

CHANGING THE RULES
Guidelines for the revision of regulations for urban upgrading

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LIST OF ACRONYMS

BUDP	Bombay Urban Development Project
CBO	Community Based Organisation
CRZ	Coastal Regulations Zone
CZMPA	Coastal Regulations Management Plan Authority
DCR	Development Control Regulations
EWS	Economically Weaker Sections
FAR	Floor Area Ratio
FSI	Floor Space Index
GOI	Government of India
GOM	Government of Maharashtra
LIG	Low Income Groups
LISP	Low Income Group Shelter Programme
LOI	Letter of Intent
MM	Mahila Milan
MOEF	Ministry of Environment and Forests
NGO	Non-governmental Organisation
NSDF	The National Slum Dwellers Federation
R & R	Resettlement and Rehabilitation
RISG	Rajiv Indira/Suryodaya/Ganga Cooperative Housing Societies
SPARC	Society For the Promotion of Area Resource Centres
SRA	Slum Rehabilitation Authority
SUP	Slum Upgradation Programme
TDR	Transfer of Development Rights

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INTRODUCTION

This paper examines how government regulations affect the urban upgradation efforts of the poor in the city of Mumbai. The case of the Rajiv Indira/Suryodaya/Ganga Cooperative Housing Societies (RISG), three societies comprising slum-dwellers residing in Dharavi, is presented. To situate this case-study within the remit of this book, it is important to note that Dharavi has the dubious distinction of being Asia's largest slum and thus constitutes a prime candidate for, and challenge to, urban upgrading. Further, Mumbai is a city where more than half its 12 million population resides in informal and inadequate housing and thus constitutes the most stringent litmus test for regulatory frameworks concerned with urban upgradation.

In sharing the experience of the RISG Housing Societies, what we are concerned with in this paper is providing an understanding of the politics of regulation from the perspective of the urban poor. As cities across the world grapple with burgeoning populations, it is becoming increasingly apparent that the existing regulatory regimes have to be revised to take these new developments and demands into account. The billion dollar question (and literally it is a question of many billions of dollars when we think of all the goings-on of today's real estate market) is who decides what regulations to keep and what regulations to change. As an NGO working with the urban poor for close to 20 years, we at the Society For the Promotion of Area Resource Centres (SPARC) take the stand that the usefulness of a regulation is decided by asking one simple question: does a particular rule concerned with urban upgradation enable or prevent communities of the urban poor to improve the circumstances they find themselves in? The failure of a rule to work for the poor is, in our experience, more a reflection of the failure of regulatory regimes to account for the reality of urban poverty than the failure of the urban poor to abide by a given set of rules. If a particular rule works against the poor in their efforts to upgrade their living environments, then it should be reviewed through a process of engaging with, rather than ignoring, the reality of urban poverty. Regulatory regimes are after all the legal bulwark of private property rights. It is therefore no surprise that the majority of the urban poor lie on the nether side of these regimes. Nor is it a surprise that they find that the rules devised by regulatory authorities do not reflect the conditions of their existence. Asking whether or not a particular regulation works for the poor is a thumb-rule that works not just for the poor, but is good for the regulatory regime itself. Its rules can potentially become relevant to increasing numbers of people, and to democracy itself as the rules that govern a nation reflect the realities of increasing numbers of its citizens, particularly its most marginalized and disenfranchised citizens, rather than the singular reality of the privileged few.

Equally pertinent to the discussion of revising the regulations governing urban upgradation as who decides which rules to keep/change/jettison is *how* these rules are changed. When the majority of the population find themselves outside the parameters of the law, what are the opportunities and mechanisms that they avail of to challenge and change those parameters? As we will show through our case-study, changes in regulations entail a strategy we call 'precedent-setting'. Precedent setting is a process wherein the urban poor present the city government an opportunity to review existing rules and roles - that *don't* work for the poor - by demonstrating *what would work for the poor*, i.e. by setting a precedent. In practice, precedent setting entails introducing at the level of an individual settlement modest changes to existing rules and roles that have the effect of allowing the urban poor to participate in the process of urban upgradation. Through advocacy and partnership building, these precedent setting practices are subsequently enshrined in city-wide regulatory frameworks.

What follows is divided into 6 sections. The first section describes the context of urban upgradation in the country and specifically, in the city of Mumbai. The next section presents the case of the Society for the Promotion of Area Resource Centres and RISG Housing Societies to build 5 apartment buildings to re-house 212 families of slum dwellers. The third section particularly analyses how central government environmental policy, in this case the Coastal Regulations Zone, affects this project. The penultimate

section analyses regulatory frameworks from the perspective of Mumbai's urban poor. The last section is the conclusion.

SECTION ONE -- THE CONTEXT

1.1 Urban poor in India – status

The 2001 census of India revealed that out of a population of over 1 billion people, the urban population is 285.4 million and rising. A rapidly urbanising population and the inadequacy of city governments to meet its demands have meant a critical housing and infrastructure shortage. Although information on the number of the poor within this urban population is approximate, it is estimated that there are roughly 100 million slum dwellers in the country. However, since poverty has long been associated with rural areas, little investment has been made in improving the lives of the poor. Moreover, political leaders, bureaucrats and the middle classes subscribe to a 'fortress' mentality that sees migrants as a threat to the city's survival. The contributions of slum dwellers to the city's economy – as industrial workers, construction labour, domestic servants, rag-pickers and in a whole range of petty trades like vegetable and fruit-selling – are unacknowledged by the administration in general. Instead, the urban poor are seen as free-riders, as encroachers on valuable land and as entirely undeserving of the most basic of rights.

1.2 The extent of slums in Mumbai

Mumbai has the dubious distinction of being both the commercial centre of the country and having the largest population of slum dwellers in the world. More than half of the city's 12 million population lives in slums. These slums have very few amenities and most residents live in unhygienic conditions without adequate access to secure tenure, water, toilets, drainage systems and internal roads. One estimate puts it that the slum population lives on only 16% of the land area, a statistic revealing of existing inequities and prompting of the question as to whom the city belongs.

1.3 Legislative Frameworks for Urban Upgradation

Before we look into the contours of a pro-poor slum upgradation programme, it will be useful to place the issue in its context. India's Constitution is federal insofar as certain subjects fall within the legislative domain of the Centre or Government of India (GOI) (such as, for example, foreign affairs, defence and finance), others fall within the legislative competence of the States (such as, for example, housing and urban development) and still others are on a Concurrent list where both the GOI and the States have jurisdiction. It is important to understand this constitutional scheme because the GOI can influence the States on the subject of slums and urban development in limited ways: through the drawing up of national policies (which do not have to be followed by States) and Centrally sponsored schemes which provide for budgetary transfers to States for the implementation of such schemes.

However, two areas of legislative jurisdiction of the Government of India have been laws placing ceilings on urban landholdings (to which states had to extend concurrence) and laws to protect coastal areas. Many states have repealed land ceiling legislation both because of difficulties of implementation and because of an apparent failure of the law to achieve its objectives. But the Government of Maharashtra has not yet scrapped the ceiling law because, it is widely suspected, of a builders' lobby which wishes to impede the flow of land into the market, thus artificially inflating its cost. This is a paradoxical explanation because one would have expected builders to oppose the law as it is an obstacle to the construction industry. Moreover, keeping the law on the statute books is an opportunity for venal politicians and corrupt bureaucrats to make money in exchange for granting permissions and exemptions while, at the same time, exercising their patronage to distribute the few flats ostensibly built for the poor to relatives, friends and political supporters. However, the laws and regulations governing coastal areas are in place and a focus of this case study.

1.4 The Central Government and Slum Policy

The Government of India is the largest single owner of urban land in the country. Although a draft national slum development policy (which has many progressive features)¹ has been prepared by the Central Ministry of Urban Development and Poverty Alleviation, it is yet to be finalized. This is, in large part, because vast amounts of land are owned by several central government agencies such as the Railways, Port Trusts and defence establishments. All these agencies are reluctant to relinquish their land and do not permit municipalities or State agencies such as Housing Boards to provide even the most basic amenities to the thousands of slum dwellers that live on these lands. Central agencies are willing to participate in resettlement and rehabilitation only when they are desperate to reclaim some of their own lands from slum dwellers for operational or security reasons. The Government of Maharashtra (GOM) has no legislative or executive jurisdiction over Central lands. But since it is politically unacceptable to demolish the homes of thousands of slum dwellers, the GOM simply refuses to offer police protection when Central agencies want their lands cleared. There is in consequence a stand off: Central agencies do not give permissions for basic amenities, upgradation or resettlement and slum dwellers continue to live on their lands. Persistent dialogue and negotiations appear to be the only way out of this impasse. In recent years, two examples of successful negotiations relate to resettlement of slum dwellers on Railway and Airport Authority lands when it became critical for these agencies to free up some of the lands for their own purposes.

1.5 A History of Slum Policy in the city of Mumbai

Until the 1970s, the Government of Maharashtra and the Municipal Corporation of Greater Mumbai followed a policy to unilaterally demolish slums and clear land of encroachments. However, this strategy did not work because people simply re-built their huts after some time at the same location or, if there was too much harassment, at another unoccupied location nearby. Moreover, land-owning agencies were just not equipped to police their lands and their lower officials often connived with middlemen to allow encroachments.

Even when the state government did try to resettle the poor, they were unsuccessful.² Resettlement proceeded erratically according to the whims and fancies of local municipal officials and the poor were completely excluded from any decision-making. As a result, more often than not, because they had been forcibly relocated without concern for their social and economic networks, the poor returned to their original locations or to nearby ones.

In the 1970s, however, legislation and policy changed.³ Slums began to be viewed as housing solutions and the state began to provide water, sanitation, electricity and other amenities in these areas. Furthermore, the state started to recognise that when slums were demolished, some form of resettlement was needed. In 1976, a census of huts on public lands was conducted and photo passes⁴ issued to all those found eligible according as to whether they could establish that they were living in the slum at the time of census. This was the first time that slum dwellers were given any form of security. However, none of these programmes ever involved the poor in any stage of planning or implementation. Furthermore, slums on central

¹ For example -- the provision that tenure of land should be granted to slum dwellers wherever feasible, and when this is not possible, slum dwellers should be resettled.

² Although there was a well-developed rural resettlement and rehabilitation (R&R) law and policy, this was not the case for urban resettlement in the state of Maharashtra.

³ This happened for a variety of reasons relating both to equity and practical considerations.

⁴ 'Photo passes' are official certification of a slum dweller's eligibility to be rehabilitated in case the land the hut is on is needed by the government for a public purpose.

government and privately owned lands – which accounted for the largest chunk of land in the city – were entirely excluded.

In the middle-eighties, the World Bank funded Bombay Urban Development Project (BUDP) came into being with two programmes -- the Slum Upgradation Programme (SUP) and the Low Income Group Shelter Programme (LISP). The SUP consisted of giving a thirty-year renewable lease of land to cooperative societies of slum dwellers (where the lands were not needed for public purposes), providing civic amenities on a cost-recovery basis and giving loans to upgrade people's houses. Under the LISP, the state provided subsidized land to the Economically Weaker Sections (EWS) and Low Income Groups (LIG) to build their own homes in accordance with a type design. Although 85,000 families benefited from both these programmes, conditions on the ground did not change significantly. The most progressive feature of SUP was the introduction of the concept of land tenure but its most retrogressive feature was that it left existing inequalities in size of holding untouched. The most positive aspect of LISP was that there was a shift in the role of the state from provider to facilitator but its most negative aspect was that it probably did not reach the really poor. Both programmes also suffered from an absence of genuine community participation. And again, the SUP could not be implemented on central government or private land.

The nineties saw the state formulating two major programmes for slum dwellers. The first was known as the Slum Redevelopment Scheme. This program aimed to provide enough incentives – such as increasing the Floor Space Index (FSI) allowed in slum areas and the ability to transfer development rights to other areas of the city - for private developers and builders to redevelop slums. The theory was that by selling the extra space in the open market, tenements for slum dwellers would be cross-subsidised and made affordable to them.

But the programme did not take off in any significant manner and when a new government came to power in Maharashtra in 1995, one of its main election promises was to provide 800,000 free houses for 40,00,000 slum dwellers in the city of Mumbai. This eventually formed the basis for the current slum redevelopment policy of the city.

1.6 The Institutional and Legal Framework of Current Slum Upgrading in Mumbai

The institutional and legal framework for current slum upgrading policy in Mumbai has been laid down by a Committee under the Chairmanship of D.K.Afzalpurkar, a senior bureaucrat, in 1995. The group had amongst its members, government officials, representatives of the housing industry, architects as also the Director of SPARC. Assuming family size to be 5, this meant building 800,000 -1,000,000 houses (including transit tenements) over a period of 5-6 years. The study group was set up to devise a framework to implement the election promise.

A Slum Rehabilitation Authority (SRA) was set up by amending the Slum Area (Improvement, Clearance and Rehabilitation) Act of 1971. This was to be the single coordinating authority while there would be multiple executing agencies like developers, public bodies, NGOs, cooperative housing societies of slum dwellers and the like. For slum areas, the SRA was made the Planning Authority with powers to make changes in the Development Plan of the city, grant building permissions and so on. Since these powers belonged to the Municipal Corporation of Greater Mumbai, necessary changes were made in the Bombay Municipal Corporation Act and the Maharashtra Regional Town Planning Act. Such was the legislative and institutional framework laid out by the Committee. The SRA was to be headed by a Minister (today it is the Chief Minister) and was to have a senior bureaucrat as the Chief Executive.

All slum and pavement families who could establish that their names were on the electoral rolls of 1/1/95 were to be held eligible to get a free 225 sq.ft. tenement. In addition, the developer was to pay a sum of Rs.20,000 per family which was to go into a corpus, the interest upon which was to help defray monthly

outgoings for maintenance as well as municipal taxes. It was expected that the developer would make sufficient profits from sale of extra tenements to provide both a free tenement and the corpus of Rs.20,000 per family mentioned above. Municipal taxes were pegged at 20% of the existing rates to lessen the burden on the slum family, with a provision to increase them gradually over a period of time. Commercial areas like shops and restaurants would also be given floor space equal to the existing area or 225 sq.ft., whichever was less, free of cost. The redevelopment of slums in situ was to be the guiding principle and main strategy of the programme. During redevelopment of the slum, the families living there could either find alternative accommodation on their own or be regrouped on the site itself or be accommodated in transit camps to be provided by the developer. Where relocation was inescapable, care was to be taken to see that as far as possible, the new sites were on the same railway line (Mumbai has an extensive suburban railway system).

1.7 Mechanism for Financing SRA projects

The mechanism of financing therefore revolved around this principle. Funding from the state government was not envisaged: in any case, no government would have been able to afford the cost of construction of 1,000,000 houses. The Committee therefore devised a formula to raise money from the market through the grant of additional Floor Space Index (FSI) or Floor Area Ratio (FAR). FSI is the ratio of the area that can be built upon a particular plot of land to the area of the plot. Thus, for example, if the FSI of a plot is 1 and its area is 1000 sq. metres, it is permissible to construct an area up to 1000 sq. metres. This mechanism already existed in the Slum Redevelopment Scheme (SRD) but the incentive given was small (20%) and each case was decided on merits, with a cap on the profitability of the scheme.

The basis of the financing mechanism was that the developer would make profits by selling tenements in the open market and these profits would cover the costs not only of the saleable flats but also the rehabilitation tenements. The question before the Committee was as to how to fix a realistic incentive that would cover all costs and still be profitable. They argued that if individual transactions were to be scrutinized, then there would be delay and also arbitrariness in deciding incentive FSI. Therefore, they worked out a general formula for the island city of Mumbai, its suburbs and as a special case, Dharavi, the largest slum in Asia.

The existing FSI in the city is 1.33 and 1 in the suburbs and extended suburbs. Dharavi, being in the city limits, also has an FSI of 1.33. For slum areas, the SRD scheme had permitted a maximum FSI of 2.5 both in the city and the suburbs. Any sanctioned FSI beyond 2.5 could be taken as Transfer of Development Rights (TDR). TDR is made available in the form of a certificate issued by the Municipal Corporation of Greater Mumbai and can be used like a negotiable instrument. The owner can use the TDR either for actual construction or sell it in the open market but the only restriction is that TDR can be used only north of the plot where it was generated, so that southern areas of Mumbai do not get further congested. Prices of TDR fluctuate according to market conditions. The following examples will make this clearer.

Take the case of a 1000 sq.metre plot. Since slum area FSI is 2.5, it is possible to construct 2500 sq.metres on the plot. For the sake of example, suppose the developer has to accommodate 50 slum dwellers and give each of them a 30 sq.metre flat. (In point of fact, the slum dweller is entitled to a 21 sq.metre tenement). He then has to construct 1500 sq.metres (50x30) of rehabilitation area. The Committee recommended that .75 of the rehabilitation area be given in the island city, an equivalent amount (1:1) in the suburbs and extended suburbs and 1.33:1 in Dharavi as a difficult area, by way of incentive FSI.

a) City example

Rehabilitation Area	1500 sq.metres
Incentive FSI (.75:1) for 1500 sq.metres of rehabilitation area	
	1125 sq.metres
Total FSI generated	

	2625 sq.metres
The developer can construct only 2500 sq.metres on site so deduct	
	2500 sq.metres
FSI in the form of TDR (iii - iv)	125 sq.metres

In the island city of Mumbai, property prices are high and so smaller incentive FSI is given.

b) Suburbs and extended suburbs example

Rehabilitation Area	1500 sq.metres
Incentive FSI (1:1) for 1500 sq.metres of rehabilitation area	
	1500 sq.metres
Total FSI generated	3000 sq.metres
The developer can construct only 2500 sq.metres on site so deduct	
	2500 sq.metres
FSI in the form of TDR (iii - iv)	500 sq.metres

In the suburbs and extended suburbs, land prices are lower than in the city and so higher incentive FSI is given.

c) Dharavi: difficult area example

Rehabilitation Area	1500 sq.metres
Incentive FSI (1.33:1) for 1500 sq.metres of rehabilitation area	
	1999 sq.metres
Total FSI generated	3499 sq.metres
The developer can construct only 2500 sq.metres on site so deduct	
	2500 sq.metres
FSI in the form of TDR (iii - iv)	999 sq.metres

Land prices in Dharavi are comparatively low so an even higher incentive FSI is given.

d) Public project example

When a land-owner or agency offers his or its land for public projects - for example, to resettle pavement dwellers - there are two types of compensation. If the FSI of the area in which the land is located is 1, then the land-owner gets an equivalent amount of FSI. In addition, if the developer also constructs the rehabilitation tenements, there is an entitlement to incentive FSI in the ratio of 1.33:1. So if he constructs 1000 sq.metres of rehabilitation tenements, he will get 1330 sq.metres of FSI. It is expected that land FSI and incentive FSI together make the project viable. All constructed area over and above the rehabilitation area can be sold in the open market and any FSI which is not used or cannot be used on site can be sold as TDR.

By cross-subsidizing slum rehabilitation from the profits generated by sale of tenements at market prices as also TDR, the SRA scheme seeks to make markets work for the poor.

Again, SRA policy did not apply to the vast tracts of land owned by Central agencies which were populated by dense slums. The Railways, the Airport Authority and the Port Trust were such instances. The committee urged dialogue with these agencies so that the latter could take a pragmatic view of matters and part with those of their lands not needed for operational purposes and allow slum redevelopment in situ. If dialogue failed to yield results, then it was recommended that a slum reservation be placed on the relevant land. If that was done according to statutory procedures, then the land-owning agency could be compensated either by paying a mutually agreed price or by giving alternative buildable area through Transfer of Development Rights (TDR).

SECTION TWO -- ABOUT SPARC/NSDF/MM

2.1 The Society for the Promotion of Area Resource Centres (SPARC)

SPARC is an NGO established in 1984 by a group of professionals who had previously worked with more traditional and welfare-oriented NGOs in the neighbourhood of Byculla in central Mumbai. Previous to forming SPARC, much of the work of the founder group was with the pavement dwellers of the Byculla area, and once established, the women pavement dwellers became SPARC's main constituency. These women had repeatedly borne the brunt of demolitions of their homes and loss of their meagre belongings, and observing the failure of welfare-oriented NGOs to deal with the demolitions, SPARC instead began to work with the women pavement dwellers to better understand the effects of the demolitions and how they could be countered. Training programmes were then established so that the women could learn how to survey their own settlements and start to use the data generated to campaign for land. When SPARC and the National Slum Dwellers Federation (NSDF) met, one product of their alliance was Mahila Milan. NSDF and Mahila Milan are described in greater detail below. Within this alliance, the role of SPARC is to design and develop strategies to enable its partners to meet with and make demands of government agencies. In addition, it also performs administrative tasks and raises funds needed for its work. Currently operating in more than 50 cities in 9 States and 1 Union Territory in India, the SPARC, NSDF and Mahila Milan Alliance now works with similar NGOs and CBOs in Asia and Africa, helping to build up effective networks in 15 Asian and African countries including Cambodia, Thailand, the Philippines, South Africa, Namibia, Kenya, Nepal, and Indonesia. This network is known as the Slum/Shack Dwellers International.

2.2 The National Slum Dwellers Federation (NSDF)

NSDF is a CBO whose membership was largely made up of male slum dwellers. Established in 1974, NSDF has a history of organising the poor against demolitions, as well as attempting to secure the basic amenities of water, sanitation and such like for the urban poor. While the Federation was initially a male slum dwellers organisation, in 1987 it began working in partnership with Mahila Milan and SPARC, and since then the number of women members has grown, with around half of NSDF's community leaders now being women. Within its alliance with SPARC and Mahila Milan, NSDF is mainly responsible for the organisation, mobilisation and motivation of slum dwellers, as well as working abroad to strengthen similar federations of slum dwellers and homeless families in Africa and Asia. Membership of NSDF remains restricted to slum dwellers, and currently the Federation spans more than 50 cities in 9 States and 1 Union Territory in India.

2.3 Mahila Milan (Women Together)

MM is the third partner of the SPARC/NSDF alliance and is a CBO made up of collectives of women pavement and slum dwellers whose central activity is the operation of savings and credit activities. Set up in 1986, as a result of SPARC's work with the Muslim pavement dwelling women of the Byculla area of

Mumbai, the rationale behind the formation of Mahila Milan lay in the recognition of the central role of women in the family as well as the enormous potential that women's groups had in transforming relations within society and in improving the lives of poor families. Mahila Milan now conducts informal training and support activities, as well as saving and credit groups, and aims to empower women to play a greater role in community management and to work with NSDF on broader policy issues at state and city levels. Mahila Milan thus represents both an opportunity to satisfy the credit needs of poor women and a strategy to mobilise them towards taking a more pro-active role in relation to their own poverty. The stress of the organisation lies not so much on concrete achievements and outputs, but instead on the learning process and the building of confidence among poor women. In the Byculla area, approximately 600 women are members of Mahila Milan, but together with NSDF, Mahila Milan now has a total of over 300 thousand households as members across the country.

2.4 An Assessment of SRA

The objective of the SRA scheme was to construct 800,000 tenements in 5 or 6 years. After 7 years, a little more than 19,000 tenements have been completed and the SRA has reported that another 80,000 or so are in the pipeline at various stages of approval/construction. From the point of view of targets, the scheme has not been successful. There are also complaints that builders have manipulated the scheme and thrown out the original slum dwellers perhaps by offering a monetary incentive. Many of these complaints are probably true.

There is general consensus that SRA schemes have become builder driven: many of the schemes have remained incomplete for years when the builders saw falling market returns. What should have been a people's movement has become dominated by the construction industry. Another reason for the limited achievement of SRA is the fall of land prices in Mumbai, which have become less than half of their levels in the mid-1990s. The viability of an SRA proposal depends upon the differential between the sale price of additional tenements built and the cost of rehabilitation tenements. Again, it has been observed that it is only at certain lucrative locations that the schemes are coming up.

On the other hand, from the point of view of the alliance of SPARC/NSDF/MM, apart from infrastructure projects, today the SRA scheme is the only way for the urban poor to get access to land and a subsidy from the market. The alliance itself has been working as a developer and without the concessions of SRA, this would have been impossible. For one thing, the price of land is not affordable to the poor. Land is free under SRA and there is no other government subsidy or loan to acquire land. Also government subsidies and loans to construct houses are miniscule in relation to the size of the problem and are extremely difficult of access to the poor. Again, the SRA scheme has thrown open the doors for cooperative societies of slum dwellers to participate in their own redevelopment and provided a financial mechanism to do so.

If one were to assess the Government of Maharashtra's overall approach to slum upgrading, one would have to say that it is a mix of populism and innovative thinking. The populism is evident in the fact that the 'cut-off' or eligibility date keeps getting extended with every election to the Legislative Assembly. Again, the promise of 'free' houses smacks of the same electoral calculations. Yet, in enacting legislation to protect the slum dwellers and in designing SRA, the Government of Maharashtra has blazed new trails. The question is how to rescue the kernel of genuine impulse and programme from the coating of political machinations.

SECTION THREE -- THE CASE OF RAJIV INDIRA/SURYODAYA/GANGA (RISG) COOPERATIVE HOUSING SOCIETIES

3.1 Background

We now turn to the ongoing experience of the RISG Housing Societies of Dharavi and describe the first attempt by any non-governmental organisation (NGO) to construct apartment buildings for 212 poor households under current SRA policy. The project, which began in 1999 with the Rajiv Indira housing society, has grown today to include the two other communities as well.

This project has meant many risks – financial and operational. SPARC has had an uphill task of setting a precedent. Enormous financial and managerial resources have been put into this project while simultaneously focusing on how to build community capacity and prove the sustainability, usefulness and success of such an undertaking. Moreover, a standoff between the central and state government regarding Coastal Regulations Zone rules, has deeply affected the finances of this scheme. This latter issue will be further explored at a later stage.

3.2 Setting a Precedent in every respect – a pilot project

This has been a precedent setting project in a number of ways:

- a. It is the first time that an NGO has played the role of a developer under the SRA.
- b. It is the first time that a community has been so intimately involved in developing its land, supervising the construction, obtaining various licenses and permits, and negotiating with state authorities for land tenure.
- c. This project has set a number of construction quality and design standards. Compared to privately developed SRA schemes, the plinth of this building rises one full floor above neighbouring constructions, the corridors and passage ways are double the standard width, and a number of apartments have 14 foot ceilings with extra loft space.

Another precedent the Alliance hopes to set is by contesting current Coastal Regulation Zone rules which limit construction and this is discussed in greater detail below.

3.3 The Process

Since the land upon which slum redevelopment was proposed belonged to the State Government, the first task was to ask the Collector (a State Government official) to certify that the families on site were eligible according to the criterion of whether their names were on the electoral rolls of 1995. Once the Collector verifies the information submitted by the developer and submits his remarks to the SRA, an application for development and building permission is made to the SRA under section 44 and 45 of the Maharashtra Regional Town Planning Act 1966. The SRA must recheck all this information, issue a Letter of Intent (LOI), scrutinise and approve the subsequent building plans submitted by the architect, check that the site has been cleared and transit accommodation has been sought, and then issue an Intimation of Approval and a Commencement Certificate. It is only then that the rehabilitation scheme can officially start. Furthermore, at each stage of construction – plinth, superstructure, other internal works, occupation of residents – permission and approval is required. And without these approvals, no TDR is released. Although the Alliance began working with Rajiv-Indira in 1997, it took about two years to get all the requisite approvals.

The construction actually began in 1999, but the process to get the approval was very slow both because this was the first time the alliance was involved in such a project and also because of the ideology behind the work. Traditional roles and types of engagement where the builder, engineer, architect and contractor are the sole decision makers about project design, implementation, approval and monitoring were reversed and instead, a committee of local residents was involved in all these stages. Also, the alliance worked to build the capacity of the local society so that the latter could learn about and handle all sorts of bureaucratic requirements. All sorts of documents had to be produced, verified, submitted to and then accepted by the

concerned government body and the one rule that was unilaterally followed was that nobody would be bribed.

Dharavi, (the largest slum in Asia and also where this housing society is located) is situated along the Mithi river, and is particularly affected by CRZ rules because FSI, in a substantial portion of this slum, is restricted to 1.33. For RISG housing project in particular, a little over 50% of its land falls into CRZ II (explained below). Naturally, this significantly affected the amount of money that this project could generate and SPARC has been involved in making representations to the state's Coastal Zone Management Plan Authority (CZMPA) to relax these rules.

Raising finances for the project was a major problem. Unlike builders, who have easy access to funds in the market, the alliance approached Citibank. After protracted negotiations, Citibank agreed to a Rs. 60 million loan but released only a portion of it. Citibank argued that Coastal Regulation Zone rules needed relaxation if the project was to be financially viable.

SECTION FOUR – COASTAL REGULATIONS ZONE

4.1 History of CRZ Regulations

The genesis of CRZ can be traced back to a letter written by Prime Minister Indira Gandhi in 1981 to Chief Ministers expressing her concern over the lack of environmental protection provided to coastal areas. On 19th February 1991 the Government of India's Ministry of Environment and Forests (MOEF) issued a notification to all coastal states introducing the concept of Coastal Regulation Zones (CRZ) under Section 3(i) and 3(2)(v) of the Environmental Protection Act 1986 and Rule 5(3)(d) of Environmental Protection Rules 1986. This restricted all development within 500 metres from the high tide line. The high tide lines were to be marked by the Chief Naval Hydrographer of the Government of India at a scale of 1:25,000. There were three zones.

CRZ I – which was the area between the high tide line and the low tide line, and where no development was allowed.

CRZ II – where substantial development had already occurred within 500 metres from the high tide line, but further development was controlled. This is the zone that particularly affects a large number of Mumbai's slum dwellers.

CRZ III – which covered areas where little development has taken place and is in a No Development Zone. Here, only repairs to existing structures are allowed.

The central government asked all states to submit Coastal Zone Management Plans (CZMP) for their coastal stretches of seas, bays, estuaries, creeks, rivers and backwaters within 500 metres from the high tide line to the Ministry for Environment and Forestry (MOEF) for approval. In August 1995, the Maharashtra government submitted its CZMP for approval. However, since in the submitted CZMP, Mumbai's rivers and creeks had not been shown. In September 1996, the MOEF approved the CZMP but only on the condition that the Maharashtra government resubmit the CZMP indicating Mumbai's creeks, rivers and backwaters. In November 1998, the Maharashtra government did so. Finally, in January 2000, Maharashtra's CZMP was approved.

4.2 The clash of policies

While CRZ was entering the legislative framework governing planning at the national level, and states were submitting and resubmitting their CZMPs, two very important legislations were coming into being in Mumbai. Both deeply affected urban upgradation for the poor.

The Development Control Regulations (DCR), the draft of which was published in 1989, were notified in March 1991. The aim of this DCR regulation was to expand FSI for slum redevelopment from 1.33 up to 2.5.

The second legislation was the creation of the Slum Redevelopment Authority in 1996 to implement the improved Slum Rehabilitation Scheme where additional FSI and TDR incentives had been created for builders to redevelop slums and house poor urban communities free of cost.

However, the newly enacted CRZ stated that, in CRZ II land:

- a) No construction was allowed on the seaward side of existing roads or authorized structures. Any new construction on the landward side of existing roads or authorized structures was subject to existing local Town and Country Planning Regulations including the existing norms of FSI.
- b) Reconstruction of the authorized buildings was subject to existing FSI norms and without any change in use.
- c) The design and construction had to be consistent with the surrounding landscape.

In September 1997, the Chief Secretary of Maharashtra wrote to the Central Government's Ministry of Environment and Forests (MOEF) explaining the practical difficulties in implementing CRZ II in a growing metropolis such as Mumbai, especially since it had such a large slum population. He asked the MOEF, in view of Mumbai's new Slum Rehabilitation Scheme, to consider slums as authorized structures and therefore to consider slum redevelopment as the reconstruction of authorized structures.

However, the MOEF, in a letter issued in September 1998, did not approve either of these suggestions. It clearly stated that slums were not authorized structures and that existing FSI norms meant those norms that existed before February 1991. It said:

"It is clarified that the phrase "Existing Authorised Buildings" means those buildings of a permanent nature that were existing before 19.2.1991, and were constructed in accordance with the building regulations and bye-laws in vogue previous to 19.2.91, and received necessary sanctions, including commencement and occupation certificates from the concerned local authority prior to 19.2.91."

Subsequently, the Government of Maharashtra informed all concerned local authorities to adhere to this clarification. This effectively managed to cancel both the state government's efforts to frame pro-poor policy. This is because

- i. It froze FSI for slums on the landward side of an existing road at 1.33 in the island city of Mumbai and 1 in the extended suburbs of Mumbai (as opposed to 2.5 which the Maharashtra government wanted). This effectively greatly reduced the incentives that had been created to develop slums.
- ii. Slums located on the seaward side of an existing road were neither allowed to be redeveloped under SRA nor permitted access to infrastructure since they were considered unauthorized.

At the time of this clarification, the SRA had approved 58 slum rehabilitation schemes and granted them 2.5 FSI – including SPARC's Rajiv-Indira project. Moreover, in 19 projects, considerable work had been completed. Consequently, in December 1998, the SRA asked the Government of Maharashtra to take up the matter with the MOEF and allow for these already approved schemes to continue to have 2.5 FSI. But this request was rejected.

Finally, in March 2002, the MOEF issued a modified notification regarding development along creeks, rivers and backwaters. It clarified that the distance of CRZ II would be either the width of the creek or 100 metres, whichever was less. This was to become of particular importance to SPARC and the RISG Housing Societies.

4.3 Engaging the state

Over 50% of the Rajiv-Indira-Suryodaya slum rehabilitation scheme was affected by CRZ II. This reduced FSI (1.33. rather than 2.5) greatly affected the finances of this project. Therefore in September 2002, SPARC submitted a proposal to the Environmental Department of the Government of Maharashtra. The application was processed, the Urban Development Department added its comments, and it was placed before the state's Coastal Zone Management Plan Authority (CZMPA). In January 2003, SPARC appeared before the CZMPA and raised the following points:

1. The RISG scheme is along the Mahim creek of the Mithi river. The width of the creek has been wrongly marked as 100 metres on its southern side and is actually only 50 metres. As per the March.2002 MOEF clarification, the area that falls into CRZ II is either 100 metres or the width of the creek, whichever is less. Thus, in the context of RISG, only 50 metres of its plot, rather than 100 metres, should fall into CRZ II and have a restricted FSI of 1.33. Ironically, on the northern side of the same creek, 60 metres of land is demarcated as CRZ II area. Surely, the width of the creek cannot change and this is an obvious mistake! If the width is corrected, the project would be more financially viable.
2. If this width is corrected, another 3080 poor families in this stretch of Dharavi will benefit from access to increased FSI and improved incentives to redevelop their area.
3. In an amended approval by the MOEF to Maharashtra's CZMP in January 2000, item no (vi) stipulated that if any area which is covered by 1000 sq. ft or more of mangroves already has an abutting road which was constructed prior to the introduction of CRZ, then the area is exempt from a 50 metre buffer zone. The idea is that development is restricted on land within 50 metres of mangroves to allow them to continue to grow. However, if a road already exists on the landward side of the mangroves, since there is no possibility of the trees spreading in this area, the 50 metre rule does not apply. In the case of RISG project, and indeed the 3080 slum households that live in this area, a 100 foot road runs along the mangroves, the latter which occupy an area more than 1000 sq. mts. If this appeal is accepted, then 3080 families that live in Dharavi will be entirely excluded from the CRZ rules because of its pre-existing road, the project would do even better.

The matters raised were discussed at great length and two decisions were taken – first, that the area that the mangroves occupied (to determine whether it was 1000 sq. mts or not) and the existence of a 100 foot road before February 1991 would be verified. And second, that a recommendation would be sent to the MOEF to delete the 100 metre CRZ II belt.

However, when the minutes of the meeting were circulated, these decisions were not reflected. Instead, it was stated that SPARC would – at its own cost - get the Chief Naval Hydrographer to recheck the measurement of the width of the creek. Immediately, SPARC asked for these minutes to be rectified.

In another meeting of CZMPA in August 2003, SPARC presented its case again. This time, the Member Secretary promised that the CRZ restriction could be reduced from 100 metres to 50 metres, and that the committee would recommend this to the MOEF. However, at the time of writing this case study, the minutes of this meeting are yet to be circulated. But it is learnt informally from the Chairman of the CZMPA, who is

also the Secretary (Environment), Government of Maharashtra, that the CZMPA has decided to recommend to the MOEF of GOI that the 100 metre band of CRZ II be reduced to 50 metres in the case of RISG Housing Societies. When the authors of this case study asked the Chairman why the CZMPA did not recommend the reduction of this land for all 3000 odd families, he replied that it would be more strategic to get the individual case cleared in the first instance. If this happened, then the authorities at the state level might be in a position to clear all other cases in the stretch with the acceptance of the principle by the GOI. The Chairman felt that the GOI would be more likely to reject the proposal if it related to 3000 odd cases and he is probably right in his assessment. The task before the alliance is now to lobby the Central Government's MOEF to clear the case of the RISG project. Once the precedent has been set, it could lead to the clearance of all other cases in Dharavi.

SECTION FIVE -- ANALYSING CRZ IN THE CONTEXT OF THE URBAN POOR

5.1 Who decides what works for the poor

The alliance of SPARC/NSDF/MM believes that if regulations have been formulated from narrow class perspectives and only work for a privileged few rather than the population at large, they are essentially undemocratic. The important questions are – how does one assess CRZ rules in the context of the needs and conditions of the urban poor? Moreover, if these regulations negatively affect the poor, what can be done to change this situation, keeping in mind the importance of protecting the environment? And, lastly, who should judge whether norms, standards and regulations work for the poor in practice?

All these questions strike at the heart of a critical issue - the state's accountability towards its urban poor population.

5.2 The environment and the poor: anomalies

It is true that if the government allowed unrestricted construction along coastal areas, private developers would reap huge benefits and, quite possibly, deplete natural resources, destroy living habitat and cause great ecological damage. Unfortunately, in the effort towards preventing this destruction, the poor that live in slums and are in desperate need of improvements in their housing and sanitation conditions are pitted in direct opposition to environmental concerns. The fact that the central government simply refuses to recognise slum dwellers has negative effects – both on the poor and on the environment! For instance, the central government refuses to recognise that slums – which might have existed in a particular location for 30 years and long become legalised – are authorised structures. Therefore, unless they are on the landward side of roads or authorised development that existed prior to February 1991, no improvements can be made in people's living conditions. The history of why these communities have chosen to live in these particular areas, the contributions they might be making in terms of labour and socioeconomic activities, their critical need for housing and infrastructure is entirely ignored. Moreover, since infrastructure development – such as toilets and proper drainage – is disallowed by CRZ (unless plans for such already existed on February 1991) people are forced to defecate in the open. What this means is that even if building a toilet in this area would actually prevent this practice and improve the environment, the environmental/CRZ policy prohibits the toilet!

CRZ rules effectively act as 'straitjacketed' legislation that do not allow for local conditions to mediate the implementation of the law. What we have, as a result, is a situation where the implementation of the law often compromises the spirit of the law from being achieved. A strict adherence to the 500m ring of protection afforded to coastal areas does not prevent an industry or residential site located on the 501st metre beyond the coast from leaching wastes into the CRZ area and the water bodies beyond.

5.3 The case of Mumbai

Mumbai is particularly affected by CRZ due to both its unusual geographical as well as socio-economic topography. The city is spread over seven – now joined – narrow islands which stretch northwards and southwards. This means that a very large section of the island city falls into CRZ (500 metres from either side of the island). And, as previously mentioned, more than 50% of the population are slum dwellers without adequate access to the most basic of services. State government development efforts – such as increasing FSI and creating incentives for slum redevelopment – were aimed at improving the lives of the city's poor. CRZ rules have resulted in the back and forth exchange between the state and central government on slum redevelopment, with the central government sticking to its position of neither recognising slums nor allowing the state to make reforms. After all, runs the central government's argument, if it recognises slums in this case and allows for them to be redeveloped, slums on other central government lands (Railway, Ports, Airport – which represent hundreds of thousands of households) will also demand the same right.

Thus as is apparent from the this case study, it is not enough to look at the regulatory framework devised by SRA if we are to understand the challenges faced by the urban poor in the course of efforts to upgrade their living environment. For these efforts have to contend with a multiplicity of institutions, authorities and regulatory frameworks with overlapping jurisdictions and which are rarely in consonance with each other. Each local upgradation intervention is caught up in the tensions and power struggles between different institutions, between the state and central government agencies. And it is within these struggles that SPARC – an NGO and first-time developer – and the Rajiv-Indira housing society – a community of slum dwellers – is unexpectedly located within.

Thus this project is important for two reasons. First, in the context of current Slum Redevelopment policy in Mumbai, and the inability of the SRA scheme to take off in any significant manner, it is crucial to examine its pitfalls and how and when it can be successful. However, in this process, the alliance has also had to confront another policy that it believes is crucial to examine in the context of the urban poor. And second, in the context of Coastal Regulations Zone rules and how these affect the entitlements that the Slum Redevelopment Policy awards the city's poor.

Consequently, the manner this NGO-community alliance approaches and deals with this situation can possibly affect slum redevelopment for not only the 3080 families in the neighbouring slums, but also for the 149 slum pockets which house over 63,000 families that are affected by similar CRZ norms.

5.4 CRZ: the builders, the poor and the state

One way of looking at such situations is to perceive each intervention as representing an opportunity to forge a way forward through this mess of jurisdictions and rules: that is to set a precedent. For instance, much pressure has been put on the alliance to take up a Public Interest Litigation to the Supreme Court and ask for the complete removal of CRZ restrictions for slum redevelopment. Naturally, this is supported by an extremely powerful builder's lobby in the city, which will reap tremendous profits if it is allowed to redevelop slums along the coast. However, since the constituency that the alliance is concerned with are slum dwellers, the fear is that such a move will result in a number of poor communities that are unorganised and unable to withstand pressure that these lobby groups can exert, on simply selling their shacks and moving into another slum. Therefore, the purpose of actually improving the lives of the poor will not be served.

If the alliance were to push for relaxation of CRZ rules for slum redevelopment initiatives on a case-by-case basis, then the project life would be greatly extended without any certainty of outcome. This would neither work for poor communities – who experience great hardship in the transition period between leaving their old shacks and moving into new tenements – and for the financial institutions that fund such initiatives, who would still be risk averse and not extend loans unless and until the CRZ outcome has been decided.

The alliance of SPARC/NSDF/MM believes that this is possible through critical engagement with the state. Ultimately, the task is to reform the State and its agencies so that laws, policies and programmes serve the interests of the urban poor. One practical reason for this approach is the fact that in ex-colonial contexts, all the goods that poor people need – land, water, sanitation, electricity, and housing finance, to name a few – are either produced, controlled or regulated by State agencies. Reorienting the State and its agencies to serve the needs of the poor is thus of key importance. It is for these reasons that the alliance has chosen its present route of going through the various official channels.

This has a number of advantages. The sheer knowledge gained on how to negotiate with and between institutions and authorities creates opportunities for other communities, interested in similar upgradation, to learn from this experience.

5.5 Is 'State-bashing' enough?

So how exactly can civil groups make regulatory frameworks more democratic so that the norms and standards that are created work for the entire population rather than for a privileged few? The alliance believes that, however unmindful of the needs of the poor the State might be, 'State-bashing' alone is simply not an effective way to change its policies and practices. To be locked in perpetual conflict with the State might attract media attention but does not result in practical solutions to problems of urban poverty. Thus, we have taken a conscious decision to interact with all manner of institutions – including the World Bank and public and private financial institutions – in order to influence them through a conversation that includes the voices of the poor. The case study presented and the experience gained by SPARC and the RISG Housing Societies will aid in the constant testing and retesting of both SRA and CRZ policy and expand the number of concrete examples of differences and partnerships between the poor and the state. Eventually, it is pilot or demonstration projects that reflect community choices that serve as powerful exemplars for reform.

5.6 Precedent-Setting

The Alliance focuses on precedent setting activities for urban upgradation in two ways. The first is by demonstrating the value of particular initiatives that work for the poor, the entire city and the state, and that can become the basis of new policy. An example is the resettlement of 900 families that lived along the Railway tracks at an area called Kanjur Marg. The Alliance organised this community, built transit housing and moved them safely. Unlike all other previous, state-led resettlement initiatives to resettle slum dwellers in Mumbai, no force was used. In fact, this was so impressive that it convinced many in government and the World Bank of the appropriateness of the strategy. The main point about Kanjur Marg was that it represented a solution that worked for the poor and, in doing so, worked for the state as well. Officials came, saw and were convinced.

The Alliance also tests existing policy and demonstrates how it does or does not work for the poor. In the latter case, it breaks existing rules and demonstrates more workable and realistic alternatives. An example of this is when the city of Mumbai changed its policy based on efforts by the alliance of SPARC/NSDF/MM which was supporting the Markandeya Housing Cooperative Society. When this community's upgradation plans were put up for approval, they were rejected on the grounds that the Development Control Rules (DCR) permitted heights of rooms to be up to 9½ feet. It took 3 years of lobbying and advocacy to persuade the authorities to change their views and agree to a 14 ft. height. This height permitted the construction of a loft and increased available living area, making life more comfortable for large families and affording privacy to married couples. Increase in height has also been permitted for the Rajiv Indira society. This has now become a precedent that could potentially benefit many more thousand families.

When the alliance studied the DCR, it found that they prescribed a minimum height of 9 ½ feet but permitted height up to 14 feet. Yet the officials at the SRA were apprehensive that if they granted permission in one case – which was entirely permissible under the rules – then other societies of slum dwellers might also make the same demand. If other slum groups demanded of developers this height of room, SRA officials felt that the profitability of SRA schemes would be affected as developers would have to construct fewer tenements since rooms with greater height consume more FSI. This is indeed a paradoxical situation where the poor are entitled to 14 feet height under the rules but officials are wary of giving such permissions (though they legally cannot refuse) for fear that builders' interests would be affected!

5.7 Future directions

Before we end this section, it is important to highlight some interesting developments that have been currently in the news. The Maharashtra government has launched an initiative called 'Mission Mumbai'. This is a representation to the central government "with a focus on improving infrastructure and transport links in suburban Mumbai...the delegation will press for a generous aid package and relaxations in the CRZ rules so as to rebuild the city."⁵ In fact, this idea has been taken up by a number of central government authorities – including the Prime Minister of India who was recently in the city of Mumbai to publicise this initiative – especially in light of competition from other cities in the world. The idea is to entirely change the face of Mumbai to look more like Shanghai. If successful, such an effort would mean massive urban upgradation.

While recognizing that the state government's request for relaxation of CRZ rules is powered more by the influential builder's lobby and that the central government's interest stems from economic competition between cities across the globe, Mission Mumbai opens up the space to voice the concerns of the urban poor living in informal settlements located on CRZ lands. Whether the width of the creek is revised or the concerned plot is entirely removed from CRZ II regulations, 3080 families in the area stand to benefit. Moreover, in the face of large scale slum redevelopment, the case of RISG Housing Societies, which demonstrates how to make SRA policy pro-poor and financially sustainable, becomes even more important, as it sets standards for slum redevelopment throughout the city.

SECTION SIX -- CONCLUSION

Regulatory frameworks have to be considered in the context of who creates them, whom they protect and benefit, and who suffers when they are arbitrarily implemented. Ultimately, this must be seen in the context that in a democratic society such as India, the state is accountable to its population – the majority of whom are poor. When grassroots democracy is in place, the accountability of institutions is ensured.

While considering what a pro-poor regulatory framework would look like, as derived from our analysis of the experience of SPARC and the RISG Housing Societies, it is clear that there is no off-the-shelf model. The Alliance focuses its efforts towards applying existing policy and presenting workable alternatives if they are revealed. Practice changes policy (and the mindsets of policy makers) and not the other way around. Also, no one model fits all.

This case study is a classic example of the environmentalists vs. advocates of the urban poor debate that swings on the issue of sustainability, a term whose nebulous meaning has been the touchstone of policy in the past decade. For many environmentalists, sustainability refers to the impact of a development intervention on the environment's capacity to regenerate itself; for financiers, sustainability references the cost-recovery capacity of any development transaction, and for communities of the poor, the ability to choose, access and control development that affects them. In this case study, we see the opportunity to understand (and practice) sustainability in a truly innovative way – where the environment and the poor are

⁵ Times of India newspaper, Aug.20, 2003, p.1

not seen as two opposing camps but as two social conditions that have to be attended to with equal respect if we are to resolve the challenges of urban upgradation.

One of the insights emerging from our experience with CRZ is that the challenge for regulatory authorities is to create rules that account for, rather than erase, specificity and contextualise social and geographical reality. This case study brings to light the fact that seemingly benign legislation does not necessarily work for the poor. The reality is that much of what becomes mainstream and official is the product of advocacy, research and effort of the elite, without consideration to the needs of the poor who, in India, constitute the majority. However, the problem is that the poor have very few tools and opportunities to design, execute and test policies that work for them. This is why precedent setting activities are critical – they serve to explore and test existing policies and start negotiating for specifics. Ultimately, it is many such precedents, when strung together, that produce the tenets for a truly democratic policy and polity.