

Urban development areas and the Urban Development Authority Law

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Urban Development Authority (UDA) was established on first of Oct. 1978 under Urban Development Authority Law No. 41 Of 1978 as an "authority to promote integrated planning and, implementation of economic, social and physical development in certain areas". Unlike any other public agency which are conferred with authority to deal with a subject specific area, UDA's operational area cannot be demarcated single subject wise. For instance in case of subject agencies such as irrigation or power supply, area of operation is the District, or the Division Local Authorities which are charged with the administration of regulation and control of thoroughfares, and public utilities at Local Level, have their areas of operation fixed under Local Government enactments and leads to no problems in their operations within such areas. Local authority areas though entrusted with multiple duties, have been prescribed with clearly identifiable functions related to public health, and welfare. Generally a Local Authority has the responsibility to be charged with streets, drains, sewerage systems, lavatories, conservancy and cleanliness, public markets, cemeteries, prevention of nuisance, removal of insanitary, overcrowded and ruinous buildings and construction of buildings. They are all directly related to public health, comfort and convenience.

For this matter Local Authorities are empowered mainly by Local Authority ordinances and the Housing and Town Improvement ordinance. In addition a Municipal Magistrate can try actions under 29 enactments.

However Urban development Authority not being entrusted with an area specific function in the sense of fitting into the existing traditional boundaries is directed by law to establish its own boundaries. They are more or less like those of sacred Areas under Town and Country Planning ordinance, Tourism Zones under the Tourist Board Act or Improvement Schemes under the Housing and Town Improvement ordinance.

Directions to declare areas

Sec. 3(1) of the Urban development Authority Law No. 41, of 1978 (the principal Act) provides for the Minister to declare areas "where he is of the opinion that any area is suitable for development... to be a Development Area". Sec. 3 (2) also empowers the Minister to define the area by metes and bounds. What these two sections mean is that the "suitable" area in the Minister's opinion does not necessarily co-terminate with any of the existing area boundaries such as GN divisions, Municipal wards, Local Authorities, or Divisions.

As the two sub-sections very clearly indicate before establishing the metes and bounds of the area it is essential to identify the "suitable area". As according to the principles of administrative Law a Minister cannot act ultra vires of the intention of the legislature by the use of discretionary power, the Minister should be guided by the Law. Sec. 3(3) provides for this. It makes the "development of every declared area for better physical and economic utilization of such area" an obligatory function of the UDA. Therefore the purpose of the UDA's entry into an area is the putting of that area into better physical and economic utilization. Therefore before determining the metes and bounds the area which have to be put to better physical and economic utilization has to be identified.

What is better and Economic Utilisation

As very clearly discernible the phrase indicates a growth scenario or condition of addition of value to the area. The definition given to the term development activity in Sec. 8J further explains this. According to Sec. 29 development activity means sub-division or parceling of

for development it should be developable. Land becomes developable only when it is served with amenities and services. Provision of amenities and services is a costly affair as it includes construction of roads, power, water supply, telecommunication, drainage, sewerage, recreational activities, transport and community facilities.

Therefore unless there is a growing demand for urban space in a given area there is no way that such areas can be put to better economic utilization. Like in the case of any other commodity in case of urban space also increase in demand results either in response to a rise in population, with purchasing power or a rise in incomes of the people. The rise may come from within an area or from the region. In the latter case increase may be due to the rise in purchasing power of the commuting population, or increase in the regional population while in the former case population increase in the area may induce growth. The difference is — in the former case demand is mainly for residential space, in the latter case demand for services such as commercial public uses, location of industries, transport facilities may go up. In Colombo what is happening is despite the decline in total population within the city, demand for space is rising. This comes mainly from the non-primary sector and this is very well reflected in land values. This is why there is an ever growing traffic con-

despite considerable investment done in housing in the city.

Thus the BASIC spurt for the better physical and economic development comes from demand. However even if the demand rises if adequate investment is not available for the provision of serviced lands it cannot be accommodated. This will result in the appearance of slums and encroachment by shanties in reservations and open areas and also lead to a physical break-down of areas while the rise in numbers of pavement hawkers, and informal traders is also a reflection of this pattern of population distribution and interaction.

As servicing of land by nature is an integrated function requiring the provision of access, power, water and other utilities a program of urban development necessarily requires the pooling of resources of those agencies which are in charge of the provision of amenities and services. Resources means not only funding but also expertise and equipment and so requires the pooling of resources and programming the activities. If this is not done an area cannot be put to better economic utilization

Better physical utilisation

What does it mean? It means the use of the land subject to the restrictions of

1. Reservation of lands for public uses. The main



gestion in Colombo. This situation is represented by the following figures.

Highest population growth according to the Colombo Urban transport Study, of 2.42% between 1981 and 1994 occurred in the outer urban areas consisting of Minuwangoda, Gampaha, Mahara (East), Kaduwel (North), Hanwell, Homagama, Homagama, and Kalutara which are largely separated from the main urban area. This was followed by the Urban periphery consisting of Ja-Ela South, Wattala, Welisara, Kelaniya, Mahara, Kolonnawa, Kotte, Battaramulla, Maharagama, (excluding Eastern zone) Kesbewa, Dehiwala/Ratmalana, Moratuwa, and Panadura with a growth rate of 1.7%. However the city grew only by 0.8%. Despite this the

objective of Government intervention in Urban development activities is to reserve land for public purposes, which among others include infrastructure, amenities, and services without which enjoyment of private properties is extremely restricted, and hence, adversely affects the productivity of land. For instance a developer cannot construct a road or a park or a very much more effective to have a public play-ground or a cemetery than an individual attempts to have exclusive ones. As, for the enjoyment of private properties, existence of public areas in the form of roads, open-spaces, fire gaps, reservations for waterways, canals, drains, and various communication lines, vehicle parks, dumping grounds are essential. Allocation of land for such purposes is a prominent objec-

are examples.

To maintain these requirements Local Authorities are adequately empowered by Local authority enactments. Housing and Town Improvement ordinance, Nuisance ordinance and the by-laws made under local authority laws. In addition local authorities are directed by other Laws such as Coast Conservation Act, Central Environmental Authority Act, Tourist Board Act etc. For the purpose of regulation or control of development alone UDA's intervention is hardly necessary. In fact the area of control covered by local authority by-laws is very much wider than the UDA regulations. To perform this foremost function of a Local authority i.e. to protect and promote public health and public welfare it has been given generally applicable regulatory powers covering regulation and control of construction of buildings and streets. What the UDA advocates is that it has more power to deal with unauthorized constructions and to prevent them from adversely affecting the roads, drains, waterways, and other public spaces. Municipal council ordinance empowers a municipality to demolish any unauthorised construction work on a state land or encroachment of streets where the street lines have been declared, without going to Courts. However the UDA does not have such coverage to go for general application of its regulations within a local authority area by arbitrarily declaring it as a development area. Purpose of the UDA's entry into an area is the development of the area for better physical and economic utilisation of the area. If the legislature intended to utilise the UDA regulations generally through out local areas the application could have been made the same way as the Housing and Town Improvement ordinance was made applicable in local authority areas. Sec.4 of the above ordinance makes it applicable in Municipal, Urban and Town Council areas. Sec. 78 of the Pradeshiya Sabha Act has made it applicable in PS areas. Therefore at present the whole of Sri Lanka is covered by some form of planning guidelines.

If the purpose of the UDA Law is to look after only one aspect i.e. better physical or economic utilisation of the area it could have gone for regulation or develop the area disregard of physical planning criteria. According to the wordings of the UDA Law both aspects of physical and economic development are equally important and interdependent. Therefore without providing for better economic utilisation it is not possible to provide for better physical utilisation alone because it leads only to a development control and not to development promotion as required by the Law. It is because of the envisaged huge investment aimed at economic growth that the Law prescribes following very harsh penalties against errant developers.

- i. A fine of Rs 50,000.00 or and imprisonment of 2 years of either description.
- ii. A fine of Rs. 1000.00 for every day of continuation of the offence.
- iii. Demolition of the unauthorized development activities.
- iv. Vesting of the land so developed without compensation if such land is required by the UDA for any of its program developments.

Even with these extensive powers UDA has not been able to combat the problem of unauthorized developments. Although Section 8J requires all developers including government agencies to obtain prior approval for any development activity government agencies almost never submit development plans for approval. Even in the private sector at least the majority do not submit building applications for approval. As a result of this there are at least 40,000 unauthorized developments