

12 June 2007

To
The Principal Secretary
Urban Development Department
Government of Karnataka
Vikasa Soudha
Bangalore 560 001

Dear Sir,

Subject: Draft Rules regarding regularisation of building bye-law violations under Karnataka Town & Country Planning (Amendment) Act 2007

Ref: No.UDD 2 BemRuPra 2007 dated: 17.5.2007

With reference to the above, wherein objections have been sought on draft rules – Karnataka Town and Country Planning (Regularisation of Unauthorised Development or Construction) Rules 2007, we wish to submit the following objections:

1. **Change in land use not to be regularised:** The draft bill merely aims to legalise illegal acts of the past, without addressing the main issue of how to prevent further violations. The rules are a consequence of mass scale violations of building bye-laws and violation of zoning regulations governing land use amounting to illegal acts which have been committed since a long time with impunity. While we have no objection to regularization of violation of set backs to the extent stipulated, we seriously object to regularization of land use violations as it changes the basic structure and nature of a designated area thereby affecting the quality of life of residents in the following manner:
 1. Invades privacy of residents
 2. Impedes good ventilation
 3. Causes parking problems within residential areas
 4. Increases traffic, thereby threatening safety of children and senior citizens
 5. Increases garbage generation posing serious threat to health of citizens living in residential areas
 6. Threatens individual safety and site protection
 7. Civic Services and infrastructure designed for residential purposes will not sustain the pressure of increased commercial activity.
2. **Prepare alternative infrastructure plan:** There is already a tremendous pressure on existing infrastructure and civic services like water supply, garbage and solid waste management, traffic congestion etc. in residential areas. Unless and until there is an alternative infrastructure strategy and plan to handle existing deficiencies in civic services, the proposed bill to regularize land use violations in residential areas will only multiply the problem manifolds. Civic services and infrastructure plan should therefore precede regularization as the absence of this will put unbearable strain on the existing services, which are already inadequate and add to the woes of citizens.
3. The Review Committee of proposed CDP 2015 has made specific recommendations with respect

to land use. These have not been incorporated while framing draft rules.

4. The violations now sought to be regularized have taken place with full knowledge of authorities and mass regularization seeks to absolve officials of dereliction of their duties. A basic principle of law is that a violator should not be allowed to enjoy the fruits of the violation. Hence, there is no question of "regularizing" violations. Regularisation of land use change or violation of Zoning Regulations with retrospective effect is highly objectionable and in direct contravention of existing and well established law of the land as contained in several judgements of the Supreme Court of India.
5. As in the case of Delhi, where the Supreme Court agreed that where the infringement is of a minor nature, example, an individual constructing an extra room above the sanctioned plan, this could be allowed with a small penalty. Where, however, a violator has built, say, a couple of extra floors and rented them out for commercial purposes, the violator should not be allowed to receive the rents [return on investment in violation] and property appreciation, by merely paying any amount. This would be like allowing a thief to retain a percentage of his theft by paying a percentage of the value of goods stolen!
6. There is another principle "balance of convenience". Under this, it would not be right to recommend wholesale demolitions. Demolitions are difficult to implement and would create problems even for those living in the vicinity. A solution is to seal the additional floors or premises and prevent the violator for a reasonably long period, say 25 years from enjoying the benefits of the violation and thereafter allow the use only for residential purposes etc.
7. Another ground for objection is that regularisation would merely encourage violations in future. The draft rules do not specify whether regularization is a one time process or is continuous and in perpetuity. There is no mention of any cut off date, after which no regularization will be acceptable. There is no provision in the bill that clearly lays down a revised and effective mechanism that would prevent further violations.
8. The Rules need to provide a retrospective cut-off date from which the violations would be taken up. There is no point in penalizing one who built when there were no laws in place, either in time or because the location was outside the jurisdiction of the current authority. In such case a small penalty would do.
9. No punitive steps have been framed to deal with violators even after introduction of new law. No punitive steps have been framed to deal with erring officials as a consequence of (12) above. The rules must give clear procedures for identifying and specifying the action against the violator. The present proposal leaves too much in the hands of the authorities and appears to be merely a device to extract bribes!
10. Independent surveyors / architects associations etc could be used for this purpose and local citizens' groups could be authorized, under the procedure, to point out errors. These must be logged [digitally] and replied to BEFORE any action is taken. The violator may be given a reasonable period of time, say 3 months, to have the premises vacated / violation remedied and then the sealing could be done.
11. Substantial part of the penalty so collected from violators should be paid to immediate neighbours as compensation, since their lives will be most impacted by the acts of violations. No regularization should be allowed without getting the approval of immediate neighbours, living on the same street, whose lives will be impacted the most.
12. There is no clarity how violated portion in excess of permissible limits will be dealt with and who will be responsible to correct it. This will lead to discretions and is almost likely to be misused by local representatives of state leading to harassment and corruption. No mention has been made of any time frame by which excessive violated portions will be corrected.
13. Allowable Commercial activity in residential areas should first be identified and defined after detailed interaction with local residents and only thereafter the provision of regularization be introduced. It is totally premature and unacceptable to give a wide and undefined expression of "land use violations" without first identifying which specific activities should be allowed. Only that activity which improves the quality of life of residents should be allowed. A list of negative activities in residential areas should first be identified through discussion with residents and then a list of permitted commercial activities be notified
14. There is no mention of any appellate authority/independent body that would oversee and review the decision of the 'Screening Committees'. Local residents' association representatives should be part of screening committee, without which the process of screening will have no transparency.
15. Registrars should be asked not to register any transfer of properties that are in violation. List of

such properties must be advertised in all major papers and on the BBMP website. In view of the objections raised in the foregoing, draft rules should not be accepted in present form. It is requested that further and deeper application of mind be exercised before Regularisation Bill is made effective. We request that the deadline for sending objections should be extended to allow a wider debate to take place in civil society on the Rules being framed on an issue of vital public importance.

Thanking you.

Yours sincerely,

Kathyayini Chamaraj
Executive Trustee
CIVIC