

Urban Land: Public Powers, Private Ends

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ducted abroad that TV is simply not a medium for education but only of entertainment. Among the most important conclusions of some of these studies is that TV makes the human brain 'drowsy and passive', making TV an ideal instrument for propaganda and

entertainment, but not education and enlightenment. Perhaps it is this very quality of TV which is the reason for the high priority accorded to it along with that accorded to the strengthening of the means of control and repression.

state government employee having retired a year ago or due to retire a year from now, or one of the immediate family of an employee deceased in service; or he should be one who is serving or has served in any of the armed forces in any capacity. Finally, any people "eligible for allotment" under any income category "who in the view of the government are having acute difficulty of securing housing accommodation" can get a flat. Section 5 of Annexure A states, "when there is a doubt as to the eligibility of an applicant to get a flat, the decision of the Chief Minister shall be final".

MAHARASHTRA

Urban Land: Public Powers, Private Ends

Kannan Srinivasan

IN the last three years the government of Maharashtra has evolved a particular policy on urban land and housing which is nothing but an extraordinary system of political patronage. This is "discretionary allotment". Ten per cent of the flats available from private builders under a recent law and two per cent of all the flats built by the state government are given at a nominal rate to whoever the Chief Minister may choose. At a conservative estimate, the market value of these flats would be not less than Rs 12 crore annually. Yet there has been little publicity. Assembly debates have not focused on the main issue; the press has been mysteriously silent.

EXERCISE OF DISCRETION

The Urban Land Ceiling Act (ULC) of 1976 by its section 21 permits a landowner to retain vacant land above the ceiling limit (500 square metres in Bombay) if he intends to use it for constructing flats "for the weaker sections of society". Who these weaker sections are is nowhere said, but the flats have to be under 800 square feet. The Government of Maharashtra set up its own rules for administering the Act: ten per cent of all these apartments built by private builders must be given to those whom it named, at Rs 90 per square foot. "Discretionary allotment" soon began.

When the Maharashtra Housing and Area Development Authority Act (MHADA) came into force in 1976, it was announced as government policy that no exception would be made to equal eligibility. But in April 1980 all advertisements were discontinued. Beginning March 1981, then Chief Minister Antulay gave a proportion of flats to "special cases" — two per cent of all flats under construction in 1980-81, and likely to be completed by the end of March 1982. Further, even the flats available for the general public were not allotted, but held in reserve.

Though it was meant to be two per cent, the government swiftly surpassed its discretion. Two flats more than 2 per cent were given in the Higher Income Group category and seven flats more in the Middle Income Group. And although the government reservation — when later framed — was only for residential flats, two commercial tenements built by MHADA were granted to the Raigad Zilla Vikas Co-operative Bank at Abhudaya Nagar in Kachowki. Even flats built specifically out of a fund, created for tenants of old buildings which have collapsed, were included in the quota (in violation of the Bombay Repairs and Reconstruction Board Act). Most of the "special allottees" have not yet paid anything for these houses.

New regulations were issued on December 29, 1981, embodying the selections already made. A procedure for allotment is laid down for various income groups. Lots are then to be down. Yet, Section 16 of the Regulations carried an overriding provision: "Notwithstanding anything contained in these Regulations, the Board may allot any tenements in any buildings to any person according to the directions of the state government. The number of tenements to be so allotted shall be restricted to the extent of 2 per cent of the tenements which are taken up for construction under each category of income.

On December 13, 1982 the government issued a circular which laid down the norms for the discretionary allotment of the government's own MHADA flats as well as the flats built by private builders under the ULC. For the MHADA flats, the person should be a resident of Maharashtra for at least 15 years and should not own a flat. For allotment in one of the various income categories, he should have won recognition in journalism, the arts, painting, music, dramatics, literature or science; or he should be a

The ULC flats carry identical requirements on age and residence. A maximum of 70 per cent out of the 10 per cent of all flats can go as official government accommodation. The remaining 30 per cent or more will go to identical categories as the MHADA flats, with the following additions: freedom fighters and the blind or otherwise physically handicapped, families of Maharashtra MPs, MLAs, MLCs who have died in office, if they had no flat of their own. The last category is any other person "who in the discretion of government deserves consideration on extreme compassionate grounds". As in the MHADA allotments, the Chief Minister of Maharashtra is the final deciding authority on suitability. For both MHADA and ULC, applications may be sent directly to the Chief Minister.

A subsequent addition has been: even present or past MPs, MLAs or MLCs, whether or not they already have an apartment or house. The last category is any person whose family has served Maharashtra in the office of Emperor of the territories which are included in the present state.

ELIGIBILITY AND LARGESSE

Like the allotments which have been made under it, the classifications of this circular are a mixture of the reasonable and the absurd. No one can dispute, for instance, that the blind or the physically handicapped should be given special assistance. But taken as a whole, anybody and everybody comes within the definitions of the circular. This would not matter if flats were freely available. But because they are to be rationed, the priorities are important. Since it is not specified what the priorities are, the Chief Minister is left free to pick and choose each individual case.

There is a very large number of state government employees, all of whom will eventually retire. What is

good and bad art or literature is a matter of personal taste. The criteria for journalists was offered by the Minister of State for Housing, Kalappa Avade, in the Council on June 20: "He has to be more than 18 years old (sic). He must of course have lived somewhere in Maharashtra for the last fifteen years and have no flat in Bombay. Anyway, the Chief Minister decides." Eighty per cent of Bombay's population lives in slums or in dilapidated accommodation; they all need flats. But this classification is not even restricted to those living in the city; any one from anywhere in the state who cannot get a flat in Bombay is eligible.

But one category is highly specific. "The descendants of the Emperor" means that the former ruling families of Kolhapur, Nagpur and Satara are all entitled to flats as "Weaker Sections of Society".

How much is all this worth? Avade's statement of June 20 is that 10 per cent of the 40,000 flats which are now to be cleared as "Weaker Section Housing" will come to government, that is 4,000 flats. The private sector has built an average of 15,000 flats a year; if 10,000 of these are now 'Weaker Section' housing, about 1,000 flats will be for 'government nominee allotment': 30 per cent of that is 300 of the flats put up by private builders every year.

MHADA builds on an average 2,000 flats a year. Two per cent of that is 40 flats. The Urban Land Ceiling Act permits 800 square feet apartments: so take as an average 600 sq ft; though WSH flats go for as high as Rs 1,500, take Rs 600 as price per square foot. So Rs 600 x 600 sq ft x 340 flats = Rs 12,24,00,000. At Rs 135 per sq ft, the ULC price for the government nominees, the flats are grossly undervalued. Only a small percentage of the market value is paid. If we subtract the cost price out of the above amount, nearly Rs 10 crore a year is to be distributed as *largesse*.

WHY THIS IS UNLAWFUL

When the state make any law, it can classify the categories it will deal with. If it has a policy on, say, food-grains or steel, then it can say on what basis these will be given. But these classes cannot be a mere list thrown together: mathadis, IAS officers, bonded labourers, senior advocates. By that means it may include and exclude. If the purpose is to award housing available to the government under the ULC Act, then the rules must advance that object. The Act

has said that landowners may hold on to their land if they build accommodation for the 'Weaker Sections'. But since the Lok Sabha has not said who the 'Weaker Sections' are, the government cannot step in and stop a builder from selling his flats to anyone.

But the case is different with the flats which the government has under its own control — the 10 per cent government-nominee allotment. Here there is an *obligation* in law to specify clearly the categories of weaker sections who will get the flats.

When the representatives of the people have conferred a power on any authority of the government, the subordinate law — circulars, rules, resolutions, notifications, (all of which have the force of law) — which the government makes must follow the policy of the legislature's original choice. It cannot clash with the very principle of the principal legislation. Second, the regulations must be specific. Discretion has to be a guided discretion. Here the rules have been framed in such a way that they include virtually everybody in the state of Maharashtra.

These, then, are no rules at all. How is choice to be made? It is left to those in office to pick anyone they want, and give him something which has a high market value at a nominal price. Clearly, those in authority can use this for personal or political gain.

All this is well settled in decisions of the Supreme Court, too numerous to enumerate. But, closer home a recent very similar case was decided. In June 1982 a Division Bench of the High Court at Nagpur presided over by Justices Tulpule and Padhye struck down the regulations of the Nagpur Improvement Trust and allotments made under them. (Pushpa, Tulsidas and Avinash vs Nagpur Trust. SCA No 1418 of 1978, SCA No 1331 of 1978, SCA No 969 of 1980 and WP No 963 of 1979.)

Since the law has, of its own force to ensure reasonableness, clearly these rules will be struck down as unconstitutional. But the nature of allotments gives further indication — if any is needed — of what was the original intention in making the ancillary legislation. For a recent judgment of the Supreme Court (Desh Bandhu Gupta vs Delhi Stock Exchange, AIR 1979 SCT 1049) has held that the record of implementation is relevant in construing the intent of a statute.

PATRONAGE

What can be the intent of such a power? By creating the categories of

Members of the Assemblies and journalists and subjecting them to the Chief Minister's choice, the law gives the ruling party the power not only to favour all of its own dissident members, but also important members of the Opposition, as well as a substantial section of the Press. Is it impossible to envisage some future *quid pro quo*? Some of the names: Pratibha Patil, Congress (I) MLA and former Minister, and Uttamrao Patil also ex-Minister but of the Bharatiya Janata Party have both been given flats in the same building on Napean Sea Road by the present V D Patil Ministry, the latter, on grounds of "compassion". Antulay was earlier given these very flats, but the Bhosale Ministry withdrew them. Datta Meghe (PWP) whose forceful questioning of the government in the ULC debate drew admiration, has applied for Pratibha Patil's flat, R D Patil, MLA from Kolhapur, Shekhar Patil, son of former Minister Sharad Chandrika Patil; Charanjit Chanana was given a MHADA flat at the time he was Minister. The leader of the Opposition in the Council, a member of the Janata Party, asks for a flat for a friend. Opposition stalwart, Ram Naik, Maharashtra BJP Chairman, writes asking for one. Kalpana Raje Bhosale, Rajmata of Kolhapur, has of course a category created just for her. As for the press: journalists from *Daily*, *Lokmath*, *Navshakti*, *National Herald*, as well as some freelance journalists. Interestingly enough, at least one national newspaper has asked for flats for their correspondents.

This whole matter has been discussed repeatedly in the Maharashtra Assembly and Council. The entire list of MHADA allotments was placed on the table of the House. When Hashu Advani wanted the ULC list to be tabled, Sharad Dighe said that time should not be wasted; "Let the matter end".

On June 20, Datta Meghe and others raised the point again. The Minister-in-charge, Avade, mentioned the Malabar Hill flats. There was great interest in the matter: Members wanted to know which were the other accessible locations in town where apartment blocks were being built. Meghe wanted to know whether these were being allotted to Ministers alone or all MLAs. Following the assurance that all MLAs and MLCs would get flats, the discussion petered out.

It is now possible to envisage at least on some matters, a consensus which includes the parliamentary oppositions, as well as the, Fourth Estate.