

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

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

8.2 Unjustified concession extended to a developer

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

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

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

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

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

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

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

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

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

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

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

8.3 Sites not handed over to BDA after development

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

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

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

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

Chapter-9

Denotification of huge tracts of land

9.1 Government denotified huge tracts of land to favour a company

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

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

[9] Dasarahalli, Nagavara and Rachenahalli

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter-10
Cancellation of denotification orders

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

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

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

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

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

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

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

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

10.1 Banashankari V Stage Layout

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

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

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

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

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

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

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

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

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

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

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

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

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

10.2 Nadaprabhu Kempegowda Layout

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

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

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

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

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

10.3 RMV II Stage Layout

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

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

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

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

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

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

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

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

10.4 BTM VI Stage Layout

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

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

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

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

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

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

10.5 Further Extension of Mahalakshmi Layout

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

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

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

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

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

10.6 Arkavathy Layout

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

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

Table-14 : Details of sites and roads formed

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

(Source: Information furnished by BDA)

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

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

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

10.7 Nagarabhavi I Stage Layout

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

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

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

Chapter-11
Restricted awards/compensation

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

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

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

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

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

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

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

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

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

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

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

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

Chapter-12
Betterment tax

12.1 Legal framework for collection of betterment tax

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

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

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

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

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

12.2 Notified land deleted from the award after collecting betterment tax

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

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

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

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

(Source: Information furnished by BDA)

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

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

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

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

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

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

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

Chapter-13
Payment of compensation

13.1 Payment of compensation not verified before denotification of land

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

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

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

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

13.3 Payment of land compensation through court not monitored

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter-14
Possession of notified land not taken in full

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

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

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

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