

*Mumbai is confounded with a host of problems pertaining to housing the poor and the not-so-poor. Real estate prices keep rising, and more and more people with perfectly respectable jobs in the city cannot find affordable housing, to buy or to rent, not to mention those who are self-employed or in the lowest strata of society. More than half the population lives in slums. Residential construction for rental for the middle and lower income groups stopped half a century ago, because of the Rent Act, and shows no signs of revival. There is widespread urban blight. This article reviews the existing situation and suggests a range of housing policies that could begin to address this particular aspect of Mumbai's myriad problems.*

“Vision Mumbai”<sup>1</sup> was the first attempt in decades to take an overall view of Mumbai's future development. It inspired the State Government to vow that it would turn Mumbai into another Shanghai. That this is a worthwhile goal was assumed to be obvious, needing no further debate. And what exactly it implies, other than grand hotels, glitzy façades and a sanitising of those streets that are likely to be seen by a high-profile, casual visitor, is also not obvious. How it is to be done is even less clear. But let us be happy that there is a sudden drive and energy in pursuit of improving Mumbai. There are any number of issues that will need to be addressed. This article confines itself to housing<sup>2</sup>.

The stakeholders whose interests will need to be considered in developing any kind of comprehensive housing strategy must include slum dwellers; frozen-rent tenants living in decrepit buildings; owners of heritage buildings whose development rights are differentiated from those of other property owners (these rights being circumscribed in particular ways, depending on the category into which their heritage property falls); and normal owners of properties including the Central and State Governments and their organs, and institutional and private landowners. Each of these has to be offered accommodation within the localities in which they are already present, in a manner that is fair to all.

**The solution proposed calls for careful, detailed area-by-area local planning. This can only be undertaken by a local authority as an activity decentralised to the local, Ward levels or smaller. Variations in local conditions will require an adaptation of rules to suit each locality. Centralized, uniform rules that take no account of local variations are no substitute for careful and detailed local area planning, particularly if public participation is to be a meaningful part of the planning process.**

Current building control regulations restrict the floor space that can be constructed on a plot. In principle this is correct, because the amount of floor space translates into numbers of occupants; and the number of occupants must have some relation to the carrying capacity of the locality in terms of water supply, sewerage and most



Source: Jehangir Sorabjee

importantly, transport, besides open spaces and the social infrastructure of medical and educational facilities. The extent to which floor space (and therefore the number of occupants) can be increased in a locality will depend on the extent to which infrastructure can be augmented to cater to the additional demand. How this additional floor space should be distributed among different stakeholders is part of the concern of this article; also relevant is how additional infrastructure might be financed. Finally, the suggestion is that we move away from the current practice of a distribution of built-up floor space uniformly across all plots to a scheme of tradable built-up floor rights, within any locality, with no restriction on how much can be built on a particular plot, provided the rights are acquired from other plots in the locality. These would then either remain vacant and open to use by the public, or would be assigned by the local planning authority for use for social infrastructure.

We begin with a review of the rights of some of the stakeholders in the city.

Squatters

**The functioning of society is governed by rules that are both formal and informal. The formal rules are called laws. The informal rules – call them conventions – sometimes find expression in Government circulars. We need the informal rules because formal laws cannot possibly cover everything: they cannot cover the entire spectrum of societal behaviour. And also because the formal rules, the laws, if strictly operated can sometimes work against the common interest, and the informal rules are needed to set this right. We live in an imperfect world, with imperfect laws, and the informal rules do no more than provide the necessary correctives.**

Jhopdies are illegal. They are built on land the occupiers do not own. They are built by squatters in the city because the city has provided them with jobs, but no place where they can afford to stay, that is, no place where they can stay by legally paying even a high fraction of their earnings. In early 2005 Greater Mumbai had 81 Police Inspectors and 4,413 Police Constables living in slums<sup>3</sup>. There could be no more glaring instance of the city providing perfectly legal jobs—in this case the job holders are officers of the law—and at the same time providing nowhere for them to stay. So now the informal rules come into play. They correct the imbalance of the law, because the formal laws have failed to address the real-world situation of jobs without corresponding homes. These informal rules say that homes in slums should be tolerated, not bulldozed as the formal law would require. Eventually, to bring everything under the ambit of formal laws, these homes are “regularized”. They are not “legal”. The jhopdi owner does not own the land under the jhopdi. But the jhopdi cannot be removed. The toleration of jhopdies in effect recognises the inadequacy of the formal laws. It is a recognition that the formal laws sometimes create unexpected inequities, and that they do not (and perhaps cannot be expected to) address all the ramifications and complexities of social life. Over time, by fits and starts, some of the informal laws get converted into formal laws. So we have

Bombay First - McKinsey Report, Vision MumbaiTransforming Mumbai into a world-class city: A Summary of Recommendations, September 2003. This is a 32-page document, with no known Report underlying the summary.

For an outstanding discussion of all relevant issues see Shlomo Angel, Housing Policy Matters: A Global Analysis, Oxford University Press, 2000.

Letter dated 24.1.05 from the Office of the Police Commissioner, Mumbai, in response to a query under Maharashtra's Right to Information Act.



legislation like the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act 1971, and the Maharashtra Vacant Land (Prohibition of Unauthorised Occupation and Summary Eviction) Act 1975. And we have judgments like the Supreme Court's in *Olga Tellis* (1985), which recognises the link between jobs and homes, but cannot do much more than point this out.<sup>4</sup>

How do squatters find the land on which they build their jhopdies? It is not as if every young adult who has grown up in a slum and now wants his own hut, or every impoverished migrant coming to the city, knows where to look for vacant, occupiable land. They may be helped by friends or family, who tell them where to go. They may be helped by "slumlords" who identify such land pockets and then charge each squatter for the right to occupy a piece of it. Or they may be helped by city officials who know very well where the vacant lands are, and for a consideration are prepared to tell you, or tell a slumlord. Squatters work their way into the interstices of the city, finding vacant land that no one noticed, where even the owners are unaware of it, unaware of what is happening on it, and don't particularly care if it is taken over by squatters. For our purposes, it hardly matters how a squatter finds the land on which to build his jhopdi. There is a market mechanism at work, and our only concern is whether we need to interfere with it.

As we set about formulating policies towards squatters, we should note that squatting is neither recent in history, nor something that was never experienced by today's First World countries<sup>5</sup>. They existed in ancient Rome. And they existed in London, Paris and New York not much more than a century and a half ago. So there is every reason to be hopeful that we can work our way out of our current situation.

**When the Chief Minister destroyed the homes of half a million people in Mumbai recently he violated the informal rules (and some of the formal ones). He should be well aware that in the hinterland people have homes but no jobs. And that in the city they have jobs but no homes. So to serve the city which wants their work but offers them no housing these workers have no choice but to build their homes wherever they can. When he destroys these homes and tells the occupants "Go back to your villages", he needs to finish the sentence. The full sentence is: "Go back to your villages and commit suicide"<sup>6</sup>. As long as new jobs can be freely**

4 See also Usha Ramanathan, *Demolition Drive*, EPW July 2, 2005, p.2908.

5 See Robert Neuwirth, "Shadow Cities", Routledge 2005, p..177 ff.

6 Since 1997 hundreds if not thousands of farmers around the country have committed suicide because they could no longer face the realities of their economic situation.

added to the city, the city will need additional homes to house those who fill those jobs. A cut-off date for adding homes is meaningless without a corresponding cut-off date for adding jobs.

Because squatting is not permitted under the formal laws we have judgments like the Supreme Court's a few years ago, where in a matter pertaining essentially to solid waste disposal the Court in passing said that "Rewarding an encroacher on public land with a free alternative site is like giving a reward to a pickpocket"<sup>7</sup>. More recently, the Chairman of Bombay First likened the squatters' occupation of land they do not own to stealing bread from a baker's shop. But neither pickpocketing nor stealing bread is a correct parallel<sup>8</sup>. A more accurate analogy would be to say: "I am the captain of this ship. You are welcome to swab the decks and polish the brass and I will pay you. But there is nowhere you can live here. You have to spend the night overboard, swimming the shark-infested seas. If you're still there tomorrow morning, report at 8 for another day's work. Don't be late, because there are a dozen others eager to take your place at even lower wages." So while the rich get richer, the poor are not only not housed: they are set to competing with each other to get still poorer.

One commonly-held notion is that those who live in jhopdies do so "free". This is wrong. Jhopdies command a rental. The residents pay for using toilets, and for their water, often at several times the Municipal price for a piped water supply in the same locality. The goods they buy are charged with octroi and sales tax, so they support the city financially as much as anyone else. Jhopdies cost money to build, and these are investments on the part of the jhopdi owner, or investor, in the belief that the informal rules will hold firm, and his jhopdi will not be demolished. The investor in a jhopdi faces none of the complications of ULCRA<sup>9</sup> or the Rent Act. Jhopdies are bought and sold, like any other properties, despite there being no formal titles, and despite the fact that there can be no recourse to the formal processes of justice or the police in case of cheating. The informal laws are virtually as powerful and binding on both buyer and seller as formal laws would be. The community around you is witness to all that is happening, and acts also as both police and judge.

7 Supreme Court judgment in *Almitra Patel* (2000), para 14.

8 Supreme Court judgment in *Olga Tellis* (1985) reads in part as follows: "The encroachments committed by the petitioners are involuntary acts in the sense that those acts are compelled by inevitable circumstances and are not guided by choice. They manage to find a habitat in the pavements or slums out of sheer helplessness. Their intention or object in doing so is not to 'commit an offence or intimidate, insult or annoy any person', which is the gist of the offence of 'criminal trespass' under Section 141 of the Penal Code".

9 Urban Land (Ceiling & Regulation) Act, 1976.

**How do we reconcile our notions of the legality of owning property with the fact that we need low-income workers in the city for whom we can provide no land on which they can live within reasonable commuting distance of where they work, because land prices are outrageous?** Let us begin by asking: what are the essential attributes of land or property ownership? Currently, these are:

(a) The right to exclude others from entering the property. The owner decides whom to let in (friends, customers) and whom to keep out (vagrants, the public). If the owner occupies the property himself, it has for him some use-value.

(b) The right to develop the property, within the framework of rules framed by Government (which may change from time to time). These rules may constrain the manner in which land is used (for industry, or offices, or housing etc); they will also usually constrain the extent of building construction, the setbacks required, the heights, the parking spaces and so on.

(c) The right to pass on the property to one's heirs.

(d) The right to rent out the property for a limited period, with the right to revise the rent at the end of that period. The property has a rental-value, normally increasing over time.

(e) The right to sell the property at the market price, subject to any stamp and registration duties and any taxes on capital gains (or share in capital gains) that the Government may impose. The amount the owner realises at sale is the property's exchange-value. This also normally increases over time.

Together with these rights there are accompanying obligations, which are:

(f) To pay taxes to Government. These will normally be related to the intensity of development and land prices in the locality.

(g) To use the property in a way that does not cause a nuisance to one's neighbours. In Switzerland you do not hang out your laundry in your own garden on a Sunday, even though this may be the first sunny day you have had in weeks, because your neighbours are at home and this would offend their aesthetic sensibilities. This is an unwritten rule, but just as rigorously observed as if it were law.

The problem of squatters and squatters' rights is really acute in Municipal areas. In such areas, in regard to the rights (a) to (e) listed above, could we say that if a person fails to exercise right (a), that is, fails to protect his property and exclude trespassers (squatters), then it shows a clear lack of interest in his property and as a result he forfeits his rights under (b), that is, the right to develop the property, at least to some limited extent? Also to be noted is the fact that while (c), the right to transmit the property

to one's heirs, remains unaffected, the rights (d) and (e), to rent or sell one's property, are in effect worthless, except to someone who has the patience or the muscle to evict the squatters.

In Turkey there is a law<sup>10</sup> that says that if you start construction at dusk and are moved in by sunrise without being discovered by the authorities then you cannot be evicted without a court fight. Many squatter settlements have come up in Istanbul in this way. In Mumbai the Government has recognised that squatters have the right to remain where they are, the recognition has come in fits and starts, with many reversals and bulldozing of homes along the way, but the recognition is clearly there, and growing. The latest position is that all jhopdies built before 1995 cannot be removed. The compromise with the original landowner's rights is that he is permitted to develop the property by re-housing the slum dwellers in pucca buildings (free of cost to them) and has an incentive in the form of additional buildings or additional floor space that he can sell in the open market. At the end of the project, ownership of their housing, including the land title, is supposed to be handed over to a co-operative society of the squatters. That this scheme has been by and large unsuccessful is another matter (only 26,000 squatter families re-housed in 7 years against a target of 8,00,000). The important point to note is that squatters' rights to at least part ownership of the land on which they reside has been recognised, and the original owner's rights definitely stand somewhat diluted. What started off as tolerance under informal rules has finally been turned into legal rights. At the end of a tortuous process of reconstruction the squatters will have clear ownership rights to part of the land on which they initially, unauthorisedly, squatted.

Because of past slum rehabilitation policies a question arises (which should never have occurred in the first place): should slum dwellers get pucca housing totally free of cost, at the exact location where they squatted? How have the squatters earned this particular right of free pucca housing? You might say that recognising squatters' rights to be where they are, "regularising" slums, even providing them with Municipal services is all part of a humane policy that acknowledges the failure of past policies to provide them with any kind of housing options at all. But to extend this to constructing pucca houses for them free of cost is uncalled for, unnecessary and absurd.

10 See Robert Neuwirth, "Shadow Cities", Routledge 2005, p..8.



Above all, it is unsustainable. Programs based on this notion will work only in a few, high-value localities, and not across the board. And it is hopelessly populist. The purpose is not to achieve anything tangible, but only to dangle the carrot of free housing before 5 million pairs of eyes, knowing full well that it cannot and will not happen.

We need more realistic approaches. Squatters are capable of paying for their own construction. What they need is cheap or free land, and up-front finance. Financing agencies need viable mechanisms for providing this, essentially some form of dependable assurance that loans will be repaid. The only way of ensuring this is to enable effective re-possession of premises in default.

We can now try and formulate the framework for a housing policy towards squatters:

(a) Recognise that squatters have a right to be wherever they have established a foothold in the city, regardless of date of settling here, except that for recognition we might say they need to have been where they are for a period of let us say at least one year. This does not give them ownership of the land they occupy. It does give them a right of occupancy. We formally recognise this right of occupancy, develop a transparent process of documentation of such rights, and allow the rights to be both rentable and tradable, subject to any taxation one may want to impose, including on capital gains.

(b) All squatter sites (including Central Government lands) have a right to power and to Municipal services: electricity, water supply, sewerage and garbage collection, provided the squatters agree to pay for these services like anyone else. The rights of occupancy are formalized only for those sites where squatters have undertaken to pay for services (whether these have actually been provided or not).

(c) The ownership of land remains with the original owner. If he wants to develop the property, and it is encumbered with squatters, he must buy the occupancy rights of those who have such rights on his land. Various kinds of sale arrangements are possible: outright sale, with the occupier parting with possession; or conditional sale, where the occupier is given premises in the redeveloped property on such terms as may be mutually agreed (this is a case where the occupant puts his use-value higher than his exchange

value for his premises). Alternatively, the occupiers may buy out the owner. Since ownership can be mortgaged, finance agencies would be willing to help the occupiers with such an ownership purchase.

(d) No special incentives are provided for redevelopment. Owners follow the same rules for development that apply to owners of any other property in the locality. These rules may vary from locality to locality, but within any locality, for any specified use the rules for development are independent of the nature of ownership and past occupancy. The property may be ceased<sup>11</sup> or non-cessed, squatted upon or free of encumbrance, dilapidated or in good condition: the same set of reconstruction rules applies to all.

Tenants

Many of those who live in jhodies, and who hold down perfectly respectable jobs (like the Police Constables and Inspectors) would be only too happy to live in proper pucca rented accommodation if it were available. **It is a fact that the State Government's persistence with the Rent Act in the form in which it was until 1999 killed the market for rental housing, particularly low-income rental housing. All the housing in Mumbai starting soon after Independence was built for owner occupation only. And no owner, if he had to temporarily leave the city, was willing to give his flat out on rent. The number of pucca dwellings given on rent – in this case frozen rent – has remained unchanged, with virtually no additions, for decades.**

The 1999 change in the Rent Act meant that thereafter residential accommodation could be given for periods of under one year on leave-and-licence without rent control<sup>12</sup>. There is also a process for summary eviction of defaulting licensees which bypasses the long delays one is familiar with in Court procedures. But this applies only to residential premises, not commercial establishments<sup>13</sup>. Nevertheless, with this change there has been a gradual increase in the number of high-value residential properties which can now be had on lease that is, leave-and-licence for a period of 11 months, usually renewable for one or two more such periods thereafter. But there has still been no spurt in the construction of low-income housing for rental. Our builders and developers provide an essential service to the city in constructing housing, in response to a vigorous market demand. But the demand they satisfy is essentially at the upper end of the scale, and their projects often take the form of

high quality residential enclaves with built-in amenities, mostly for ownership and self-occupation. They would move down-market and construct lower-income housing colonies for both ownership and rental if the Rent Act were further amended to make it clear that new tenancies – not just short duration leave-and-licence arrangements – are free of rent control, and that housing finance institutions can be assured of re-possession of premises where the owner is in default, even if he has rented them out to someone else.

So the changes we need to make in the Rent Act – and these would be essentially non-controversial because they do not affect the protection afforded to existing frozen-rent tenants – are the following:

(a) Declare that the provisions of standard rent do not apply to any tenancies or sub-tenancies created hereafter, whether in old premises or new. (But they do continue to apply to existing tenants and their heirs: there is no change in regard to this touchy issue). Additionally, extend the present leave-and-licence period limit of one year to say 7 years, and have the summary eviction procedure apply to all kinds of premises, not just residential.

(b) If someone has taken a housing finance loan for his premises against mortgage of his property, and thereafter rents it out, then in case of defaults in repayment the housing finance agency can evict the tenant and re-possess the premises.<sup>14</sup>

This is to guard against cheating. Assume a property owner secures mortgage finance for his property. Against a major up-front capital payment he then rents it out for a long period for a paltry monthly rental. Now he has pocketed more than the original value of the property. He defaults on repayment of his mortgage. The property cannot be re-possessed because the tenant cannot be evicted. No housing finance agency will consider mortgaging properties intended for rental unless re-possession is possible regardless of subsequent tenancies. Protecting innocent tenants against unscrupulous landlords is a matter of the housing finance agencies getting together and doing something that is in their collective as well as individual interests: hosting a publicly accessible website that lists all mortgage transactions.

When a property is given on rental, normally the landlord is

interested in the upkeep of the building. If it is in good condition he will get higher rents. If he improves it further he will get still higher rents. As the rental-value keeps on rising, so does the exchange-value. The landlord is interested in elevating both, and so makes sure he looks after the building, and keeps on improving it.

Why do existing frozen-rent tenants live in such derelict buildings? If we look at their situation carefully, we see that by persisting with the Rent Act and freezing rents at the values prevailing 50 years ago, Government has interfered with the rental-value of properties. The owner's rights in regard to exchange-value have also vanished, because there is no market for properties where the rent cannot be raised in line with market values. The obligation to keep his building in good repair is supposed to be the owner's responsibility. With rents frozen, the owner cannot be expected to spend on the upkeep he gets farcical returns on whatever he spends. Instead of passing the obligation for repairs on to the tenants, at least in some measure, Government in its days of high socialism chose to take this burden entirely on itself, through MHADA<sup>15</sup> or other agencies. This has proved unworkable in practice, and old buildings are deteriorating, essentially because they are "owned" by nobody: not the landlord, who has not reason to invest in the building; not the tenants who see no reason to pay for repairs when the landlord is supposed to do this; and not Government because it is only a repair agency.

One of the implications of the change suggested above in the Rent Act is that in old buildings, while old tenants and their heirs (forever) would continue to enjoy standard rent, new tenants if they took over the same premises would not. The "pugree" price of these old tenancies would therefore fall. But the old tenants can have no reason to complain, since the purpose of rent protection is to assure them of continuing possession with only nominal rent increases: the purpose is not to guarantee them a financial reward if they choose to move out. Note that they may still negotiate with the landlord for an appropriate price for moving out, alternative accommodation perhaps; but they will not be in as strong a position as they are today, where they can market their tenancies and give a third of the price to the landlord (the current convention).

The significant gain is to the landlord. He will be able to buy out

<sup>11</sup> Cessed buildings are frozen-rent buildings where the Government has been collecting a regular "cess" from the tenants, in the expectation that the fund so built up can be used for repairing such buildings as and when needed.

<sup>12</sup> Maharashtra Rent Control Act, 1999 (Maharashtra Act No XVIII of 2000), Section 6.

<sup>13</sup> Ibid. Section 24.

<sup>14</sup> See the 1999 US Supreme Court judgment in Vermont Tenants Inc. vs. Vermont Housing Finance Agency by Dooley, J. In respect of Vermont's Residential Rental Agreements Act, 1985 which reads in part: "Where the mortgage precedes the lease the lessee's rights can rise no higher than those of his landlord, the mortgagor....It follows that if the mortgagee could take possession against the mortgagor...he has the same right against a tenant of the mortgagor." I am indebted to Sudhir Jha of HDFC for drawing my attention to this.

<sup>15</sup> Maharashtra Housing & Area Development Authority.



at least some of his tenants, and re-let the same premises at much higher rents, which he can expect will go on increasing over time. Now he has a real incentive to maintain and improve his property because of the higher rents he can realise. The situation begins to be restored to normalcy, where a landlord happily spends on upkeep and improvements.

How do we deal with the older built-up areas in the Island City, where buildings are dilapidated, too many have common toilets, light and ventilation are often inadequate, and streets are narrow and often filthy? Very often the plots are tiny, and any kind of regulation that proposes plot-by-plot development is nonsensical.

To illustrate this, let us look at just one example of the application of Development Control Regulation (DCR) 33(7). Under this rule, MHADA has sanctioned an FSI<sup>16</sup> of 10.76 on a property of 55.56 m<sup>2</sup> in A Ward<sup>17</sup>. If we set back the new construction by 1.5m on all sides, except the front, as required, we are left with a plinth area of at most 29 m<sup>2</sup>. A lift and a staircase cannot be built in much less than 17 m<sup>2</sup>. This leaves a built-up area of 12 m<sup>2</sup> per floor as built-up, useful livable floor space. It means that for the minimum size of accommodation to be provided (22 sq. m) each tenement will have to be on two floors, the living space on one floor, and the kitchen, bath and toilet on the next floor, to be reached via the common staircase. The FSI calculation will apply only to the living space, not to the stairwell area. We have a total permissible built-up area of 55.56 \* 10.76 = 597.8 m<sup>2</sup>. To consume this at the rate of 12 m<sup>2</sup> per floor, we will need a structure of about 50 floors. And this on a footprint of 29 m<sup>2</sup>, that is, at best, about 5m x 6m. The structural members needed to support 50 floors will probably occupy all the floor space on the lower floors, leaving nothing for living. While this may seem ridiculous enough, the absurdity of the 33(7) rule is even more emphatic for those plots (and there are a few such) which are 3m wide. So if we leave 1.5m on either side, there is nothing left to build on at all.

If squatters can be entitled to free housing, then why not tenants, who definitely have more of a legal status in the city? The scheme of DCR 33(7) is based on the premise that the old tenants, like squatters, are so impoverished that they are entitled to free pucca reconstruction of their buildings. This seems as uncalled for, and indeed as outrageous. If the floor

space occupied by them is less than 225 sq ft, they are further entitled to a minimum of 225 sq ft, free of cost. After the construction they will continue to enjoy similar absurdly low rents in the new building. As with squatter housing, this policy of free reconstruction is both unsustainable and unnecessary. Given access to housing finance the tenants, like the slum dwellers, could very well afford to pay for their own reconstruction, or, if their use-value is much less than the exchange-value, they can opt to sell out.

In a situation of a multiplicity of small plots there seems to be no viable alternative other than to demarcate blocks which can only be taken up for redevelopment of an entire block at a time, encompassing several properties. Occupants and landlords must come together and share in the new development in some prescribed way. And the redevelopment must follow whatever guidelines have been defined for that precinct, allowing for road widening and current parking requirements.

**The process calls for detailed area level planning by the local authority. It cannot be dealt with by drawing up a uniform set of centrally administered “rules” that apply across the board, regardless of context.**

Notice that there are four distinct areas of work in any such locality redevelopment and densification programme:

- (i) Augmenting the physical infrastructure, most importantly transport capacity to service the locality. This is an activity to be necessarily carried out by various Government agencies.
- (ii) Planning the redevelopment, providing for heritage conservation if any, road widening, parking, open spaces, social infrastructure (hospitals, schools etc), specifying the proportions of different uses (residential, commercial, social infrastructure etc), the total built-up area and any other building construction guidelines and controls. The planning work would also set out guidelines as to how benefits from the development are to be shared between owners and occupiers in the locality. This too is an activity necessarily carried out by a Government agency, preferably a local Authority which is familiar with the specific ground realities of each locality.
- (iii) Managing and executing the redevelopment, including temporary relocation of those residents who wish to return to live or work in the locality. This is best done by a private

agency, selected through a bidding process where the bidder offers the amount he will distribute to owners and occupiers. Various kinds of financial arrangements are possible, including schemes in which the owners and occupiers share the builder's risks in regard to the final sale prices realised.

(iv) Supervising and monitoring the redevelopment, including dispute resolution. This is Government's responsibility.

**Heritage Buildings**

We have in Mumbai now a well established process of identifying structures of historic value. Depending on the heritage category into which they fall, they are subject to varying degrees of constraint in regard to re-development or extensions or new constructions in the compound. These restrictions apply without any compensation, either in the form of grants to help with conservation, or in the form of relief from normal levels of taxation. The heritage restrictions are thus an additional burden for these particular property owners. No wonder they are anxious to avoid heritage listing of their buildings. Ideally, they should want to be on the list, and should want to preserve their buildings. Can we do something to bring about a change in attitude?

This finishes our assessment of what rights different categories of special, disadvantaged stakeholders might have in any urban redevelopment programme. We turn our attention now to our principal instrument for both controlling and sharing the fruits of such redevelopment.

**FSI & TDR**

FSI is the ratio of constructed, built-up area of all floors on a property to the plot area. The amount of residential floor area on a property translates to how many people will be living there, a number that depends also on their income level – poorer people live more crowded than rich people, both across the city and across countries. **The important point is that regulating FSI regulates densities, the number of occupants per square kilometre, and therefore the demand on the infrastructure of water supply, sewerage and the traffic and transport systems.**

FSI normally applies to a single plot. “Global FSI” is a term we use for an entire locality that contains several plots, and has roads and other open spaces. We say that the Global FSI is the total built-up area in the locality, divided by the total land area of the locality (including roads and common spaces). FSIs on individual plots could vary, from plot to neighbouring plot, but as long as the Global FSI of the locality remained unchanged the demands on locality infrastructure would also remain unchanged.

Currently, our Development Control Regulations (DCR) prescribe an FSI of 1.33 in the Island City and 1.0 in the Suburbs. The Island City was already much built up before the FSI controls came into force, so different localities have very different, existing

FSIs, and the city is a more captivating place because of it. In contrast, the monotony of our suburbs is largely a result of uniform plot FSI, and tragically, New Bombay's planners have followed the same rule when they had absolutely no need to. With CIDCO<sup>18</sup> owning all the land in New Bombay, plots could have been auctioned with whatever FSI CIDCO chose to make available on each plot. It would certainly make more sense from the point of view of mass transport to have higher intensity development around the railway stations, with intensities falling off as one moved further away towards areas of sparser development more easily reached by car or bike. The urban landscape would have been richer and more interesting. What should have been controlled is Global FSI, the total built-up floor space in a locality, not uniformly distributed over all plots but unevenly divided, with more intense usage around stations and less intense usage, perhaps bungalow plots, at the perimeter.

The concept of Transferable Development Rights (TDR) was first introduced by the Municipality because it did not have the funds to acquire properties needed for public gardens, or other public purposes. What a plot owner was most importantly being deprived of was the profits he might make from construction on the plot, so his would-be FSI was converted into TDR, that is, the construction rights conferred by the FSI rule on his plot were made transferable to someone else, for use on another property. Where and to what extent the TDRs could be used was restricted. The conditions essentially implied that receiving properties could only be in locations where the infrastructure could support the infrastructure burden consequent on the additional built-up floor space.

**Since then, TDRs have been heavily misused. Originally designed to compensate owners who surrendered their land for a public purpose, TDRs now take the form of “incentives” – equivalent to cash – to persuade owners, or their builder partners, to provide free housing to squatters and free reconstruction to frozen-rent tenants, that is, to support some of the totally unsustainable policies of the State Government. And from liberally handing out TDRs for one reason or another it is a small step to allowing the TDRs to be used in-situ, that is, the generating plot and the receiving plot remain the same, and considerations of infrastructure viability are totally ignored.**

<sup>16</sup> Floor Space Index, called in many cities FAR or Floor Area Ratio. Both mean the same thing, the constructed built-up area of all floors divided by the area of the plot. In Mumbai currently FSI calculations exclude stairwells and lift shafts, some kinds of balconies and other areas, effectively inflating the permissible FSI by a significant amount.

<sup>17</sup> Redevelopment of property bearing C.S.No.880 of Fort Divn., Ward No. A-2468, Bldg. no. 42 Maruti lane, "A" Ward, Mumbai, known as "Mohammed Saleh Building". Source: MHADA's report to the High Court, Mumbai, November 2004.

<sup>18</sup> City & Industrial Development Corporation of Maharashtra, the State Government-owned Company in charge of developing New Bombay and other cities in Maharashtra.



Increasing infrastructure capacity in an already built environment is not easy. Road capacities in particular are very difficult to augment. And if roads are difficult to widen, even worse are footpaths, indeed, footpaths are very often the first victims of road widening. Mass transport systems are equally difficult to enlarge. This is not all. Increased occupancy levels in a locality, which is what the construction added by the local use of TDRs implies, will mean an increased demand for the social infrastructure of hospitals, schools, colleges, the fire brigade, police stations and parks and gardens. The cost of the liberal doling out of in-situ TDRs is borne by existing citizens, whose quality and sufficiency of infrastructure degrades.

The conclusion is inescapable. If we want to densify a locality in terms of more residents per square kilometer we must first satisfy ourselves that we can augment both mass transport and road transport capacities to serve the increased population; and we must undertake the densification as a program that encompasses the entire locality and provides all the requisite physical and social infrastructure. Further, whatever we add by way of new floor areas need not be uniformly distributed over all plots. It is important to control the Global FSI, which is what is constrained by infrastructure. Within the Global FSI, individual plot FSIs can vary without upsetting the overall balance.

How do we go about implementing such a scheme?

**Governance & the Planning Process**

Over the years, any kind of urban planning process has been abandoned by the State Government. It has arrogated to itself all initiatives and all thinking in regard to urban development, eroding entirely the function of the Municipality in this regard. It has been assumed that the entire process can be reduced to formulating “rules”: that laissez-faire moderated by the Development Control Regulations is all that is needed to produce satisfactory urban development; that the Municipality does not need to be consulted; that there needs to be no consideration of infrastructure in sanctioning development; and any kind of planning is superfluous.

The first step therefore in recasting the urban development process is to restore local area planning to the status of an essential, inescapable first activity in formulating local area policies and rules. This is not something which should be within the purview of the State Government's activities at all. It is both beyond its capabilities, and too detailed an exercise to be so heavily centralized. It should necessarily be undertaken by the local authority.<sup>[E]</sup>

Local area planning means that plans would be specific to each locality. In Mumbai a typical locality might be one of the Island City Wards – the Suburban Wards are too large, and perhaps need to be split into smaller units. Also within an Island City



Source: Jehangir Sorabjee

J. B. D'Souza, former Chief Secretary of the Government of Maharashtra, says: "Is there the slightest chance that the State Govt. will surrender its grip on city planning, which it has wrested from the BMC? In our time Urban Development (UD) was considered a minor portfolio, along with Education, to be held by Ministers of no political consequence like P. G. Kher. Today Chief Ministers prefer UD to Home."

Ward, if the character of the Ward is very different from one part to another, perhaps that Ward too needs to be split into smaller units for purposes of overall planning.

The next step—or perhaps an independent first step—is to define the physical infrastructure and draw up plans for its overall as well as its local augmentation. Once this is done we can begin to understand how much additional occupancy can be tolerated in that locality. With that, and considering the existing Global FSI, we can set a new permissible target Global FSI. The total buildable floor space in the locality is determined by how much the physical infrastructure, including open spaces, can support. The essential control is over the extent of total built-up floor space to be permitted in a locality, and how it is distributed. For example, we might say that adding floor space close to railway stations is more desirable than adding floor space at locations that are difficult to access. The locality plan sets out all these general features and constraints.

Next, we say that FSI and TDR are interchangeable. Today, each plot's basic FSI of 1.33 in the Island City has to be consumed on that plot. But what FSI and TDR both imply is permission to build a certain amount of floor space in the locality. How does it matter in terms of occupancy and infrastructural impact whether it is built on this plot or that?

More to the point is who gets how much. Here, in pursuit of equity, is one possible arrangement:

- (a) An owner of a plot gets TDR (or FSI; the terms are equivalent) of 1.33 in the Island City and 1.0 in the Suburbs.
- (b) An owner of a cessed building, like any other landowner, gets TDR of 1.33 in the Island City or 1.0 in the Suburbs.
- (c) A tenant gets TDR equivalent to the floor area he occupies. The Certificate of TDR is issued to him when he vacates the premises.
- (d) A squatter gets the area of his jhopdi, plus an appropriate fraction of the area of his loft, with the Certificate of TDR similarly issued to him when he vacates his jhopdi. The owner of the plot will of course get the normal FSI for his plot, as in (a) above: he will get a Certificate of TDR for 1.33 or 1.0 on his plot area.
- (e) The owner of a heritage building gets the normal FSI, like any other owner as in (a) above, plus a bonus FSI of some fraction of his building's built-up area as compensation for the restraints imposed on him by the heritage regulations. This may be released progressively, over a period of years, keeping step with his upkeep of his building.



This covers the four categories of existing occupants of buildings. In addition there is a fifth category of new occupants who merit a bonus FSI, and that is:

(f) Schools, colleges, hospitals and other social infrastructure facilities, who get as much TDR as they need for their functioning, and to rectify any deficiencies in their locality. They do not get a freely transferable TDR, but must consume their TDR in that locality for their own use. The implication is that they get free land in the locality: all they need to pay for is the cost of construction.

And finally we have:

(g) TDR that can be sold by Government for use only in that locality, as and when needed, carefully released so as not to depress market prices, with the funds so realised being used for augmentation of infrastructure.

And we could add:

(h) Any plot owner who surrenders his plot to the public authority gets a small bonus TDR. This is to encourage the owners of vacant plots to turn their plots over for public use rather than keeping them as private gardens.

We say first of all that there is no prescribed limit to the volume of construction on any plot, subject to any overall limits the planning exercise may have imposed on different parts of the locality. All that is required is that the owner of the plot has assembled an adequate number of Certificates of TDR to cover the volume of construction proposed, and that he follows the building rules regarding setbacks, mandatory open spaces on the plot, provision for parking spaces and fire regulations.

**Subsidies & Housing the Very Poor**

Even with free land, there is a category of workers and residents in the city who cannot afford any kind of pucca housing. For them, having housing finance available would also not make a difference. They are a small fraction of those who today live in jhodies, and towards them the only viable attitude would be one of benign neglect. They need to be provided with water supply, sanitation and solid waste disposal services, but beyond that they should be left to their own devices. They form a small part of the squatter community, and hopefully over time they too will earn enough to sustain a move to proper housing. If subsidies are provided, it is essential that they are on a case-by-case family income basis, and not for any particular category of built housing.

**Financing Reconstruction & Resettlement**

The essential constituent for securing housing finance is effective re-possession in case of default, without extended delay. Currently, the SARFAESI Act<sup>20</sup> has made a significant difference in enabling re-possession, and this has had a salutary effect on defaulting borrowers. If we want to encourage the construction of new rental housing – and this is what Mumbai desperately needs, particularly for the middle and lower income groups and many of those who today live in jhodies – then re-possession must be equally effective whether a property is occupied by the owner or rented out by him to someone else.



Source: Prasad Khanolkar

**Caveats**

All the foregoing proposals assume clean administration and the political will to address the problems of housing in the city. Neither assumption is realistic. But what has been set out above hopefully demonstrates that the problem is not completely intractable, and we do not have to live with the hopelessness and despair that characterises much of the debate about housing in Mumbai. And, perhaps, recognising obstacles is the first step in overcoming them.

First, let us not assume that all politicians want the housing situation improved. It is a fact that past Chief Ministers have withheld signing orders pertaining to urban development until the contents had first been run past a builder friend. Our city's developers and builders, however much they may be a vital driving force energising construction, are smart enough to realise that a situation of shortages is to their advantage: more profits for less work. Not all of them will want more land on the market to enable more affordable housing – whether it is salt pan lands or Port Trust lands or any other. The Centre has repealed ULCRA, but the State Government shows no sign of wanting to do this. If the city's builders really wanted ULCRA removed it would surely have happened by now. So we need to make a real effort to convince our builder friends that perhaps the high-income housing opportunities are drying up, and that there is instead a huge market for low- and middle-income rental housing, with housing finance readily available.

Against bureaucratic corruption there seems to be only one promising remedy, and that is transparency: of information, and of the decision-making process. Detailed planning information, of what is existing and what is proposed, on a publicly accessible website would encourage constant vigilance by the city's residents. And a planning process that engaged citizens in discussions at various stages of the preparation of plans and guidelines would surely both improve planning and reduce the possibility of subsequent derailment through the Courts of law.

**Conclusion**

What has been suggested above is a set of policies by which all the stakeholders in the city, squatters, frozen-rent tenants, owners of heritage buildings and normal owners of properties get a stake in the redevelopment process through a fair distribution of construction rights. Such rights would be marketable and freely tradable both within the locality in which they are generated and in designated localities further afield.

**Planning would be locality by locality, with different rules for each, the essential guideline being that constructed floor space in the locality must be consistent with the physical and social infrastructure that can be made available.** The rule of uniform FSI on all individual plots would be replaced by Global FSI for the locality, varying according to the locality and what its infrastructure can support. On any plot the owner would be free to construct to whatever FSI he chooses by assembling the necessary locality TDR permissions. There would be complete transparency of all transactions and information pertaining to building construction. Locality planning would be decentralised to the level of the local authority, accessible to citizens, open to public scrutiny, and with active public participation in the planning process.



Source: Prasad Khanolkar

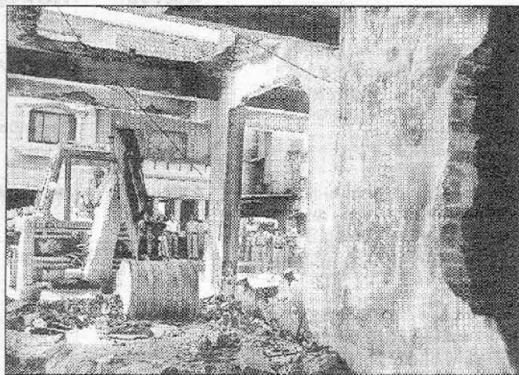


Source: Prasad Khanolkar



# Levy fine, legalise buildings: Civic body

Ulhasnagar municipal body revises Development Control Rules, proposal awaits government nod



The proposed penalty will be the depreciated value of the construction cost and 50 per cent will be paid by the occupier

EXPRESS NEWS SERVICE  
DECEMBER 5

ULHASNAGAR is keeping its fingers crossed.

Two days before the Bombay High Court takes a decision that could change the lives of more than 1 lakh residents in 855 illegal buildings, the Ulhasnagar Municipal Corporation (UMC) passed a revised set of Development Control Rules (DCR) giving hope to the suburb.

The revised DCR—it will now have to be approved by the state Urban Development Department—proposes regularising the illegal buildings and levying a fine.

The penalty will be the depreciated value of the cost of construction at that point of time, of which 50 per cent will be paid by the occupier and rest will be

split between the builder, owner and the architect.

“Similar resolutions have been passed on two occasions, once last year and once five years ago. But the state government did not clear them,” pointed out Narendra Rajani, BJP general secretary (Thane region). He was also the first standing chairman of the UMC in 1996.

Meanwhile, Deputy Municipal Commissioner Utam Lonare, who is heading the UMC until the new commissioner assumes charge, did not file the affidavit in the high court. The affidavit will now be filed on Tuesday.

It cites the law-and-order situation, insufficient police



## Meanwhile...

■ Ulhasnagar will also find its way to the Legislative Assembly's winter session in Nagpur on Tuesday. BJP legislator Gurmukh Jagwani from Jalgaon and MLC Ramnath Mote from Konkan will take up the issue. “The Speaker has agreed to take it up first since it needs immediate attention and we will stress the humanitarian aspect and ask the state to look at it with a sympathetic attitude,” Jagwani said, speaking from Nagpur.

■ The Bombay High Court on Tuesday will also hear a public interest litigation (PIL) filed by Pradeep Bhagnani, an activist of the Sindhi Association. ■ Bhagnani's PIL points out discrepancies in the UMC's affidavits. “Of the 855 buildings mentioned, there are mass repetitions of names and the actual number is only around 500,” said an architect supporting the PIL.

■ “Buildings that have committed small FSI (floor space index) violations have also been given demolition notices. This will be brought to the court's notice,” he added.

bandobast and the constant change of guard as the main reasons for the delay in following the court's order.

# Playgrounds of the rich milk state coffers dry

Prime Plots Given To Clubs At Low Rents

By Kishore Rathod/TNN

**Bandra:** Hundreds of acres of prime public property in the suburbs have been ‘gifted’ away by the collector to associations and clubs catering exclusively to the rich.

Even as the common man struggles to pay the monthly instalment of match-box apartments, the members of these tiny clubs are enjoying five-star facilities at ridiculously low prices. TOI focuses on how the club leases are draining the state coffers dry every month.

Property prices may have gone through the roof in the last 30 years, but as far as Khar Gymkhana is concerned, its land value has actually diminished over the years thanks to a benevolent government. While the gymkhana paid an annual rent of Rs 60,801 in 1970, it now pays just Rs 55,812 for the 8,340 sq m of land that it has leased from the Mumbai suburban collector. This works out to an annual rent of just Rs 6.69 per sq m, which is a fraction of the going market rate in the area. Further, far from being ‘caretakers’ of public land, the gymkhana has made this property the exclusive preserve of its rich, famous and influential members.

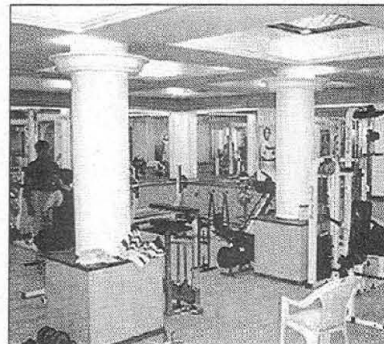
And this is just the tip of the iceberg. The collector has made 154 similar agreements in the suburbs, under which millions of square feet of land has been leased to select organisations at a fraction of the market price.

“This is akin to the common man subsidising the indulgences of the rich,” said activist Shailesh Gandhi, who used the Maharashtra Right to Information Act to bring the anomaly to light.

According to Gandhi, under the garb of laws and rules, ordinary citizens are not only being shortchanged, but also being deprived of their rightful public space.

In the last three years alone, the collector has renewed the lease for almost three lakh sq m of land at an average annual rent of just Rs 4.11 per sq m.

“On these leases alone, the government is losing revenue to the tune of almost Rs 50 crore every year; not to men-



The interiors of the Khar Gymkhana

tion the hundreds of crores being drained on the other lease arrangements. Though little can be done to change the lease rents of old agreements, the collector should at least ensure that the new agreements and renewals are signed at a higher rate, if not the market rate,” said Gandhi.

On their part, the lessees are only too happy to enjoy the subsidised rents.

“When the collector gave us the land 75 years back, the entire area was a jungle and it was good enough that someone developed the land, forget about the rent. So, we are justified in enjoying the special rates,” said Hari Mehra, president of Khar Gymkhana, adding that for the new lease agreements of prime land, however, the collector should charge rents at the prevailing market prices. He said the gymkhana is ready to buy the entire land from the collector at the appropriate price.

Meanwhile, Mumbai suburban collector S S Zende admitted that there is an imbalance in the leasing agreements, but little can be done to rectify it. He said most lease agreements are based on the Land Revenue Code of 1879 and 1966, so they enjoy very low lease rents.

“Every time we propose a hike in sync with the prevailing market rates, the parties go to the high court or the state government and get it stayed. Unless, the government takes an initiative, the collectorate can't do much to change the situation,” Zende said.

## MONEY TALKS

POWER THEFT ■ Slumdweller say they pay rent. No, says BEST

# How to steal power with official approval

BAYA AGARWAL  
NOVEMBER 28

**I**N A state that has seen rioting due to power shortages, this picture of a Dharavi slum shows how locals use wires hooked on to power lines of the Brihanmumbai Electric Supply and Transport (BEST) undertaking to illegally draw electricity.

Arrangements like these are common and allegedly part of a larger, highly organised network of BEST officials, suppliers and the local police.

This repeats across slums in Dharavi, Shanti Nagar and Mori Road at Mahim, where shanties boast of television sets, fans, bulbs and music systems.

In Dharavi itself, more than 1,000 houses are using illegal power, allegedly paying Rs 50 a month to the BEST.

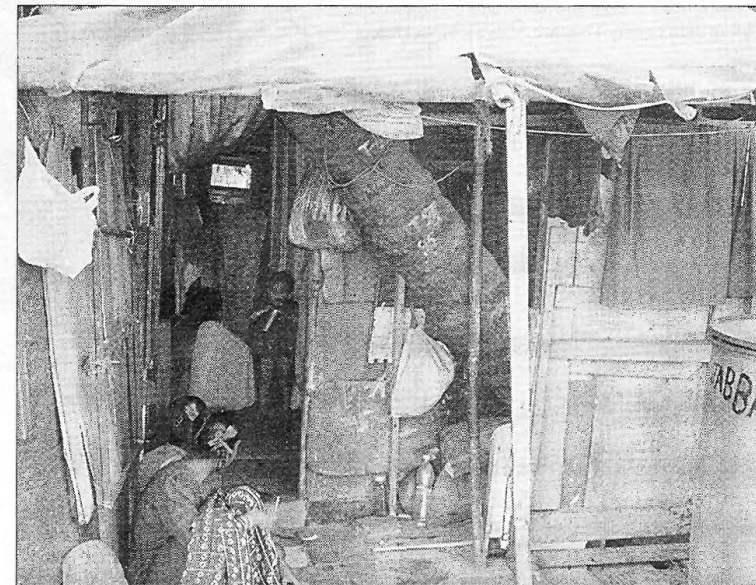
“All of us in this slum pay the BEST a monthly rent,” said florist Prakash Kale (34), whose house has a television, a bulb and a fan. “Mumbai's too hot to survive without power.”

While slumdweller openly admit to paying BEST officials, Public Relations Officer A S Tamboli

**We are aware of such cases. Two months ago, we did receive complaints against some BEST officials. We are probing the matter**

Abdul Mulani

Police Sub-Inspector, Mahim police station



In Dharavi, over 1,000 houses use illegal power but claim to pay rent to BEST—Baya Agarwal

denied this. “We know of power thefts but our officers are definitely not involved in this,” he said. “If an investigation proves them guilty, proper action will be taken against them.”

A senior BEST official, however, admitted that BEST officials and the police were involved, but said BEST lacks the resources to track down the culprits.

“Mumbai is a big city and we can't keep track of everything everywhere,” he said, requesting anonymity.

“We conduct confidential departmental inquiries and raids daily, but an area that's raided lies low for a while, then supply starts again.”

Until three months ago, Aslam Khan (name changed) would clamber up an electricity pole and tamper with the wires, providing electricity to slumdweller. Khan claims he was trained by the local BEST officials.

“I supplied power to around 100 houses in Mori Road and extorted Rs 50 from residents for each connection, earning about

Rs 20,000. Of this, I paid 90 per cent to the local BEST officer who then paid the local police,” he explained.

Jitendra Bajaria, a member of a citizens' committee formed by the BEST as its interface with the public, says the BEST is to blame.

“I first told the BEST about these thefts in 2003. I was assured of appropriate action, but nothing's been done,” said Bajaria.

“Hawkers on most city footpaths have power, it's such a common sight. How can BEST officials not know about it?” he asked.

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