CESSED BUILDINGS IN MUMBAI

How we got to where we are today, and where to next?

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"In many cases rent control appears to be the most efficient technique presently known to destroy a city—except for bombing."

– Swedish economist Assar Lindbeck

Acknowledgement

This report, *Cessed Buildings in Mumbai: How We Got to Where We Are Today, and Where to Next?*, represents an effort to understand the historical evolution, policy framework, and redevelopment challenges associated with Mumbai's cessed buildings. The study examines how rent control legislation, housing policies, and redevelopment mechanisms have shaped the city's built environment and housing stock over time.

The findings presented here are based on interactions with government officials, housing experts, developers, landlords, tenants, and other stakeholders involved in the redevelopment process. Statistical information was compiled through Right to Information (RTI) applications, policy reviews, archival research, and field investigations. A significant component of the study involved on-site documentation and resident interviews conducted by students of Bharati Vidyapeeth College of Architecture, Navi Mumbai. Residents living in cessed buildings, including both landlords and tenants, generously shared their experiences, concerns, aspirations, and lived realities, providing an essential human perspective to the research.

Published by Plural, this report presents factual analysis and recommendations concerning development regulations and redevelopment practices. It recognizes the need to balance affordable and secure housing with the conservation of heritage structures that contribute to Mumbai's distinctive urban character and identity.

This report is intended as an advisory document for government agencies, policymakers, practitioners, researchers, and academic institutions. We hope it contributes to informed decision-making and further research towards a more inclusive, affordable, and heritage-sensitive future for Mumbai. The authors have, to the best of their knowledge, compiled and presented the information and data contained in this report as accurately and objectively as possible, drawing upon available records, stakeholder consultations, field documentation, and verified sources at the time of publication.

This research would not have been possible without the intellectual collaboration, guidance, and generous sharing of knowledge by the late Mr. Shirish Patel. A visionary thinker and an open-minded practitioner, Mr. Patel's deep understanding of housing, redevelopment, and urban governance significantly influenced the direction of this work. The report stands as a tribute to his enduring contribution to the discourse on Mumbai's housing future.

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1. Background

In 2023 we celebrate the 105th anniversary of the rent control legislation that allows some a view of the vast Arabian Sea through their tiny pigeonhole apartments in South Mumbai. This legislation gives an affordable roof over the heads to low- and middle-income people who live in subsidized rental housing in this crowded, expensive, land-starved city.

1a) History of Rent Control

Rent controls were introduced in the early 1900s in Europe, the United States, and some other parts of the world to check runaway rent increases and tenant evictions, especially during wartime housing emergencies. The first comprehensive rent control law in Europe was the British Rent Control Act in 1915 followed by Russia and Germany in 1916. Outside Europe and within British colonies similar rent control measures were introduced between 1918-1922 in India, Hong Kong, and South Africa. After WW II there was a sudden increase in the demand for rentable housing from soldiers returning home. With industrialisation and corresponding urbanisation, there was also an increase in rural-urban migration. To prevent rents from rising too much owing to this spurt in demand, Rent Control Acts under various names were introduced in many other countries. This phase marked what is called the first generation of Rent Controls.

The first rent control legislation in India was introduced immediately after WW I in Bombay in 1918. It was called Bombay Rent (War Restrictions No. 1) Act of 1918. It was followed by similar legislation for Calcutta and Rangoon in 1920. Born primarily out of the inflationary aftermath of WW I, these Acts were conceived as a purely temporary measure to provide relief to tenants against the demand of exorbitant rents and indiscriminate evictions by landlords due to the scarcity of houses in urban areas.[i] By the end of WW II almost all the major Indian cities and towns were covered by rent control measures. The Bombay Rents, Hotel, and Lodging House Rates Control Act, 1947, which overrode the earlier Act was passed as a temporary measure. However, with the coming of democracy at Independence and the consequent pursuit of votes, with tenants vastly outnumbering landlords it remained in force till 31 March 2000. This Act was amended multiple times and the life of the Act was extended till the Supreme Court found it “unreasonable” to extend it any further in 1998. The court gave the state an ultimatum to come up with a new policy based on the Central Government’s Model Rent Control Legislation of 1992.

This ultimatum resulted in the Maharashtra Rent Control Act 1999. Prior to enactment of the Act, three Acts were in force in the state of Maharashtra pertaining to tenancy disputes. These were the Bombay Rent, Hotel and Lodging House Rent Control Act of 1947 for Bombay Region (comprising Konkan, Desh, Khandesh); the Central Provinces and Berar Regulation of Letting of Accommodation Act of 1946, prevailing in the area of Vidarbha in eastern Maharashtra; and Hyderabad House (Rent, Eviction and Lease) Control Act 1954, prevailing for the Marathwada Region of central Maharashtra. The state of Maharashtra appointed a Rent Enquiry committee (called the Tembe Committee after the name of its Chairman) and the recommendations of the Tembe Committee were considered by the Maharashtra Law

Commission which brought about enactment of the 1999 Act. Its purpose was to unify, consolidate and amend the law relating to the control of rent and repairs of certain units, as well as for eviction, and for encouraging the construction of new houses by assuring a fair return on investment.

This Act however did little to alleviate the woes of landlords. It allowed a measly 5% increase in the 'standard rent' and 4% increase every year thereafter (a figure lower than that of annual inflation in the cost of living index). Standard rent was defined as the base rent recognised by the three separate legislations that were unified and in case of lack of clarity, rent paid on 1st day of October 1987. It exempted all the newly constructed rental units and units let on leave and license from its purview.

Rent Control in Mumbai is a double-edged sword. It is perhaps the only formal mechanism that offers affordable housing and affordable commercial units to Mumbaikars in the Island City and some parts of the suburbs. It is the principal reason that the populace, variety of businesses and markets existing there are of mixed income. However, low rents have had several damaging consequences: they have fostered a disregard for the maintenance and repair of the old buildings to the point of collapse; they were a deterrent to the construction of any further rental housing in the city, shutting down the supply of new rental housing despite a steadily increasing demand; and because property taxes were until 2009[1] linked to rental value under Rateable Value System (RVS) and not Capital Value System (CVS), the collection from these taxes was severely constrained.

1b) Cessed Buildings under Rent Control

The damaging consequences of the Rent Control Act were soon recognized and to repair, maintain and reconstruct these buildings, the state government formed a committee called the Bedekar Committee in 1968. According to the recommendations of this committee the Bombay Buildings Repairs and Reconstruction Act (BBRRA) was passed in 1969 and the Board (BBRRB) was formed in 1971. A repair cess was levied (similar to a property tax) on privately owned tenanted rent-controlled buildings built prior to 1969. This cess was payable by both the tenant and the landlord, according to a formula where the shared proportions as well as the amount of cess levied differed depending on the age of the building and its Rateable Value (RV)[2]. BBRRB (later MBRRB) was incorporated within the state housing agency, Maharashtra Housing and Area Development Authority (MHADA) in 1976.

Cessed buildings are a subset of the Rent Controlled Buildings[3]. Only privately owned tenanted buildings with at least one residential tenant were cessed. Buildings constructed

[1] PTI. "Bombay HC Junks BMC's Capital Value Rules as Basis for Property Tax." Times Of India, 24 Apr. 2019, https://timesofindia.indiatimes.com/business/india-business/bombay-hc-junks-bmcs-capital-value-rules-as-basis-for-property-tax/articleshow/69027984.cms

[2] The Rateable Value (RV) is calculated as the rent that a property fetches or may fetch if given on rent, minus certain deductions. Various parameters of the property like its construction type, usage type, year of construction, etc. determine which method is applied to compute this value. In cases where a property is let out on rent, this rent is the base for computing the RV. However, in cases where the property is owner-occupied, the rent-earning capacity of that property is estimated using the Residential Letting Rate or RLR Method. For further clarifications refer To https://www.moneycontrol.com/glossary/property-tax/how-is-rateable-value-determined_3996.html

[3] Deducted from data received as a result of an RTI (Right to Information) application by the authors in November 2022

after 1969, public buildings, owner occupied buildings with no tenants, buildings under leave and license, and certain non-profit trust buildings were exempted and not expected to be maintained by MBRRB.

1c) Repealing Rent Control

The affordable housing saga in Mumbai starts from "nearly free" (miniscule rents under rent control to "absolutely free" (ownership apartments after redevelopment[4] given against no payment under regulations 33-7, 33-9A, 33-9B, 33-10) and has less to do with empathy towards providing quality shelter to the needy and more to do with earning votes. The world over, first generation rent control has evolved under second generation rent control legislation into either stabilised rents not far below market rents, or into market rent with housing subsidies for the lower income populace. Although in theory the first generation Rent Control Act has been repealed in Mumbai, in practice other than for new construction (post the enactment of the 1999 Act) and surrendered tenancies the old Rent Act continues to apply. The impact of the repeal on the rent control fabric of the city goes unseen. A realistic policy of easing out rent control by introducing implementable effective measures that sustain affordable rental housing is completely missing in Mumbai.

Currently, there is only a handful of ways of freeing a tenement of rent control. One possibility occurs when the tenement is surrendered to the landlord, either willingly by the tenant or upon the tenant's death. In that case the tenement goes back on the market as a rental unit at market rent under leave and licence or is sold as an ownership unit. In 2008 the Supreme Court amended the Maharashtra Rent Control Act by specifying that any company with a total paid up share capital of more than Rs 1 crore will not come under the protection of the Rent Control Act. This freed from rent control many commercial spaces rented by banks and other similar commercial establishments. These can certainly afford market rents and there is no reason to deprive their landlords of a fair return on their properties.

Development Control and Promotion Regulations 2034 (DCPR 2034) outline redevelopment policies for cessed buildings under regulation 33(7) and 33(9) which allows self-redevelopment or redevelopment by a developer. Effective after the Sukthankar Committee Report of 1997[5] (which did not recommend it) this redevelopment entitles tenants to receive ownership of a free housing unit on the same site as a unit in exchange for incentive building rights for the developer, also on the same site or elsewhere as TDR, thus freeing the building from rent control, and converting the building to ownership by its occupants. They, incidentally, having got their ownership at zero cost, are free to let out their premises on Leave and Licence at market rates.

Till date around 25% of the original 19,642 cessed buildings have been redeveloped either privately by developers or by MHADA[6]. In case of reconstruction by MHADA, the buildings are

[4] Reconstruction means rebuilding by a government agency of the cessed building without any incentive FSI (of which there has been no instance after 1987) while redevelopment refers to building by private developers or a government agency with incentive FSI. For this clarification we have to thank Mr D R Hadadare, former Chief Engineer of MHADA.
[5] details discussed later under "Regulations affecting cessed buildings"
[6] Count based on actual survey conducted by MBRRB, MHADA in June 2022. Data received as a result of an RTI (Right to Information) application by the authors in November 2022

acquired by MHADA first and then reconstructed. The tenants are considered as MHADA tenants and the building is no longer a cessed building. From the interview of a real estate lawyer detailed in section 5(d) below, there is a lesser-known provision in the MHADA Act (103B) whereby occupants (not tenants or landlords) of cessed buildings can form a co-operative housing society and appeal to MHADA that it would be in interest of the maintenance of the building if it is transferred to the society. MHADA has the powers to acquire the building from the landlord by paying an amount calculated through a formula which equates to roughly 100 times gross monthly rent of all the tenants and transfer the property to the co-operative housing society. However, execution of this provision is very rare due to landlords' resistance who demand market rate for the acquisition. Instead, what generally happens is formation of a non-statutory association of tenants as a platform for negotiating with the landlord. However, since the rise in real estate values in the early 90s, it is economically not feasible for MHADA to acquire the buildings at market value and no acquisition has taken place since then. Except in the case of deteriorated cessed buildings that have been officially declared uninhabitable by MHADA following an annual structural assessment.

All these strategies deplete the rental housing stock of the city and do nothing to add planned affordable housing in the part of the city that has a dearth of it. Redevelopment policy in fact adds densities to already dense pockets of the city without adding corresponding open space and amenities. Repealing the Rent Control Act without simultaneously establishing provisions for subsidized rental housing represents a grievous misstep. This approach is nothing short of a ruthless disregard for tenants' well-being.

2.Rationale for Investigation

Cessed buildings comprise a vital part of the historic fabric of the Island city of Mumbai. At the same time they provide an essential support to many residents and businesses to continue where they are in the city. They represent about 27% of the buildings in the Island city.[7]

Current legislation is inadequate to maintain the affordable rental housing fabric of the city. An abrupt end to the Rent Control Act without providing an alternative policy to stabilize rentals excludes many social groups from coexisting. It forces them to long distance travel and long commutes. Affected groups would be young professionals in their early stage of career, retired elderly individuals living on pension funds, out-station students, blue collared workers and many more.

[7] In the listing of all buildings in wards A to G from UDRI there are total of 49,316 buildings out of which 13,091(as per MHADA survey of 2022) are cessed

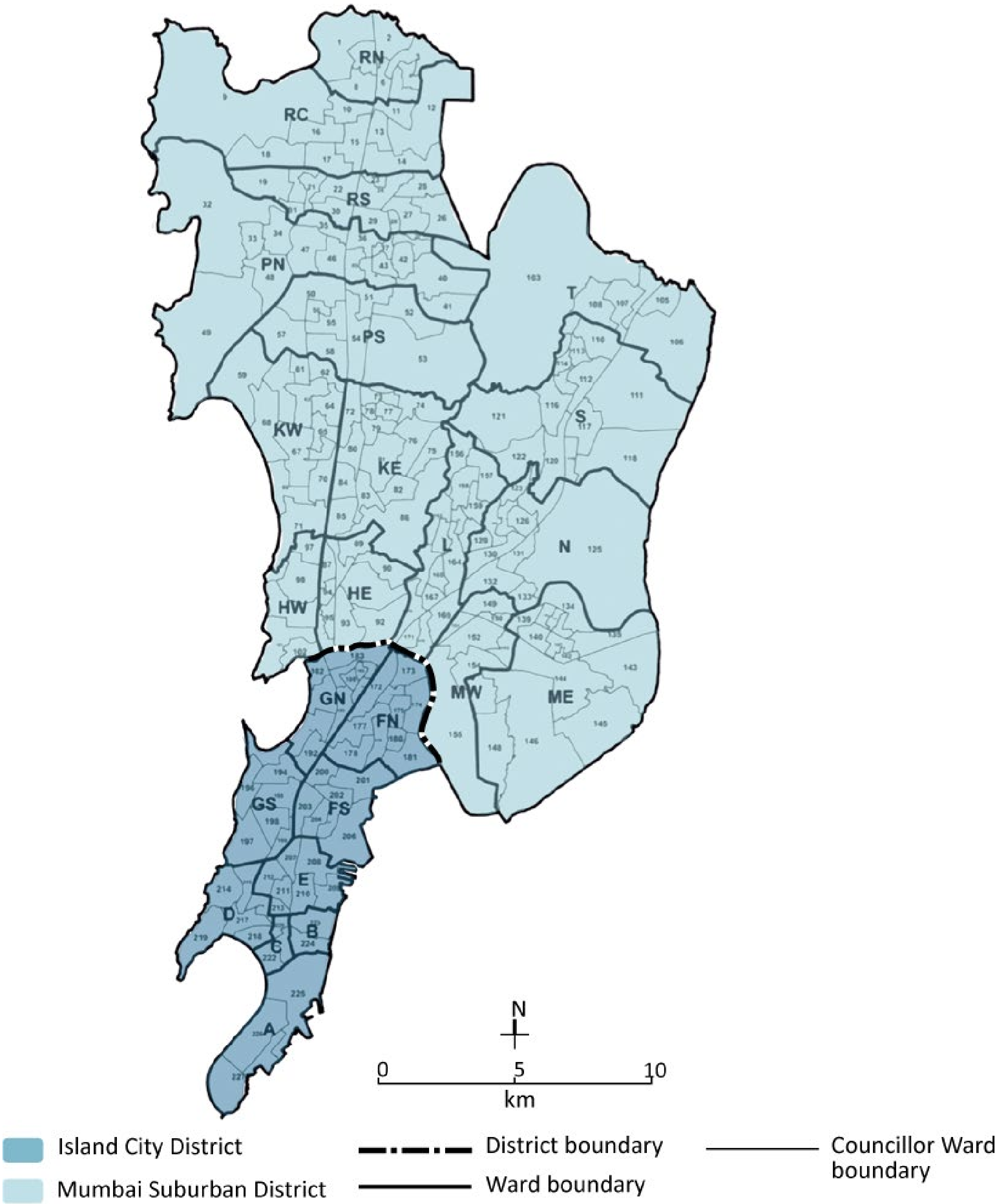

Figure 1 Districts of Mumbai demarcating Island City

Securing long-term property ownership for the low-income population in this part of the city is practically unattainable due to the exorbitant land prices, coupled with the absence of accessible, affordable housing options, whether in the private or public sector. In this scenario, rental housing emerges as the sole practical solution, as it enables tenants to make periodic payments in manageable increments while relieving them of the responsibility for property maintenance.The deterioration and subsequent collapse of cessed buildings, often posing a serious threat to the lives of occupants, can be attributed to the inadequate maintenance funds that have remained stagnant over time. It is prudent to explore financial models employed in other nations where rent-controlled buildings are effectively maintained and continue to play a vital role in the rental housing sector.

Often, when a building's structural integrity deteriorates to the point where it can no longer safely stand, redevelopment becomes the only viable solution. However, the current development regulations in Mumbai that allow for redevelopment rights for all cessed buildings, including Grade II heritage buildings, have significant negative consequences. These arise from incentives for additional development rights without corresponding increases in social and physical infrastructure. The negative aspects include increased population density, strained infrastructure, reduced access to green spaces, heritage conservation challenges, social inequity, pressure on the city's resilience, and adverse environmental impacts.

Given these far-reaching effects on the quality of life and the city's inability to withstand challenges, there is a compelling case for further investigation into these regulations. Such an investigation should aim to assess the balance between development and infrastructure, evaluate the impact on heritage preservation, analyze social and economic disparities, and consider environmental sustainability. This examination can lead to the development of more comprehensive and sustainable regulations that prioritize the well-being and resilience of Mumbai's residents while preserving its unique heritage and environment.

Further, redevelopment accentuates segregation of the city's population by income level. When the low-income population from a particular location is augmented by high income residences and markets it leads to what is called gentrification within the precinct. This brings the situation closer to what are called gated communities of the well-to-do.

Gentrification is undesirable in a city for variety of reasons. The primary one is the segregation across the city according to income levels. This means that the poor are forced to the outskirts of the city, further and further away from their places of work. The cost of travel, both in terms of time and money, means that their impoverished lives are further diminished. For an efficient city which is a pleasure to live in for all its citizens, residential location in the city needs to be as close as possible to the place of work. Endogenous service industry has customers spread across the city. This includes domestic help, nurses, teachers, dhobis, dabbawalas, taxi drivers, watchmen, repair workers, carpenters, plumbers and so on. The city depends on them for its day to day working. So they need to be widely and evenly spread through the city.

Whatever may be the downside of cessed buildings, in a way they have served to promote a desirable mix of income levels across the city. As it happens, cessed buildings with extreme rent control are occupied by a wide range of income groups. This is desirable for the variety of reasons listed above. So when considering policies we need to be careful not to encourage gentrification of areas taken up for redevelopment.

Currently the statistics in Mumbai associated with cessed buildings are maintained by MBRRB, the state agency under MHADA. However, access to these statistics is veiled by bureaucracy and the current state of cessed buildings is unclear. Fragmented information can be obtained by RTI (Right to Information) from individual ward offices. But this is limited to a building by building enquiry. It is also limited to what is there on file concerning each building. You cannot get any kind of compilation or analysis. Either the ward does not carry out such work, or if it does, it is careful not to keep this on file from where it could be revealed through RTI. To get the information you have to specify the exact name and category of each cessed building of interest. This would be a humongous task, ridiculous to undertake because the desired information is already there with MHADA. It may be in a disaggregated form but tabulating it for purposes of analysis would not be difficult.

There has been a two decades long gap since the last comprehensive report on cessed buildings was compiled by the government. Previously the following reports were initiated to address issues of dilapidated buildings within the Island city and the suburbs.

2a) 1968 – Bedekar Committee report, which led to formation of MBRRB

2b) 1997 – Sukhtankar Committee report, which led to modifications in Development Control Regulaions (DCR) 33(7) & 33(9)

2c) 2000 – Afzulpurkar Committee report, which expanded MBRRB's responsibility to address repair and redevelopment issues of dilapidated buildings in the suburbs and extended suburbs, which as it happens were not cessed.

In such a scenario it is critical to first provide a comprehensive and clear picture of the existing condition of cessed buildings. It would be the starting point leading to the drawing up of alternative policies for restoring, maintaining, reconstructing and redeveloping this important fabric of the city. The work could also lead to proposing policy alternatives in support of rental housing.

3.Objectives to Achieve

The current understanding is that by "redevelopment" we mean demolition of the old and construction of a new building by a developer or by a private agency or by the occupants. By "reconstruction" we mean redevelopment executed by MHADA. In either case the project may or may not generate a monetary surplus. If it is generated by MHADA it must necessarily be used to cross-subsidise other low-income housing.

In what follows, we introduce a new term, "rebuilding" by which we mean redevelopment (by anyone other than MHADA) where there is no monetary surplus. "Redevelopment" in this document implies the generation of a monetary surplus.

Before one gets completely entangled in the complexities of the study it would be useful to first define the objectives of the study. This study aims to produce recommendations that:

3a) Retain the system of rental housing under a suitably modified Rent Control Act.
3b) Encourage and revive construction of institutional (both public and private) rental housing.

3c) Resist the removal of lower-income residents of the Island City that total abolition of rent control and redevelopment of cessed buildings might bring.

3d) Improve the quality of small format rental housing with better amenities and facilities.

3e) Provide financial models to aid in building a realistic maintenance fund to self-support restoration or repairs, and if it comes to that, help finance rebuilding.

3f) Provide legal legitimacy to tenants' associations of rent control and *pagdi*[8] tenements.

3g) Provide a platform for negotiations and conflict resolution between landlord and tenants.

3h) Provide additional formal options of affordable rental housing for the lower 40 percentile income population of the city, the vulnerable section of society that most desperately needs the option of formal rental housing.