

## HERITAGE LEGISLATION & CONSERVATION

In Bombay and elsewhere - an NGO effort

### VI. URBAN CONSERVATION SUB COMMITTEE FOR GREATER BOMBAY

Another major milestone was in January 1988.

Sometime earlier, Government of Maharashtra had constituted a Committee of Secretaries (senior civil servants who are heads of departments) to consider the changes to the Development Control Regulations (building regulations and byelaws) for Greater Bombay.

At the initiative of former Municipal Commissioner Jamshed Kanga, an Urban Conservation Sub-Committee (which included representatives of heritage groups) was constituted under his chairmanship to generally advise on heritage conservation in Greater Bombay, suggest a heritage regulation, frame a heritage list etc.

This started with a letter of 11<sup>th</sup> January 1988 from Urban Development Department, Government of Maharashtra to various heritage groups; this letter stated firstly that there were no regulations for conservation of historical/architectural buildings in Bombay and other cities in the State. It went on to say that it was proposed to add a new chapter on conservation in the Development Plan (Master Plan) of Bombay and that it was proposed to modify the Development Control Rules for Greater Bombay.

With this letter a list was enclosed; the list included 145 buildings, 7 conservation areas and 9 design control zones. It also included a draft of Development Control Rules for conservation.

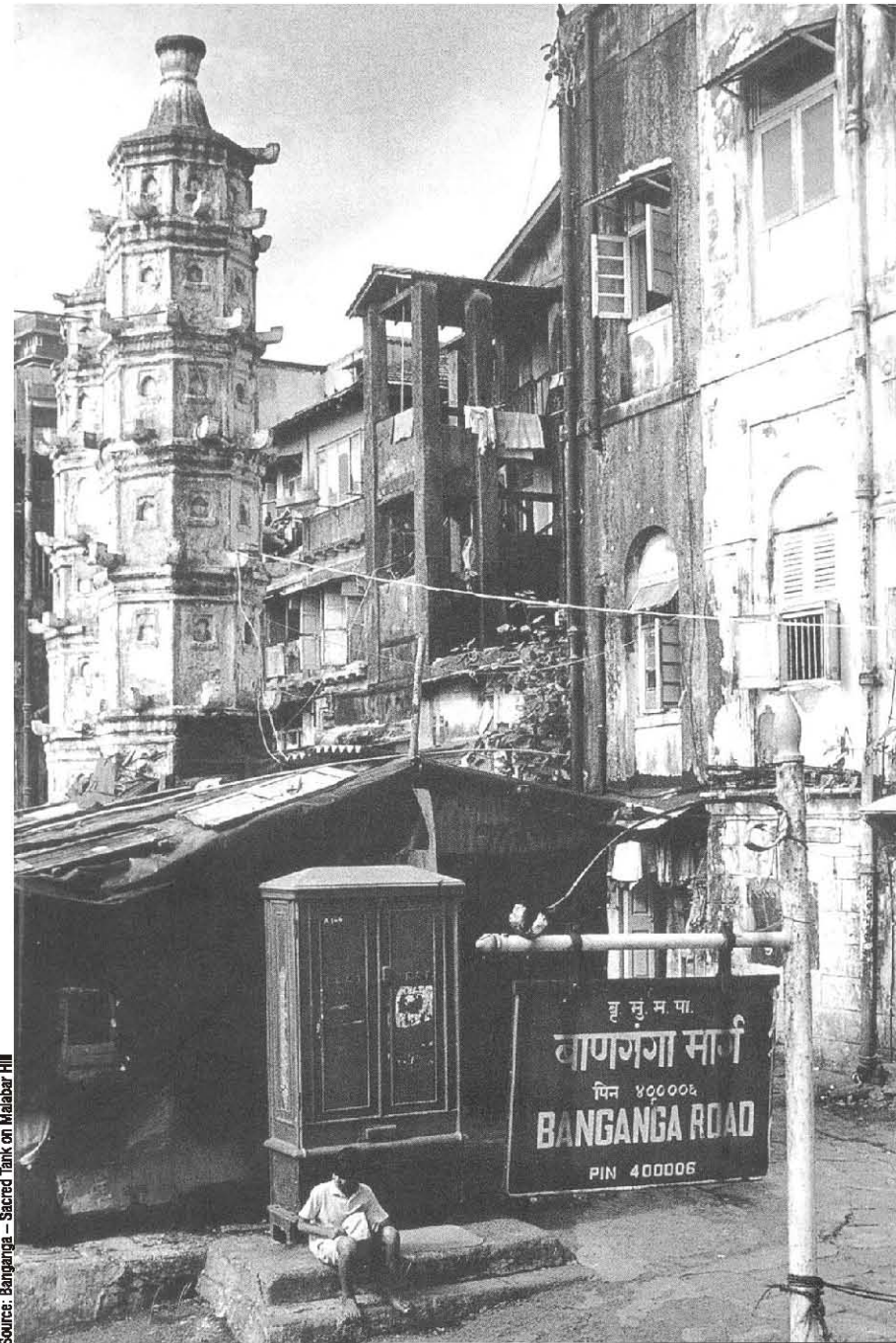
This was a great step forward since it was not just historical and monumental buildings that were being considered for protection; but also "architectural" buildings. Secondly, though there was no specific reference in the covering letter to heritage precincts, this was implied since the annexures did contain lists of conservation areas and design control zones. Thirdly, a regulation had been drafted which could form the basis for further action. Most important of all, perhaps, it stated explicitly that heritage preservation is needed not just in Bombay but also in other parts of the State.

### VII. HERITAGE COMMITTEE FOR BOMBAY

In August 1990, Maharashtra Government Urban Development Minister Sushil Kumar Shinde asked me to call on him. At that meeting, I asked him to constitute a Heritage Committee for Bombay.

He asked me as to why I wanted a new Committee since the earlier Sub-Committee was functioning and according to him its work was almost complete (which it was not). I pointed out that if Government issued a Government Resolution and created a formal Committee, the Committee would have greater validity. It would minimise the chances of the Heritage Regulation and the Heritage List being struck down by the High Court on the basis of arbitrariness or non application; it would also serve as a precedent for similar action elsewhere. Sushil Kumar Shinde agreed to constitute this heritage committee. This Committee was constituted vide Maharashtra Government Resolution of 27<sup>th</sup> August, 1990.

Appointment of this Committee set a vital precedent since we were able to persuade Government to constitute a similar committee for Pune which was constituted less than



Source: Banganga — Sacred Tank on Malabar Hill

Shyam Chainani

6 months later, on 16<sup>th</sup> March 1991.

Furthermore at our urging, Government of India, vide its letter of 31<sup>st</sup> October 1990 circulated this Maharashtra Government Resolution of 27<sup>th</sup> August 1990 to the Chief Secretaries of all State Governments and requested them to consider taking similar action "to identify and conserve the precious heritage of your state."

### VIII. HERITAGE LIST OF GREATER BOMBAY

Late in 1990 the Government had almost finalised the Draft Control Regulations for Greater Bombay; if the heritage regulation had to be gazetted by Government, it could only be done by gazetting it at the same time that other Development Control Regulations were being gazetted. Simultaneously Government wanted to gazette the Heritage List. I pointed out to Maharashtra Government Urban Development Secretary DT Joseph that the list was by no means complete and also that there were errors. As regards the list being incomplete, DT Joseph correctly said that listing is a continuous process and buildings could always be added to the list later. He asked me what the percentage of errors would be; I said 5%. He said that he could live with 5% errors, and that these could be removed at the time of hearing of public objections and suggestions; in fact that was what the objections and suggestions procedure was for.

This sort of decision making is rare in Government - it shows the contribution that a bold and enlightened civil servant can make. Full marks must be given to D T Joseph.

A preliminary heritage list for Greater Bombay was finally submitted to Government vide letter of 5<sup>th</sup> September 1990 by Jamshed Kanga, Chairman of the Heritage Committee.

The covering letter pointed out that the list was a preliminary one which would need amendment but was nevertheless being submitted to Government at this stage so that Government could commence its scrutiny. Secondly Government could send the list to the Municipal Corporation which could then have due regard to this list (as per the provisions of section 46 of the MRTPA Act) while granting development permissions.

(As per the MRTPA Act, 1966 any proposal of this nature shall be borne in mind by the Planning Authority when development permissions are given; such a proposal therefore has some degree of statutory backing).

### IX. GAZETTING OF DRAFT HERITAGE REGULATION & DRAFT HERITAGE LIST FOR GREATER BOMBAY

This led to the third most important milestone which was 20<sup>th</sup> February 1991 - a date we will always remember. Government of Maharashtra published in the gazette the draft Bombay Heritage Regulations for the purpose of inviting objections and suggestions from the public. Separately but on the same day, Government also published the draft Heritage List for Greater Bombay.

It should be noted that the Regulations and the list are quite separate; the list does not form a part of the Regulations.

Though the heritage list was still just a draft published for the invitation of public comments, it had the force of law. The statutory backing came from section 46 of the MRTPA Act. For the first time in Bombay - and with minor exceptions, in India - heritage



buildings and precincts, other than archaeological, had legal protection.

## X. CLARIFICATION OF 27<sup>TH</sup> SEPTEMBER, 1991

After the heritage regulations and heritage lists were published, there seemed to be some public apprehensions that if buildings were listed as heritage buildings, the owners would stand to lose their properties etc. Government therefore issued a clarificatory notification vide their Gazette of 27<sup>th</sup> September 1991. The clarification gazette said first of all that Government had not yet sanctioned the heritage regulations nor finalised the list of heritage buildings to be protected. They further clarified what is obvious but had clearly not been fully grasped – that listing of a building does not prevent changes in its use or from it being sold or otherwise disposed off. In order to minimise uncertainty, Government also spelt out the sorts of changes that could be made to different grades of heritage buildings. In addition, they extended the time for submission of objections and suggestions by another 2 months, making a total of over seven months as against 60 days stipulated by the MRTP Act.

## XI. SOME PROBLEMS

The period 1991-95, when the list and regulation were both in draft form was a period of many shocks and crises. Two of them are mentioned below to give some idea of the processes involved in environmental and heritage campaigning.

Sahyadri, the State Government guest house which had earlier been the Chief Minister's official residence where the first Chief Minister of Maharashtra Yeshwantrao Chavan had lived, had been placed on the heritage list. However Government at the highest level – Chief Minister Sharad Pawar – had taken a decision that this building was to be demolished and to be replaced by another one. The Indian Heritage Society (Bombay Chapter) (IHS), at that time spearheaded by Heta Pandit, planned to file a writ petition challenging this demolition. In early 1991, threats were conveyed through senior government officers that if the IHS went ahead with its writ petition, the Chief Minister would scrap the entire heritage list. Since the list was still in draft form, and since there were many public objections, this was by no means an empty threat.

After much debate, IHS decided (not without a great deal of heart-burn) not to proceed with the litigation.

The next problem was that of a Jain Temple (Jain Shantinath Temple at Pydhoni) which the Temple Trustees claimed was dilapidated and wished to demolish/rebuild. The Heritage Advisory Committee (which was advising the Municipal Commissioner) recommended against permitting the demolition and the rebuilding. An opinion from structural engineers was taken by the Advisory Committee; this opinion was that the building could be rehabilitated without demolition. Municipal Commissioner Sharad Kale, in a rare case, over

ruled the Advisory Committee and permitted the demolition.

A writ petition was filed by the Indian National Trust for Art and Cultural Heritage (INTACH) and the Indian Heritage Society. A tremendous amount of harassment had to be faced by Sohrabji Godrej (Chairman of the Godrej group of companies) who had signed the petition. In spite of gheraos and demonstrations just outside both his office and home SP Godrej stood firm. Here also at the end of 1993 a threat was conveyed that if the petition was not withdrawn, then all religious buildings would be deleted from the heritage list. Religious sensitivities being what they are, this too was not an empty threat. Mercifully though the petition was not withdrawn religious buildings were not deleted from the list. However a price had to be paid; the regulation for religious buildings has been diluted.

There is no doubt that these incidents delayed the final sanction to the Heritage Regulation and List for Bombay; it also led to a delay on taking similar action in other cities.

## XII. CONSIDERATION OF OBJECTIONS & SUGGESTIONS

A long democratic process of hearing objections and suggestions was gone through (both on the draft regulations and on the draft list).

A total of about 935 objections/suggestions were received; each one was called for a hearing.

Many of the people who gave objections and suggestions said that heritage was a great idea - but suggested that their building should be excluded from the heritage list. The architects and their professional association by and large opposed the heritage list and the heritage regulations.

After the hearing of objections and suggestions, by the officer appointed for the purpose, the draft regulation was proposed to be considerably diluted. Secondly a large number of buildings and precincts were also proposed to be deleted from the list. Thirdly, a number of buildings were proposed to be down graded from Grade II to Grade III; the reason given (for most of the down-grading) was that these buildings had large amount of open spaces around them and in fairness to the owners, they should not be prevented from building on these open spaces. As per the draft regulation the scope of changes in respect of Grade II buildings did not permit the construction of additional buildings in the compounds.

I took up all these issues vigorously with Government over a period of one year.

As a result of a large number of meetings and repeated representations the dilutions made in the regulation were by and large removed; in fact the final sanctioned regulation was, far

tighter than the original published draft regulation.

As regards deletions made in the list, initially Urban Development Secretary DT Joseph agreed that a few of the deletions would be restored. However, since there was pressure to quickly sanction the regulations and the list, he decided to retain the Heritage list as it was; but he however directed the Heritage Conservation Committee to re-examine all the deletions.

In order to meet the objections about open spaces being left unbuilt, after many discussions, Grade II was split into Grade IIA and Grade IIB. In Grade II-A, the initial scope of changes was retained. In Grade II-B what was additionally permitted was “extension or additional buildings in the same plot or compound ...provided that the extension/additional building is in harmony with (and does not detract from) existing heritage building(s) or precincts especially in terms of height and facade.” The downgraded buildings (nearly 100 of them) were upgraded to Grade II-B.

Others and I urged very strongly that additional precincts be added to the heritage list. DT Joseph was hesitant to do so at that late stage, specially since suggestions and objections had not been invited for inclusion of these precincts; however, as a via media he agreed that a directive would be given to the Municipal Corporation/proposed Heritage Conservation Committee to examine the question of inclusion of these precincts.

I would like to pay my tribute to D T Joseph and G S Pantbalekundri (then Secretary and Deputy Secretary respectively) for their willingness to listen to us and for their moral courage in reversing their own earlier decisions.

However, this very success in trying to perfect the regulation almost backfired on us -the fine tuning of the regulation took a lot of time. By the time the file was approved by the Urban Development Minister Arun Gujrathi towards the end of 1994, the election procedure had started. Once the election procedure starts, Government is prohibited from making any policy decisions or announcements, since sops to the electorate are often given immediately before the elections. Though the heritage regulations and list could by no stretch of imagination be deemed to confer a benefit on anybody, Maharashtra Chief Electoral Officer DK Shankaran referred the matter to the Chief Election Commissioner, the redoubtable T.N. Seshan. Seshan refused to permit the Regulation and list to be sanctioned till the election procedure was completed. I knew him very well but could not unfortunately reach him to try and persuade him to reverse his decision.

There was a gap between the voting and counting of votes – I was told that once the voting was over (since there could now be no question of influencing the voters) the sanctions could be

gazetted - but it was not to be. The elections resulted in a surprise defeat for the Congress government. Anyway after a tense wait, the new Chief Minister signed the file - this tense wait was a blessing in disguise since now two governments of radically different potential persuasions have approved the heritage regulations and the list.

## XIII. GOVERNMENT SANCTION TO HERITAGE REGULATION & HERITAGE LIST OF GREATER BOMBAY

April 1995 was the most important milestone in the heritage movement of Bombay, and one of the most significant in India.

On 21<sup>st</sup> April 1995 Government conveyed their sanction to Development Control Regulation No.67 i.e. the heritage regulation

Secondly, on 24<sup>th</sup> April, 1995, Government conveyed their sanction to the heritage list.

Thirdly, in their gazette of 25<sup>th</sup> April 1995, Government laid down qualifications for membership of the Heritage Conservation Committee whose role, inter alia, is to advise the Municipal Commissioner about the grant or refusal of building permission to heritage buildings and precincts.

Fourthly, on 25<sup>th</sup> April 1995 Government wrote to the Municipal Commissioner of Greater Bombay. This letter contains several statutory directives:

Firstly, there was a directive that the Heritage Conservation Committee consider whether to include in the list those additional buildings and precincts recommended by people during the objections and suggestions procedure. Secondly, there was a directive to the Heritage Conservation Committee to re-examine the deletions made by Government from the originally published heritage list. This latter is a very unusual directive in that Government is asking its own Committee to review its own actions.

Thirdly, there was a directive that the Heritage Conservation Committee must examine the question of adding seven large additional precincts namely Marine Drive Precinct, Nepean Sea Road Precinct, Old Cuffe Parade Precinct, Cooperage Development Precinct, Khodadad Circle Precinct, Area to the south of Gamdevi Precinct & Five Gardens Precinct, Matunga.

On 26<sup>th</sup> April 1995 Government issued a directive to the Municipal Commissioner to bring the above into force with immediate effect, and giving a time limit of four months for completing the task of re-examining the deletions and for examining the addition of additional buildings and precincts to the list.