The UDA's role in unauthorised construction

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Unauthorised constructions have become a real nuisance to the bureaucrats, city administrators as well as politicians. Since the introduction of the Urban Development Authority (Amendment) Act No. 4 of 1982 both developer as well as the UDA are of the opinion that they have an unquestioned authority to demolish an unauthorised development activity if having ordered to regularise if the errant developer fails to do so.

By now the UDA has spent millions of rupees to handle this situation which has grown to menacing proportions. There are over 100,000 such activities in the country.

There is no argument that the planned development is very adversely affected by allowing property owners to construct structures as they want, without controls. The removal of unauthorised construction is one thing while doing it by an agency having legal power to do it, is an important aspect of law. The vanguard institution in this regard has been the Urban Development Authority, popularly known as the UDA.

What is unauthorised development?

Section 8 J of the Act deals with the subject. According to it, it is an offence to carry out any development activity by a government agency or any other person within a development area except under a permit issued by the authority and according to terms, directions, and conditions in the permit. According to Sec. 8K it is also an offence to occupy the development activity even if it is already approved without a certificate of conformity issued by the authority. It is also an offence to violate the conditions in the permit after getting approval.

The development activity is defined as parceling or subdivision of land, construction and reconstruction of buildings or structures, carrying out of building or engineering works on, over or under land and change of uses of buildings while agriculture or horticulture is not an element of the development activity. It should be noted here that the terms, conditions and directions according to which a development has to be done has been published as Planning and Building Regulations in 1986 and are applied in general in all UDA areas.

It is noteworthy that these regulations have been gazetted under section 21 of the Principal Law which did not contain powers to regulate development Under that law the UDA had powers only to carry out projects in development areas .Therefore, although the authority has been using these regulations for the last 16 years that itself is illegal. Such regulations should be made according to the procedure given in the Amendment Act. No 4 of 1982.

Legal action

Legal action can be initiated against an errant developer by bringing an action before a magistrate under Sec. 28A. He shall issue an order for the demolition of the development activity if "he is satisfied" that it is unauthorised. It is important that a magistrate does not have absolute discretion to give an order. It is subject to his being satisfied.The authority or authorised agent can by petition and affidavit file an action Present practice is only to issue the order if the developer does not object to its unauthorised nature and does not regularise having so ordered.

Up to now there has not been an argument before courts to defend the activity of the developer on the ground that the UDA has no power to interfere in his behaviour. In fact a magistrate should satisfy himself at least on two grounds before issuing an order for demolition. It should be noted here the order for demolition is a supplementary punishment. The principal punishment is penal and under Sec. 28C an errant developer can be sentenced to a fine of Rs. 50,000/= or an imprisonment of two years and also to a fine of Rs. 1000/= for every day of continuation of the offence after the order is given. Although the UDA has never invoked this penal punishment so far the mere prescription of such a grave punishment itself is a reason to have enlightened about the rights of the public.

The temple at Punchi Borella being demolished by the UDA

URBAN DEVELOPMENT

What the above legal direction indicates is that an area should be potential for development. Of course, physical development being construction of amenities, a services can be done anywhere. But what the law wants is for physical and economic utilisation to move parallel, like the two wheels of a cart. So according to the law, investment in physical development can be done only if the area is suitable for economic investment which should primarily come from the private sector which is driven by market forces. This concept embodies a basic principal of town planning i.e locational suitability for investment.

An area is suitable for economic investment only if the local economy indicates growth trends. Growth trends need not be in terms of population growth. It can be the growth in physical quality of life which represent a demand for higher quality services and amenities. This depends on the purchasing power of the local and regional community that looks to the town centre for their service needs. Thus a decision on the suitability for UDA's intervention is not an easy task that can be made by sheer political requirements. Up to now nearly 175 areas in the country have been declared as development areas. However, not in the case of a single area the Minister has been made to take a rational and legal decision. There is not a single area in which the UDA can operate legally at present.

According to the procedure steps should be followed in order to make a legally binding development plan. They are

1. Appointment of a Planning Committee to advise the Chairman on the preparation, implementation and enforcement of a development plan, by the board of management under section 5 of the Law. To meet the requirement of the law, the planning Committee should be able to determine the basis of the DP. The UDA town planners can determine only on technical matters. Burt matters of political and social sphere should be determined by community leaders while the implementation program must be determined in consultation with the agencies responsible for services and amenities. The Committee should determine the objectives of the DP, area within which the plan should apply, funding arrangements, and programme of implementation. However, none of the Planning Committees that are in operation at present have been appointed to meet these requirements and all decision taken to demolish "so called" unauthorised structures are a violation of human rights of the people through arbitrary political and bureaucratic action.

2. To call for opinion of the local authority regarding the development plan and do the basic surveys for information.

3. Under section 8D the draft plan should be studied and approved by the planning committee and transmitted to the Local Authority for comments which should be sent back to the authority within 60 days. The authority is not legally bound to accept these comments.

4. Under Sec. 8E following this the board of management should submit its recommendations on the advice of the PC to the Minister for approval under Sec. 8F

5. Once the minister approves the development plan, a notice to that effect should be published for the information of the community and also the fact of gazetting should be published in the newspapers. At the same time it should be placed for public inspection.

A legally binding DP can be prepared only according to this procedure and up to now there is not a single legally binding DP for any of the UDA areas. What is presently enforced to regulate development activity is a set of regulations prepared by the minister under section 21 of the principal act that has been provided for a different purpose. As the principal law was not meant for the regulation of development activities in general except to the extent they affected a development project it is absurd to use a set of regulations made under this section. This shows that the UDA has been operating extremely arbitrarily during its 25 years of existence.

Role of the authorities

An important innovation introduced by the Amendment Act No. 4 of 1982 is the provision made for the delegation of its powers to local authorities. According to Sec. 23 (5) the authority may delegate any of its powers relating to planning, to any officer of the Local authority in consultation with the local authority subject to the supervision, control and regulation of the Authority. Here it is clear that UDA can delegate any of its powers relating to planning and this means that planning consists of more than one element. According to the UDA law it consists of power to prepare a development plan, implement the programme of projects in the plan and enforce regulations to direct development according to the plan.

What is now being done is under a general delegation and no one knows what powers a local authority has accrued under this delegation. The letter of delegation must specify the power delegated. The powers that can be delegated arise from the development plan. Therefore, a local authority has no power derived from this delegation and cannot either approve a building application or take legal action against a developer as there is no DP and that power has not been specifically delegated. So what happens throughout the country in the name of the UDA is a total violation of the law.

Role of UDA in urban areas

The UDA law is the most uncomprehended law in the country. The management of the UDA are dedicated to the program of removal of unauthorised constructions as if it is not the only job, it is the most prominent job it thinks it should perform in towns. UDA was established to attract private investment in towns for creation of job opportunities to accommodate the growing educated youth who rose in riots against the government twice.

The law had developed in two stages. One is the Law No. 41 of 1978 which empowered the UDA to coordinate public sector funds by directing, regulating and coordinating them within areas declared under it, under section 3 of the principal law by Minister who had power to declare an area only if it is "suitable for development" Under this principal law the UDA could carry out only an implementation programme consisting of projects, schemes and development plans.

The term development plan is used in a sense of a planned programme of development integrated into a total development endeavour. However, under this law the authority had no power to regulate development activities of any person..What it could do is to identify a programme of projects to promote integrated planning. Therefore, under the principal law there was no entertainment of building application, nor power to take action against a person who constructs a structure without obtaining the prior approval of the Authority.

Under the principal law what was possible was only carrying out development projects such as they did in the Echeleon Square or Battaramulla. The main objective of these projects was to free the state lands from the inappropriate developments that were there.

By this time crown was a major owner of some prime lands in the city. The other existing planning laws such as Local Authority Ordinances or Housing and Town Improvement Ordinance (H&TIO) or Town and Country Planning Ordinance (T&CPO) did not have power to interfere in crown properties and hence could not free the town centres from these in appropriate public uses such as low- productivity administrative buildings etc. UDA law embodied adequate powers to regulate and direct government agencies (Sec.8 p) and that is how it undertook projects like Echeleon Square development.

Amendment to Act No. 4 of 1982 was introduced as a concept of regulation of development in general in a Development Area. The strategy of doing this was to prepare a Development Plan (DO). Power to prepare a DP was granted by section 8A which made it a mandatory duty. It states that "the authority shall prepare a DP for every Development (DA) Area with a view to promoting and regulating integrated planning and physical development of land and buildings in a DA, "having regard to amenities and services to be provided to the community".

The set of regulations used by the UDA at present is made under this section. In fact, it is a general provision that may be found in any legal enactment for the purpose of giving effect to that law. The type of regulations that can be made under this section are for the administration and management of the authority, regulations that may be followed in preparing a Development Plan, regulations for the appointment of Planning Committees, guidelines for the preparation of a suitability report to be submitted to the Minister to declare areas, regulations for the carrying out of socio-economic surveys etc.

Had these basic principles been established at the inception this quagmire would not have resulted despite the UDA being manned by very senior town planners and architects.