

Legality of RAD 1 2021

1. This is an explanation of the legal basis of RAD 1 - 2021:

“To stop all development on the crown until further notice from the Residents Assembly.”

The following is my understanding of the Auroville Foundation Act 1988, and other relevant documents.

The questions being answered here are:

“Does this decision hold legal/statutory validity?”

“Does the Residents Assembly have the legal right to address and decide on this question?”

2. The Residents Assembly is a governing component of the statutory body named ‘Auroville Foundation’. Based on my readings of the Auroville Foundation Act 1988, the 57th Minutes of Meeting (MoM) of the Governing Board and the Auroville Universal Township Master Plan (Perspectives 2021), it is clear to me that the Residents Assembly has the jurisdiction to address as well as to decide on this particular topic.
3. In order to explore the problem of overstepping jurisdiction, let us first address the question as to whether the Governing Board has overstepped its jurisdiction in the 57th MoM. It is clear from my reading of the MoM that the Board has not made any decisions regarding the development of the crown. It is clear that the Governing Board, as per the MoM, has only ‘observed’, opined its views and ‘endorsed’ various ideas and actions. The Governing Board has also stated its views on various issues that are outside of its jurisdiction, for example in 6. Entry Process of the MoM.

However, ‘endorse’, opine on views and ‘observe’ cannot be seen as having made decisions. As per Section 14 of the Auroville Foundation Act, the Governing Board is statutorily bound (unlike the Residents Assembly) to only make decisions through a majoritarian vote. As per Section 14(2) of the Act, the chairman does not vote other than with a casting vote in case there is an equality in votes.

It is hereby submitted that this process of voting and decision-making did not take place, as it is admittedly not reported in the MoM. Furthermore, there are no references to decisions being made in any part of the 57th Governing Board MoM regarding the development of the crown. In fact, the only point where the MoM precisely states that a decision has been taken regarding any topic is at the end of the meeting, in **8.1**

“The Board decided to meet at least once in every quarter.”

Therefore, there is no question of overstepping of jurisdiction by the Governing Board. The Governing Board is well within its rights to endorse views or make observations for the purview of the Residents Assembly. It is however, the responsibility of the Governing Board to only express views which aim towards the cohesion and integration of Auroville. The Residents Assembly admittedly also carries the responsibility of taking into account all the ‘endorsements’, ‘opinions’ and ‘observations’ of the Governing Board.

However, when the Residents Assembly draws up its own programmes, decisions of the Residents Assembly are not bound by any views expressed by the Governing Board.

4. In order to understand the hierarchy of decision making in Auroville, an eye opener lies in Section 17(b) and (c) of the Act which states

“The powers and functions of the Governing Board shall be-

b) to review the basic policies and the programmes of Auroville and give necessary directions for the future development of Auroville

c) to accord approval to the programmes of Auroville drawn up by the Residents' Assembly”

17(b) and (c) are only two of the many powers and functions endowed to the Governing Board.

Section 17(c) is evidently not only a power but a function. This clarity lies in the wording. The use of the phrase “**shall** accord approval” clearly states that the Governing Board does not have the power of veto in any programmes drawn up by the Residents Assembly. If it had veto power, the phrase would have been “**may** accord approval” or “**shall** accord approval **subject to certain conditions**” or even “**shall** accord approval **at its pleasure**”. The lack of any of these phrases in Section 17(c) clearly shows us that the Governing Board’s **function** here is to accord approval for any and all programmes drawn up by the Residents Assembly.

Section 17(b) read with 17(c) clarifies that the Governing Board was not meant to exceed and usurp the powers or functions of the Residents Assembly, nor to draw up any programmes of Auroville, but simply to “review the programmes drawn up by the Residents Assembly” and to collaborate with it through giving “necessary directions.”

The reader might come to the conclusion from my analysis that the most powerful body of the Auroville Foundation is the Residents Assembly. This would be to my observation completely inaccurate. The Residents Assembly is not more powerful than the Governing

Board, and its powers are certainly not unchecked. The aim of the Act, in my reading, is not to make one power body but to have three important governing components with well-defined roles and separate spheres in which they operate. The three governing bodies are meant to harmonise and support each other in cohesion, and not to obstruct or veto each other. It is submitted here that the Residents Assembly has also not been given veto power over the Governing Boards decisions within the sphere of which the Governing Board is meant to operate by law.

5. The question of whether the Residents Assembly can revisit the Master Plan does not arise. There is no mention in the Act that the formulation of the Master Plan, or any other power and function of the Residents Assembly, is a one-time affair.

Furthermore, Section 17(e) gives the Governing Board the power to “prepare a Master-Plan” and to “ensure development of Auroville as so planned” but is statutorily bound to “consultation with the Residents Assembly.”

On the other hand, the reader will find that the exact same power is endowed to the Residents Assembly, but only in different words.

The Residents Assembly can “formulate the Master-Plan” but it is bound to the “approval of the Governing Board”, which in turn, as we have noticed above, is required to accord approval to the programmes drawn up by the Residents Assembly.

6. The question often arises while reading Section 17(e)

“The powers and functions of the Governing Board shall be- to prepare a Master-Plan of Auroville in consultation with the Residents' Assembly and to ensure development of Auroville as so planned.”

whether the phrase “as so planned’ means that the Master Plan has been finalised once and for all?

Can the Master Plan be reviewed/revisited, or is it understood to be rigidly followed henceforth without amendment?

In order to understand the true meaning of section 17(e) it must be read with a little care. The Governing board is given the power to “**prepare** the Master-Plan of Auroville” but is **not** given the power to “ensure development of Auroville **as so prepared**”. Notice that the phrase ‘**as so planned**’ is used in section 17(e) instead of “**as so prepared**”. In law, words take on very important forms, and are chosen very carefully. This difference shows that the aim is **not** to set in stone the Master Plan as a one-time affair.

Furthermore, all that is “**so planned**” is subject to consultation with the Residents Assembly, in which the Governing Board shall accord approval to all the Residents Assembly’s drawn up programmes.

This, along with the fact that the Master Plan states itself to be a **perspective plan** as well as broad guidelines that needs Detailed Development Plans, implementation plans as well as project plans (apart from the other regulations setup by the governments of Tamil Nadu and India that Auroville is bound by), clearly shows that the Master Plan is a work in process.

Therefore, the Residents Assembly has all the power and responsibility to revisit the Master Plan. In my analysis, the Residents Assembly has original jurisdiction over all activities of Auroville.

7. On the question of reviewal of the Master Plan, first and foremost, in the very Preamble in 1.1.1 it is stated

“Urban Development Plan Formation and Implementation (UDPFI) Guidelines” set out by the “Institute of Town Planners India” ... “have recommended a planning system consisting of a set of four interrelated plans with the Perspective Plan at its Apex and Plans of Projects at the base, with the Development Plan and the Annual Plan facilitating the implementation of the Urban Perspective Plan. In line with these guidelines, this Mater Plan (Perspective: 2025) of Auroville has been conceived.”

This succinctly sets out the process by which a Master Plan shall be implemented. On the very top, as the guiding principle, there is a Master Plan. From the Master Plan, Detailed Development Plans (DDPs) are to be made. Based on the DDPs, Annual Implementation Plans are created. Based on these Implementation Plans, Project Plans are created; only after this stage arises the implementation phase. It is clear that the Master Plan is purely a general guideline and a policy document that may serve for long periods of time and is created to be flexible to the ground realities.

8. Furthermore, the Master Plan mandates in Section 2.11.1 that

“Although the Master Plan (Perspectives 2025) indicates a time horizon of 25 years, it will neither be traditional, nor static and rigid.”

9. Further in 2.11.2 it states that

“Two groups, namely the Planning Group and the Implementation and Monitoring Group will assemble the necessary data for such a review. The review process [of the entire Master Plan and of DDPs] will be the same as the process followed for the preparation of the perspective plan and the results will be approved by the Governing Board.”

However, this time it needs the additional consultation with the supervisory ministry (now the Education Ministry).

This evidently means that the Residents Assembly formulates DDPs as well as Implementation Plans and Project Plans and then seeks the approval from the Governing Board. However, since the Residents Assembly does not execute directly but through committees made by it, the Residents Assembly is supposed to have two groups as set out by 2.11.2 namely; a) Planning Group, and b) Implementation and Monitoring group.

This conclusion is made from Section 17(b) and (c) read together with Section 16(1) and (2) which clearly shows that programmes of Auroville can only be drawn up by the Residents Assembly. Furthermore, these two groups cannot be constituted by the Governing Board as there is a statutory bind on the committees as well as the purpose of the committees that the Governing Board is allowed by law to constitute.

The existence of any planning and implementation bodies does not forego the fact that the original jurisdiction of formulating on the Master Plan has been accorded to the Residents Assembly. Therefore, any plans and DDPs drawn up by an internal/external planning body are not seen to be **formulated** until it has the approval of the Residents Assembly. Therefore, all Project Plans, Implementation Plans and DDPs require the approval of the Residents Assembly. Thereafter, the DDPs and the reviews on the Master Plan are subject to the approval of the Governing Board, who must further consult the supervisory ministry before approving said Plan.

10. It may be seen from the general tone and direction of the Act that there is a lot of intention behind giving such a large and wide role to the Residents Assembly. Auroville was not created to be ruled by superiors or through the general top-down approach. The continuous and complete role of the Residents Assembly is clearly a means for Auroville's governance and development to stem from the residents.

It suffices to state that the entire Auroville Foundation Act (as expressly stated in the introduction to the AVF Bill) intended that the beneficiaries of the Act are the residents of Auroville. It is for the residents of Auroville that this special piece of legislation has been created, in order that the residents of Auroville may achieve the goals of the Mother's Charter.

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