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"G-CATEGORY" BDA (ALLOTMENT OF SITES) RULES 2015 AMENDS IT BY SUBSTITUTION" OF NEW RULE 5 IN PLACE OF OLD RULE 5 IN "BDA (ALLOTMENT OF SITES) RULES 1984"



By: M.S.Yatnatti: Editor and Video Journalist Bengaluru: Request is made to Principal Secretary UDD to file an affidavit in HKHC in WP 23475/2010 C/W WP 1032/2006 and WP 36275/2009 (BDA PIL) stating that "Earlier Government had no power to allot G Category sites and Government took power to allot G category sites retrospectively by way of amendment to Bangalore Development Authority (Allotment of site) (Amendment) rules 2015 which in turn amends BDA (Allotment of sites) Rules 1984 by "substitution" of new rule 5 in place of old rule 5 as HKHC order in WP 23475/2010 C/W WP 1032/2006 and WP 36275/2009 (BDA PIL) had granted liberty to the Government to frame appropriate rules in accordance with law.UDD department has failed to take up follow up action after amendment and amendment was not communicated to high court as All MLAs MPs Ministers and social workers who have been allotted G Category sites by Government or have Government allotment letters but sites were not allotted by BDA stands to get the benefit by the Gazette notification No UDD 475 MNJ 2014 ,Banagaluru Dated 20-05-2015 which is effective retrospectively since 1984 as rule 5 is substituted in Rule 5 of BDA (Allotment of sites) Rules 1984.

Bangalore Development Authority (Allotment of site) (Amendment) rules 2015 have been published by the Gazette notification No UDD 475 MNJ 2014 ,Banagaluru Dated 20-05-2015 which has come into force from the 20-05-2015 the date on which it is published in the official gazette of Government of Karnataka . This amendment of Bangalore Development Authority (Allotment of site) (Amendment) rules 2015 which in turn amends BDA (Allotment of sites) Rules 1984 by "substitution" of new rule 5 in place of old rule 5 . Which makes this amendment effective retrospectively since BDA (Allotment of sites) Rules 1984 is amended by BDA (Allotment of sites) Rules 2015 as rule 5 is "substituted" in Rule 5 of BDA (Allotment of sites) Rules 1984. "The word 'substitute' ordinarily would mean 'to put (one) in place of another', or 'to replace'. In Black's Law Dictionary, Fifth Edition, at page 1281, the word 'substitute' has been defined to mean 'To put in the place of another person or thing', or 'to exchange'. In Collins English Dictionary, the word 'substitute' has been defined to mean 'to serve or cause to serve in place of another person or thing'; 'to replace (an atom or group in a molecule) with (another atom or group)'; or 'a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague'."

This amendment was made as per HKHC order in WP 23475/2010 C/W WP 1032/2006 and WP 36275/2009 (BDA PIL) as liberty was reserved to the Government to frame appropriate rules in accordance with law as it was said in the order that Government has no power to allot G Category sites and Government took power to allot G category sites retrospectively by way of amendment to Bangalore Development Authority (Allotment of site) (Amendment) rules 2015 amends BDA (Allotment of sites) Rules 1984 by "substitution" of new rule 5 in place of old rule 5.In view of this amendment UDD Department is duty bound to inform the HKHC in WP 23475/2010 C/W WP 1032/2006 and WP 36275/2009 (BDA PIL) that earlier Government had no power to allot G Category sites and Government took power to allot G category sites retrospectively by way of amendment to Bangalore Development Authority (Allotment of site) (Amendment) rules 2015 which in turn amends BDA (Allotment of sites) Rules 1984 by "substitution" of new rule 5 in place of old rule 5.

With this order of HKHC in WP 23475/2010 C/W WP 1032/2006 and WP 36275/2009 (BDA PIL) becomes infractious as Government has complied the order in letter and spirit and consequently can seek HKHC for winding up of the Justice Farouque Committee constituted for the purpose of this as according to court order government has complied the HKHC order in WP 23475/2010 C/W WP 1032/2006 and WP 36275/2009 (BDA PIL) and framed appropriate rules in accordance with law and committee became redundant . Public are free to file individual cases against G category allottee if any individual allotment is found to be illegal in view of New amendment to Bangalore Development Authority (Allotment of site) (Amendment) rules 2015 amends BDA (Allotment of sites) Rules 1984 by "substitution" of new rule 5 in place of old rule 5 making all allotments and Government orders allotting G category orders became legal .

All MLAs MPs Ministers and social workers who have been allotted G Category sites by Government or have Government allotment letters but sites were not allotted by BDA stands to get the benefit by the Gazette notification No UDD 475 MNJ 2014 ,Banagaluru Dated 20-05-2015 which is effective retrospectively since 1984 as rule 5 is "substituted" in Rule 5 of BDA (Allotment of sites) Rules 1984. In view of the Gazette notification No UDD 475 MNJ 2014 ,Banagaluru Dated 20-05-2015 which is effective retrospectively from 1984 as rule 5 is "substituted" in Rule 5 of BDA (Allotment of sites) Rules 1984 (substitution makes the law effective retrospectively from the Rules 1984) ,Request for Allotment of G category site to Mr M.S.Rajshekhkar Social worker and Congress leader as per Government order Number UDD 407 BLA 2005 dated 27-01-2006 which is valid as per above cited amendment and substitution of rules & as per BDA Act 1976 and Rule 5 of BDA (Allotment of sites) Rules 1984 as per section (9) and complying with the guidelines issued by the government in that regard from time to time. With amendment of Rule 5 of BDA (Allotment of sites) Rules 1984 the court orders became infractious and government should file an affidavit stating that Government has regained power of allotment of G-Category sites through amendment retrospectively and can seek HKHC for winding up of the Committee constituted for the purpose of this as according to court order government has complied the HKHC order in WP 23475/2010 C/W WP 1032/2006 and WP 36275/2009 (BDA PIL) and framed appropriate rules in accordance with law.

In view of the Gazette notification No UDD 475 MNJ 2014 ,Banagaluru Dated 20-05-2015 which is effective retrospectively since 1984 as rule 5 is substituted in Rule 5 of BDA (Allotment of sites) Rules 1984 ,Wherefore request is made for Allotment of G category site to as per Government order Number UDD 407 BLA 2005 dated 27-01-2006 is valid and legal & as per BDA Act 1976 and Rule 5 of BDA (Allotment of sites) Rules 1984 as per section (9) and complying with the guidelines issued by the government in that regard from time to time by Karnataka Government .It is pertinent to note that High court order in WA 2066/2006 dated 12-09-2007. The Division Bench of Honble justice Sridhar Rao and Honble justice L Narayan Swamy clearly states that BDA is subordinate to Government and cannot question the act of Government and BDA is bound by directions issued under Section 65 of the BDA Act in respect of G category of site.

It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect. (ibid, pp.468-469).The substitution of one text for the other pre-existing text is one of the known and well-recognized practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision .Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision (See Principles of Statutory Interpretation, ibid, p.565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. and Ors. Vs. State of U.P. and Ors. (2002) 2 SCC 645, State of Rajasthan Vs. Mangilal Pindwal (1996) 5 SCC 60, Koteswar Vittal Kamath Vs. K. Rangappa Baliga and Co. (1969) 1 SCC 255 and A.L.V.R.S.T. Veerappa Chettiar Vs. S. Michael & Ors. AIR 1963 SC 933. In West U.P. Sugar Mills Association and Ors.'s case (supra) a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal's case (supra) this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar's case (supra) a three-Judges Bench of this Court emphasized the distinction between 'supersession' of a rule and 'substitution' of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place.

Reportedly in Satish Chandra Makan vs Dr. S.V.S. Sastry And Anr. on 7 October, 2005 Equivalent citations: 2006 (1) ALD 145 it is held that "In matters of substitution by an amendment, it has to be construed that there is not real distinction between the repeal and an amendment. Whether a provision of an Act is omitted by an Act and the said Act simultaneously re-indicates new provision which substantively covers with certain modifications. In that event, such re-enactment is recorded as having force continuously and modification are treated as changes with effect from the date of the enforcement of the re-enacted provision .It makes no difference in application to these principles that the amendment is by substitution or otherwise. However, the statutes dealing with the procedures in contrast with the substantive rights are presumed to be retrospective, unless such a conclusion is textually inadmissible. If the new Act affects the matters of procedure, then only prima facie it applies to all actions pending as well as future.While the law relating to forum and limitation is procedural in nature while the law relating to right of action and right of appeal even though remedial is substantive in nature, that a procedural statute should not generally be speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished. A statute which not only changes the procedure but also creates new rights and obligations shall be construed to be prospective, unless otherwise provided either expressly or by necessary implication.

Following is set of Karnataka High Court Orders which are directing to allot G Category of sites to BDA and issues writ to allot the sites to BDA and states that Government has power to allot or cancel G category sites.

1. AIR 2000 Kar 150 ILR 2000 Kar 1601:2000(2) Kar LJ 334 Under Secretary Housing & Urban Development Dept Vs A.Rajendra Naidu.
2. Karnataka High court in WA 2066/2006 dated 12-09-2007. The Divisin Bench Honble justice Sridhar Rao and Honble justice L Narayan Swamy clearly states that BDA is subordinate to Government and cannot question the act of Government and BDA is bound by directions issued under Section 65 of the BDA Act in respect of G category of site.
3. Karnataka High court order in WP 11997/2006 Dated 22-09-2006
4. Karnataka High court order in WP 29895/2009 Dated 08-12-2009

Following are the Karnataka High Court Orders which declared that state government has no power to allot G category sites as per a outdated Circular No UDD 129 MNJ dated 06-08-1997 and Corrigendum Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 by which Government is empowered to allot G category site and BDA has authority to allot ABCDEF category.

5. Karnataka High court order in WP 11102/2008 Dated 15-12-2010(based on outdated circular dated 06-08-1997)
6. Karnataka High court order in WP 23475/2010 Dated 25-08-2012 (based on outdated circular dated 06-08-1997)



Note : With amendment of Rule 5 of BDA (Allotment of sites) Rules 1984 the court order became infructuous and government can seek HKHC for winding up of the Committee constituted for the purpose of this as according to court order government has complied the HKHC order in WP 23475/2010 C/W WP 1032/2006 and WP 36275/2009 (BDA PIL) and framed appropriate rules in accordance with law.

The Additional Advocate General KM Natraj has personally committed in Karnataka High court order in WP 23475/2010 Dated 25-08-2012 that WP 11102/2008 Dated 15-12-2010 is correct while suppressing the fact of 1-4 citations and Corrigendum Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 according to which Government is empowered to allot G category site and BDA has authority to allot ABCDEF category and suppressed the Fact of BDA has allotted more than two Lakhs sites in 62 Layouts to General Public since inception of BDA and less than two thousands sites allotments under discretionary quota in ABCDEFG category which should not rise any bodies eye-brows, Which amounts to less than 1% of general allotments. Whereas Advocate Genral sataed on 27-06-2012 report that G category allotment was done as per rules.

The state government has authority to direct BDA to allot the sites under "g" category: "State Government has authority under the provisions of BDA Act 1976 and rules made there under to direct BDA to allot the sites to any person/persons under "G" category as per the CORRIGENDUM Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 and not under Circular No UDD 129 MNJ dated 06-08-1997 which is referred and is the subject matter of the court order in Sri K.Raju v BDA ILR 2011 KAR 120 and this court order is not applicable to government and is infructuous" Wherefore there is no legal impediment to BDA to allot site to Mr M.S.Rajshekhhar as per Government order Number UDD 407 BLA 2005 dated 27-01-2006 as it has allotted the sites against almost all government orders except few like Mr M.S.Rajshekhhar the social worker and Person In Public Life. In the light of above facts Mr M.S.Rajshekhhar in a letter to BDA has requested BDA to allot him G Category site as per BDA Act and rules prevailing at the time in force as such Karnataka High Court has not quashed the Rule 5 of the BDA (Allotment of Sites) Rules, 1984 and Revised Guidelines on Allotment of Stray Sites, 1997 and the Government of Karnataka is not party to the case in Sri K.Raju v BDA (ILR 2011 KAR 120). I feel with above narration BDA and Government is legally empowered to consider his request to allot him G category site..I am Looking forward for justice and equity from BDA in respect of Mr M.S.Rajshekhhar and others who have not been allotted the G category sites despite government orders.

Government has power to issue direction to BDA for allotment of site. Karnataka High court orders in WP 29895 /2009 and WP 11997/2006 issued directions to follow the government directions to allot G category sites .Karnataka High court in AIR 2000 Kar 150 ILR 2000 Kar 1601:2000(2) Kar LJ 334 Under Secretary Housing & Urban Development Dept Vs A.Rajendra has said "The allotment made by the chairman cannot be sustained as it is violative of Rule 5 of the the Rules which make it mandatory that such allotment should be made by the authority and not by the chairman .Rule 5 of the rules prescribes that the stray sites shall be allotted in accordance with the guidelines issued by the Government .From the circular ,it is seen that no discretionary power is vested or conferred upon the chairman to allot any stray site. The Chairman of the board has no power to allot a stray site in his individual capacity .The Government has authority of law to cancel the allotment so made by the Chairman .AIR 2000 Kar 150 ILR 2000 Kar 1601:2000(2) Kar LJ 334 Under Secretary Housing & Urban Development Dept Vs A.Rajendra

The order in Sri K.Raju v BDA (ILR 2011 KAR 120 is also not adverse in nature as it is not applicable to Government as it issues directions to BDA under amendment notification(CORRIGENDUM) Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 and not the Circular No UDD 129 MNJ dated 06-08-1997 which is referred and is the subject matter of the court order as the Para first of operative order states that "State Government has no authority under the provisions of BDA Act 1976 and rules made there under to direct BDA to allot the sites to any person/persons under "G" category as per the Circular No UDD 129 MNJ dated 06-08-1997 is correct , But "State Government has authority under the provisions of BDA Act 1976 and rules made there under to direct BDA to allot the sites to any person/persons under "G" category as per the CORRIGENDUM Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 which was issued for para 5 of the No UDD 129 MNJ dated 06-08-1997 and following was substituted :- "The allotment of stray sites in respect of "A" to "F" except category "G" shall be made by the Bangalore Development Authority on the recommendation of a sub-committee of the Bangalore Development Authority as constituted by it .Wherefore court order in Sri K.Raju v BDA (ILR 2011 KAR 120 Sri K.Raju v BDA (ILR 2011 KAR 120 is not applicable to both Government and BDA. Question of violating court order does not arise as government has issued directions under Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 which is not a subject matter in court order in K.Raju v BDA (ILR 2011 KAR 120).There is no need to create huge controversy over 'G' category site allotments ,as if Government and BDA did nothing in respect of General Public where as fact is especially when B D A from the day of its inception has formed about 62 layouts and has made site allotments of about two lakh numbers of sites to general public as per rules and has made about 2000 sites 'G' category site allotments under legal provisions , which amounts to 1% of total allotments made to that of general public under the rule of about 11 chief ministers each allotting about 300 sites each during their tenures and yet BDA is going to allot around two lakhs sites to general public in another one year in five proposed layouts as "State Government has authority under the provisions of BDA Act 1976 and rules made there under to direct BDA to allot the sites to any person/persons under "G" category as per the Corrigendum Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 and not the Circular No UDD 129 MNJ dated 06-08-1997 which is referred and is the subject matter of the court order in Sri K.Raju v BDA ILR 2011 KAR 120 and this court order is not applicable to government and is infructuous as for as the Corrigendum Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 is concerned .The state Government also draw power from The provisions of the THE KARNATAKA GENERAL CLAUSES ACT, 1899 , and Regulations/Rules made there under by virtue of section 21 of power exercisable in the like manner under any of such Acts, Regulations or Rules includes, subject to the like sanction and conditions, if any, power to add to, amend vary or rescind any Act or Rules or Regulations so made;. In any case the discretionary powers of State Government in respect of allotments of few sites less than 1% of General allotment as per rules , to be allotted on merit to persons in public life from recognized political organizations and NGOs eminent politicians and freedom fighters, former policemen, former defense servicemen, journalists, award-winning sportsmen, artists and scientists is justified.Karnataka High court has declared in following court orders that government has power to direct BDA to allot Stray sites as in the cases i.e Rule 5 of BDA (Allotment of sites) Rules 1984 confers discretionary power upon the authority for allotment of stray site in favour of eligible persons provided ,they comply with the guidelines issued by the government in that regard.ILR 1999 Kar 114 Sh N 53:2000(4) Kar LJ 25 Sh N 33, K.R.Pradeep Vs Secretary Housing & Urban Development Dept. Karnataka High court in a Division Bench order in WA 2066/2006 Dated 12-09-2007 has said categorically that Government has power to issue direction to BDA for allotment of site. Karnataka High court orders in WP 29895 /2009 and WP 11997/2006 issued directions to follow the government directions to allot G category sites .Karnataka High court in AIR 2000 Kar 150 ILR 2000 Kar 1601:2000(2) Kar LJ 334 Under Secretary Housing & Urban Development Dept Vs A.Rajendra has said "The allotment made by the chairman cannot be sustained as it is violative of Rule 5 of the the Rules which make it mandatory that such allotment should be made by the authority and not by the chairman .Rule 5 of the rules prescribes that the stray sites shall be allotted in accordance with the guidelines issued by the Government .From the circular ,it is seen that no discretionary power is vested or conferred upon the chairman to allot any stray site. The Chairman of the board has no power to allot a stray site in his individual capacity .

The Government has authority of law to cancel the allotment so made by the Chairman .AIR 2000 Kar 150 ILR 2000 Kar 1601:2000(2) Kar LJ 334 Under Secretary Housing & Urban Development Dept Vs A.Rajendra .The order in Sri K.Raju v BDA (ILR 2011 KAR 120 is also not adverse in nature as it is not applicable to Government as it issues directions to BDA under amendment notification(CORRIGENDUM) Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 and not the Circular No UDD 129 MNJ dated 06-08-1997 which is referred and is the subject matter of the court order as the Para first of operative order states that "State Government has no authority under the provisions of BDA Act 1976 and rules made there under to direct BDA to allot the sites to any person/persons under "G" category as per the Circular No UDD 129 MNJ dated 06-08-1997 is correct , But "State Government has authority under the provisions of BDA Act 1976 and rules made there under to direct BDA to allot the sites to any person/persons under "G" category as per the CORRIGENDUM Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 which was issued for para 5 of the No UDD 129 MNJ dated 06-08-1997 and following was substituted :- "The allotment of stray sites in respect of "A" to "F" except category "G" shall be made by the Bangalore Development Authority on the recommendation of a sub-committee of the Bangalore Development Authority as constituted by it .Wherefore court order in Sri K.Raju v BDA (ILR 2011 KAR 120 Sri K.Raju v BDA (ILR 2011 KAR 120 is not applicable to both Government and BDA. Question of violating court order does not arise as government has issued directions under Circular No UDD 129 MNJ 97 (P) Bangalore dated 26 -08-1997 which is not a subject matter in court order in K.Raju v BDA (ILR 2011 KAR 120).

Wherefore there is no legal impediment to BDA to allot site to all persons as per Government orders issued as it has allotted the sites against almost all government orders except few persons and social worker and Person in Public Life. In the light of above facts many persons have written letter to BDA and has requested BDA to allot them G Category site as per BDA Act and rules prevailing at the time in force as such Karnataka High Court has not quashed the Rule 5 of the BDA (Allotment of Sites) Rules, 1984 and Revised Guidelines on Allotment of Stray Sites, 1997 and the Government of Karnataka is not party to the case in Sri K.Raju v BDA (ILR 2011 KAR 120). The Division Bench of Honble justice Sridhar Rao and Honble justice L Narayan Swamy clearly states that BDA is subordinate to Government and cannot question the act of Government and BDA is bound by directions issued under Section 65 of the BDA Act in respect of G category of site.

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