

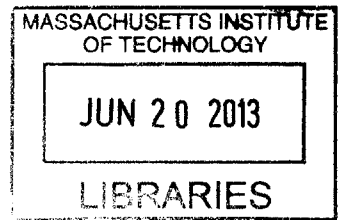
**Governing Urban Land:
The Political Economy of the ULCRA in Mumbai**

By

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Bachelor of Architecture
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Mumbai, India (2008)

ARCHIVES



Submitted to the Department of Urban Studies and Planning
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ABSTRACT:

In this thesis, I look at the political economy of the Urban Land (Ceiling and Regulation) Act (ULCRA) in Mumbai, India. Enacted in 1976, the stated aim of this legislation was to prevent speculation in the urban land market, and to make land available for affordable housing. The legislation imposed a “ceiling” on the amount of vacant land individuals could hold in urban areas. During the years it was in effect (1976-2007), almost all excess vacant land in the Mumbai agglomeration was exempted under the Act. Current literature posits that ULCRA failed to achieve its objective because politicians and bureaucrats were self-motivated rent-seekers, who were not interested in socially just redistribution of urban land. In 2007, using a conditional intergovernmental transfer scheme, the Central Government forced the State Government of Maharashtra to repeal ULCRA. I argue that current literature offers at best broad generalizations of the reasons ULCRA failed to achieve its objective in Mumbai. Through an in-depth analysis of the working of ULCRA in Mumbai, I show that it was never implemented as originally intended. Also, I show that ULCRA was frustrated by a number of deficiencies in institutions such as the lack of political will to take proactive action, capacity and cohesiveness in the bureaucracy, and amendments in other enabling statutes, to name a few. Seen from this perspective, it is incorrect to assume, as the current national urban development policy does, that a turn to market-led development in urban land markets will yield better results in delivering affording housing for the urban poor. Further, by analyzing the political economy of ULCRA’s repeal, I show that under certain conditions, Central Government intervention may be a necessary step to protect interests of the poor. However, Central Government intervention needs to be designed keeping in mind the “why” and the “how”, to ensure that the intervention’s does not become dead letter, or redundant. I conclude with the dilemmas development planners are likely to face when designing laws and regulations in developing countries that feature a thinly institutionalized state, and a weak democracy.

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All errors and inconsistencies in this thesis are solely mine.

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LIST OF ABBREVIATIONS

BJP	Bharatiya Janata Party
CA	Competent Authority
CM	Chief Minister
DDA	Delhi Development Agency
FYP	Five Year Plan
GoM	Government of Maharashtra
GoI	Government of India
IAS	Indian Administrative Services
INC	Indian National Congress
JNNURM	Jawaharlal Nehru National Urban Renewal Mission
MoHUPA	Ministry of Housing & Urban Poverty Alleviation
MoUD	Ministry of Urban Development
NIUA	National Institute of Urban Affairs
PC	Planning Commission
RAY	Rajiv Awas Yojana
TWEP	Twenty-Point Economic Program
UA	Urban Agglomeration
ULB	Urban Local Body

Chapter 1: Introduction

“The greatest fear of the *Bombayite* is to end up on the footpath ... Homelessness is a condition; the material fact of not having a home of one’s own invades one’s consciousness till it becomes a person’s entire self-definition. Before you are an out-of-work clerk or your father’s son or your wife’s husband or a *Bombayite* or a human being, you are homeless.”
(Mehta 2004, 117)

1.1 The Context

There is a high probability that the psychoanalytic description in the epigraph reflects reality. While the fear of destitution due to lack of shelter, or security of land tenure, may be particularly acute for *Mumbaikars*¹, it is a valid fear for millions, and an already existing fact of life for millions of others in urban India. According to the Ministry of Housing and Urban Poverty Alleviation (MoHUPA), there are 19 cities in India where over 25 percent of the population lives in slums (GoI 2013). A UN-Habitat study paints a bleaker picture. It reports that 55.5 percent of urban population in India lives in informal settlements (UN-Habitat 2003, 80). In Mumbai, it has been reported that 54 percent of the population lives in slums (Annez et al 2010, 12). It is common knowledge that slums lack basic services like access to drinking water and sanitation, and security of tenure. This has both direct and indirect implications on the quality of life of slum dwellers. Besides the inhuman and undignified living conditions, slums present public health hazards for those living in them, and also the larger city population.

¹ *Mumbaikar* is a term used to refer to residents of Mumbai. Mehta refers to them as Bombayite, in reference to Bombay, the name given to this city by the British.

The Government of India (GoI) has long been concerned about the proliferation of slums, and the lack of affordable housing. The first Five Year Plan (FYP) drafted by the Planning Commission (PC) of India noted:

Most of the towns in India have grown up haphazardly. They have a large proportion of sub-standard houses and slums containing insanitary mud-huts of flimsy construction poorly ventilated, over-congested and often lacking in essential amenities such as water and light. This is specially so in the large industrial cities. The disgraceful sights presented by the *abatas* of Kanpur and the *bustees* of Calcutta are conspicuous examples of this state of affairs. These conditions have developed because of insufficient control over building activity by the State or municipal authorities. Local authorities have been generally indifferent to enforcing such bye-laws regarding building and sanitation as have existed. Their own resources have been too meagre to permit any development work worth the name. (GoI 1951)

Over the decades, the government has taken a number of initiatives to help improve living conditions in urban areas with a special emphasis on the urban poor. To help ensure affordability of housing, development planners in India have tried to influence factors on both demand and supply sides. For instance, on the demand side, by planning for balanced regional development, national Five Year Plans (FYPs) have tried to reduce migration to big urban centers, where the problem of lack of affordable housing has historically been acute. On the supply side, planners have tried to provide low-interest loans, land tenure to the poor, and initiated upgrading schemes of environmental conditions in slums. Some of the specific initiatives undertaken by the government, at the national and sub-national level, for achieving affordable housing, have been the creation of the Housing and Urban Development Corporation (HUDCO), integrated urban development program in metropolitan cities, the Urban Land (Ceiling and Regulation) Act to control land prices, Rent Control Act, urban basic services schemes, and the National Housing Bank (Gnaneshwar 1995).

Despite these efforts, as described earlier, large-scale homelessness is a pervasive phenomenon in India.

Availability of affordable housing is directly contingent upon the supply of land at an affordable price. Until the 1980s, the Indian economy, and therefore, planning, were heavily guided by socialist principles. Government efforts to build affordable housing were made with the assumption that land could be acquired at little or no cost, through fiat. As a result, for instance, the Master Plan of Delhi published in 1962 (MPD-62), noted that planned growth in the past had been hampered by lack of developed land and private speculation in the land market. It acknowledged that hardly any land was available with the government, and that price of land in the open market had soared past affordability for the poor (DDA 1962, 7). As a strategy, the plan proposed acquisition of land by the government for public housing. It noted:

Recognising [sic] this *and also as matter of major policy*, the Government of India has notified for acquisition about 35,000 acres of land all around the present built up area, which will be sufficient for the growth of Delhi according to plan for the next 10 years or so... ..All this land will remain under public ownership and developed plots or undeveloped land will be leased out to individuals and co-operative societies on an equitable basis, so that the benefit of planned growth accrues to the common man and the Government can also have a share of the future rise in the price of such land. The ownership of land by Government makes planning and the implementation of plans easier and is imperative if slum clearance, redevelopment and subsidized [sic] housing and provision of community facilities according to accepted standards have to be undertaken, as, indeed, they must be in Delhi, in a determined way. (ibid. Emphasis added)

This approach to city planning, especially on the issue of land management and use in MPD-62, was reflective of the dominant political philosophy of the time which believed in an interventionist state and held that essential goods like decent housing should be provided by the

public sector. MPD-62 became a “model” master plan for the entire country. Ideas from this plan heavily influenced other master plans in the country that were developed soon thereafter. Dominant ideas on pathways to socio-economic development have changed much since then. In the last two decades, since 1991, the Indian government has ushered in a wave of liberal economic reforms. The defining features of the New Economic Policy (NEP) are market-led development, with a much smaller role for the state in directly providing good and services, and a much larger role for other actors. The NEP is driven by, and heavily reliant on private sector involvement. For Mooij (2008), this change has meant that, “from a ‘command-and-control’ organization, the state became an enabling regulator.”

The early 1980s were a turning point in the national fortunes of India (Kohli 2006). Since then, the Indian economy has grown substantially with the growth rate averaging 5.6 percent during 1981-91 and after the NEP, the growth rate improved to 5.9 percent per annum. In later years of the next decade, it reached up to 8.5 percent (Hashim 2009). Historically, around the world, economic development has been accompanied with urbanization. This is true in the Indian case as well. Compared to other developing regions in the world, the pace of urbanization in India is relatively slow. Annual growth rates of urban population over the decades from 1931-41 to 1991-2001 have ranged between 2.77 percent and 3.83 percent (ibid.). However, irrespective of the relatively slower pace of urbanization, given the large population of India, the number of people living in cities is very large. As per World Bank estimates, 31 percent of the total Indian population in 2011 lived in urban areas, and the growth trend is looking upward (World Bank 2013).

All spheres of public policy, including urban policy, have been shaped by this fundamental change in development policy since the advent of the NEP. Importantly, cities have finally come to

be recognized as “engines of growth.”² The government has clearly stated that if India has to grow as an advanced developed nation, urbanization must be embraced and encouraged.³ At the same time, countless urban policy and planning documents published by the central government have acknowledged lack of affordable housing, crumbling transportation infrastructure that is unable to meet increased demand, lack of basic services in slums, and so on, in Indian cities.

Having acknowledged this, the government has redoubled its efforts to help enable a good quality of life for all urban residents. The largest urban infrastructure improvement program in Indian history, the Jawaharlal Nehru Urban Renewal Mission (JNNURM), was launched by the central government in 2005. Under this reform-linked, conditional intergovernmental transfer scheme, the central government has been helping cities build infrastructure and upgrade living conditions. There has been a special focus to improve living conditions of the urban poor. In line with the basic principle of NEP, among other things like increasing efficiency and transparency of Urban Local Bodies (ULB), private sector involvement has been identified as integral to the process.

This turn in public policy of reliance on private sector participation and investment in urban development has been looked at with skepticism by some scholars. Presenting a contemporary reconstruction of Marx’s (1887) concept of “Primitive Accumulation”, Harvey (2003, 2005) has presented the idea of “Accumulation by Dispossession,” wherein a neo-liberal state uses its power of eminent domain to acquire and transfer resources to private companies for the development of

² Government of India, *Urban Reforms*, (New Delhi: Ministry of Urban Development, n.d.) <http://www.urbanindia.nic.in/urbanscene/urbanreforms/urbanreform.htm> Accessed May 17, 2013

³ According to the Ministry of Urban Development, “Enhancing the productivity of urban areas is central to the policy pronouncements of the Ministry of Urban Development. Cities hold tremendous potential as engines of economic and social development, creating jobs and generating wealth through economies of scale. They need to be sustained and augmented through the high urban productivity for country's economic growth. National economic growth and poverty reduction efforts will be increasingly determined by the productivity of these cities and towns. For Indian cities to become growth oriented and productive, it is essential to achieve a world-class urban system. This in turn depends on attaining efficiency and equity in the delivery and financing of urban infrastructure.” See GoI (n.d.).

“hyper-liberalized enclaves.” (Levien 2012) In part influenced by Harvey’s theory, Banerjee-Guha (2010), Mahadevia (2011), and Benjamin (2010) have presented sharp critiques of this new model of urban development in India. They hold that the NEP turn in urban development policy has led to predatory capitalism and city branding exercises that exclude the poor. Mahadevia (2011) identifies the defining features of contemporary urban development in India as, “elitist visions of cities, irreconcilable agendas of infrastructure development and poverty alleviation creating a situation of deliberate policy confusion, brutal displacements [of slum dwellers beginning in 2000]” and a predatory state.

HRLN (2006), DuPont (2008, 2011), Bhan (2009), among others have reported large scale forced evictions of slum dwellers in large Indian cities like New Delhi, Mumbai, and Chennai because of the fetish of urban planners with developing “world-class cities.” Harvey (2010) holds that in the urban age, the right over land is at the center of the new political economy of development. He holds that history is repeating itself in the forced evictions in urban and rural India and China just as it did in New York and Paris in the nineteenth century. According to DuPont (2011), the recent drive for global competitiveness involving image building has had negative consequences, especially for the poor, “through ‘cleansing’ the city of slums and other alleged undesirable elements, and has exacerbated socio-spatial polarization.” On the other hand, commentators like Mahadevia & Singh (1998) have showed that land prices in Mumbai were related more to movements in the financial markets that are increasingly being influenced by foreign institutional investors, than the actual demand and supply of land.

The eleventh FYP (2007-2012) stipulated improvement in the quality of life of slum dwellers by improving the physical and socio-economic conditions in slums. Mahadevia (2009) has

emphasized that this cannot be achieved unless there is a serious attempt at engaging with the question of land tenure in slums. National Urban Housing and Habitat Policies of 2005, and 2007, stress the need for increased supply of land for affordable housing projects, shelter, and services at affordable prices (GoI 2005b, 2007b). Over the last decade, first through the JNNURM, and most recently through the Rajiv Aawas Yojana (RAY), the central government has been pushing states and urban local bodies (ULB) to ensure “slum-free cities” through awarding land tenure to slum dwellers (GoI 2007b). Central assistance under JNNURM and RAY is conditional upon the States and Union Territories assigning land tenure to slum dwellers.

Unfortunately, allocation of land tenure to slum dwellers is one condition for central government assistance under JNNURM that almost every state failed to meet. State government bureaucrats from around the country informed the central government during JNNURM progress monitoring meetings that this demand was unreasonable, given the commercial demand for land. Among other things, these bureaucrats also mentioned that there existed no legal instrument with the state government using which they could force private developers and landowners to give up land for public housing. In part because of this feedback, the central government decided to remove it from the list of mandatory conditions for the second phase of the urban renewal program, which is to be launched soon.⁴ While on the one hand the central government has used JNNURM to push for security of tenure and affordable housing in cities, on the other hand it has forced states to repeal a law like the Urban Land (Ceiling and Regulation) Act (ULCRA), with the rationale that it failed to achieve its objective. It is interesting to see that while almost all states have failed to provide land tenure to slum dwellers, all but one have repealed ULCRA.⁵

⁴ Anonymous (Bureaucrat in the Ministry of Urban Development, New Delhi). Personal Interview. June 15, 2012.

⁵ As of July 2012, all states in India except West Bengal have repealed ULCRA.

1.2 Urban Land (Ceiling and Regulation) Act, 1976

As part of the Twenty-Point Economic Program (TWEPE), the government led by Mrs. Indira Gandhi enacted the Urban Land (Ceiling and Regulation) Act (hereafter, ULCRA, or the Act) in 1976, with the aim of preventing speculation in urban land and making land available with the government to build affordable housing. ULCRA was adopted by 17 states in the country. The Act provided a ceiling limit on vacant land that private individuals could hold in urban areas. If individuals held vacant land in excess of the ceiling limit, under ULCRA the state had powers to acquire the land by paying compensation. The Act contained some exemption clauses too. According to the exemption clauses, if the government felt that acquisition of excess land would cause undue hardship to the owners, or felt that it was in public interest to not acquire the land, it could be exempted. Further, if the landowners promised to build housing for “weaker sections” on their land, they could be awarded exemptions. In this thesis, I specifically look at the political economy of ULCRA in Mumbai and its repeal.

In Mumbai, almost all excess vacant land under ULCRA was exempted. Scholars writing on ULCRA in Mumbai unanimously hold that it failed to achieve its objective (Srinivas 1991, Narayanan 2003, Shaw 2004, Phatak 2005, Pethe 2010). The common explanations given are that ULCRA was ambiguously drafted, and gave too much discretionary power to bureaucrats and politicians, which created rent-seeking opportunities for them, which were used by developers and landowners to bypass the law. Those landowners that did not want to pay bribes took the legal route and challenged the Act as well as the government’s actions under it in court.

Amidst ongoing liberal reforms in the country, in 1999, the central government passed the ULCRA Repeal Act, following which many states repealed the Act. Maharashtra, however, was one

of the four states that decided not to repeal it. However, with the launch of JNNURM in 2005, the state government of Maharashtra came under pressure from the center to repeal ULCRA.⁶ The central government claimed that ULCRA created distortion in the land market and that repealing it would help lower land prices. Finally, after almost two years of resistance and negotiations with the central government, in 2007, the state of Maharashtra repealed ULCRA. Contrary to expectations, there was no effect on land prices in Mumbai after the repeal. Social activists challenged the repeal of ULCRA, first in the Bombay High Court, and then in the Supreme Court. Both courts ultimately upheld the legality of the repeal.

1.3 Research Questions

In this study, I seek to understand the political economy of ULCRA in Mumbai. The overarching research question is why could ULCRA neither be used to control land prices in Mumbai, nor acquire land for affordable housing. The point of departure for my research questions in this study was the understanding that, “the effectiveness of particular statutes and regulations is compromised by the institutional environment in which they must operate.” (Clarke 1991) Further, I recognize that the incentive structures in political-institutional⁷ environment in which laws and regulations operate need to be understood in depth if we are to understand how to make them effective.

⁶ The central government made repeal of ULCRA a mandatory condition for states to receive central funding under JNNURM.

⁷ North (1991) defines institutions as, “institutions are the humanly devised constraints that structure political, economic and social interaction. They consist of both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights). By this definition, politics is embedded in a complex web of institutions. Even though inherently enmeshed with one another, I use the term “political-institutional” to emphasize the political element in the institutional environment.

Scholars writing on ULCRA in Mumbai unanimously hold that it failed to achieve its objective (Srinivas 1991, Narayanan 2003, Shaw 2004, Phatak 2005, Pethe 2010). However, this literature at best offers broad generalizations on its working, and the reasons why it failed to achieve its objectives. The explanations offered by scholars, while not explicitly based on rational choice theory, hinge broadly on the concept of rent-seeking.⁸ It assumes that bureaucrats, as if a homogenous category, were driven only by self-interest, and wanted to maximize personal gain in the form of (illegal) rents. During fieldwork, I interviewed former bureaucrats who were in charge of administering ULCRA in Mumbai. They fully believed in the ideological agenda of ULCRA and wanted to implement it. Current literature does not explain why even these bureaucrats failed to implement the Act in its true spirit. I find that ambiguous definitions of “weaker section”, “undue hardship,” and “public purpose,” periodic interventions by the judiciary, the lack of cohesion within the bureaucracy, and red tape encountered by bureaucrats within the bureaucracy, prevented those bureaucrats interested in implementing the Act in its spirit from being able to do so.

Secondly, current literature either on ULCRA or inter-governmental bargaining has not analyzed the political economy of its repeal in Maharashtra. I find that ruling politicians in Maharashtra did not want to let go of the Act because they could seek rents from developers by threatening to overturn the exemptions previously given to them under ULCRA. It was not until the central government threatened to refuse central assistance under JNNURM unless ULCRA was repealed, that the state government, desperate for these funds, finally repealed the Act. While primarily interested in keeping the legislation for rent-seeking, politicians couched their resistance to repealing ULCRA in populist rhetoric. This, when seen in the context of on-going efforts of the central government to decentralize decision making and planning to local levels, presents what

⁸ Theoretical models of rent-seeking have been presented by Buchanan, Tollison, and Tullock (1980); Colclough and Manor (1991); Collander (1984); Kreuger (1974). See Wade (1982) for empirical evidence-based work on the same.

Prud'homme (1995) has called “the dangers of decentralization.” As suggested by Bardhan (2002), this points to the fact that, given weak institution of democracy at the sub-national and local levels, some degree of central control might be necessary to protect the interests of the poor.

Thirdly, the role of the judiciary has been overlooked in scholarship on the ULCRA. In India, the judiciary is considered fairly unbiased and pro-poor. There is a thriving culture of public interest litigation in the country that is used by social activists to seek effective intervention on excesses of the legislature and executive, which is popularly perceived as corrupt and inefficient. ULCRA has had a long-term interaction with the judiciary. Surprisingly, the judiciary has not always backed the Act, whose basic underlying principle is socially just redistribution of wealth, something deeply consonant with the basic principles in the Constitution of India. The same institution of the judiciary upheld the validity of the Act in the 1970s, and then, three decades later, also upheld its repeal. Using insights from Bhan (2006) and Rajagopal (2002), I have analyzed judicial intervention in matters related to ULCRA as situated in dominant political-ideological currents of the time.

1.4 Methodology

This study is informed by both primary and secondary sources. Between June and August 2012, I carried out fieldwork in Delhi and Mumbai, spending three weeks in the former and the rest in the latter city. During this time, I interviewed bureaucrats including two former secretaries to the Ministry of Urban Development, one of who oversaw JNNURM during his tenure. In addition, in Delhi I interviewed the current Additional Secretary of the Ministry of Housing and Urban Poverty Alleviation, and experts at the National Institute of Urban Affairs, one of who had played a key part in JNNURM policy formulation. In Mumbai, I interviewed former ULCRA bureaucrats including

two chiefs of the office of the ULCRA Competent Authority for Greater Mumbai. In addition, I interviewed a former chief of Maharashtra Housing and Area Development Authority (MHADA), a former chief of the Mumbai Metropolitan Region Development Authority (MMRDA), three prominent housing rights activists, a real estate analyst at a leading multi-national real estate consultancy firm in Mumbai, a leading architect who worked on numerous projects with a number of big developers in the city on ULCRA exempted land, two ULCRA “consultants”, one of the biggest landowners in Mumbai, two prominent real estate developers in the city, and a well-known Indian economist who has worked on the political economy of the land market in Mumbai. I conducted 60-90 minute long semi-structured interviews with each of these informants. Since the nature of information revealed by informants is sensitive, and if revealed publicly can create a personal safety threat for the informant, all interviews have been anonymized. In my interview citations, I have only mentioned the profession of the informant. Starting with two informants personally known to me from my prior professional work experience in India, I snowballed my way further. In addition to these, I acquired copies of all official intra-governmental correspondence in the ULCRA Bureaucracy in Mumbai, and the writ petitions filed by housing activists in Mumbai challenging the repeal. These documents form an invaluable primary source too. Further, I have used articles in published books, peer-reviewed studies, official government documents, and news articles from prominent newspapers and periodicals. Between all these sources, I have been able to subject my findings to the test of triangulation.

1.5 Scope and limitation

While the study is situated in India, it is a specific study in the political economy of ULCRA in Mumbai. The extremely high price of land in Mumbai was the biggest factor in shaping the political economy of this legislation in Mumbai, and that is what makes the case unique. A salient limitation of this study is that it does not offer a comparative perspective of the political economy of ULCRA in two different cities. Also, I do not offer any generalization of functioning of ULCRA in the country. Exploring the political economy of this legislation where it performed better could offer interesting insights in making pro-people laws and regulations work. In this thesis, at a number of places, I highlight the fact that land prices in Mumbai did not ease after repeal of ULCRA. I would like to qualify this by mentioning that I am cognizant that one factor, like the existence of ULCRA, does not solely determine the price of land in a city. However, I include it as one of the indicators to highlight the very fact. Also, doing historical research at the city level in India is very difficult. Old records are difficult to come by. In this study, I have tried my best to get access to as many original documents as possible. Even after repeated attempts of getting interviews with politicians who dealt with ULCRA at the state and central government levels, I failed. For politicians' views and attitude towards ULCRA, I had to rely on statements made by them in prominent newspapers and periodicals, articles authored by them in the same, and interviews with bureaucrats and activists who worked closely with politicians on ULCRA matters. Finally, this thesis raises more questions than it provides answers for. I realize that there is some inconsistency when I argue that not all bureaucrats were necessarily rent-seekers, but that the ruling elite in Maharashtra always resisted ULCRA repeal in order to retain their rent-seeking power.

Chapter 2: Urban Land Policy in Post-independence India—A Closer Look

This chapter looks at the way in which urban land policy has evolved in India. Even though urban development and land are state subjects, the central government has historically been the *de facto* guide for urban policy, including urban land policy in the country. The Planning Commission, a body guided by the central government, has played an important role in shaping national urban policy through the national FYPs (Ramachandran 1989, 328). The prescriptions for urban development contained in the FYPs are reflective of the general urban development policies followed by central and state governments (Shaw 1996).

In the first FYP, the lack of affordable housing was identified as the immediate concern. Other than dilapidating housing in city areas, and increasingly unaffordable rents, the housing situation was exacerbated because of the influx of millions of refugees as a result of the partition of India. An estimated 10 to 12 million refugees including Hindus, Muslims, and Sikhs migrated across the international boundary between India and Pakistan. Delhi, a city that received a large number of refugees saw its population swell from 917,939 in 1941 to 1,744,072 in 1951 (Kaur 2005). Along with recognizing the housing shortage on account of heavy influx of refugees in the country, the plan recognized that landlords in urban areas had begun to demand rents that were “sometimes wholly out of proportion to the capital outlay” (GoI 1951). However, Prime Minister Jawaharlal Nehru’s Fabian socialist views notwithstanding, there was a difference of opinion at that time in the government regarding the exact nature of state intervention in economic policy (Lall and Rastogi 2007).

The first FYP (1951-1956) recognized that, “for the years to come the bulk of the building activity will still have to be undertaken by private enterprise.” (GoI 1951) Development planners anticipated private sector participation in urban land market could lead to speculation and hoarding, which would then lead to artificially inflated land prices. They were convinced of the need for state intervention in the urban land market to ensure affordable land and housing. This plan alluded to taxing vacant land in urban areas as a strategy to mitigate perverse incentives for private players in the land market. It considered slums “a disgrace to the country”—a malaise that it sought to do away with. Rehabilitation and redevelopment of slums, either through *in situ* redevelopment or rehabilitation of slum dwellers and compensatory payments to land owners, was suggested as a strategy. One of the main action items of this plan was institution building. During the period of this FYP, the Ministry of Works and Housing (1952), the National Buildings Organization (1954), the Town Country Planning Organization, and the Housing Boards were instituted.

The second FYP (1956-61) laid stress on achieving efficient methods to acquire land for developing housing by public or private entities. Besides this, the haphazard growth of urban areas was a major topic of concern. This plan called for regional planning, especially for large urban centers, with the aim to “evolve balanced urban-rural regions which would provide stable and diverse employment and, through the provision of the necessary economic and social over-heads, achieve development at a reasonable social and economic cost.” (GoI 1956) To achieve this, the plan suggested that Master Plans should be prepared immediately for all large urban centers in India as well as upcoming new towns and those areas affected by large-scale infrastructure projects. To institutionalize and give statutory backing to the Master Plan, the second plan advised enactment of Town and Country Planning legislation, and necessary government machinery needed for the implementation of these plans.

It was in the third and fourth FYPs that “urban land policy” began to take concrete shape (Gnaneshwar 1995). The third FYP (1961-66), again, was concerned with speculation in urban land markets leading to lack of affordable land and housing. This plan continued to build upon recommendations of its predecessor. It provided a list of cities for which master plans were considered critically important for future growth. The plan also made budgetary allocations for Master Plan development (GoI 1961). Nearly forty interim development plans were prepared as a result of this step (GoI 1969). Concerned about increasing price of urban land, the third FYP noted, “The most important element in raising housing and other costs and in restricting the scale on which improvements can be undertaken in the interests of low income groups is high land prices.” (GoI 1961) This plan also strongly advocated state intervention in controlling urban land prices. Some of the strategies put forth in the plan included taxation of vacant land in developed areas along with the option for state agencies to acquire vacant land if not built upon within a specified period of time, setting a ceiling limit on the size of individual plots and limiting the number of plots which a single party may be permitted to acquire, and freezing land values with a view to enable acquisition of land by public authorities at low cost (ibid.).

Interestingly, the central Town & Country Planning Organization circulated a draft National Urban Land Policy in 1961. Part of the draft read:

The policy that may be evolved cannot afford to remain preoccupied with compulsory acquisition of land only but would have to take care of the entire problem of urban land in its multifarious aspects. The subjects with which the new policy would have to concern itself may, for example, be the acquisition of land, its development and disposal, the nature and extent of public ownership of land, the lease and rent arrangements of such land, stabilization of land prices, rent control measures, state and municipal taxation of urban land and property, measures to mop up unearned increments, controls on the subdivision and development of land,

zoning regulations and master planning, etc. Needless to say, the new policy should co-ordinate various measures affecting urban land, its proper development, disposal and prices. It should be conceived as a well-contrived instrument whose aim is to serve broader social objectives and the unhampered fruition of National Plans. [Cited in Menezes (1983, 36)]

Further, the report of the Committee on Land Policy observed that there was no escape from large scale public acquisition if the question of guiding urban development or the provision of adequate housing and other facilities had to be tackled effectively. Moreover, the committee held that large-scale, advance acquisition of land was the best and perhaps the only way to put an end to speculation in land, and to capture subsequent increases in land values. These surpluses, where realized by the public authorities, the committee held, would benefit the community in more ways than one (*ibid.*).

It was during the third FYP period that the first Master Plan in the country was produced. The Master Plan for Delhi (1962-82) was promulgated on August 1, 1962. Produced by the Delhi Development Authority (DDA) with technical assistance from Ford Foundation's urbanism experts, this plan aimed at integrated development of Delhi. Haphazard growth of the city, increasing pollution, and lack of affordable housing, were identified as key areas of concern. The plan aimed at large-scale acquisition of land, which would be held under public ownership, serviced, and provided to the urban poor at affordable rates for building houses (DDA 1962).

The Delhi Master Plan became the ideal master plan for other Indian cities that were getting started with their master plan preparation. As a result, the need for affordable housing, mixed-use development, and land use based zoning, emerged as dominant planning strategies in the country. In MPD-62, the reason behind maintaining public ownership of acquired land was not necessarily

because government considered land to be public property. Instead, the planners intended the public sector, and therefore society at large, to benefit from the increase in land value that would result as a consequence of the infrastructure and land development that the government would do (ibid., 7).

All these development strategies seem to have influenced urban land policy objectives in the fourth FYP (1969-74). According to this plan, the aim of urban land policy was: 1) optimum use of land, 2) making land available for weaker sections of the society, 3) reducing or preventing the concentration of land ownership, rising land values, and speculation on land, and 4) allowing land to be used as a resource for financing the implementation of city development plans (GoI 1969; Ramachandran 1989, 331). The fifth FYP (1974-1979) provided actual steps for tackling urban problems that were described in the previous plans. With respect to urban land, the plan suggested: 1) differential taxes on urban land depending on its use; higher taxes on vacant land to discourage speculation; higher taxes on land under non-conforming uses to encourage redevelopment, 2) a recurring tax on capital value of land and property, 3) conversion tax on change in land-use, among other suggestions. It was during this plan period that the Urban Land (Ceilings and Regulation) Act 1976 was enacted by the central government and adopted by 17 states. This legislation provided a ceiling on the ownership of vacant land in urban agglomerations. It was enacted with the aim of preventing speculation in the urban land market.

The sixth FYP (1980-1985) did not offer any radical changes to urban land policy. It stressed investment for development of small and medium towns within the Integrated Development of Small and Medium Towns (IDSMT) scheme (GoI 1980). A visible change in the government's position toward urban areas and in the articulation of urban land policy can be seen in the seventh and eighth FYPs (Shaw 2004, 53). Part of the reason was the Census of India of 1981, which

showed that since independence, despite focus on developing rural areas, the size of urban areas had grown much faster than rural areas. While the Indian population had grown from 350 million in 1947 to 800 million, the urban Indian population had quadrupled from 50 million in 1947 to 200 million in 1988 (NCU 1988). According to Siddiqui (2011, 8), “The 1981 census brought home to the powers that be, the urban reality of India and the inevitability of urbanization with all its accompanying challenges.”

According to Shaw (2004, 53), in the seventh FYP (1985-1990), a deliberate attempt at “devolution of funds (and hence power) to urban local bodies, for the revitalization of civic bodies, and for greater ‘community participation’”, was visible. Further, the plan alluded to the need for more private sector initiative and investment in urban development. The eighth FYP (1992-1997) continued in the same vein as the seventh. While there was mention of the need for private sector participation and private investment in urban development, the plan still highlighted the need to remove lacunae and loopholes from key urban land use policy legislation like the ULCRA. In this sense, direct methods of government control over land were not given up in the eighth FYP (Gol 1992).

Moved by the findings from the census in 1981 that urban areas had grown much faster than rural areas, and increased concern with deteriorating living conditions for the large number of urban poor, in the sixth plan period, the Government of India constituted the National Commission on Urbanization (NCU). It was tasked with taking stock of the urban situation and recommending the way forward. In 1988, the NCU submitted its report to the Government of India. This report changed the debate around urbanization in India for good. According to Mehta and Mehta (1989), the NCU took a “refreshingly positive attitude in recognizing ‘urbanisation [sic] as a catalyst for

economic development’ and that these same ‘towns and cities, despite their problems, are for millions and millions of our people the road to a better future.’ The NCU report stated, “Urbanisation, we believe, is a vital element of the national economy and should be viewed as such.” (GoI 1989, 28) It also recognized cities to be places of liberation that provided venues for social mobility to millions whose development was seriously challenged by the caste system. It was in the background of these observations that the NCU recommended the need for “an aggressive public policy to upgrade, develop, and maintain the urban centres.” (Mehta and Mehta 1989)

The NCU report recognized urban land to be a critical resource that should be used efficiently. Nominally, while this was not very different from the government’s earlier view on urban land, the NCU engaged in a critical appraisal of urban land policy and its implementation. It concluded that ULCRA had failed to transfer vacant land to state ownership, and that it was a “defective law” (GoI 1989, 125). An interim report of the commission suggested amendments to ULCRA, “providing, on the one hand, that, initially, a five-year moratorium on acquisition under the act would be declared to give landowners a chance to develop their land according to plan and, on the other, for the automatic vesting of vacant land in the State if the landowner fails to develop it within the prescribed time-frame.” (ibid., 127)

The NCU report tried to walk a fine line between participation of public and private sectors in urban development. For instance, while on the one hand it critiqued the ULCRA and proposed amendments to it, on the other hand it suggested ensuring a free land market. According to the report, “Simultaneously with acquisition by the State, there has to be development of a large market which facilitates the availability of land from private sources.” This implies that the master planning exercises have to be detailed in identifying land which will be acquired and that which will be

allowed to be privately developed, with acquisition being restricted to land for the poor, for use by government, and for the laying of physical infrastructure.” (ibid.) With the census of 1981, constitution of the NCU, and its landmark report, the 1980s marked an important change in history of urban policy in India. According to Srinivas (1991), prior to the mid-80s, politics was locked in “socialist rhetoric” and anyone who talked about the market “ran the risk of being denounced as pro-capitalist.” The NCU report, without a doubt, had a strong pro-poor tenor but suggested private participation in urban development as necessary.

Macroeconomic policy started to show signs of change in the mid-1980s, in part due to efforts of the then Prime Minister Rajiv Gandhi. Modest liberal reforms, including lowering of marginal tax rates and tariffs, and allowing some leeway to manufacturers, spurred growth (Das 2006, 3). A watershed moment in the history of economic policy in independent India came in 1991. Faced with serious macroeconomic imbalances like high fiscal deficits, large foreign debt, high inflation, and an acute shortage of foreign exchange, the Government of India initiated liberal economic reforms. The biggest immediate implications of reforms were on trade and industrial policy. Among other things, the import licensing system was abolished, import tariffs reduced considerably, the currency was devalued, and proposals were made to relax labor laws, among other measures (Mooij 2005). Privatization of state-owned enterprises was identified as beneficial for improved national economic growth, and a disinvestment policy was announced that gave greater autonomy and stressed on accountability of public sector enterprises (ibid.).

The urban development agenda and principles outlined in the ninth FYP (1997-2002) continue as the overarching principles in urban development and urban land policy in India today. One of the major urban development objectives of the Ninth Plan was “promoting private sector

participation in the provision of public infrastructure and of the community and NGOs in urban planning and management of specific components of urban services.” This plan lies in the era classified by Lall and Rastogi (2007) as “Decentralized Politics.” The plan related to international politics as well by referring to global resolutions on climate change, democratic politics, and international consensus on sustainable equitable development promulgated through policy documents of institutions like the UN and World Bank. This plan mentioned the need to rationalize land control legislation like ULCRA. Paradoxically, while mentioning the need to rationalize ULCRA, the plan decreed, “the thrust of the new approach would be guided development rather than regulation per se.” (GoI 1997) This approach is reflected in recent major urban development programs in India today, like the JNNURM, and RAY.

Chapter 3: Urban Land (Ceiling and Regulation Act) 1976 in a Historical Perspective

Lal Bahadur Shastri, the second prime minister of India, who had led the country in a Nehruvian tradition, passed away on January 11, 1966. Mrs. Indira Gandhi, daughter of the first Prime Minister of India, Jawaharlal Nehru, then assumed leadership of the Congress party. Thus began a period in Indian political economy that Lall and Rastogi (2007) have called the “Indira Era.” In the years to come, Mrs. Gandhi would see opposition to her power both from within her own party as well as other parties, and from the public through social movements in the country. Her accession to power was not as smooth as the transition from Nehru to Shastri, which was mediated by a “syndicate” of state party leaders including K. Kamraj, Atulya Ghosh, S. K. Patil, S. Nijalingappa, Sanjiva Reddy (Austin 1999, 174).

Mrs. Gandhi was not the consensus candidate for the top leadership post. Consequently, she continued to face significant opposition within her own party, the Congress. In Austin’s words, “to survive politically, Mrs. Gandhi faced the tasks that would confront any prime minister in similar circumstances. She has to assert her leadership within the government and lead the party to election victory.” (ibid., 175). In 1967, the Congress party performed very poorly in the general elections, losing 264 seats in state assemblies, and lost its majority in eight states. As a result of realizing that it was a do-or-die situation, and that the internal bickering was proving lethal, Mrs. Gandhi and her followers in the party turned to the Congress party staple—Socialism (ibid., 175). On May 12, 1967, the Working Committee of the party adopted the “Ten-point Programme” that called for, among other things, social control of banks, nationalization of general insurance, limits on urban incomes and property, and the removal of princes’ privileges (ibid.).

Mrs. Gandhi continued flexing her political muscle to cement her position as the top boss; socialist rhetoric became her weapon. She continued to lambast her opponents by questioning their commitment to social change. Her main opponent was the Old Guard of the party, with veteran politician Morarji Desai at its helm. “Open warfare” continued within the Congress with the two *de facto* factions bitterly fighting the other to exert dominance and control over the party (ibid., 179). The ultimate showdown was in selecting the new President of India, upon the death of Dr. Zakir Hussain. Mrs. Gandhi, in the face of stiff resistance from the party Old Guard, succeeded in installing V. V. Giri as the President of India. Mrs. Gandhi’s detractors, then at the leadership of the Working Committee of the Party, accused her of high-handedness and anti-party activities and removed her from the Party’s primary membership, ultimately resulting in a split in the Congress party eighty-four years after its birth (ibid., 180). This “new Congress party” continued to emphasize its difference from the old Congress by being more radical, socialist, and pro-people.

There were two Congress parties in India at that time and “each faction proclaimed itself to be the true congress.” (ibid.) Mrs. Gandhi’s faction, the breakaway faction, continued to hold power in the parliament with the support of Communist and other regional political parties. From 1967 through 1970, the government lead by Mrs. Gandhi tried to implement the ten-point agenda. However, in implementing it, the government ran a collision course with the judiciary. A number of strategic defeats for the government from the judiciary pushed Mrs. Gandhi to change strategy and call early elections. Even though the next general election was due in 1972, Mrs. Gandhi opted to call for special parliamentary elections in 1971. The rallying cry of her electoral campaign was *Garibi Hatao* (Out with Poverty). Some of the planned actions for the party, if it came to power, were amendments to the Constitution, which it considered posed impediments to social justice, to impose limitations on urban property, and to make the public sector dominant in industry. Her party, the

Congress(R) won 350 of the 520 seats in the Lok Sabha (House of the Commons) in these elections. The party understood this as clear evidence of popular support for Mrs. Gandhi's election manifesto. Through the President's address to the new Parliament, Mrs. Gandhi said, "My government has been returned to office on the clear pledge that the central objective of our policy must be the abolition of poverty." (GoI 1971, 5) The stage was set for big changes.

3.1 ULCRA is enacted by the Parliament

A long-standing item on Mrs. Gandhi's Ten-point and later Twenty-point Economic Program (TWEP) was the imposition of ceiling on ownership of land in urban areas, with a view towards controlling speculation. On February 17th, 1976, the Parliament of India enacted the Urban Land (Ceiling & Regulation) Act (hereafter ULCRA, or the Act) under Article 252⁹ of the Constitution after the Houses of Legislatures of 11 states passed the resolution authorizing the Parliament to enact a law. These states were Andhra Pradesh, Haryana, Gujarat, Himachal Pradesh, Karnataka, Maharashtra, Karnataka, Orissa, Punjab, Tripura, Uttar Pradesh, and West Bengal (NIUA n.d., 2). Subsequently, the states of Assam, Bihar, Manipur, Meghalaya, Rajasthan, and Madhya Pradesh, and the Union Territories (UTs) of Delhi, Chandigarh, and Pondicherry also adopted the Act (ibid., 3).

The Act was passed "virtually overnight, with virtually no parliamentary debate, at the height of the Emergency." (Narayanan 2003, 185) Some authors hold that the act was brought in to force

⁹ As per the Constitution of India, land is on the State List, and therefore under normal circumstances, the Parliament of India does not have law-making power for states. However, Article 252 of the Constitution provides power to the Parliament to make laws affecting items on the State List if the legislatures of two or more states pass a resolution to that effect. In this case, "any Act so passed by Parliament may be amended or repealed by an Act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State." See GoI (2007c).

primarily to soften the impact of the Emergency regime's actions on the urban poor (Pittie, n.d.). Narayanan (2003, 185) has suggested that it was a strategy to co-opt the "vast armies of the urban poor that were being hurt and antagonized by various other excesses conducted under the guise of the emergency." (Pittie, n.d.) The stated aim behind this legislation, in line with the overarching theme of the TWEF, was to prevent concentration of urban property in the hands of a few persons thereby reducing the scope for private profiteering and speculation. The other aim was to achieve socialization of urban land "to subserve the common good by ensuring its equitable distribution." Further, the legislation sought to discourage construction of luxury housing leading to "conspicuous consumption of scarce building materials and to ensure the equitable utilization of such materials." Finally, the legislation aimed to engender orderly urbanization (GoI 2012, 2-3).

The legislation aimed to achieve its objective by imposing a ceiling on both ownership and possession of vacant land in urban agglomerations (UA). The ceiling limit was graded based on classification of the UA. UAs were divided into 4 categories—A, B, C, and D. "Super metropolitan cities" were classified as Class 'A', UAs with population greater than 1 million as per Census of India, 1971 were classified as Class 'B', UAs with population between 300,000 and 1 million as per Census of India 1971 were classified as Class 'C', and UAs with population between 200,000-300,000 as per Census of India 1971 were categorized as Class 'D'. The ceiling limit was prescribed as follows: Class 'A'—500 sq. m., Class 'B'—1000 sq. m., Class 'C'—1500 sq. m., Class 'D'—2000 sq. m. (ibid., 6)

The main agency responsible for implementing the Act was the "Competent Authority" (CA). In the Act, it was defined as "any person or authority authorized by the State Government, by notification in the Official Gazette, to perform the functions of the Competent Authority under this

Act". The CA had powers of a Civil Court. While trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), it had the power to summon and enforce the attendance of any person and examine him on oath; require the discovery and production of any document; receive evidence on affidavits; requisition any public record or copy thereof from any Court of office; among other powers of Civil Courts under the said code. (ibid., 24) Those owning land in excess of the ceiling limit were required to file a statement containing the name and address of the person, particulars of vacant lands and of any other lands on which there was a building, particulars of vacant lands that the person desired to retain, and particulars of the right, title, or interest of the person in the vacant lands. (ibid., 6) The Act barred landowners from transferring, gifting, selling, or mortgaging vacant land until they had filed a statement under section 6, and a notification regarding the excess vacant land had been published under sub-section (1) of section 10. (ibid., 9)

The Act vested state governments with power to acquire land in excess of the ceiling limit, and the power to dispose of the excess vacant land to serve the common good. (ibid., 18) State governments were required to pay compensation to landowners whose land would be acquired. A complicated method was outlined for calculation of the compensation to be paid. For vacant land acquired that earned income to the owner, the amount equaled eight and one-third times the net average annual income actually derived from such land during the period of five consecutive years immediately preceding the date of publication of the notification issued under sub-section (1) of section 10. In case no income was derived from the vacant land being acquired, compensation was to be calculated at a rate not exceeding ten rupees per square meter in the case of vacant land situated in an urban agglomeration within category 'A' or 'B'. For vacant land situated in category 'C' or 'D', that was not deriving any income, the rate of compensation was to not exceed five rupees per square meter.

An elaborate mechanism of nuances in the calculation of compensation was laid down in Schedule II of the Act. The state government was to determine the amount of compensation for land acquisition within 6 months from the date of the order of the CA. Further, 25 percent of the compensation amount or rupees twenty five thousand, whichever was less, was to be paid to the landowners in cash. The balance was to be paid in negotiable bonds redeemable after the expiry of twenty years carrying an interest at the rate of 5 percent per annum. Under the Act, a “person” included “an individual, a family, a firm, a company, or an association or body of individuals, whether incorporated or not.” (ibid., 3) Lands held by the Central Government, any State Government, any local authority, or any Corporation, established by or under a Central, Provincial or State Act or any Government company; any military, naval or air force institution; and most other public sector institutions like Reserve Bank of India, State Bank of India and its subsidiaries, Life Insurance Corporation, and public charitable and religious trusts, did not fall under the purview of this Act.

Importantly, Section 20 and 21 of the Act provided the state government with powers to grant exemptions to those holding vacant land in excess of the ceiling limit. The criteria for granting exemptions was very loosely defined. For instance, the Act provided state governments the power to exempt excess vacant land if the state considered the current use of the land, or its proposed future use, to be used in public interest (ibid., 18). Similarly, the state government had power to exempt ceiling of excess vacant land if the government deemed the ceiling would cause “undue hardship” to the landowner. In addition to powers to exempt under Section 20, Section 21 provided powers to exempt excess vacant land if the landowner built housing for accommodation of “weaker sections” of society (ibid.). This tied well with the stated aim of socially just redistribution of land. However, criteria were not described for ascertaining who belonged to the “weaker sections” of society.

Soon after the Act was passed and came in to effect in the 17 states, landowners went to court. Some petitions challenged the constitutional validity of the Act, thereby challenging the existence of the Act itself. It was not until 1980 that there was clarity on the fate of the Act. This, as we will see in the next chapter, resulted in a practical hiatus on implementation of the Act in Mumbai. In the writ petition (civil) No. 350 of 1977, the petitioners challenged the constitutional validity of the Act vis-à-vis Articles 39(b) and 39(c) of the Indian Constitution.¹⁰ Other than that, the petitioners also claimed that the stipulation under section 11(6) of the Act that the compensation for acquired excess land would be a maximum of INR200,000 was “illusory.” Further, they claimed that the definition of family as defined in section 2(f) of the Act, was artificial.

In 1980, a five-judge bench of the Supreme Court of India dismissed this petition by a majority of 4-1. The bench observed, “The Urban Land (Ceiling and Regulation) Act, 1976 is valid. The vice from which a provision here or a provision there of the impugned Act may be shown to suffer will not justify the conclusion that the Act is not intended to or does not, by its scheme, in fact implement or achieve the purposes of clauses (b) and (c) of Article 39 of the Constitution.” Further, the bench also held that the maximum compensation amount was not “illusory”, as claimed by the petitioners. It observed, “Section 11(6) of the Urban Land (Ceiling and Regulation) Act, 1976 which provides that the amount payable under sub-section (I) or sub-section (5) of section 11 shall, in no case, exceed two lakhs of rupees, is valid. The amount thus payable is not illusory and the provision is not confiscatory. Rupees two lakhs is not like a farthing even if the excess land may be a fortune.”

¹⁰ *Maharao Sahib Bhim Singhji v. The Union of India and Others*. Writ Petition No. 350 of 1977, AIR 1981, SC 234.

This verdict was a major turning point in the continuance of the Act. Other than upholding the constitutional validity of the Act, the verdict served to do much ground clearing on the powers of the state under the Act. For instance, in upholding the constitutional validity of the Act, the judges explicated on the meaning of “common good” that was intended to be achieved by using power bestowed in the state under section 23 of the Act. This power, the judges ruled, was not mala fide. Instead, judges held that it was needed. To quote the Court:

The touchstone is public purpose, community good and like criteria. If the power is used for favouring a private industrialist or for nepotistic reasons the oblique act will meet with its judicial Waterloo. To presume as probable graft, nepotism, patronage, political clout, friendly pressure or corrupt purpose is impermissible. The law will be good, the power will be impeccable but if the particular act of allotment is mala fide or beyond the statutory and constitutional parameters such exercise will be a casualty in court and will be struck down. The power of judicial review to strike at excess or mala fides is always there for vigilant exercise. Hence, even the crude drafting of section 23(4) by the unwanted "subject to" will not whittle down the power, why the obligation, to distribute vacant land, not according to personal, political or official fancy but strictly geared to the good set down in Article 39(b) and (c) and instead required.

Chapter 4: ULCRA in Mumbai

4.1 Mumbai, the City

Mumbai was originally a group of seven marshy islands on the west coast of India, and a fishing village until the 16th century (Risbud 2003). According to historian of modern Mumbai, Gyan Prakash (2010, 35), Bombay's¹¹ modern birth occurred in the crucible of European overseas conquest. Mughals rulers ceded it to the Portuguese in the 1630s. The Portuguese considered this place the "island of good life." In 1661, the Portuguese gifted it as dowry to the English when Catherine of Braganza married Charles II. Later, the King of England leased it to the East India Company, thereby rewriting conquest as lawful possession. With the Portuguese gone, a new chapter opened in Bombay's modern life—its growth as a port city under the company (ibid.). It developed as an important port, used by the British for more than two centuries. The city started growing after the cotton-growing areas of the hinterland were connected to Mumbai by rail, which facilitated the supply of cotton to factories in England.

By 1864, the city's population had reached 817,000. With the growth of manufacturing units for cotton textiles, by 1888 Mumbai had emerged as the second largest commercial center in India after Calcutta. The city gradually became more and more industrialized and attracted a massive supply of skilled and unskilled labor from all over the country. The growth of the city was steady as its manufacturing sector became more diversified with the expansion into the chemicals industry, basic metal and engineering products. The city of Mumbai was the first in the country to have a municipal corporation, the Municipal Corporation of Greater Mumbai (MCGM), created under The Mumbai Municipal Corporation Act, 1888 (ibid.).

¹¹ Mumbai was called Bombay until 1995.

Today, Mumbai is the commercial capital of India and one of the most populous cities with about 18.4 million people. It is poised to become the core of the biggest urban agglomeration in the country, and the world's third largest city after Tokyo and Mexico City. Mumbai contributes 33 percent of the total income tax collected in India, 60 percent of all customs duties collected, 20 percent of all central excise duties, and 40 percent of all foreign trade generated in India (MCGM 2006). Over the decades, Mumbai's socio-economic structure has witnessed a sea change due to a paradigm shift in business activities—a switch from 'manufacturing' to 'services'. The replacement of manufacturing jobs by the service sector has been a gradual process. In 1981, the industrial sector accounted for 44 percent of the jobs, while the services sector accounted for 54 percent. By 1991, the share of the industrial sector in employment declined to 39 percent, while that of the services sector increased to 60 percent. The current share of the service sector is 75 percent. This transition during the 1980s has much to do with the closure of the textile mills, followed by the prolonged strike of textile workers. Subsequently, there was also a large-scale relocation of engineering, chemicals and pharmaceutical industries from Mumbai to locations elsewhere (GoI 2006¹²).

The Mumbai Metropolitan Region (MMR) encompasses six other rapidly growing municipal corporations, 13 municipal councils, and 995 villages. The area of Mumbai, also known as Greater Mumbai, under the jurisdiction of Municipal Corporation of Greater Mumbai (MCGM), is 437.71 sq. km. [(City area: 68.7 sq. km.), Western Suburbs (210.54 sq. km.), Eastern Suburbs (158.46 sq. km.), and the rest of the MMR admeasures 4,355 sq. km.] The MCGM's administrative limits cover Mumbai City and Mumbai Suburban Districts, and parts of Thane and Raigad District. There are 40 Planning Authorities in the Region that are responsible for the micro-level planning of different areas. MCGM is responsible for provision of basic services to the residents of Greater Mumbai. For

¹² Cited in (MGCM 2009, 41).

purposes of revenue and general administration, Greater Mumbai is considered as one district. After 1975, the influence of the city was extended into the Bombay Metropolitan Region (BMR). The BMR region, covering an area of 4,355 sq. km. was formally delineated after the enactment of Bombay Metropolitan Regional Development Authority (BMRDA)¹³ Act in 1974. According to a recent land use survey of Mumbai, the existing land use distribution in Greater Mumbai shows 24.90 percent residential, 2.18 percent commercial, 5.44 percent industrial, 3.64 percent educational, medical and social amenities, 31.50 percent under natural areas and open spaces and 13.5 percent under transportation and utilities. Vacant land and under-construction together constitute 7.90 percent of the land (MCGM 1996, 8).

Statutory bodies in Mumbai include the Greater Mumbai Municipal Corporation, which enjoyed significant autonomy until the mid-eighties (Risbud 2003). Its range of services includes public transport and electricity, apart from other municipal services. It is responsible for the Master Plan of the city and enforcement of development control regulations. It is not directly involved in public housing or slum improvement. Interestingly, even though the 74th Amendment to the Constitution of India has empowered urban local self-government by devolution of functions like urban planning, slum improvement and poverty alleviation as well as other responsibilities, the state government of Maharashtra has been showing a tendency to centralize city planning and governance. According to Koppikar (2012):

The buck used to stop at the BMC till the mid or late 1990s; then, as ambitions to develop Mumbai as Asia's financial hub took root, the BMC's charter of responsibilities began shrinking. The urban local body, with a history that pre-dates Independence, was replaced by government bodies and special purpose vehicles (SPVs) like the MSRDC in several key areas of the city's development. The BMC, with an elected general house of 227

¹³ BMRDA is was renamed MMRDA, after Bombay became Mumbai.

corporators, and by that virtue the most representative voice of the city on matters concerning the city, has had little to do with the planning and execution of big-ticket projects. “No one talks of the planning department here anymore,” says veteran corporator Vinod Shekhar (Congress). Indeed, the ‘Vision Mumbai’ document was drafted in 2003 with hardly any inputs from BMC.

The other big institutional player in planning and development of the MMR is the Mumbai Metropolitan Development Authority (MMRDA), whose specific mandate is regional planning, coordinating and supervising development efforts in the Mumbai Metropolitan Region. The Maharashtra Housing and Area Development Authority (MHADA) is the main agency responsible for supplying public housing. The Collector of Mumbai is a revenue executive responsible for land management aspects related to titles and deeds of ownership of land. The Office of the Collector is responsible for issuing identity cards to slum dwellers, the collection of service charges from them, the granting of entitlements to government lands, and the removal of unauthorized structures from public land (Risbud 2003).

Private builders and developers play a very significant role not only in developing land and providing housing but also in slum rehabilitation. The period after the national emergency in 1976 saw the emergence of a supportive role of NGOs. Since then, NGOs have been acting as pressure groups that claim to work towards protecting rights of the poor. The role of politicians and political parties is important as access to strategic resources, at least for disadvantaged lower-class groups, is through political rather than other channels. Slums in Mumbai, like anywhere else, need water, electricity, schools, and other essential services. These are obtained by slum dwellers largely through political pressure and contacts (*ibid.*). The system is such that politicians need support and bargain

for it through promises of patronage and favors. Desai (1995, 297)¹⁴ claims that the Republican Party and the Shiv Sena are in part generated by this system of mutually sustaining pay-offs.

4.2 Land Policy and Slums in Mumbai

Land prices in Mumbai are among the highest in the world. A recent news article reported that the asking price for a two-room shack¹⁵ in the famous Mumbai slum, Dharavi, was \$43,000 (Nolen 2012). Chances are, it was said, that the shack would sell for well above its asking price. These are telling facts of how unaffordable housing in the formal open market is. Recently, a lottery for 3,683 relatively cheaper flats by the Maharashtra Housing & Area Development Authority (MHADA) attracted over 700,000 applicants (MCGM 2009, 38).

According to the MCGM, poverty, unaffordable housing, and lack of adequate housing supply are the chief causes of proliferating slums (MCGM 2006). At the current level of supply of 40,000 units per year, there would be an annual deficit of 45,000 units per year. Predictions are that unless the supply increases significantly, the annual deficit will gradually increase to about 59,000 units a year by 2021. The Maharashtra Housing and Area Development Authority (MHADA), a public agency, exists with the mandate of providing affordable housing. MHADA produces a negligible amount of housing in Mumbai. Private real estate developers are the main producers and suppliers of housing in the city. Mumbai has historically not had a comprehensive land use policy.

A number of legal instruments have been available to planners to control and acquire land such as the Land Acquisition Act, 1894, The Maharashtra Slum Areas (Improvement, Clearance and

¹⁴ Cited in Risbud, 2003.

¹⁵ This shack comprises “two rooms of eight feet by eight feet stacked one atop the other with only a rickety ladder outside leading to the low-ceiling upper floor.

Redevelopment) Act, 1971, Mumbai Metropolitan Region Development Authority Act, 1974; Urban Land (Ceiling and Regulation) Act, 1976, and the Maharashtra Housing and Area Development Act, 1976. Among these, the only legal instrument, whose stated aim was to help prevent speculation in land prices, and enable assembly of land by the government for the purpose of public housing was ULCRA. According to Srinivasan (1981), there was a large amount of vacant land that could potentially be acquired under ULCRA. Private charitable trusts like F E Dinshaw in Mulund, Soli Godrej at Vikhroli, Wadia Trust at Kurla, N D Sawant Holdings at Borivli and Eksaw, the Surji Ballabhdas Holdings at Hariyali, and the NL Mehta Holdings at Bhandup, held large tracts of vacant open lands in Mumbai. Godrej Holdings held over 1,200 hectares in Vikhroli alone (ibid.). As a result of these large landholdings in few hands, land ownership in Mumbai was very concentrated. It was reported that 55 percent of vacant residential land in Mumbai was in the possession of 91 owners (Abraham 1982).

Thus, with large amount of vacant open land, concentration of land ownership, and a burgeoning slum population, Mumbai seemed to be the perfect case where ULCRA could prove an extremely useful tool for socially just redistribution. Ironically, ULCRA is supposed to be one of the main culprits behind the high land prices and subsequent lack of affordable housing in Mumbai. Apparently, the law that was considered to help the poor by ensuring affordable housing did the opposite. In what follows in this thesis, we will be trying to understand why ULCRA has such an outcome in Mumbai. In the following sections of this chapter, we will take a close look at the way ULCRA was operationalized in Mumbai by the government, the intentions of policy makers, the working of ULCRA's bureaucracy, and actual outcomes in the housing industry.

4.3 ULCRA in Mumbai

The need for imposing a ceiling on urban land was felt in Maharashtra much before the central government enacted ULCRA.¹⁶ Back in October 1971, the Maharashtra Assembly and Maharashtra Legislative Council had adopted resolutions favoring the imposition of a ceiling on urban immovable property and the acquisition of such property in excess of the ceiling (Hamine & Gangan, 2007). During deliberations in the legislative assembly, the leader of the opposition had argued for enacting a state law on urban land ceiling rather than empowering the central government since taking the former route would ensure the state government could make amendments. However, with a simple majority, the government of the day led by Vasant Rao Naik, passed the resolution under Article 252 empowering the central government to enact an urban land ceiling law.¹⁷ The Urban Land (Ceiling and Regulation) Act, 1976, came in to effect in Maharashtra on 17th February 1976 (GoM 1983, 2).

ULCRA was applicable in 9 urban agglomerations (UAs) in Maharashtra including Greater Bombay (now Greater Mumbai), Thana, Ulhasnagar, Nashik, Pune, Sangli, Solapur, Kolhapur, and Nagpur. Initially, the interim control of administration remained with Collectors of these UAs. Soon thereafter, on July 21, 1976, the Government of Maharashtra's Urban Development and Public Health Department appointed Deputy Collectors in the 8 UAs except Mumbai as Competent Authority (CA). In Mumbai, an IAS officer of the level of Additional Collector was appointed CA.¹⁸ This was because the job was considered to be of greater responsibility as Mumbai was the largest UA in the state with high land prices.

¹⁶ Anonymous (Former Senior ULCRA Bureaucrat). Personal interview. July 30, 2012

¹⁷ Anonymous, *supra* n. 16

¹⁸ GoM, "Resolution No. ULC 1076/1510 UD 25." Mumbai: Urban Development and Public Health Department. July 21, 1976.

According to a former senior bureaucrat who helped steer initial ULCRA implementation efforts, there was a great deal of uncertainty within the bureaucracy in Maharashtra about how the Act was to be implemented.¹⁹ The Act was perceived by the bureaucracy to be complex, and during the first few years of ULCRA coming in to effect, there was a serious lack of knowledge within the state government agencies responsible for implementing it. The first task for CAs before they could begin implementation was to get clarity on concepts in the Act. Official communication shows CAs writing to the state government asking for clarification on concepts like “land appurtenant”, “vacant land”²⁰, and “contiguous land”²¹. According to this informant, for the first six months, “nothing moved, primarily because we [bureaucrats in charge of implementing the act] did not know how to proceed.”²²

In 1977, the constitutional validity of ULCRA was challenged in the Supreme Court.²³ As described in the earlier chapter, the Supreme Court ultimately struck down the petition and upheld the constitutional validity of the Act. According to a former ULCRA bureaucrat, till the end of 1977, significant time and effort of the government administration went in to delegation of responsibility regarding implementation of ULCRA, most importantly the appointment of CAs and setting up of their offices.²⁴ By the end of 1977, there was still ambiguity on the Act’s constitutional validity and the modalities of its implementation. This resulted in a lack of interest shown by landowners in filing statements; they kept postponing filing statements with the hope that the Act would be struck down soon. All these factors together resulted in the building industry in Mumbai coming to a standstill.^{25,26}

¹⁹ Anonymous, *supra* n. 16.

²⁰ GoI, “Circular No. 1/243/76-UCU.” New Delhi: Ministry of Works and Housing, November 19, 1976.

²¹ GoM, “Circular No. ULC-1078/XXXV.” Mumbai: General Administration Department. June 2, 1978.

²² Anonymous, *supra* n. 16.

²³ *Maharao Sahib Bhim Singhji v. The Union of India and Others*. No. 350 of 1977, AIR 1981 SC 234.

²⁴ Anonymous, *supra* n. 16.

²⁵ *Ibid.*

²⁶ Anonymous (Architect). Personal Interview. July 19, 2012.

This meant major losses for everyone in the building industry in the city. In response, real estate developers, architects and professional building industry-related associations started mounting pressure on the government to find a way out of this situation.²⁷ This resulted in the state government shifting gears and starting to work on a series of guidelines detailing how the Act was to be implemented.

In June 1977, after a year of the Act coming in to effect, the Government of Maharashtra constituted a Cabinet Sub-committee, tasked with steering ULCRA towards “effective implementation.” This sub-committee comprised the Chief Minister (as its chairman), the Minister of Industries and Sports, Minister for Revenue, Minister for Finance, Minister for Urban Development, Minister for Housing, Bombay Metropolitan Regional Development Authority, the Minister for State, General Administration, and the Minister for Industries, as its members. The Secretary to the Government General Administration Department (Urban Land Ceiling) was the secretary to this Committee. Bureaucrats in the Department of Housing were tasked with the main policy making work and presenting it to the sub-committee for approval.²⁸ The CA in Mumbai was an IAS officer in the Department of Revenue. Since the CA was the main agent for implementation of ULCRA, to bring coherence between policy making and its implementation, the CA’s office was supposed to work in consultation and collaboration with the Department of Housing. Later, in the late 1980s, the CA began working in consultation with the Department of Urban Development.²⁹

²⁷ Ibid.

²⁸ GoM, “*Resolution No. ULC-1076/1-X Dn(i)*.” Mumbai: General Administration Department, July 5, 1976.

²⁹ Anonymous (Former MMRDA Planner). Interview. August 5, 2012.

4.3.1 ULCRA “implementation” strategy begins to take shape

In 1977, even the central government took cognizance of the fact that ULCRA was being criticized for having retarded building activity in the country, with “adverse effects on employment and the housing shortage.” In response, the Deputy Secretary of the Ministry of Works and Housing, New Delhi, wrote to the Government of Maharashtra, stating “excess vacant land in certain categories may be exempted liberally in the public interest under section 20(1) (a) of the Act.”³⁰ The first type of exemption in “public interest” outlined in this communiqué was based on, “Environmental and Aesthetic Considerations”, wherein because of the lay out plan of an area, it became undesirable, “to divide the excess vacant land into bits of land and construct on it as it is likely to create slum conditions.”³¹ The second category included, “Vacant Land Earmarked for Commercial Use”, including for business, trade, profession, cinema, hotels, cultural institutions, petrol pumps, and so on. Certain riders were included such as, “the use of such land and the construction of building thereon conform to the master plan/redevelopment plan/building regulations/FAR/FSI regulations, etc.”³² The state government was given the power to reverse the exemption in case it found the landowners had failed to adhere to the conditions.

According to former ULCRA bureaucrats interviewed by the author, the state government understood from early on that it was impractical to simply take over all vacant lands. The government seemed afraid of an economic standstill. This is reflected in government documents. According to Government of Maharashtra (1983, 2), “The entire development of urban areas would come to a standstill, if the aim of the Act was only to acquire urban or urbanizable [sic] vacant lands by following this [the ULCRA acquisition] procedure.” Industries, and private charitable trusts were

³⁰ Government of India, “*Letter No. 2/31/77-UCU(ii)*.” New Delhi: Ministry of Works and Housing. February 2, 1977.

³¹ *ibid.*

³² *ibid.*

the two categories of landowners that held huge chunks of land in Mumbai. In the initial years of the Act coming in to force, internal communication in the ULCRA Bureaucracy shows that the government gave high priority to formulate an exemption policy for these lands. As early as October 1976, the General Administration Department of the Government of Maharashtra outlined the rationale and procedure for granting exemptions for industrial use under Section 20 of the Act. The then confidential note outlined that the state government had powers under section 20 of the Act to grant exemptions to land owners either in public interest or to prevent undue hardship to landowners. Soon, the government had formulated exemption criteria for other land types too.

4.3.2 Industrial Lands

As per Section 23 of ULCRA, the state government had powers to allow the owners of industry to hold land in excess of the ceiling limit if they stated it was required for any purpose relating to industry, or for constructing employees' housing (GoI 2012, 19). A committee called the Urban Land (Industrial Use) Committee, comprising the Secretary, General Administration Department, the Metropolitan Commissioner, Bombay Metropolitan Region Development Authority, and the Joint Secretary to the Chief Minister, was formed to examine cases relating to the exemption of vacant lands held by Industrial Undertakings in Mumbai, "to the extent necessary to meet their genuine requirements, from the provisions of the ceiling limit laid down under Section 4 of the Act."³³ This committee was also charged with making recommendations regarding the conditions on which such exemptions were to be granted. To streamline and speed up the process of deciding exemptions for industrial lands, the cabinet of the Government of Maharashtra, in its meeting held on May 25, 1977, decided to appoint the Chief Executive Officer of MIDC (Maharashtra Industrial Development Corporation) and the Industries Commissioner as CAs,

³³ GoM. "Resolution No. ULC-1076/XXXV." Mumbai: General Administration Department, September 19, 1976.

thereby empowering them to grant exemptions to industries under Section 20 of the Act, in MIDC and non-MIDC areas respectively.³⁴

As mentioned earlier, industrial landholdings were large—some even as large as small towns. As per the development plan of Mumbai, many industrial units were required to mandatorily providing recreational grounds, internal roads, etc. Other than this, there were instances where these lands had streams, lakes, and other water bodies. Also, some of these lands had power transmission lines passing through, which as per regulations required a certain amount of area to be left vacant around them. In the initial months of the industrial lands exemption policy coming in to effect, time was spent by the bureaucracy to ascertain how to account for these features in calculating the amount of excess land for industrial lands.³⁵

Ultimately, it was decided that open but functional spaces that were either mandated by the development plan (e.g. a recreational ground reservation on a land parcel), or required as per some other regulation (e.g. fire safety regulations), would not be counted as vacant in the excess vacant land calculation for ULCRA purposes.³⁶ As per a government directive, industrial landowners, were required to submit the following as part of their land ownership statements: a) Entire holding of the industrial units; b) Land under the buildings; c) Lands to be kept open as per statutory requirements; d) Lands which qualified for matter-of-course exemptions; and e) Lands which were required for expansion in 3 stages—within 5 years, within 10 years, and within 15 years.

³⁴ GoM. “*Resolution No. IND-1077/I/XXXV.*” Mumbai: General Administration Department, June 14, 1977.

³⁵ Anonymous, *supra* n.16.

³⁶ *Ibid.*

In 1980, the Director of the City and Industrial Development Corporation (CIDCO) was appointed as *ex-officio* Secretary to the Government's General Administration Department, as well as Competent Authority for purposes of granting permissions to landholders, "to enable them to mortgage their properties contrasted and allotted by the CIDCO and also their properties constructed on the lands leased by the CIDCO, to financial institutions for raising finances."³⁷ All of these steps taken by the government show that it was not the intension of the government to use ULCRA to acquire vacant industrial lands. A former ULCRA bureaucrat commented, "with the increased pressure on us from the building industry, we realized the government was doing something very wrong that upset market players."³⁸ With a liberal exemption policy for industries, nearly all industrial lands were exempted.³⁹

4.3.3 Lands owned by Public Charitable and Religious Trusts

Section 19(1)(iv) of the Act provided powers to the state government to exempt vacant lands held by any public charitable or religious trusts, that was required and used for any public or charitable or religious purpose. The rider in this exemption was that the exempted vacant land must continue to be required and used for such a purpose by the trust (GoI 2012, 17). A confidential note circulated within the ULCRA Bureaucracy outlined the different scenarios of vacant land use by public charitable trusts, and the procedure to be followed for taking deciding on them.⁴⁰

The most straightforward case was one in which the trust was holding vacant land, not using it for a religious or public charitable purpose. In this case, the vacant land would not be exempted

³⁷ GoM. "Resolution No. ULC-1079/1224/XXXV." Mumbai: General Administration Department, January 2, 1980.

³⁸ Anonymous, *supra* n.16.

³⁹ Anonymous, *supra* n.16.

⁴⁰ GoM. "Circular No. ULC-1076/XXXV." Mumbai: Government Secretariat, December 17, 1976.

under Section 19(1)(iv). If the trust held vacant land but used it for public charitable or religious purpose like for delivery of religious discourses, school playground, etc., the trust was to approach the Charity Commissioner for scrutiny (that they were indeed using it for said purpose), and then file for exemption with the CA. In case the trust held vacant land that was used for a public charitable or religious purpose but wanted to change the land use in future, the land would not qualify for exemption under Section 19(1)(iv). Instead, the trust would have to apply under Section 20.⁴¹

4.3.4 “Land Appurtenant” saved the day for Landowners

An important concept that was instrumental in vacant land area calculations was land appurtenant. Section 2(g) of the Act defined land appurtenant as “In an area where there are building regulations, the minimum extent of land required under such regulations to be kept as open space for the enjoyment of such building, which in no case shall exceed five hundred square meters; or, in an area where there are no building regulations an extent of five hundred square meters continuous to the land occupied by such building.” (ibid., 3) Soon after the Act came in to effect, there was confusion within the fledgling ULCRA Bureaucracy in Maharashtra about the use of this concept in ascertaining the amount of excess vacant land for land parcels with buildings on them. Clarification was required on whether every building constructed before the appointed day with a dwelling unit therein will be entitled for a bonus of 500 square meters of land if available in a contiguous manner.⁴²

A confidential note from the Law Department circulated within the ULCRA Bureaucracy confirmed that in case of land on which a building was constructed before the appointed day with a

⁴¹ Ibid.

⁴² GoM. “*Resolution No. ULC-1076/XXXV.*” Mumbai: General Administration Department, October 26, 1976.

dwelling unit therein, an additional area not exceeding 500 square meters of land, if any, contiguous to the minimum extent referred to in sub-clauses of Section 2(g), was to be included in the expression “land appurtenant”.⁴³ According to ULCRA, “land appurtenant” was excluded from the definition of vacant land. Thus, landowners got a bonus of 500 square meters per legal structure containing a dwelling unit on their land. For instance, if there were four such structures, the landowner could claim 2000 square meters of vacant open land that would be exempt from the excess vacant land calculations under ULCRA. In practice, this meant that landowners had some relief if their properties had more than one preexisting building containing a dwelling unit before the Act came in to effect.

4.3.5 “Weaker Section” Housing Schemes

Sections 20 and 21 were the main exemption clauses used in Mumbai to exempt excess vacant land under ULCRA. Section 20 provided powers to the state government to exempt excess vacant land if it was satisfied that doing so was in “public interest,” or if acquiring the excess vacant land would cause “undue hardship” to the landowner. Section 21 provided state government with powers to exempt excess vacant land if landowners would agree to construct housing for “weaker sections” of society on the exempted land. The term “weaker section” was not defined in the Act. According to a former ULCRA bureaucrat from Mumbai, “Whether ‘weaker section’ meant economically weaker section, physically weaker section, mentally weaker section, or something else, was never specified in the Act.”⁴⁴ The only restriction put by the Act on “weaker section” housing was that plinth area of such housing could not be more than 80 square meters (GoI 2012, 18). Moreover, only the Government of India could announce “weaker section” housing schemes under

⁴³ Ibid.

⁴⁴ Anonymous, *supra* n. 16.

Section 21. The first such scheme was announced at the end of December 1978—almost two years after ULCRA came in to effect. The last date for making applications was March 31, 1979 (GoM 1983, 4).

In the meantime, alarmed by the standstill in the building industry in Mumbai, and subsequent pressure from building industry-related lobbies, the Government of Maharashtra tried finding ways out of the situation. As a solution, the Government of Maharashtra devised a similar “weaker section” housing scheme under Section 20, with the justification that weaker section housing was in “public interest,” and that it would prevent “undue hardships” to landlords. According to the Government of Maharashtra (*ibid.*), this scheme would prevent freezing of land supply in urban areas, “by providing a safety valve, as it were, in the form of permission to build houses which serve the common good.” Over the decades, it would experiment with a number of such schemes, where the next was based on learning from the previous ones. In December 1977, the Government of Maharashtra announced the first “weaker section” housing scheme under Section 20. According to this scheme, landowners who desired to construct dwelling units of 30 square meters, 50 square meters, and 80 square meters, on their surplus vacant lands could seek exemption from acquisition of their lands (GoM 1983, 5).

Another similar scheme was launched in August 1979, which provided for construction of houses with tenements each not exceeding 40 square meters. Later, in September 1982, yet another Section 20 scheme was launched for construction of dwelling units with plinth areas not exceeding 20, 30, and 40 square meters in proportion of 25 percent, 25 percent, and 50 percent of vacant land for which exemption was being sought. This scheme was withdrawn in April 1983 (*ibid.*). According to the Government of Maharashtra (*ibid.*, 7), due to various reasons, the implementation of ULCRA

was slow in the period 1976-1982. In Mumbai, by December 1982, while 17,191 landowners had filed statements about their lands under Section 6(1), the proceedings up to the stage of declaring land as surplus had been reached for only 1,343 landowners. The surplus land deemed to be vested in Government, *but not actually taken over*⁴⁵, was only 181.09 hectares. The government was able to taken possession of only 27.13 hectares. Interestingly, exemptions under Sections 20 and 21 were being processed at a much faster pace than decision on surplus land under Section 6(1). By May 1983, while the number of applications received for exemption under Sections 20 and 21 in Mumbai were 6,368, the number of applications disposed off were 2,790⁴⁶ (*ibid.*, 20-23).

In 1983, the Government of Maharashtra launched another “weaker section” housing scheme. This time, the government planned to not only force landowners to build “weaker section” houses, and sell a predetermined percentage of these to the government pre-fixed rates, but also force landowners to surrender a proportion of vacant land, where landholdings were large enough. The intention was to hand over this land to MHADA, the public housing agency, which would then build affordable housing on it.⁴⁷ Under this scheme, 25 percent tenements could be up to 25 sq. m. plinth area, 25 percent up to 40 sq. m. plinth area, and remaining 50 percent up to 80 sq. m. plinth area. Landowners had to surrender between 15-35 percent of built up area (tenements) to the government depending on the size of the land parcel. In Mumbai, landowners would be paid INR 135 per sq. ft. for the tenements surrendered. There was no restriction on the price of remaining tenements that would be sold on the open market.

⁴⁵ The phenomenon of *ex parte* acquisition of land was pervasive. It is discussed in more detail in Chapter 5.

⁴⁶ The breakup was as follows: Section 20: 2,500 disposed out of 3,655; Section 21: 290 disposed out of 2,713.

⁴⁷ GoM. “Circular No. HWS-1083/CSC54/XXIV.” Mumbai: Housing and Special Assistance Department, June 29, 1983.

The amount of vacant land to be surrendered to the government was fixed in slabs, in proportion to the size of the parcel. For land parcels admeasuring between 15,000-25,000 sq. m., land to be surrendered was 25 percent; for parcels between 25,000-50,000 sq. m., 30 percent; and for parcels above 50,000 sq. m., 30 percent up to first 50,000 sq. m., plus 60 percent of the balance area.⁴⁸ For lands under 25,000 sq. m., no land was to be surrendered. This criterion notwithstanding, actual delivery of land acquired under ULCRA to MHADA is negligible. As of 2006, only 53.65 hectares of land had come to MHADA through ULCRA (Pethe et al 2010). The author was not able to find a satisfactory answer to why this scheme failed to deliver land to MHADA. It can be speculated that either landowners chose not apply under this scheme, or that most large chunks of land, in which cases landowners would have to surrender vacant land to the government under the scheme, had already been exempted. Actual data on the number of housing units acquired by the government was difficult to come by, but news reports suggest that only about 11,000 tenements could be acquired by the government at the pre-fixed rates (Times News Network 2004).

4.3.6 Attempts at Regulating “Weaker Section” Housing Schemes

The Government of Maharashtra made repeated attempts to ensure that terms of exemption given on lands under Section 20 and 21 for “Weaker Section” housing were followed by developers, and that the housing produced on these lands remained affordable for the actual weaker sections of society. Initially, the government tried to set price restrictions for “Weaker Section” scheme tenements that would be sold in the open market. Till the end of 1979, the price limit for these tenements was INR 90 per sq. ft. of plinth area (GoM 1983, 14). The state government, in theory, had powers to overturn exemptions if it was satisfied that the landowner did not follow terms of the exemption. However, per government’s own admission, there was a lack of administrative capacity

⁴⁸ Ibid.

to control the sale of apartments in the open market. The final nail in the coffin of price control of “weaker section” housing apartments sold in the open market was an amendment of the Income Tax Act in 1982. As per this amendment, sale of all urban properties having value beyond INR25,000 had to be notified to the Income Tax Commissioner who then had the option to buy the property after paying 15 percent higher value, if he had ground to believe that the original sale price was understated. This, according to a former ULCRA bureaucrat in Mumbai, made any control of sale prices of flats sold in the open market by state government unnecessary or unworkable.⁴⁹

In 1987, a resident of a “weaker section” housing scheme filed a writ petition in the Bombay High Court claiming that the developer was violating conditions of exemption by escalating the selling price of “weaker section” housing tenements.⁵⁰ The court ruled in favor of the petitioner. Aggrieved by this, the developer challenged the decision first in the Bombay High Court, which dismissed the petition. The developer, still wanting to fight in court, decided to challenge the Bombay High Court’s ruling in the Supreme Court.⁵¹ In the early phase of this litigation, the Supreme Court instructed the Government of Maharashtra to issue detailed guidelines for efficient implementation of “weaker section” housing schemes. As a result, the Government of Maharashtra was forced to issue revised guidelines. As per the guidelines, the most important concern was timely construction. The government claimed, that it had noticed in the past that landowners tended to delay implementation of weaker section housing schemes “with a view to earn speculative profits.”⁵² If the landowner delayed constructing the “weaker section” housing scheme, he would be penalized

⁴⁹ Anonymous, *supra* n. 16.

⁵⁰ *N K Totame v. Shantistar Builders*, Writ Petition (Civil) No. 4837 of 1987.

⁵¹ *Shantistar Builders v. N K Totame*, AIR 1990 SC 630.

⁵² GoM. “*Resolution No. ULC-1090/(3422)/D.XIII.*” Mumbai: Housing and Special Assistance Department, January 6, 1990.

in the form of an increase in the number tenements to be surrendered to the government. Tenements so surrendered would go to “government nominees.”⁵³

The CA remained the main government agent responsible for ensuring that developers followed the terms and conditions in the exemption order. To this end, the CA was vested with wide powers. For instance, the CA had powers to physically visit and inspect project sites, to call for information and statements from landowners and developers, to inspect books of accounts, and other records relating to the booking and sale of flats, just to name a few. Most importantly, the CA had powers to revoke exemption in case terms and conditions of exemption were not followed. However, the CA by themselves had powers only to issue notices to this effect. The actual task of issuing stop-work order lay with planning authorities. In this sense, the CAs power would hold good as long as other agencies like planning authorities respected his word. The state government advised the CA to maintain close liaison with the planning authority to ensure that stop-work orders were issued promptly by the latter for schemes whose validity had expired. The CA could take the help of MHADA officers working in regional offices for the purpose of satisfying themselves that the quality of construction was of an acceptable standard. Further, CAs were also responsible for ensuring that the sizes of dwelling units constructed were in accordance with the terms and conditions set in the exemption order.⁵⁴

In a later judgment⁵⁵ in the same petition, the Supreme Court clarified that allotment of tenements that would come to the government should be on the basis of “one family - one flat”, and the family should include husband, wife, and dependent children. A family that owned at least

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Dated November 17, 1995.

one apartment in any urban agglomeration within the state was not entitled to allotment or acquisition by transfer of a flat. Further, according to this order, every builder had to maintain a register of applicants, arranged chronologically. The register had to be available for inspection by the authorities. The court also directed that a “means test” for identifying weaker sections of society be adopted.⁵⁶ Finally, the court recommended that the regulatory task should be managed by the CA, in a committee comprising himself, a judicial officer not below the rank of an Additional District Judge, and a Government engineer not below the rank of Superintending Engineer. In the committee, the judicial officer was to serve as the Chairman. The Government of Maharashtra passed a resolution following this order. As per the “means test” in this resolution, a “weaker section” family was one whose total annual income was under INR35,000.⁵⁷

Clearly, the Supreme Court’s judgment, on the one hand, provided concrete guidance, and on the other, it increased the procedure involved both for the state government as well as landowners. It also increased the discretionary power of bureaucrats, something that was a double-edged sword. Many informants, including those that had earlier served in the government, claimed that this power of discretion led to massive misuse in the form of corruption. Clearly, the task of regulating “Weaker Section” housing schemes under ULCRA was very complex, and involved cohesive behavior by agencies within the State.

The government assumed that prescribing plinth area restrictions on weaker section housing projects would ensure a supply of small-sized dwelling units that would remain affordable because such small houses would not appeal to rich buyers.⁵⁸ This was a mistaken assumption because the

⁵⁶ Ibid.

⁵⁷ GoM. “Resolution No. ULC-1095(6182)/ULC-1.” Mumbai: Housing and Special Assistance Department, January 16, 1996.

⁵⁸ Anonymous (Former Competent Authority, Mumbai). Telephonic Interview. July 20, 2012.

land market in Mumbai already had an undersupply of housing stock.⁵⁹ Landowners and developers used numerous stratagems to game the “Weaker Section” housing projects regulation system of the government. A well known architect in Mumbai who prepared building plans for landowners under these schemes said that a common method used by them was to tell buyers that the “ceiling price” applied only to the basic structure. At times, the basic structure was defined as only the reinforced concrete structure. Landowner and developers then listed everything else including material finishes (sometimes including paint), fittings, and so on as add-ons, and charged the buyers for these separately. In practice, using this method, the selling price of the “weaker section” housing dwelling unit was the same as market price for a similar regular dwelling unit.⁶⁰

Further, developers building housing under these schemes made such layouts that two dwelling units could easily be combined to form a larger, fully functional unit. On paper, these units were shown as two separate units, for example, 40 square meters each. Once the scheme was approved, they were constructed and sold as two separate units to the same buyer. As per the buyer’s wish, before occupation the two units were combined to form an 80 square meter unit. Often, the procedure was as simple as knocking down a single partition wall.⁶¹ A former bureaucrat who served as Competent Authority for Greater Mumbai, said he could not take action against such behavior because it was legal for buyers to do whatever they wished with the apartments. “In the face of such gaming of the system,” this former CA said, “my hands were tied.”⁶² One informant stated that a particular housing scheme in a now-affluent suburb of Mumbai, built on surplus vacant land exempted under a “weaker section” housing scheme by a leading developer of Mumbai,

⁵⁹ Anonymous, *supra* n. 29.

⁶⁰ Anonymous, *supra* n. 26.

⁶¹ Anonymous, *supra* n. 60.

⁶² Anonymous, *supra* n. 58.

features two apartment numbers for the same apartment. This is because smaller units, sold separately, were later combined to form bigger units.⁶³

In theory, if landowners contravened any of the conditions, the CA had power to void the exemption and notify the surplus land for acquisition. This did not happen. The most common answer given by former ULCRA bureaucrats to this author, for the lack of enforcement of rules, was lack of administrative capacity to keep a check on every housing project in the city.⁶⁴ Housing activists allege there was corruption and underhand dealing involved here because of which the ULCRA bureaucracy routinely overlooked open flagrance of rules by landowners and developers.⁶⁵

4.3.7 Unintended Outcome—Assembly of land by developers as a result of ULCRA

While the objective of ULCRA was to prevent concentration of land in private hands, and limit speculation, the opposite seems to have happened. According to several informants, in the initial years of the Act coming in force, some “smart” developers started taking advantage of the ambiguity regarding the future of land ownership in the city. There were many landowners who had relatively small holdings. These were people who did not have connections in the government and to them, given the red tape involved, the thought of getting an exemption under the Act was a daunting challenge. Some developers took advantage of the situation. They approached such landowners and told them that their lands would certainly get acquire under ULCRA. These developers proposed buying these lands below below market price. Since in the developer’s version of the story, these lands were “worthless” anyway, sub market price still sounded profitable to landowners. Later, they would exploit loopholes in the Act, and their connections in the government

⁶³ Anonymous, *supra* n. 16.

⁶⁴ Anonymous, *supra* n. 16.

⁶⁵ Anonymous (Housing Activist). Personal Interview. August 11, 2012.

to get exemptions on these lands, and make huge profits.⁶⁶ Another tactic used by developers to evade ULCRA regulation was to hold land using proxies. According to a prominent Mumbai-based developer, they registered lands in the names of relatives, and even employees. They would retain control over land using power of attorneys.⁶⁷ The lack of proper land records helped such developers evade whatever attempts were made to keep this activity in check.⁶⁸

As of November 2007, the total land declared surplus under ULCRA was 17,000 acres. Of this, 12,000 acres had been exempted under Sections 20 and 21. Of the remaining 5,945 acres, 1,827 acres was further exempt. This left a balance of 4,118 acres. Government ordered acquisition of 3,500 acres in the two years before the repeal. It was able to acquire only 2,282 acres but over two thirds of it was legally challenged (Koppikar 2007).

⁶⁶ Anonymous, *supra* n. 29.

⁶⁷ Anonymous (Mumbai-based Developer). Personal Interview. August 2, 2012.

⁶⁸ Anonymous, *supra* n. 29.

Chapter 5: Repeal

5.1 ULCRA gets repealed

By the mid-1980s, ULCRA had come under sharp criticism both in terms of its design and implementation. Several commentators (Srinivasan 1981, 1983; Abraham 1982) claimed that the Act was not being implemented to enable affordable housing for the poor. The central government-commissioner NCU report published in 1988 agreed that ULCRA had failed to achieve its objective (GoI 1988). It recommended that all property developed in breach of norms, should be liable for confiscation by the state without payment of compensation. It also recommended that during the period when land in excess of the ceiling was kept vacant, a cess or tax, ranging from Rs. 3 to Rs. 50 per square meter, depending on the size of the town, location and so on, be paid to a Shelter Fund for each urban center. These recommendations were not followed in Maharashtra.

By Government of India's own admission, on a national scale too, the Act performed dismally (GoI 1999). The state governments could physically acquire only 19,020 hectares of excess vacant land out of an area of 220,674 hectares estimated to be in excess of the ceiling limits; this worked out to only about 9 percent. As much as 56,640 hectares of excess vacant land were exempted under Sections 20 of the Act (on grounds of "public interest" or on account of "undue hardships"). Under Section 21, 5,327 hectares of excess vacant land were exempted for the purpose of construction of dwelling units for "weaker sections" of society. The Government of India noted, "It is a matter of widespread knowledge that the provisions of the act, while unduly restricting the supply of land for meeting various needs, have led to corruption and unnecessary harassment of the people holding small parcels of land in the 64 notified urban agglomerations." (ibid.)

Ranade (2006) holds that, “A nationwide movement to repeal ULC picked up momentum in the mid 1990s.” Ramesh (1999) traces the developments within ruling parties in New Delhi regarding repeal of ULCRA. According to him, the P. V. Narsimharao-led Cabinet first considered liberalization of ULCRA in 1992. However, this government “buried the amendments by referring them to a group of ministers.” In 1995, it was considered once again by the same cabinet, but it never saw light of the day due to lack of all-party consensus on the issue. Next, H. D. Devegowda-led government considered it but before the government could take action, the government fell. I. K. Gujral, the next prime minister who, incidentally, had piloted ULCRA in Parliament in 1976 as Minister of Housing and Works, promised to liberalize ULCRA, “but lost his nerve at the crucial moment.” (ibid.) Some more efforts were made during Gujral’s tenure but again, before anything substantial could be done, the government fell. Finally, it was the BJP-led coalition, the National Democratic Alliance, during whose reign the Repeal Act was passed.

According to Mahalingam (1999), the then Minister of Urban Development and Employment, Ram Jethmalani said that since the Punjab and Haryana legislatures had passed the enabling resolution seeking ULCRA’s repeal, under Article 252 of the Constitution, he had no option but to oblige them. Once in opposition, many former ministers from I. K. Gujral’s cabinet, who had previously supported repealing ULCRA, made a U-turn. A group of 64 Members of Parliament, led by actress-politician Shabana Azmi, presented a memorandum opposing the bill to the then Prime Minister Atal Bihari Vajpayee (ibid.).

On March 22, 1999, the Parliament of India passed the Urban Land (Ceiling and Regulation) Repeal Act (hereafter, the Repeal Act). From January 11, 1999, ULCRA stood repealed in the state

of Haryana and Punjab, along with all Union Territories.⁶⁹ Importantly, under Article 252 of the Constitution of India, the Repeal Act proffered the possibility of repeal of ULCRA to any state that chose to adopt it. (GoI 1999) According to the Repeal Act, the repeal of ULCRA would not affect any vacant land that had already been vested under sub-section (3) of section 10, possession of which had been taken over by the State Government, or any person duly authorized by the State Government.

The Repeal Act would also not affect the validity of any order granting exemption under sub-section (1) of Section 20, notwithstanding any judgment of a court to the contrary. In case vacant land had been deemed to be vested in the State Government but possession had not been taken over, it would only be restored after the amount paid to the landowner was refunded to the state government. (ibid.) Further, clause 4 of the Repeal Act read “All proceedings relating to any order made or purported to be made under the principal Act [ULCRA] pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate.” The Repeal Act excluded Sections 11, 12, 13, and 14 of ULCRA from the abatement of legal proceedings clause.

In the years following the passage of the Repeal Act, other states like Gujarat, Haryana, Karnataka, Orissa, Madhya Pradesh and Rajasthan repealed it. Interestingly, the states of Andhra Pradesh, Assam, Jharkhand, West Bengal, and Maharashtra did not repeal the Act immediately. (NIUA n.d.) It was only after the central government made it mandatory for state governments to repeal ULCRA, among other mandatory reforms, in order to receive central funding under the JNNURM, that these states repealed ULCRA.

⁶⁹ An Ordinance was passed on July 11, 1999, repealing ULCRA. Later, in March that year, the Parliament passed the Repeal Act.

Launched on December 5, 2005, JNNURM is a reform-linked, urban infrastructure and service delivery improvement program that aimed at fast track planned development of identified cities by focusing on efficiency in urban infrastructure and service delivery mechanisms, community participation, and accountability of ULBs and Parastatal agencies towards citizens (MoUD 2005, 5). To be eligible for centrally-allocated JNNURM funds, the mandatory reforms at the levels of state governments included: 1) Implementation of the decentralization measures as envisaged in the 74th Constitutional Amendment Act; 2) Reforms of Rent Control Laws; 3) Rationalization of Stamp Duty to bring it down to no more than 5 percent within seven years of launch of JNNURM; 4) Assigning the “city-planning function” to ULBs; and 5) Repeal of ULCRA (ibid., 13).

Just like other government reports, JNNURM policy documents too, describe ULCRA as having failed to achieve its objective. The main reasons for this are giving too much discretionary powers to state governments for granting exemptions under ULCRA, providing very little compensation for acquired land that led to lengthy legal disputes, and absence of a mechanism to encourage the entry of the vacant urban land into the land market through appropriate fiscal measures (GoI 2011, 2). The Ministry of Urban Development’s *JNNURM Repeal Primer on ULCRA* offers the following as “principle reasons why the ULCRA should be repealed”:

- Vast tracts of land in cities are expected to be released for development. This will bridge the gap between demand and supply in the real estate sector of various states.
- The housing sector will receive a big boost. The increase in the supply of land will improve accessibility and affordability for the urban poor.
- It will tend to improve transparency and efficiency in land acquisition, which would encourage domestic and foreign investment in the real estate sector.

- The administrative fees payable under ULCRA for getting permission for land development, which are sometime as high as Rs.100 per square feet, would be done away with and the benefits passed on to the consumers. (ibid.)

Further, this document claimed that repeal of ULCRA would have palpable benefits for state governments, cities, and citizens (ibid., 3). For states, it claimed that there would be increase in supply of land and investment in housing would have, “multiple effects in generating direct and indirect income and employment generation besides improving productivity levels and the overall social well-being.” The repeal would make available “large tracts of land that earlier would have required urban land ceiling clearance from the government,” which could be used for construction of integrated townships and houses for the urban poor. In addition, the new supply of land was supposed to have a moderating effect on property prices. Finally, it was supposed to lead to a decline in the number of litigation cases. For ULBs, the increased housing supply was supposed to help in mobilizing property tax, thereby bolstering municipal finance. There was supposed to be increased accessibility to affordable housing for the urban poor, along with reduction in corruption and unlawful payments to get permission for development (ibid.).

State governments were advised to repeal the Act in four steps. First, a resolution was to be passed in the state assembly indicating state’s intent to repeal ULCRA. Second, the state legislature was to pass a resolution in compliance with the repeal of ULCRA Act passed by Parliament in 1999. Third, the state government was to issue a notification in this regard. Fourth, the state urban development department was to issue directions and guidelines with regard to usage of excess vacant land that would be released after repeal of the Act. This was to be accomplished over a period of four years. According to a former Secretary of the Ministry of Urban Development, there was

difference of opinion between the legislators, bureaucrats, and the technocrat-advisors on including repeal of ULCRA in the set of mandatory state-level reforms for states to be eligible for central government's JNNURM funds. Ultimately, a small but influential group that believed ULCRA had to go, succeeded.⁷⁰

In 2004, just before JNURM was launched, the Government of Maharashtra, headed at the time by Congress leader Sushil Kumar Shinde, formed a committee under the chairmanship of the then Chief Secretary to the Maharashtra State Cabinet, Ajit Nimbalkar to consider the future of ULCRA. The Committee decided that ULCRA should be retained. Shinde claimed that there was a lot of protest from citizens against the repeal who, according to him, wanted ULCRA to stay (Bharucha 2004). A number of social activists, present and past legislators, and prominent citizens in Mumbai were pro-ULCRA at the time. According to a well-known activist in Mumbai, former Members of Legislative Assembly (MLA)—Mrinal Gore and P. B. Samant, were prominent in the campaign to retain ULCRA.⁷¹ It was suggested that ULCRA was the government's "Cash Cow" that it would not let go of (Bharucha 2006).

Pressure to repeal ULCRA mounted on the Maharashtra Government with the launch of JNNURM. During negotiations with the central government, the Maharashtra Government claimed difficulty in forming political consensus on repealing the Act (Times News Network 2006). According to a former Secretary of the Ministry of Urban Development, who oversaw the administration of JNNURM during his tenure, since this was the first time the center was in a way directly intervening on a large scale in urban development—a state subject—there was a fair bit of "give and take" between the center and the state regarding the manner in which the reforms were to

⁷⁰ Anonymous (Former Secretary to the Ministry of Urban Development). Personal Interview. June 20, 2012.

⁷¹ Anonymous (Housing Activist). Personal Interview. July 12, 2012.

be carried out.⁷² States were given leeway in deciding their own reform process schedule over the JNNURM period. The aim of the Central Government was to have all mandatory reforms carried out by the end of JNNURM.⁷³

Therefore, the central government maintained pressure on Maharashtra to repeal the Act. In 2006, the Government of Maharashtra decided to give an undertaking to the Central Government that ULCRA would be repealed (Times News Network 2006). The then Union Minister for Urban Development, Jaipal Reddy, had expressed his Ministry's unhappiness with Maharashtra Government's unwillingness to repeal ULCRA. There were warnings given by the Central Government that ULCRA would have to be repealed if Maharashtra was to receive JNNURM funds (ibid.). In October 2007, Urban Development Secretary of Maharashtra, Ramanand Tiwari informed the media that ULCRA would be most likely be scrapped in the winter session of the Maharashtra Assembly. According to him, scrapping ULCRA was linked to the availability of funds for infrastructure projects under JNNURM. The deadline set by the Central Government to the state for scrapping ULCRA was March 2008 (Bharucha 2007).

A special meeting to allow for the discussion on the repeal of ULCRA was convened on the day before repeal. In the meeting, the Leader of Opposition in the Maharashtra State Assembly pointed out that ULCRA repeal could result in potential losses as high as INR 200 billion, the foregone cost of land that could be acquired in the state under UCLRA. Socialist members in the meeting advocated preserving ULCRA by pointing out its potential to enable the provision of affordable housing for the poor. They also highlighted that some other states had not repealed ULCRA because of the potential they saw in it. According to the proceedings of the meeting:

⁷² Anonymous (Former Senior Bureaucrat). Personal interview. June 15, 2012.

⁷³ Ibid.

Some of the interested members even presented the statistics on poor performance of Government: Of the 91,000 notices issued under ULCRA, 63,000 were decided but only 21 ha were acquired and 28000 cases with over 42 ha were pending. Questioning the poor performance in the past, it was argued that at the pace in the last two years, when 9000 hectares were acquired and 500 crores went into treasury, there was scope for better performance; therefore, the question of the dependency on Central Government budget.

The Socialist members pointed to still prevailing problem of much of Mumbai's land in the hands of large private land owners like Godrej (2500 acres), Dinshaws (800 acres), Others (600 acres), Mill lands (600 acres), Parks & Playgrounds (300 ha) and Vijay Sawant (200 acres). They were of the opinion that the private gains could be large and instead of the repeal of ULCRA, there was a need to provide housing for the poor rather than giving up to the Central Government pressure. The loss of local control over land was also lamented by them, especially the declining status of *Marathi Manooos* vis-à-vis the affluent people in Mumbai.

Some of the main opposition members argued to look out for better avenues to raise revenue for the State Government rather than begging the Central Government. They also pointed out that with the loss of mill land there was a loss of revenue as well as opportunity to provide housing for the poor. They questioned the sincerity of implementation of ULCRA and the usefulness of Central Government money with reference to the urban poor. Despite some amount of questioning, there was hardly any response and on October 29, 2007, the Chief Minister initiated resolution and it was declared as passed by the Speaker of the House. (GoM 2007, cited in Pethe et al 2010)

Maharashtra finally capitulated. On November 30, 2007, amid “shouting from opposition benches” in the Nagpur Assembly, the ULCRA Repeal Act 1999 was adopted by Maharashtra thereby repealing ULCRA (Maharashtra Legislative Assembly 2007). In return, the state government got a guarantee of INR 17 billion as central government assistance under JNNURM (Kurup 2007). The response from the building industry was ecstatic. Experts claimed the move was expected to

free a large amount of land for development in Mumbai city. The estimates of land to be freed up ranged from 8,000 acres to over 30,000 acres of land in Mumbai that was in the possession of 345 large business groups such as the Godrej and Hiranandanis as well as the Indian Railways (ibid). Anticipating the event, the day before the repeal, the market had begun to celebrate. Godrej Industries' stocks hit upper circuit on the Bombay Stock Exchange (ibid.). All other major Mumbai-based real estate developers listed on the Bombay Stock Exchange gained too (Express News Service 2007).

5.2 Challenging the Repeal Act's Validity

As the Maharashtra Government started showing signs of repealing the Act, social activists P. B. Samant, Mrinal Gore, and others filed a public interest litigation in the Bombay High Court to stop the repeal. In Writ Petition No.4 of 2006, Petitioners (activists) prayed for the court to issue a *Writ of Mandamus*, or any other Writ, Order or Direction in the nature of Mandamus, directing central and state governments (respondents) to place before the court a list of land holders holding vacant lands of 10 acres and above in Greater Mumbai and disclose the steps taken under ULCRA with respect to them. Further, they requested the court to direct the respondents to immediately “implement and invoke the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and acquire the excess vacant land which is available in Greater Mumbai, ... and utilise the same as best to subserve the common good.” The petition also requested the court to order halting of the ULCRA repeal process in Maharashtra until the matter was decided.

Upon the court's direction, the state government submitted the list of names of landholders holding vacant lands of 10 acres and above in Greater Mumbai. As per the list, there were 338

declarants holding vacant lands in excess of 10 acres. In response to the court's query to the Government pleader as to the status of proceedings under ULCRA in respect of the list of landholders, the Government Pleader submitted that before December 31, 2007, "the Competent Authority shall be able to pass orders under section 8(4) of the Act of 1976, pursuant to the statements filed under section 6(1). He also submitted that as on date, acquisition of 1009.75 acres (403.90 hectares) of declared surplus vacant land is under process under section 10 of the Act of 1976 and that the said process shall be completed within six months from today." The court also ordered the Competent Authority, Greater Mumbai, to "proceed with the statements filed under section 6 (1) of the Act of 1976 expeditiously and pass order under section 8(4) as early as possible and in no case later than December 31, 2007." Further, the court ordered that the CA, Greater Mumbai, "to act quickly for acquisition of 1009.75 acres (403.90 hectares) declared as surplus vacant land and complete the process within six months from today as the land has already vested in the State Government, by virtue of section 10(3) of the Act of 1976." The court qualified its judgment by mentioning that this order was to not have any effect on the legislative process regarding repeal of ULCRA.

Later, veteran Mumbai-based socialist leader P. B. Samant challenged the Government of India and Government of Maharashtra's decision to repeal ULCRA.⁷⁴ The petition claimed that the state government had been insincere in its efforts to implement ULCRA to help the poor. The petition further claimed that due to the non-implementation of ULCRA, the sale of lands was frozen, and the prices of saleable vacant lands had reached sky-high, creating an acute shortage of housing in urban areas like the city of Mumbai. It claimed that UCLRA was the one instrument that the government could use to legally acquire "considerable tracts of excess vacant land in the city of

⁷⁴ *P. B. Samant and Others v. Union of India and Others*, (Public Interest Litigation) Writ Petition, No. 59 of 2007.

Mumbai on payment of only INR 70 million to the 335 land holders in the city. This land, it was claimed, could provide about 2.6 million tenements in Greater Mumbai. Not only just tenements, the petition claimed that selling this excess vacant land, the state government stood to earn INR 200 billion, that could use utilized partly for the development of the city as well as for repayment of state loan, and for financing backlog of development of the backward regions of Vidharba, Maratha and Konkan regions.⁷⁵ Based on these claims, the petition concluded that repealing ULCRA was against public interest. They submitted that, “it was not as much the decision of the legislative than a policy of Respondents Nos. 1 [Central Government] and 2 [Maharashtra Government] to repeal the said Act of 1976. It appears that Respondents Nos. 1 and 2, their bureaucrats and builders have conspired to defeat the objects of the said Act of 1976.” The petition finally claimed:

The Repeal Act of 1999 is violative of Articles 14, 19, 21, 38 and 29 of the Constitution of India and is liable to be declared as ultra vires and struck down. The said Memorandum of Agreement dated 7.10.2006 is opposed to public policy and the conditions imposed therein are in contravention of Article 73(1) of the Constitution of India and as such the same is illegal and liable to be set aside. The said Resolution dated 16.04.2007 moved by the Hon’ble Chief Minister of State of Maharashtra is unconstitutional and in contravention of the Maharashtra Government Rules of Business and is, thus, illegal. In the circumstances set out hereinabove, the present Petition (P.I.L.) files as it is apprehended that the 2nd Respondent is most likely to repeal the said Act of 1976.⁷⁶

In 2009, the Bombay High Court dismissed this petition. The judges were of the view that due legislative process was followed by the Maharashtra Government in passing the Repeal Act. In its judgment, the court noted:

⁷⁵ Ibid.

⁷⁶ Ibid.

It is stated that all the contentions raised by the Petitioners in the petition are totally misconceived and are not tenable and disentitle them to raise the said issues in the present petition as the said issues relate to proceedings of the State Legislature and there is a Constitutional bar under Article 212 to the proceedings of the State Legislature being called in question and therefore the Petitioners are precluded from raising the said grounds relating to repeal of the said Act.⁷⁷

Responding to petitioner's claim that Central Government's pressuring the Government of Maharashtra to repeal the Act by using a conditional intergovernmental transfer scheme under JNNURM amounted to arbitrariness, the court opined, "We are unable to find any merit in this contention inasmuch as the Central Government has not exercised any undue influence over the State legislature and both have operated and acted in sphere of their own legislative competence."⁷⁸ The court agreed that the state legislature was reasonable in repealing the Act based on "unanimous" public opinion that the Act had failed to achieve its purpose. According to the judgment, "the Legislature intended to revoke the most potent clog on housing." Interestingly, the court exercised extreme judiciousness in invoking the power of judicial review to interfere in law making. The judgment referred to observation made by American Jurist Alexander Bickel, "judicial review is a counter-majoritarian force in our system, since when the Supreme Court declares unconstitutional a legislative Act or the Act of an elected executive, it thus thwarts the will of the representatives of the people; it exercises control, not on behalf of the prevailing majority, but against it."⁷⁹ Further, agreeing with American legal writer James Bradley Thayer, the court held:

A court can declare a statute to be unconstitutional not merely because it is possible to hold this view, but only when that is the only possibly view not open to rational question. In other words, the court can declare a statute to be unconstitutional only when there can be no manner of doubt that it is flagrantly unconstitutional,

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

and there is no way of avoiding such decision. The philosophy behind this view is that there is broad separation of powers under the Constitution, and the three organs of the State--the legislature, the executive and the judiciary, must respect each other and must not ordinarily encroach into each other's domain. Also the judiciary must realize [sic] that the legislature is a democratically elected body which expresses the will of the people, and in a democracy this will is not to be lightly frustrated or obstructed.⁸⁰

5.3 Post-Repeal Scenario

In accordance with Bombay High Court's order in 2006 instructing the state government to acquire 1009.75 acres of excess land, the government initiated the process. However, according to an ULCRA consultant, the process moved very slowly.⁸¹ According to this informant, there were some basic organizational problems with the actual land acquisition process under ULCRA in Mumbai. First, within the Competent Authority's office, there was a lack of communication between sub-sections. For instance, the decision to acquire a piece of excess vacant land was made by an officer in one sub-section of the office of CA while the task of maintaining and archiving the list of acquisition orders was the responsibility of another. There was a lack of communication and coordination between these sub-sections.

As a result, according to this informant, in the past it had happened that acquisition orders were issued by the CA's office but when authorities actually tried to take physical possession of land, the landowner claimed he was not notified and went to check with the CA's office. Due to mismanagement and miscommunication, the sub-department at the CA's office that was supposed to keep a list of acquisition orders did not have this acquisition on its lists. Not only were the officers embarrassed at this, such confusion led to a hesitation amongst those officers who would

⁸⁰ Ibid.

⁸¹ Anonymous (ULCRA Consultant). Personal Interview. August 10, 2012.

have wanted to give more land acquisition orders in doing so because they believed it would ultimately result in embarrassment for him, when his own office would not be able to back the acquisition claim.⁸² Further, the normalization of such a practice in “ULCRA culture”, created potential for those in charge of managing the lists and passing orders, of creating ambiguity, which could then be used to seek illegal rents.

Secondly, another important issue with acquiring land was that multiple agencies were involved, not all of who were under the direct control of the CA.⁸³ The order to acquire land was passed by the CA’s office. It was then communicated to the local Revenue Department office (where the land was to be acquired). That office was supposed to coordinate with the local police station, and then together with the police, proceed to acquire land. Since there were too many agencies and actors involved, again, it was difficult to maintain effective coordination and communication, which was needed to ensure that orders were actually carried out as intended. Often, there was complacency within the local Revenue Department bureaucrats, who knew that the main office suffered from lack of coordination too, resulting in creation of ambiguities regarding what was to be done. As a result, a potential rent-seeking opportunity emerged for local bureaucrats including the police, who saw incentive in colluding with the landowner and actually not physically acquiring the land. The landlord would be absent, and possession of land would be taken *ex parte*, meaning the acquisition remained only on paper. It would be included in the list of lands acquired. Later, the landowner could go to court, challenge the acquisition and get relief, or continue to use

⁸² Ibid.

⁸³ It must be remembered that the CA was also responsible for maintaining good liaison with other agencies like planning authorities, and MHADA. SEE Chapter 4.

the land by paying bribes to local officials who would continue to overlook the fact that the land continued to be used by the original landowners.⁸⁴

The land acquisition process begun by the CA as per Bombay High Court's order in 2006 also suffered from the same. Moreover, since the Act was repealed while the acquisition process was being carried, many landowners went to court challenging the State Government's authority to acquire their land once the Act was repealed. Interestingly, the courts, tended to favor landowners. According to the blog *Indian Legal Remedy*⁸⁵, "a number of cases were filed in Bombay High Court as State Government resorted to complete the proceedings under various sections of the Repealed Act to take possession of lands which were declared surplus and with respect to which proceeding under section 10 of ULCR Act were initiated for taking possession of the land."

In deciding on these litigations, courts were faced with three basic questions: 1) Whether the State Government was entitled to take possession of lands declared as surplus under ULCRA and initiate acquisition proceedings under section 10 of the Act after the Act itself had been repealed; 2) Whether exemptions granted by the Government were contracts between the State Government and the landlord, and if the State Government could cancel the exemption if the landlord had transgressed the contract, and move to acquire the land once the Act had been repealed; and 3) Whether lands, possession of which had already been taken by the government under section 10 of the Act prior to the repeal, would be affected by the repeal.⁸⁶ Deciding on a case in which the landowner (petitioner) had challenged that his previously exempted vacant land under section 20 of ULCRA could not be acquired because of breach of contract of exemption once the Act had been

⁸⁴ Ibid.

⁸⁵ <http://indianlegalremedy.blogspot.com>

⁸⁶ Ibid.

repealed, the court ruled in favor of the petitioner. In *Vithabai Bama Bhandari v. State Of Maharashtra*⁸⁷, the court held that even though the contractual terms for exemption had been violated by the petitioner and the contract had technically been breached, the State Government was not entitled to acquire previously exempted land once the Act was repealed because there did not exist a legal way to do it as section 10 of the Act, that provided such power, no longer existed. According to the court:

In the result, for the reasons recorded, petition succeeds and is allowed. It is held and declared that as a consequence of the Repeal Act, further proceedings pursuant to the order made by the State Government dated 28th June, 2007 withdrawing exemption and all further actions taken under Section 10(3) shall stand abated and can no longer be proceeded further. That all further proceedings under the provisions of the Principal Act in relation to the land of the petitioner mentioned in declaration made under sub-Section (3) of Section 10 of the Principal Act have lapsed and those lands no longer vests in the State Government. Rule is made absolute accordingly.⁸⁸

Similarly, in *Abdul Aziz Alisabeb Bharmar v. State Of Maharashtra*, Bombay High Court in its order passed on 17 August, 2010, held:

In view of the law declared by the Division Bench of this Court, even in case of breach of the conditions by the holder of the land in whose favour the exemption is granted under section 20(1) and if such exemption is withdrawn by the State Government by exercising the power under section 20(2) on account of breach of condition, even then the question of saving under sub-clause (b) of section 3 of the Repealed Act does not arise.⁸⁹

⁸⁷ SEE <http://indiankanoon.org/doc/211693/>

⁸⁸ Ibid.

⁸⁹ SEE <http://indianlegalremedy.blogspot.in/2011/12/repeal-of-urban-land-ceiling-regulation.html>

On the third issue of whether lands, possession of which had already been taken by the government under section 10 of the Act prior to the repeal, would be affected by the repeal, courts took the fairly straightforward stand well in line with what was already included in the Repeal Act. According to Clause 4 of the Repeal Act:

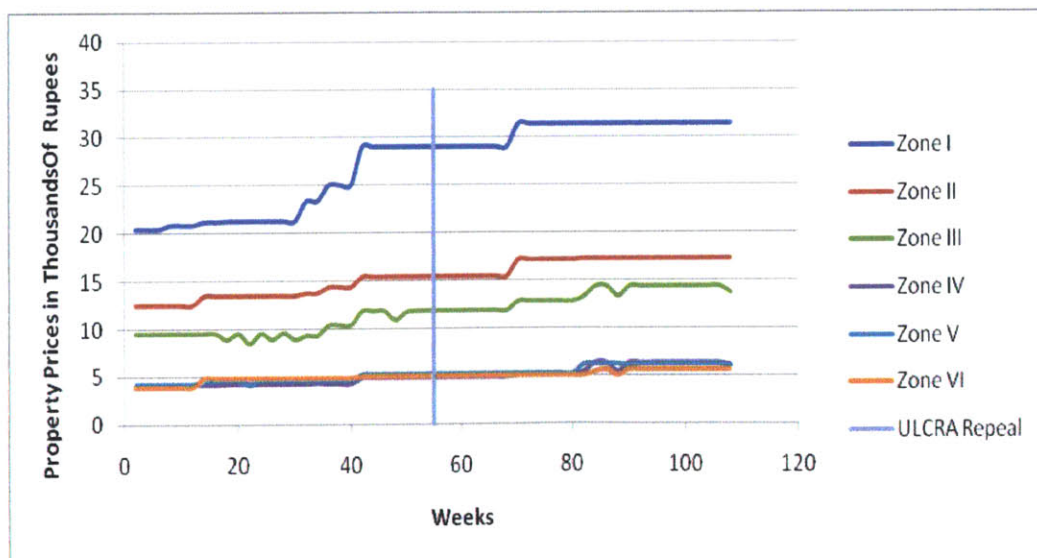
All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the commencement of this Act, before any court, tribunal or other authority shall abate, Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the principal Act in so far as such proceedings are relatable to the land, possession of which has been taken over by the State Government or any person duly authorised [sic] by the State Government in this behalf or by the competent authority.⁹⁰

As of November 2007, the total land declared surplus under ULCRA was 17,000 acres. Of this, 12,000 acres had been exempted under Sections 20 and 21. Of the remaining 5,945 acres, 1,827 acres was further exempt. This left a balance of 4,118 acres. Government ordered acquisition of 3,500 acres in the two years before the repeal. It was able to acquire only 2,282 acres but over two thirds of it was legally challenged (Koppikar 2007). Actual land that was supposed to become available as a result of ULCRA repeal therefore was 1,218 acres (DNA, November 2007). Further, Koppikar (2007) reports that of the 1,218 acres of land that was “freed up” due to the repeal, only 65 acres was without any legal issues.

After the repeal, in November 2007, *Volta Company Ltd.* demanded that 19 acres of the company's land at Panchpakhadai, Thane, be returned as the state government had failed to take physical possession of it. The land had been declared surplus in 1984 but the government did not

⁹⁰ Ibid.

take physical possession of it. In 2006, the company filed a writ petition in Bombay High Court against the acquisition and with the repeal of the Act in 2007, it contended that since the government had not taken physical possession of the land, it should be reverted to the company. The High Court upheld the company's plea, which was then challenged in the Supreme Court by the state government. In August of 2008, the Supreme Court, too, upheld the company's appeal. Following the order, nearly 73 landowners in Mumbai filed various petitions in the HC demanding that the land be reverted (Lewis 2008). It remains unclear what the current status of these lands is but given the view taken by courts in the past, there is a high probability that these lands would be returned to owners. However, the court ordering return of excess vacant lands that was not physically acquired when the Act was in effect does not mean the land would become available for development. Moreover, land becoming available for development does not mean housing will become affordable. Contrary to the central government's rather simplistic claim that repeal of ULCRA would result in a stabilization of housing prices, empirical evidence suggests this has not happened in Mumbai. As shown in the figure below, property prices in Mumbai were not negatively affected anywhere in Mumbai after repeal of ULCRA.



Source: Pethe 2010

According to Mahadevia (2009) and Annez et al (2010), housing in Mumbai continues to be way beyond reach for most residents. Notwithstanding the Central Government's rationale for repeal, State Government officials at the time of repeal had expressed fears that easing of prices would not happen because, "Builders would like to maintain the existing demand-supply gap by keeping that land idle, so that prices do not come down." (Joshi 2007) Not only government officials and activists but also analysts in the real estate industry in Mumbai too had professed at the time of the repeal that that easing of prices would not occur.

According to a well-known analyst, easing of prices would happen in Mumbai as a result of the repeal because the released land meets only a very small part of the overall demand. Also it would not bring down prices in middle income housing segment because "all the released land is in central areas that command very high property prices." (Express News Service 2007b) Moreover, large chunks of land that were supposed to be released as a result of the repeal were in no development zones, according to the development plan. One of the biggest landowner in Mumbai confirmed that even though large chunks of his land were now free from ULCRA, he had not been able to develop them because of other planning regulations like recreational ground reservation, coastal regulation zone guidelines, and other restrictions.⁹¹

⁹¹ Anonymous (Mumbai landowner and developer). Personal Interview. August 1, 2012.

Chapter 6: Discussion

To recap, ULCRA was enacted to help prevent concentration of land in private hands in urban areas, limit speculation in urban land prices, and ensure supply of land for housing for the poor. From the preceding chapters, it is clear that ULCRA failed to achieve these objectives in Mumbai. Large tracts of land continued to be held in private lands, and land prices continued moving upwards. Today, decent housing continues to remain a distant dream not only for the poor but also for the middle class. More than half of Mumbai's population lives in informal squatter settlements (Annez et al 2010). Various commentators, including the Government of India, have called the legislation a failure: a tool for rent seeking by bureaucrats and politicians, and distortionary in nature. Finally, the central government pressured the state government of Maharashtra to repeal the Act using conditional intergovernmental transfer under the JNNURM. After much back and forth between the central and state governments, the state government finally buckled and repealed the Act in November 2007.

The story of working of ULCRA in Mumbai throws up a number of puzzles that deserve attention of students of political economy of development, sociology of bureaucracy, and urban land policy analysis. For instance, the assumption that ULCRA repeal would help release previously "frozen" land tracts of land into the market, which would in turn help ease prices, thus paving the way for affordable housing, has not held ground. Even after five years of the repeal, this has not happened. According to Gandhi (2012), only 5-6 percent of the city's population can afford a 250 sq. ft. house in Mumbai. While being cognizant of the fact that only one thing, such as the repeal of ULCRA, does not solely determine land prices, the reasons for there being almost no effect on land prices after the repeal deserve attention. The common reasons offered by critics of ULCRA in

explaining why it did not make an effective law are that it vested too much discretionary power in the bureaucracy *ipso facto* endowing them with rent-seeking opportunities. Developers exploited this opportunity to circumvent the law. Secondly, critics claim that the Act was ambiguously worded and lacked clarity required for operationalizing it in true spirit. For instance, it did not define what shape “weaker section” housing would take, or how much it would cost, and so on. Developers, in collusion with politicians and bureaucrats, to game the system, then used this ambiguity.⁹² Thirdly, these explanations claim, that landowners who did not want to pay bribes, or just wanted to circumvent the law using another route, chose to challenge the various provisions of ULCRA in court, that remained either remained largely pro-landowner, or resulted in the matter being *subjudice* for long periods resulting in effective “freezing” of land supply.

Finally, these explanations claim that the state government was not interested in acquiring land under ULCRA because it was hands-in-glove with the landowners and developers. Even if this were true, there was enough potential in the “weaker section” housing schemes, if regulated well, to provide affordable housing. It is argued by this author that if we are to understand real reasons for failure of regulation under ULCRA, we need to delve in to the institutional constraints under which the regulatory agency⁹³ functioned. The following part of this chapter, through analysis of various facets of the inception of ULCRA, its enactment by the Parliament of India, subsequent adoption by states, operationalization of the Act in Mumbai, and subsequent repeal, will outline some important learning from the ULCRA story.

⁹² For instance, see Srinivas (1991), Narayanan (2003), Pethe (2010).

⁹³ The Competent Authority

6.1 ULCRA and Indian politics of the 1970s

It can be recalled from Chapter 3 that the government led by Mrs. Gandhi enacted ULCRA during the Emergency in 1976. It was part of a list of socialist-sounding measures promulgated by the Mrs. Gandhi, known as the Twenty-Point Economic Program (TWEPE). Beside socialization of urban land, the government pledged to implement agricultural land ceilings, provide housesites for landless laborers, abolish bonded labor, bring prices down, prevent tax evasion, provide cheaper books for students, confiscate properties of smuggler this included nationalization of banks, and enlarge overall employment (Frankel 1978, 547). According to the Congress Party, these promises were the “beginning of a renewed and vigorous battle against poverty, for laying the foundation of a new social order.” (New York Times 1975)

ULCRA, along with most other items on the TWEPE, was a product of the political rhetoric and ministrations of the time directed by Mrs. Gandhi and her coterie. Once Mrs. Gandhi had imposed the emergency, silenced opposition, and set about enacting legislation to institutionalize the Twenty-Point Economic Agenda, she emerged as a *de facto* monarch whose word, in the words of Francine Frankel (1974, 547), “was law.” Part of the reason that so many states, including Maharashtra, jumped to adopt the central government version of ULCRA was to prove their loyalty to Mrs. Gandhi. This is borne in the case of Maharashtra, whose legislative assembly had debated enacting their own version of urban land ceiling legislation, so that it could be amended easily with changing needs of the time. With the majority Congress enjoyed in the Assembly, this idea was shot down and Maharashtra chose to go along with the central government version of the legislation, thereby giving up its power to amend the law. As mentioned earlier⁹⁴, the idea of ULCRA was not alien to legislators in Maharashtra. In fact, as far back as 1971, the Maharashtra Assembly had passed

⁹⁴ SEE Chapter 4.

a resolution identifying the need to impose a ceiling limit on urban land. Still, the enactment of ULCRA by the parliament, and its adoption by the state government came all of a sudden. State leaders could not have anticipated much in advance the imposition of the emergency, and Mrs. Gandhi hurriedly implementing the TWEP. Similarly, the state's administrative machinery was not ready for what was suddenly imposed on it.

Interviews with ULCRA bureaucrats in Mumbai and Delhi revealed that some politicians and senior bureaucrats in the Government of Maharashtra as well as other state governments held that ULCRA had problems. Some others were ideologically opposed to it. However, given Mrs. Gandhi's position within the party and the hegemony that socialist principles as expounded by Mrs. Gandhi had come to assume, no one was brave enough to openly oppose the legislation at the state or central levels.⁹⁵ It was not until Mrs. Gandhi's assassination, election of her son Rajiv Gandhi to the post of prime minister, and the Indian government showing first signs of openness to reform that opposition to ULCRA started becoming prominent. Concentration of decision making at the top echelons of a political party, without sufficient information flow from the ground, can lead to disaster. In the 1970s, Mrs. Gandhi had created "a pyramidal decision-making structure in party and government," which "prevented threats to her personal power, it tended to create an overly personalized regime." According to Kochanek (1976, 104)⁹⁷, as a result, positions in the Congress organization at all levels "were filled by appointment from above rather than election from below. This change caused people at all levels to tend to tell people above them what they thought those people wanted to hear, so that the organization's once formidable powers as an information-gathering agency soon wasted away." This is what seems to have happened even in the case of

⁹⁵ Anonymous (Former Secretary to the Ministry of Urban Development). Personal Interview. June 20, 2012.

⁹⁶ Anonymous (Former Competent Authority, Mumbai). Telephonic Interview. July 20, 2012.

⁹⁷ Cited in (Manor 1988, 70).

ULCRA—in the initial phase, its discontents were not transmitted to the top fast enough. Extreme centralization of power, without proper organization can have serious negative consequences, even if intentions of the leader at top are benign.⁹⁸

6.2 Good Bureaucrats in a Bad Bureaucracy

Pethe (2010, 10) suggests that in case of ULCRA, there was a “drift between policy makers/designers and policy implementers at ground level, which created big rift [sic] between desired and actual outcomes.” Interviews conducted with senior former bureaucrats in charge of implementing ULCRA claimed that many of their colleagues, both peers and subordinates, were often not completely committed to, or insufficiently incentivized, to carry out socialization of land under ULCRA. Interestingly, however, there were politicians and bureaucrats at the state level, and in Mumbai, who believed that ULCRA was good and wanted to carry through its agenda. In analyzing why ULCRA failed to achieve its objective, it is important to understand why even this group failed to implement the law in its spirit. In summary, their failure to translate their sentiment and will in to action can be understood as good bureaucrats stuck in a bad bureaucracy.

Interviews with former ULCRA bureaucrats revealed that they felt a serious lack of administrative capacity due to lengthy procedures involved. For instance, in response to a question put to the General Administration Department of Government of Maharashtra by CAs regarding the procedure to be followed in case of lands marginally in excess of the ceiling limit, the Deputy Secretary at the department replied:

⁹⁸ For more elaboration on this, see Hart (1988).

All competent authorities are therefore, requested that when they come across such cases where lands are marginally in excess of the ceiling limit they should firstly identify such excess vacant land on the site plan. Then they should ascertain from Municipal Authorities, Milk Scheme Authorities of MAFCO and such other public organizations whether such tit-bits of land would be of any use to them. If these authorities do not show any interest in such tit-bits, then the Competent Authority should forward the case to General Administration Department stating that he has made all efforts to find out whether any authority will be in a position to use these marginally excess lands and that nobody is interested in therein and therefore, the exemption cases may be favourably considered. It may also be ensured that while recommending such cases, three copies of the sketch clearly showing the area which is to be exempted may also be furnished to Government.⁹⁹

Even in an efficient bureaucracy, with effective communication and flow of information between departments, the procedure described above would have been immensely time and resource consuming. Former ULCRA bureaucrats from Mumbai admitted to there not only being a lack of effective interdepartmental communication but also a lack of communication between different subdivisions in the same department. In addition to this, in the initial period of ULCRA's implementation, the working definitions of many important terms and concepts in the Act were hard to come by for bureaucrats. For instance, the exact meaning of "weaker section" housing was missing from the Act. Similarly, a study of communiqués between the ULCRA bureaucracy reveals bureaucrats seeking clarifications from the Department of Law, on other key terms such as "land appurtenant", "contiguous land", and so on. Similarly, in the later periods, as described in detail in chapter 4, the responsibilities of the CA were increased further, without any significant increase in the funds or human resources available to the CA. Former CA's interviewed all stated that they faced serious lack of administrative capacity to implement the act. All of this together increased red tape, and consequently, the waiting time for landowners before they could get decisions on their exemption applications. Over time, this "delay" got normalized in ULCRA procedure. This could

⁹⁹ GoM, "Circular no. IDV-1077/380-XXXV (I)." Mumbai: General Administration Department, March 17, 1977.

have created a willingness in landowners to pay bureaucrats and politicians to get their applications expedited. This brings us to the next issue.

One of the most common explanations of why ULCRA failed is that it created rent-seeking opportunities that were exploited by bureaucrats and politicians to expropriate illegal rents from landowners and real estate developers. It cannot be denied that ULCRA gave much discretionary power to bureaucrats, most importantly regarding granting exemptions under Sections 20 and 21 of the Act. All informants interviewed by this author alleged massive corruption in ULCRA. This claim was corroborated in interviews with two high-level central government bureaucrats.¹⁰⁰¹⁰¹ Both these informants, who earlier in their careers served as Collectors of a number of districts in India, and recently served as Secretary, and Additional Secretary to the Ministry of Urban Development in New Delhi, in no unclear terms stated that they knew many of their colleagues who used their discretionary power under ULCRA to seek bribes.

In Weber ([1904—1911] 1968) and Polyani ([1944] 1957), a rational, rule-following bureaucracy is considered a “tool for growth.” However, a number of neo-classical economists (Buchanan, Tollison, and Tullock 1980; Colclough and Manor 1991; Collander 1984¹⁰²; Kreuger 1971) have offered models of rent-seeking behavior by bureaucrats and politicians, that according Evans (1999), assert that, irrespective of organizational form, bureaucracy will be the enemy of growth, “as soon as it went beyond protecting property rights.” Kreuger (1974), in her classic paper on international trade, *The Political Economy of the Rent-Seeking Society*, tells us that quantitative restrictions upon international trade can result in competitive rent-seeking and if that is the case,

¹⁰⁰ Anonymous (Former Secretary to the Ministry of Urban Development). Personal Interview. June 20, 2012.

¹⁰¹ Anonymous (Senior Bureaucrat in the Ministry of Urban Development). Personal Interview. June 21, 2012.

¹⁰² Cited in Evans and Rauch (1999).

lead to operation of the economy inside its transformation curve. In other words, the economy functions at a less than optimal equilibrium with a resultant loss in total welfare. Further, according to Kreuger, competitive rent-seeking results in a divergence between the private and social costs of certain activities.

There are at least two possible constructions of the scenario in which bureaucrats claim ULCRA was difficult to implement because of lack of capacity and complications created due to ambiguous definitions in the Act, and the extreme red tape that existed in bureaucratic culture. In one scenario, it is possible that the lack of administrative capacity due to shortage of skilled human resource, or the obsession with red tape, was a pretext under which bureaucrats and politicians justified the long procedural delays and kept the opportunities for rent seeking alive. It was in their interest to maintain the ULCRA system this way for they stood to gain. In fact, Gunnar Myrdal (1968), citing the 1964 *Santhanam Committee on the Prevention of Corruption* appointed by the Government of India, has argued that corrupt officials may, instead of speeding up, actually cause administrative delays in order to attract more bribes.¹⁰³

Alternatively, lack of capacity and procedural delays were a natural consequence of the way the Act was framed. The bureaucrats and politicians, who wanted to implement the act in its spirit, individually might have had no control, for instance, over the delays caused by lack of clear definitions, or due to litigation. The argument here is that the reality lies somewhere in between the two scenarios. For one, bureaucrats were not deciding procedures in isolation. They had to have politician's approval on policies. Moreover, the judiciary intervened time and again. As described in detail in chapter 4, the Supreme Court of India literally dictated to the Government of Maharashtra

¹⁰³ Cited in Bardhan 1997.

the procedure to be followed for regulating “weaker section” housing. This “middle-of-the-road reality” hypothesis was reflected in the comment of a long-time housing activist in Mumbai, who observed, “Neither our [people’s struggle] nor their [politician-bureaucrat-builder] view prevails. The outcomes in Mumbai are always a little bit of both.”¹⁰⁴

This is not to absolve the bureaucracy of allegations of corruption using ULCRA. Here, based on the existing critiques of working of ULCRA, and insights gleaned from fieldwork, I have tried to situate the rent-seeking behavior under ULCRA in the complex working of the legislation, with the objective of being able to anticipate how laws and regulations might come to be actually used. In this case, it is suggested that lack of clear definitions in the Act, and the procedural complexity that spawned, resulted in delays that were normalized in bureaucratic culture, which in turn created willingness in landowners to pay illegal rents to expedite the process. Moreover, the Act had several loopholes that landowners and developers could exploit. For instance, as described in detail in chapter 4, developers would produce such building layouts that two small apartments could easily be combined by breaking a wall, resulting in a medium-sized apartment—just the kind that was in demand by middle class. A former head of the Competent Authority under ULCRA in Mumbai stated that this was unstoppable, because it was legal.¹⁰⁵

Sanyal (2010) holds that, “the bias for perfect order and ‘comprehensive solutions’ actually does more harm to the efficiency of the planning process than is officially acknowledged. For one, it underestimates the demands of implementation.” Sanyal calls for policy makers to subject all new affordable housing policies to “the test of organizational pragmatism.” (ibid) It must be remembered that drafters of ULCRA, perhaps in recognition of the fact that land and urban development were

¹⁰⁴ Anonymous (Housing Activist). Personal Interview. August 11, 2012.

¹⁰⁵ Anonymous (Former Competent Authority, Mumbai). Telephonic Interview. July 20, 2012.

state government subjects, had engineered a fair bit of leeway to the state government in charting their own ways of operationalizing ULCRA.¹⁰⁶ For instance, “public purpose”, “weaker section” housing, and so on, were mentioned but not fully defined.

In analyzing the variation in outcomes in developmental states that have reasonably similar rule-following bureaucracies¹⁰⁷, Chibber (2002) holds that, “absent intrastate power configuration, bureaucratic rationality can lead to decidedly *nondevelopmental* outcomes.” He holds that bureaucracy can negatively affect developmental outcomes in a developmental state not because it is not sufficiently rule-following but because intra-government conflicts arise due to the complex nature of the state, “as an amalgam of agencies, charged with distinct functions, having domains that are frequently overlapping, and often compelled to compete for resources.” According to Chibber (*ibid.*), in addition to the ability to discipline firms, certain state agencies need to have the capacity to discipline other state agencies, to ensure state cohesiveness. In the case of ULCRA, the CA was the main agency that had to work with numerous other agencies like planning authorities, MHADA, Urban Development Department, among others. The CA, per se, did not have the power to *discipline* these agencies. It is reasonable to assume that given lack of a clear statutory requirement for other agencies to promptly follow orders issued by the CA, and given the general understaffing of government agencies in India, it is possible that the CA faced insurmountable constraints in making other agencies work towards effective enforcement of terms and conditions of exemptions on excess vacant land for construction of affordable housing. For such capacity, agencies need to have political backing. Therefore, the politicians’ role becomes a crucial factor. This is the next important

¹⁰⁶ While we consider these “endogenous” suggestions, it must be mentioned that administrative reform of the bureaucracy (civil service), something already under consideration in India, would be necessary for overall more efficient and transparent functioning of the bureaucracy.

¹⁰⁷ Chibber is comparing developmental outcomes in South Korea and India.

learning from the ULCRA story in Mumbai—The relationship between Maharashtra’s ruling elite and ULCRA.

6.3 The Political Economy of ULCRA repeal

The role played by legislators at the helm of the state government of Maharashtra in the process of ULCRA repeal typifies a case in which a sub-national government worked against the interest of its constituency, especially the poor, in a bid to preserve its rent-seeking power. The political economy of ULCRA repeal informs what Remy Prud’homme (1995) has called “The Dangers of Decentralization.” Importantly, the center-state bargaining around the repeal of ULCRA must be understood against the background of central government efforts towards political and administrative decentralization. In the last two decades, decentralization has been an important focus for the Government of India. In 1992, the Parliament of India passed the 74th Constitutional Amendment Act (CAA), which seeks to empower ULBs as the third tier of government. The central government used JNNURM to implement the agenda set forth by the 74th CAA. For instance, one of the mandatory conditions for receiving financial assistance from the central government under JNNURM was, “Assigning or associating elected ULBs with ‘city planning function’. Over a period of seven years, transferring all special agencies that deliver civic services in urban areas to ULBs and creating accountability platforms for all urban civic service providers in transition.” (GoI 2005a, 13)

The basic assumption in the theory of decentralization, also known as fiscal federalism, is that local governments, being closer to people, know people’s preferences better. As a result, decentralized governance is supposed to better tackle the problem of information asymmetry¹⁰⁸

¹⁰⁸ Stigler (1961) presents a classic analysis of economics of information.

between agents (politicians and bureaucrats) and principals (the public). This is because in an ideal decentralized system, agents are fully accountable to principles. Through voting and other channels of communication, principles can easily let their preferences be known to the agents. The agents can then correct their course of action, if need be, with a much lesser transaction cost than in the centralized system. Further, it is argued that decentralized systems encourage innovation by activating intergovernmental competition, and ensure greater participation of people in the decision-making process (Breton 1995).

According to Araujo et al. (2007), the theoretical literature remains ambiguous in its assessment of the rationale for decentralization. According to them, “the ambiguity arises from the trade-off between the local government's advantage in terms of access to superior information at lower cost, and the possibility that the risk of capture of decision-making by special interest groups is higher at the local level than at the national level.” Bardhan and Mookerjee (2000), highlight that even the framers of the American Constitution were cognizant of this fact. According to the “Madisonian presumption”, “the lower the level of government, the greater is the extent of capture by vested interests, and the less protected minorities and the poor tend to be.”

Building further on this argument, Bardhan (2002) posits that special issues arise in decentralization in developing economies primarily because of the institutional context¹⁰⁹ and therefore, “the structure of incentives and organization are in some respects qualitatively different from that in the classical US case.”¹¹⁰ Therefore, for Bardhan (ibid.), “in considering the theory of decentralization in developing countries, it is important to move beyond the traditional tradeoff of how centralization is better for dealing with spillovers and decentralization is better for dealing with

¹⁰⁹ E.g. lack of education, transparency, due process, etc. In short, a weak institution of democracy.

¹¹⁰ The “classical US case” resembles the one described in the theoretical framework.

heterogeneity.” For Bardhan (ibid), to understand whether centralization, decentralization, or a hybrid of the two is a better strategy, it is necessary to delve into political economy issues of institutional process and accountability at both the local and central level. How does this relate to the political economy of ULCRA repeal?

The process of ULCRA repeal was an exercise in negotiation between the state and central governments. The political leadership of the state government, that was negotiating the repeal with the center was not necessarily directly accountable to the citizens of Mumbai. For instance, Vilasrao Deshmukh, the chief minister of Maharashtra during whose tenure ULCRA was repealed, was elected from Latur, a town several hundred miles away from Mumbai. Had the city of Mumbai’s political leadership been negotiating the repeal of ULCRA with the central government for a Mumbai-specific repeal, the stance taken by the political leadership, in theory, could be different. However, given the way legislative powers are divided under the Constitution of India, state governments will always be key negotiators in the reform process for state laws. Therefore, as the process of administrative and political decentralization occurs, we must take in to account that state government politicians could become short sighted and prioritize rent-seeking potential over public good. In this case, the state leadership in Maharashtra had incentives, primarily in the form of opportunities for rent-seeking, to preserve ULCRA. At the same time, in trying to preserve ULCRA, they could be seen as doing something for the poor by keeping a “redistributive” legislation.

State legislators, especially the chief minister had direct power under ULCRA to grant or overturn previously granted excess vacant land exemptions. Second, the Chief Minister’s quota in the “weaker section” housing schemes gave him absolute discretion over allotment of 10 percent of

houses constructed on exempted vacant land¹¹¹. Interviews conducted by the author, as well as secondary sources point to the fact that successive chief ministers of Maharashtra had used this scheme for maintaining patronage. Chief ministers used this discretionary power not only to appease their supporters but also rival politicians, members of the media, and any others who were considered necessary to be appeased (Narayanan 2003, 198).¹¹² According to Narayanan (2003, 199):

Clearing of pending applications for exemptions provided another areas where direct personal favors could be rendered. Therefore, at any given time, a large part of the state political establishment and the local elite stood to gain under ULCRA. For instance, Sharad Pawar, as chief minister of Maharashtra, cleared over 200 applications for exemption under Section 21 in less than a year, during 1979—80. His successor, A. R. Antulay, cleared just two applications between February 1980 and January 1982. This prompted the Practising Engineers, Architects and Townplanners Association and various builder' and planners' associations in the city to get together and file a writ petition in the Bombay High Court demanding that all the applications under Section 21 be cleared forthwith.

Immediately thereafter, about a dozen clearances were given to demolish and redevelop their land, including a plot of 17,000 sq m belonging to Pure Drinks in Worli and one 50,000 sq m owned by Tata Oil Mills in Parel (both in central Mumbai). It may not be a complete coincidence that this measure was taken during a period when the property market was depressed, and the rate of clearances petered out once again after news reports entitled 'Flat prices may crash' (Financial Express, 18 June 1982) and 'Real Estate Speculators Panicky' (Financial Express, 19 June 1982) suggested that the government's efforts to spur the flat property market by issuing ULCRA clearances was backfiring, because the market simply could not absorb sharply increased real estate shock.

Interviews with a Mumbai-based developer, and an ULCRA consultant who advises many prominent landowners and developers on matters related to the Act, revealed that in 2006, when it

¹¹¹ After a Supreme Court judgment in 1995, this was reduced to 5 percent.

¹¹² Anonymous (Veteran Journalist in Mumbai). Personal Interview. August 21, 2012.

became clear to the state government that ULCRA would have to be repealed soon, the then chief minister, in a bid to extract as much “profit” from ULCRA as possible, reopened over 40 cases, all high profile projects in the city that were built on land exempted under ULCRA and extorted money from developers by threatening to overturn the exemption unless they paid.¹¹³¹¹⁴

It has been mentioned in the earlier chapters, that certain developers stood to gain, and gained indeed, because of ULCRA. Interviews by the author with various actors involved in ULCRA also show that politician-bureaucrat-developer nexus had formed on many occasions, and for these developers, ULCRA had in fact become a boon. In the political-economic conditions described above, these developers should have campaigned against the repeal. This was not observed to be the case: developers unanimously supported the repeal. There are a number of possible explanations for this. For one, as told by the ULCRA Consultant, “by the early 2000s, developers had exhausted all potential excess land from small time land owners under ULCRA. No more such land remained. Further, with new bureaucrats in the ULCRA bureaucracy, the cost of greasing palms for no reason did not make sense.”¹¹⁵ Narayanan (2003, 194) agrees. According to her, one reason developers opposed the Act was the “arbitrariness and corruption engendered by the flexible nature of the Act has left them tired and insecure, and they would like some relief from the delays caused by waiting for exemptions to come through and from the costs of getting these exemptions.”

In sum, the example of center-state bargaining on the repeal of ULCRA shows that state politicians could have been motivated primarily by the incentive of preserving their rent-seeking ability. Without the need of taking a moral stand on rent-seeking, it is logical to conclude that state

¹¹³ Anonymous (ULCRA Consultant). Personal Interview. August 10, 2012.

¹¹⁴ Anonymous (Mumbai-based Developer). Personal Interview. August 2, 2012.

¹¹⁵ Anonymous, *supra* n.113

legislators were possibly trying to preserve a noble-law-gone-wrong *as it was*. Given the history of lackadaisical attitude of the ruling elite in Maharashtra to not make any serious effort to implement ULCRA in the interest of the poor, it is reasonable to conclude that had ULCRA not been repealed, the state of its implementation would not have changed greatly. Therefore, in this case we see that the central government could use its fiscal muscle to tame a sub-national government, powerful elements in which were motivated by perverse incentives.

Bardhan (2002) highlights that in many situations in developing countries, the poor and minorities, oppressed by the local power groups, may be looking to the center for protection from local elites. In this case, it is clear that central government intervention worked in getting the state government to repeal a legal instrument that had not worked for the poor. However, whether in this case the central government was able to provide “protection and relief” to the poor is a topic that can be debated. If it was the central government’s intention to intervene to provide relief to the poor, it is somewhat paradoxical to see it entrusting the task of providing affordable housing to the same government it did not trust with implementing ULCRA. In fact, the central government now advises heavy use of public-private-partnership in providing affordable housing—something that requires strong enforcement of rules and contracts, and transparent governance. Therefore, while central government intervention can be an effective way of countering elite capture of sub-national, or local governments, it has to be designed pro-actively considering the “why” and the “how” to ensure that the intervention does not become dead letter, or redundant.

6.4 A note on the Role of the Judiciary

Almost right from its enactment by the parliament, ULCRA has been the subject of numerous litigations. First, landowners challenged its constitutional validity thereby putting it in an existential crisis. As described in Chapters 3 and 4, the Supreme Court of India delivered the first landmark judgment regarding ULCRA by upholding its constitutional validity. Over the lifetime of the Act, landowners frequently went to court to seek relief from what they alleged were excesses of the state, made possible under ULCRA. Frequently, courts delivered judgments that benefitted landlords. Besides, it is a well-known fact that for numerous reasons, litigation in India can be a very lengthy process. Therefore, going to the courts made sense for landowners who wanted to buy time, or keep the state at bay from acquiring their land.

At the same time as courts served as a *de facto* bulwark for landowners against ULCRA, thanks to the tradition of public interest litigation in India, they were also used as a site of contestation by public interest groups that wanted ULCRA implemented. In the cases discussed in Chapter 5, activists challenged ULCRA's repeal both at the Bombay High Court as well as the Supreme Court. Both courts, however, ruled that the repeal was legal and dismissed the activists' petitions. According to Bhan (2009), "In India, regional high courts and the Supreme Court of India are perceived as institutions that protect the rights of ordinary citizens from an executive that inspires a far lower degree of trust in the public and that is often accused of being corrupt, politically motivated and, importantly, deeply inefficient." While this could be true, it is important to situate the courts and judiciary in the socio-political-temporal currents of the time. Bhan (*ibid*) has recorded that the tone of the Delhi High Court, which earlier had remained sympathetic to the human rights of squatters in Delhi in the 1990s, changed "both suddenly and dramatically." Citing *Almitra Patel vs. the Union of India* (2000), Bhan (*ibid*) tells that court opined:

Delhi should be the “...showpiece of the country” yet “...no effective initiative of any kind” has been taken for “...cleaning up the city”. Rather than see them as the last resort for shelter, “...slums” the court said, were “...large areas of public land, usurped for private use free of cost.” The slum dweller was named an “encroacher” and the resettlement that had hitherto been mandatory became, suddenly, a matter of injustice, “...rewarding an encroacher on public land with an alternative free site is like giving a reward to a pickpocket for stealing.”

Comparing the change in attitude of the judges towards labor rights, Rajagopal (2007) holds these attitudinal change, “cannot be divorced from the broader socio-economic context of liberalization, privatization and World Bank and IMF demands for reform of labor laws since 1991.” Writing about the Supreme Court, Rajagopal (ibid.) claims that despite the court’s laudable activism, it’s record in human rights “is characterized by a serious measure of substantive adhocism. In particular, the Court’s record on economic, social and cultural rights remains deeply satisfactory.” According to Rajagopal, the court, “as a governance mechanism, shares the ideologies of statism and developmentalism.” For him, the meaning of these ideologies change over time and reflect the dominant theories and social relations of the day. He states, “Thus, developmentalism has meant many things from state-led industrial growth to sustainable development to rights-based development to neoliberal development. Indeed, many of these meanings coexist in tension with the ideological matrix of the state and the judiciary is not free from them.” Put in this light, the activity of the court with regard to ULCRA can be understood as more or less congruous with dominant development paradigms of the day.

6.5 Concluding Notes

With the turn to a market economy, the government has changed its role from a direct controller of the economy to a “rules of the game setter.” In this paradigm, instruments like ULCRA that aimed at government intervention in urban land markets, are considered failures because they tried to regulate too much. With ULCRA having been declared a “failure”, the idea of state intervention in urban land markets has been further discredited. In turn, this has meant moving towards a free market land regime. However, as is clearly evident in this study, in Mumbai, ULCRA was never implemented as intended. Moreover, it kept getting frustrated by numerous institutional deficiencies. In this sense, the post-liberalization narrative that a free market regime should govern urban land markets, which rests on the theory that urban land was overregulated in the past by regulations like ULCRA, is false. It is not surprising then, that homelessness in Indian cities is on the rise, and market-friendly schemes such as JNNURM have not been able to deliver on its promise of allocation of land tenure to slum dwellers in urban India.

This study raises more questions than it provides answers. The political economy of ULCRA was complex, and therefore the questions it raises are complex too. Some of the key learning are: First, writing a good law is essential—implementation of ULCRA in Mumbai suffered a lot because of the ambiguous and loose terms, very rigid compensation criteria, among other lacunae. Second, bureaucracies can be organized better, and in doing so, political will, and politicians become crucial. In the case of ULCRA, even those bureaucrats that wanted to implement the law in its spirit could not because of institutional constraints. Other bureaucrats used their discretionary powers to seek bribes. Third, given weak democracy and socio-economic inequality, local government may be easily captured by the ruling elite; in sum, local control is not always better. However, the “why” and the “how” of central government intervention needs to be carefully thought through, especially when

protecting interests of the poor is the priority. Fourth, supposedly neutral actors like courts can be biased toward dominant development paradigms, which may not necessarily be pro-people. While simply stated, these insights also incorporate dilemmas. For instance, if there is a more powerful, super-bureaucracy, or a nodal agency, as suggested by Chibber (2002), and if unchecked power tends to corrupt, why would this super-bureaucracy not exploit its position of power for extracting rents? One could say its political bosses could keep such an agency from exercising power perversely. However, given the oft-existing patron-client relationship between politicians and developers, how can we expect the politicians to not become rent-seekers themselves? The way out of these dilemmas lies in social change, which requires political action. However, successful progressive political action is a result not only of effective mobilization of a politically conscious citizenry but also of several other enabling factors like existence of supporting statutes, intervention of government at different levels, presence of supportive quasi-government bodies, leveraging of issues that draw international attention, and engagement with the judiciary, just to name a few. Future research should be cognizant of this, and asks, “Under what political-institutional conditions, do laws and regulations work in the interest of people?”

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