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Urban development areas and the Urban Development Authority Law

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Continued from yesterday

While the government, the health authorities and the environmentalists shout at the UDA whenever there is a break down of environmental health or occurrence of floods due to poor drainage what the UDA attempts to do is to curb the problem through development control or prevention of satisfying the demand for urban space which is definitely the contrary of justification for the UDA's involvement. Present break down of the urban environment is mainly attributable to the mishandling of the powers of the UDA Law. As a result of attempting to impose UDA regulations without a simultaneous program to provide amenities and services a large number of plots of land have gone blight. For instance a land having access along a foot path cannot be developed. Most of the areas with rural characteristics cannot satisfy the standards of UDA regulations and hence cannot be developed. Some examples are a larger part of the 1 km. coastal belt, Matara-Kataragama Rail Tract area and areas declared for Gam Udava Program. UDA is not another local authority to regulate development using some 70 Planning and Building regulation. It is an authority which should promote integrated planning through pooling of resources. For this matter it has a right to operate only if

i. the area is potential for urban growth or directed by government policy. The mainstay of the government policy should not be the political requirement to acquire opponents' land or interfere through a central government agency with the affairs of local authorities administered by opposition politicians, but the availability of funds for an integrated overall development of an area and the significance of such area in the overall development policy frame work of the government. The guiding factors may be the population growth, trends in land-use changes, existence of infrastructure development programs planned by other agencies such as the Baseline Road development, location of economic zones such as industrial parks, or Tourist Zones..

ii. Availability of funds to develop the area for better economic utilization. This mainly comes from the National Budget or sectoral agencies.

Above should be the criteria for the suitability report from which the Minister should have guidance to identify Development Areas. However in no instance of the declaration of nearly 150 areas up to now, a suitability report was prepared. Most of the declarations, specially the declaration of areas with rural characteristics have been done in response to political requests which were instigated by the innocent hope that UDA funds could be obtained to develop the areas or political motive of disturbing opposition party administrations or supporters. This is very clear from the policy followed by the UDA in N'Eliya, A'Pura and Kataragama in 1995 and 1999 by withdrawal of the delegated powers, and functions relating to planning under S. 23(5) of the UDA Law. At present Kataragma Pradeshiya Sabha has gone to the Court of Appeal invoking its writ jurisdiction against the action of the UDA. In fact S.23(5) was introduced to delegate the physical planning administration of the area, after completion of the development program. That is why that section is silent on the withdrawal of the delegated powers. It does not provide for withdrawal, because once the area is developed for the UDA objectives the general regulation of physical development becomes a function of the Local Authority. Therefore it is not wrong to state that the mere entry of the UDA to an area is unplanned or haphazard. once the area is identified, what waits is the defining of the area by metes and bounds. The true development Area boundary may be defined by applying the following criteria.

i. Investment needs to supply adequate serviced lands. For instance when the Base Line Road is developed its impact spreads to a very wide area and to benefit from this huge investment a large amount of infil investment in link roads, transport terminals, drainage, recreational commercial and service facilities, may be required. Unfortunately UDA though this is a very pertinent need to plan the Base Line Road area has not paid a wholesome attention to it.

Legal requirement that the magistrate should satisfy himself prior to making a mandatory order is an important step in the whole process of the trial that is being held against an errant developer. He should keep in mind that the offender can be convicted to a fine of Rs. 50,000 or a 2 years imprisonment of either description and fine of Rs. 1000 for every day of the continuation of the offence.

ii. Available investment from the central government, sectoral agencies, in charge of amenities and services, and funds obtainable from provincial councils and the decentralised budget etc.

iii. Sectors identified for investment. For instance if relocation of industries is involved in such areas which are naturally away from the central areas may also be included.

Based on the above three functions the metes and bounds can be established. Unless this is done the area identification is arbitrary. It is advisable for the UDA to be cautious in determining the areas and their boundaries as the property owners could be subjected to very heavy penalties when the law is violated. According to Sec. 28A (3) once the Authority applies to the Magistrate he has to issue "a mandatory order authorizing the Authority to demolish or alter the building or work .... if he is satisfied" Magistrate can give only a relief of 2 months if the offender undertakes to demolish or alter the building or work. The short period given to a magistrate to give a decision also is a factor that clarify the intention of the legislature. If not for the urgent requirement of removing the obstacles to the development program that is being carried out by the UDA such a quick decision cannot be expected. In this regard the very lenient provisions of the Housing and Town Improvement Ordinance or the Local Authority acts provided for against the errant developers are relevant. This indicates that an unauthorized development activity under the UDA Law is one that adversely affects the UDA's planned program of development and not one affecting the general comfort, convenience, and public welfare of the community. To prevent interference in such affairs the powers granted by the Local Authority Ordinances and other enactments have to be utilised. Can it be believed that the legislature intended to have provision which are very widely different in penalties for the commission of the same offence be operated under two enactment? This is why the Amendment Act No. 4 of 1982 treats Government agencies also as developers, where as the Local Authority Laws, and Housing and Town Improvement Ordinance leave aside the government as a developer.

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A development area declared under Sec. 3 must be preceded by a suitability report to guide the Minister and it must be an area declared for the purpose of developing it for "better physical and economic development" [S. 3(3) of UDA Law.] Activities that should be implemented to develop the area for better physical and economic development are detailed in S.8. They include a) implementation of integrated planning and physical development within and among development areas, b) implementation of related projects of development work, activities, and services which are consistent with integrated planning, c) formulation and submission of development plans for Minister's approval, d) undertaking and execution of development projects and schemes, e) entering into contracts for execution of projects, f) completion of defaulted projects, g) implementation of development plans and capital investment plans, h) formulation of capital improvement programs, i) development of environmental standards and preparation of schemes for environmental improvements, j) formulation and implementation of an urban land use policy, k) carrying out building engineering and infrastructure development projects, l) formulation of and execution of housing schemes, m) clearance of slums and shanties, n) directing, regulating and coordinating the development projects and schemes of government agencies, o) calling upon government agencies to undertake development projects and schemes at the request of the Government. All these functions are aimed at putting the areas into better physical and economic development.

To be continued