

AND:

1. State of Karnataka

Represented by its Chief Secretary
Department of Urban Development
Vidhana Soudha, Bengaluru-560 001.

2. Bangalore Development Authority

Represented by its Commissioner,
Kumara Park West, T.Chowdiah Road,
Bengaluru-560 020.

...RESPONDENTS

MEMORANDUM OF WRIT PETITION UNDER ARTICLES 226

AND 227 OF THE CONSTITUTION OF INDIA

The Petitioners above named respectfully submit as follows:

1. The address of the Petitioners for the purpose of service of notice, summons and other court processes is as shown in the cause-title or through their counsel,
2. The address of the Respondents for similar purposes is as shown in the cause-title above.

BRIEF DESCRIPTION OF THE PARTIES

3. The Petitioner No.1 is the Vice-President and the Petitioner No.2 is a member of the Citizens Actions Forum which has been instrumental in filing several Public Interest Litigations which has resulted in increased accountability and

transparency particularly with respect to several developmental projects that have been taken up in the Bengaluru Metropolitan Area. The Petitioner No.3 is an educator and RTI activist and has previously been involved in Public Interest Litigations pertaining to several issues concerning the previous Master Plan-2015 that was issued by the Bruhat Bengaluru Mahanagara Palike (BBMP). Petitioner No.4 is a civic activist and has been involved in Public Interest Litigations concerning proper planning of road projects and the mushrooming of commercial establishments in residential areas. Petitioner No.5 is the co-founder of '*I Change Indiranagar*', a federation of Resident Welfare Associations to fight civic issues in the Indiranagar area. Petitioner No.5 has been in the forefront against the operation of illegal bars and pubs, especially in Indiranagar.

4. The Respondent No.1 is the State of Karnataka through the Chief Secretary, Department of Urban Development. The Respondent No.2 is the Bangalore Development Authority. The Respondent No.1 is responsible, *inter alia*, for the overall planning, regulating, monitoring, and facilitating

infrastructure projects pertaining to housing, transportation, water supply and sewage etc through the urban local bodies in the State of Karnataka. The Respondent No.2 is the Bangalore Development Authority, responsible for the planning, regulating, monitoring, and facilitating urban development in the Bengaluru Metropolitan Area.

I. Brief Background and Facts: Overview on *Akrama-Sakrama*

5. The Petitioners have filed this writ petition, in public interest, against the Bangalore Development Authority (Amendment) Act, 2020 ("**BDA Amendment Act**"), the Karnataka Town and Country Planning (Fourth Amendment) Act, 2020 ("**KTCP Amendment Act**") and the notification dated November 17, 2020 ("**KTCP Amended Rules Notification**") whereby the draft amended rules to the Karnataka Planning Authority Rules, 1965 were issued by the Respondent No.1 since the same are unconstitutional, illegal and violative of Articles 14 and 21 of the Constitution of India. A copy of the BDA Amendment Act is produced herewith as **Annexure A** and a copy of the KTCP Amendment Act is produced herewith as **Annexure B**. The

copy of the notification is produced herewith as **Annexure**

C.

6. The Respondent No.1, had previously, sought to amend certain legislations and the rules framed under these legislations viz., the Karnataka Town and Country Planning and Certain Other Laws (Amendment) Act, 2013; the Karnataka Town and Country Planning and Certain Other Laws (Amendment) Act, 2009; Section 76FF of the Karnataka Town and Country Planning and Certain Other Laws (Amendment) Act, 2004; the Karnataka Town and Country Planning (Regularisation of Unauthorised Development or Constructions) Rules, 2014; Section 321-A of the Karnataka Municipal Corporation Act, 1976 and Section 187-A of the Karnataka Municipalities Act, 1964. These amendments more commonly referred to as the '*Akrama Sakrama*' scheme ("**Scheme**") sought to regularise and make legal several unauthorised and illegal constructions, particularly in the city of Bengaluru.
7. The aforesaid Scheme was challenged before this Hon'ble Court in WP No.8895/2015 along with a batch of other petitions, including one filed by the present Petitioner Nos.1

and 3 herein. The Scheme was challenged on the grounds of, *inter alia*, being violative of Articles 14 and 21 of the Constitution of India. The Scheme was violative of Article 14 of the Constitution as it made an unreasonable classification by favourably treating those who had violated the various building norms and regulations and discriminating against those who had followed the very same building norms and regulations. The Scheme was violative of Article 21 of the Constitution, which gives the right for a decent and planned environment, and the Scheme sought to regularise unauthorized and illegal constructions which went against these principles.

8. The Scheme was also challenged on several other grounds, as the Scheme sought to levy a minimal fee for regularising unauthorized constructions and the cut-off date that was specified for regularising these unauthorized constructions was also arbitrary. The net effect of the Scheme would have resulted in regularisation of violation of setback norms and floor area ratio and would also excuse the jurisdictional officers who had, directly or indirectly allowed the unauthorised constructions to take place.

9. This Hon'ble Court passed an interim order dated March 19, 2015 ("**Interim order**") whereby the authorities were directed to not process the applications that were received pursuant to the rules framed under the Scheme. Later on, this Hon'ble Court vide Final Order and Judgment dated December 13, 2016 dismissed WP No.8895/2015 along with the other writ petitions. A copy of the Final Order and Judgment dated December 13, 2016 has been produced herewith as **Annexure D**.
10. Against the Final Order and Judgment of this Hon'ble Court, a Special Leave Petition was preferred before the Hon'ble Supreme Court which came to be numbered as SLP (C) No(s).11077-11078/2017. The Hon'ble Supreme Court vide Order dated May 04, 2017 reinstated the Interim Order that had been passed by this Hon'ble Court. The matter is currently pending before the Hon'ble Supreme Court. A copy of the Order dated May 04, 2017 is produced herewith as **Annexure E**.

**II. The Bangalore Development Authority Act, 1976 and
Illegal Encroachments**

11. The Bangalore Development Authority Act was enacted in 1976 ("**BDA Act**") through which the Respondent No.2 was constituted. The important and ostensible functions of the Respondent No.2 as per the provisions of the BDA Act are the acquisition of lands, development of layouts and the allotment of sites in the Bengaluru Metropolitan Area. The provisions of the development of layouts are outlined in Chapter III of the BDA Act. Similarly, the power of the Respondent No.2 to acquire lands is provided in Chapter IV of the BDA Act and the allotment of sites is provided in Chapter V of the BDA Act.
12. The BDA Act has undergone several amendments pursuant to its enactment. One of the earliest amendments that was undertaken by the Government was in 1984 to prevent and deter the burgeoning problem of encroachment of lands belonging to municipalities, city improvement trust boards, the development bodies such as Respondent No.2 herein as well as other local bodies.
13. Accordingly, penal provisions were introduced in several legislations such as the City of Mysore Improvement Act, 1903; Karnataka Village Panchayats and Local Boards Act,

1959; Karnataka Municipal Act, 1964; Karnataka Municipal Corporations Act, 1976; Karnataka Improvement Boards Act, 1976 and the BDA Act as well.

14. Section 33-A was introduced under Chapter III of the BDA Act to penalise any person who trespassed, used or occupied any land belonging to the Respondent No.2 if the said person was not entitled to or had ceased to be entitled to the use or occupation of the said land. The person found guilty of trespassing into, or illegally using or occupying the land belonging to the Respondent No.2 can be punished with imprisonment for a term which may extend to three years.
15. Further, under Section 33-A (3) of the BDA Act, any person who intentionally aids or abets the commission by any other person to illegally trespass, use or occupy the land belonging to the Respondent No.2 would also be liable for the same punishment of imprisonment for a term which would extend to three years.

III. The BDA Amendment Act

16. The Respondent No.1, enacted the BDA Amendment Act which came into force on July 31, 2020. The BDA Amendment Act introduces Section 38-D to the Bangalore

Development Authority Act, 1976. Section 38-D allows the Respondent No.2, for the purposes of allotment, to hold an enquiry. Subsequent to the completion of the enquiry, if the Respondent No.2 is:

“..of the opinion that any land vested in, or acquired by it cannot be used by it on account of existing building thereon and it is not practicable to include such land for the purpose of development scheme or formation of sites, the Authority may, subject to such rules after holding such enquiry as may be prescribed, allot such land by sale in favour of the original owner of the land or purchaser from its original owner or any other person **in unauthorised occupation of the land for some reason or other who has put up the building on the land and is in settled possession of such land** but does not include tenant, licensee or permissive user...” (emphasis supplied).

17. Section 38-D further stipulates certain conditions for the allotment of the land. Some of the conditions include the

existence of the building on such land and in settled possession for not less than twelve years prior to the date of commencement of the BDA Amendment Act; the total extent of land allotted to any person under this subsection shall not exceed 4000 square feet and no other member of his family would be entitled to apply for or seek benefit of allotment of any other land on any ground whatsoever and the allottee has to make payment towards the allotment of land at rates specified in the table outlined under Section 38-D (ii) of the BDA Amendment Act.

18. Section 38-D further states that the person seeking allotment is to make an application to the Respondent No.2 containing such particulars, by paying a certain fee within a particular time-period as may be prescribed and the applicant may also provide supporting documents to establish settled possession and building construction.
19. Section 38-D (2) states that jurisdictional officers who have been proved to have failed to prevent the unauthorised construction and occupation within the jurisdiction from the date of commencement of the BDA Amendment Act are also liable to be punished as may be prescribed.

20. Section 38-D, by allowing for the regularisation of unauthorised construction/occupations on BDA lands directly contradicts Section 33-A of the BDA Act which penalises any illegal trespassing, use or occupation of BDA lands.
21. The BDA Amendment Act, by allowing for regularisation of unauthorised constructions/occupations on BDA lands, in effect, has gone one step beyond the Scheme that is currently being challenged before the Hon'ble Supreme Court. The Scheme had primarily sought to regularise the following: (a) The unauthorised development of land by the owner in contravention to what the owner had permission to develop the land for; (b) The unauthorised and illegal change of land use by the owner and (c) The unauthorised construction on buildings and sites which go beyond the permission granted at the time of issuance of the commencement certificate for the construction by the respective authorities. To qualify under the Scheme, the individual/entity had to be the owner of the said land/building which had been developed/constructed in violation of the relevant rules and regulations. However, the

BDA Amendment Act, on the other hand, does not even stipulate the minimal condition of legal ownership of the land for availing the benefit under the BDA Amendment Act as the lands belong to the Respondent No.2 in the first place. The BDA Amendment Act, has, therefore effectively awarded encroachments on lands belonging to Respondent No.2.

22. The BDA Amendment Act incentivises land grabbers who have encroached upon the land to sell the encroached land to unsuspecting buyers and also excuses previous sales made by land grabbers of encroached lands to unsuspecting buyers.
23. No rationale for the enactment of the BDA Amendment Act has been provided and no rationale has been provided for allowing for the regularisation of unauthorised constructions/occupations of BDA lands only to the extent of 4000 square feet.
24. The BDA Amendment Act, prescribes an arbitrarily low fee, for authorising illegal constructions/occupations on BDA lands, thereby rendering a significant loss to the exchequer. It does not specify the timelines and the application fees for processing the allotment application.

25. The BDA Amendment Act is similar to the Scheme as it has been enacted having a narrow focus on the illegal occupier of the BDA lands whereas several other stakeholders, including the adjacent property owners may be unduly affected by the legalisation of the illegal occupation of the person occupying and using the BDA Lands.
26. The BDA Amendment Act, prospectively penalises jurisdictional officers for their failure to prevent unauthorised constructions/occupations on BDA land from the date of the commencement of the BDA Amendment Act. In effect, the same amounts to excusing the jurisdictional officers for failure to prevent the unauthorised constructions/occupations on BDA lands prior to the date of the commencement of the BDA Amendment Act.
27. Section 38-B of the BDA Act gives the right to the Respondent No.2 to allot lands in bulk by way of sale, lease or otherwise which belongs to it, or is vested in it or acquired by it for the purpose of any development scheme. However, the said bulk allotment can only be made to the State Government or the Central Government; to a body corporate or organization owned or controlled by the State

Government or the Central Government; to any housing co-operative society registered under the Karnataka Co-operative Societies Act, 1959; to any society registered under the Karnataka Societies Registration Act, 1960 or to a religious, charitable or cultural trust. The said bulk allotment can take place only with the prior approval of the Government.

28. The BDA Amendment Act by authorising the illegal occupation of the lands owned or vested in the Respondent No.2 runs contrary to Section 38-B as regularising illegal occupation and construction over BDA lands effectively implies that the same is allotted illegally in bulk without seeking the prior approval of the Government.
29. The BDA Amendment Act has been enacted without due public consultation and the BDA Amendment Act has been enacted without having been brought to the notice of the Bangalore Metropolitan Planning Committee ("**BMPC**"), which is a constitutional body set up under Section 503-B of the Karnataka Municipal Corporation Act, 1976 in accordance with Article 243ZE of the Constitution of India. The BMPC is the apex body responsible for planning and

urban development for the Bengaluru Metropolitan Area. By circumventing the BMPC, the BDA Amendment Act has violated the provisions of the Karnataka Municipal Corporations Act, 1976 as well as the Constitution of India.

IV. The KTCP Amendment Act and the KTCP Amended Rules Notification

30. The KTCP Amendment Act was enacted by the Respondent No.1 and came into force on July 31, 2020.
31. The KTCP Amendment Act introduces Section 18-B to the Karnataka Town and Country Planning Act, 1961 (“**KTCP Act**”). Under Section 18-B, constructions can make use of a ‘Premium Floor Area Ratio’ for a building by making an application and paying premium charges. The KTCP Amendment Act states that a ‘Premium Floor Area Ratio’ is “an additional floor area ratio permitted over and above the ordinary and permissible floor area ratio”.
32. From the above, it is clear that a Premium Floor Area Ratio is when a person constructing a building can make additional constructions over the building by paying a mere premium fee. It is pertinent to note that this is contrary to existing provisions of the KTCP Act. Sections 14A read with Section

14B of the KTCP Act allows for the increase in the floor area ratio only if certain conditions are satisfied and they are exceptions to the rule of strict adherence to the floor area ratio prescribed under the BBMP Building Bye-laws, 2003. Section 14-B states that if a landowner surrenders existing land to the planning authority or local authority free of cost for public purposes, then the said authority can allow the landowner to develop an additional floor area not exceeding one and half times the area of the land surrendered.

33. Section 14-A of the KTCP Act states that any change in the construction plan has to be published in one or two daily newspapers, having circulation in the area where the building or land is situated so as to enable the public to file their objections to the proposed deviation.
34. In stark contrast, under Section 18-B, there is no requirement of prior surrender of land for public purpose nor is there a need to notify the public in order for the landowner to make use of the 'premium floor area ratio'. The only stipulation is the payment of 'premium charges' for the same.

35. As has been noted above in paragraph 22, one of main objectives under the Scheme was to regularise unauthorised construction on buildings and sites which had ostensibly violated the floor area ratio. The KTCP Amendment Act, now seeks to regularise this aspect of the Scheme, by the mere payment of 'premium charges.'
36. The KTCP Amendment Act, in effect, seeks to render void the very concept of a Floor Area Ratio as builders can now pay additional charges which gives builders carte blanche powers to undertake constructions over buildings to the detriment of several other stakeholders, especially adjacent property owners.
37. The KTCP Amendment Act may also result in a 'race to the top' wherein haphazard additions are made to existing buildings which may threaten the very occupants of these buildings as there is no requirement for a certificate to be submitted by the builder as regards the structural safety of the construction purported to be undertaken.
38. The KTCP Amendment Act, like the BDA Amendment Act, has been enacted without due public consultation and without having been brought to the notice of the BMPC. By

circumventing the BMPC, the KTCP Amendment Act has also violated the provisions of the Karnataka Municipal Corporations Act, 1976 as well as the Constitution of India.

39. The Respondent No.1 vide the KTCP Amended Rules Notification issued certain draft rules that seek to amend the Karnataka Planning Authority Rules, 1965. The Respondent No.1 seeks to introduce Rule 37-E in the Karnataka Planning Authority Rules, 1965. Rule 37-E outlines the charges that are levied for premium floor area ratio. Rule 37-E states that the premium floor area ratio charges so collected will be deposited in a separate head of account of the Planning Authority. Rule 37-E further states that 50% of the premium charges collected shall be utilised for acquisition of land reserved for roads and road widening and the remaining 50% of the charges shall be utilised for development of infrastructure and allied developmental activities.
40. It is submitted that KTCP Amended Rules Notification, like the BDA and the KTCP Amendment Acts, has been issued without having been brought to the notice of the BMPC. The said KTCP Amended Rules Notification by circumventing the BMPC, is violative of the provisions of the Karnataka

Municipal Corporations Act, 1976 as well as the Constitution of India.

41. It is in this background that the Petitioners have moved this Hon'ble Court for the reliefs claimed here under, being aggrieved by the actions of the Respondent No.1 in enacting the BDA Amendment Act, the KTCP Amendment Act and the KTCP Amended Rules Notification. It is submitted that the Petitioners have not filed a case before any other Court arising from the same cause of action. It is further submitted that the Petitioners do not have any other alternative remedy in the present instance. Therefore, the Petitioners have approached this Hon'ble Court to seek necessary relief.

GROUNDS

42. The BDA Amendment Act is violative of the rule of law as it legalises the illegal occupation of land which is vesting or belonging to the State therefore leading to a private appropriation of public property.
43. The BDA Amendment Act, the KTCP Amendment Act and the KTCP Amended Rules Notification are unconstitutional as they are colourable legislations. The BDA Amendment Act is an extension of the Scheme as it seeks to authorise and

regularise unauthorised constructions, similar to the Scheme. The KTCP Amendment Act and the KTCP Amended Rules Notification are identical to some aspects of the Scheme.

44. The BDA Amendment Act is violative of Article 14 of the Constitution of India as it fails the test of reasonable classification. The BDA Amendment Act, like the Scheme, if implemented, will classify allottees of BDA sites into two groups viz., unauthorised occupants of lands belonging to Respondent No.2 and lawful allottees who have been allotted sites after participating under the existing rules and regulations of the Respondent No.2.
45. The KTCP Amendment Act and the KTCP Amended Rules Notification are also violative of Article 14 of the Constitution of India as it fails the test of reasonable classification. The KTCP Amendment Act, like the Scheme, if implemented, will classify landowners into two groups viz. landowners who can undertake additional construction over their lands by paying premium charges in order to avail premium floor area ratio and landowners who will be unable to do the same.

46. The BDA Amendment Act, the KTCP Amendment Act and the KTCP Amended Rules Notification are violative of Article 21 of the Constitution of India as it affects the guarantee of decent and planned environment for citizens living in the Bengaluru Metropolitan Area as the BDA Amendment Act authorises illegal constructions on the lands belonging to Respondent No.2 and the KTCP Amendment Act allows relentless and unplanned constructions to take place.
47. The BDA Amendment Act, the KTCP Amendment Act and the KTCP Amended Rules Notification are bad in law as the vires of the Scheme is still pending before the Hon'ble Supreme Court. The BDA Amendment Act is an extension of the Scheme and the KTCP Amendment Act is identical to parts of the Scheme which has been stayed before the Hon'ble Supreme Court.
48. The BDA Amendment Act, the KTCP Amendment Act and the KTCP Amended Rules Notification are also violative of the Karnataka Town and Country Planning Act, 1961 whose main objectives are for planned growth and development with a view to improve the standard of living and the overall environment. By enacting the BDA Amendment Act which

regularises illegal and unauthorised constructions especially on government lands and the KTCP Amendment Act which allows for unplanned and relentless construction, the Respondents are actively enabling the violation of several legislations which have been enacted to aid the proper planning, development and improvement of the Bengaluru Metropolitan Area.

49. The BDA Amendment Act is violative of the BDA Act as it runs contrary to Section 33-A of the BDA Act, which penalises unauthorised occupation and use of lands belonging to the Respondent No.2.
50. The BDA Amendment Act is violative of Section 33-A of the BDA Act as it excuses previous actions of land grabbers in having sold illegally encroached upon land to unsuspecting buyers. The BDA Amendment Act also incentivises future actions by land grabbers in selling encroached land to unsuspecting buyers whereas penal actions under Section 33-A of the BDA Act should be initiated against the land grabbers.
51. The KTCP Amendment Act and the KTCP Amended Rules Notification are violative of Section 14-B of the KTCP Act as

the KTCP Amendment Act does not satisfy the public purpose requirement which is necessary for the increase in allowing additional floor area ratio to be used by the landowner.

52. The BDA Amendment Act, the KTCP Amendment Act as well as the KTCP Amended Rules Notification, are violative of Article 243ZE of the Constitution of India as no consultations were made, prior to its promulgation, with the BMPC, which is the main planning body constituted in accordance with Article 243ZE of the Constitution.
53. The BDA Amendment Act is bad in law as the fees for regularising unauthorised constructions on lands belonging to the Respondent No.2 is minimal, arbitrary and internally inconsistent. For instance, applicants for sites measuring 600 ft to 2400 ft only have to pay a percentage of the guidance value, applicants for sites measuring 2400ft to 4000 ft, in addition to paying a percentage of the guidance value, may also have to pay a penalty, as may be prescribed.
54. The KTCP Amendment Act and the KTCP Amended Rules Notification are bad in law as the premium charges

prescribed is pegged to a ratio of the estimated increase in the value of land and building as prescribed by the government which is minimal and arbitrary as the actual value of the increase in the value of the land and building may be much higher.

55. The BDA Amendment Act is bad in law as it excuses the jurisdiction officers who have permitted, directly or indirectly, unauthorised constructions and occupations on lands belonging to Respondent No.2, by only punishing those officers who fail to take action pursuant to the promulgation of the BDA Amendment Act.
56. That the above grounds are urged without prejudice to one another. The Petitioners crave leave of this Hon'ble Court to urge additional grounds at the time of hearing.

GROUND FOR INTERIM PRAYER

57. That if urgent interim reliefs and / or measures are not passed, it would result in irreversible damage to the urban landscape of the Bengaluru Metropolitan Area as several unauthorised constructions will be rendered legal.

58. Further, the Petitioners have claimed significant reliefs that will affect the society at large in the Special Leave Petition challenging the Scheme before the Hon'ble Supreme Court. If the Respondents are allowed to authorise illegal construction and occupations, many of these reliefs will be rendered infructuous.
59. The Petitioners crave leave to raise additional grounds at the time of hearing and submits that the aforesaid grounds are raised without prejudice to one another.
60. No writ or other proceedings have been initiated by the Petitioners on the same cause of action before this Hon'ble Court or any other Court, Forum or Tribunal.
61. Court fees of Rs.100/- has been paid on this Petition.
62. That this Hon'ble High Court has the necessary jurisdiction to entertain the writ petition.
63. The Petitioners submit that for the reliefs sought in the instant Petition, the Petitioners do not have any alternative, efficacious remedy apart from this Petition.

PRAYER

WHEREFORE, it is humbly prayed that this Hon'ble Court may be pleased to:

- a. Declare the BDA Amendment Act, the KTCP Amendment Act and the KTCP Amended Rules Notification as violative of Articles 14, 21 and 243ZE of the Constitution of India;
- b. Call for records from the Respondents with respect to any action they may have taken in connection with the BDA Amendment Act, the KTCP Amendment Act and the KTCP Amended Rules Notification;
- c. Pass any other necessary writ, order or direction as may be deemed necessary in the facts and circumstances of the case.

INTERIM PRAYER

WHEREFORE, it is humbly prayed that this Hon'ble Court may be pleased to pass an Order:

Directing the Respondents and their officials restraining them from entertaining any applications for allotment under the BDA Amendment Act or from entertaining any applications for grant of

permission for utilization of premium floor area ratio during the pendency of this writ petition.

PLACE: BENGALURU

DATE: .12.2020 ADVOCATE FOR PETITIONERS

Address for Service

Samvād: Partners

Advocates

No. 62/1, Palace Road, Vasanthnagar,
Bengaluru – 560 001.

Tel: 080-42686000.

Email IDs: