

**MAHARASHTRA GUNTHEWARI DEVELOPMENTS (REGULARISATION, UPGRADATION
AND CONTROL) ACT, 2001**

MAHARASHTRA ACT NO. XXVII OF 2001

(First published, after having received the assent of the Governor, in the "Maharashtra Government Gazette" on 13th August, 2001).

An Act to provide for the regularisation and upgradation of certain *Gunthewari* developments and for the control of *Gunthewari* developments and for matters connected therewith and incidental thereto.

WHEREAS both Houses of the Legislature were not in session; AND WHEREAS the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to promulgate an Ordinance to provide for the regularisation and upgradation of certain *Gunthewari* developments and for the control of *Gunthewari* developments and for matters connected therewith and incidental thereto; and, therefore, promulgated the Maharashtra *Gunthewari* Developments (Regularisation, Upgradation and Control) Ordinance, 2001, on the 30th April, 2001;

AND WHEREAS, it is expedient to replace the said Ordinance by an Act of the State Legislature; it is hereby enacted in the Fifty-Second year of the Republic of India as follows —

STATEMENT OF OBJECTS AND REASONS

There has, of late, been a growing tendency to form plots unauthorisedly by subdividing private lands and transfer them to needy persons for the construction of dwelling units. Since these subdivisions are usually in multiples of a *guntha*, such developments are some times referred to as *Gunthewari* developments.

Although *Gunthewari* developments are unlawful and there is an obvious need to curb such development, it has at the same time, to be appreciated that it is neither practicable nor desirable to demolish on a mass scale the old and long existing constructions, made on such plots. This is especially so because the formal housing market has failed to meet the demands of economically weaker sections of the society for shelter in terms of both quantity and price. *Gunthewari* developments are a form of informal housing and have to be viewed as a positive response, however flawed and imperfect, of the common people to meet their shelter needs. This is now widely recognised and several States have announced policies for curbing further unauthorised developments of this kind on the one hand and regularising and upgrading those that already long exist. The Bill embodies set of measures in line with this perception of *Gunthewari* developments is so far as Maharashtra is concerned.

1. Short title, extent and commencement: —

- (1) This Act may be called the Maharashtra *Gunthewari* Developments (Regularisation, Upgradation and Control) Act, 2001
- (2) It extends to the whole of the State of Maharashtra.
- (3) It shall be deemed to have come into force on the 30th April, 2001.

2. Definitions:—In this Act, unless the context otherwise requires, —

- (a) “*Gunthewari* development” means plots formed by unauthorisedly sub-dividing privately owned land, with buildings, if any, on such plots, including excess vacant land under the Urban Land (Ceiling and Regulation) Act, 1976, not vested in the State Government, but excluding land under encroachment;
- (b) “layout” means a piece of land or contiguous land under common ownership sub-divided into plots;
- (c) “Planning Authority” means —
- 1) for the areas within their respective jurisdiction, —
 - (i.) the Nagpur Municipal Corporation, constituted under the City of Nagpur Corporation Act, 1948;
 - (ii.) the concerned Municipal Corporation, constituted under the Bombay Provincial Municipal Corporations Act, 1949; or
 - (iii.) the concerned Municipal Council, constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965; or
 - (iv.) the Nagpur Improvement Trust, constituted under the Nagpur Improvement Trust Act, 1936; or Maharashtra Gunthewari Developments Act, 2001 17
 - (v.) the concerned Special Planning Authority, constituted or appointed or deemed to have been appointed under section 40 of the Maharashtra Regional and Town Planning Act 1966; and
 - 2) in respect of areas other than those covered by sub- clause (1), the Collector or an officer authorised by him in this behalf;]
- (d) “prescribed” means prescribed by rules mad under this Act; (2) Words and expressions used but not defined herein, shall have their respective meanings as assigned to them in the Maharashtra Regional and Town Planning Act, 1966.

3. Regularisation of Gunthewari developments

- (1) All *Gunthewari* developments existing on the 1st January, 2001, shall, on an application being made in this behalf by the plot-holders to the Planning Authority, as provided in section 4, be eligible for being considered by the Planning Authority for regularisation Provided that, *Gunthewari* developments existing in the following areas shall not be eligible for regularisation namely : —

- (a) Mumbai Metropolitan Region as established under subsection (1) of section 3 of the Maharashtra Regional and Town Planning Act, 1966;
- (b) Scheduled Areas, declared as such by the President of India by an order under paragraph 6 of Schedule V of the Constitution of India;
- (c) forests to which the Forest (Conservation) Act, 1980 applies;
- (d) Coastal Regulation Zone as declared under clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986;
- (e) Eco-Sensitive Zones or Ecologically Fragile Areas as declared under section 1 and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986;
- (f) Hill Stations as notified by the State Government;
- (g) Special Tourism Areas, declared as such, by the Central or State Government:

Provided further that, the *Gunthewari* developments in respect of the following categories of plots and buildings shall also not be eligible for regularisation namely:—

- a. plots formed and transferred after the 1st January, 2001;
- b. plots existing on lands under acquisition for a public purpose;
- c. plots existing on lands where the provision, or to which the extension, of civic services is not technically feasible or financially viable;
- d. plots or buildings (or parts thereof), posing hindrance in the provision of infrastructure facilities and change in the plans for such facilities to enable the said plots or buildings (or parts thereof), to continue to exist is not feasible;
- e. plots or buildings (or parts thereof) which, in the opinion of the State Government or the Planning Authority, ought not to be regularized, —
 - (i.) in the public interest; or
 - (ii.) because of the matter being *sub-judice*; or
 - (iii.) as the same is barred by Court decisions or orders.

(2) The regularisation of any *Gunthewari* development shall be to the following general conditions, namely :—

- (a) In the layout, ten per cent., of the plots shall vest in the Planning Authority, free of cost: Provided that, such plots are unsold and unbuilt;

- (b) Wherever necessary, open marginal spaces shall be surrendered, to achieve a road-width of nine meters or required Development Plan road width in the areas of a Municipal Corporation, a Special Planning Authority and a New Town Development Authority and four and half meters or required Development Plan road width in other areas;
 - (c) It shall not be the responsibility of the Planning Authority to provide alternate plots or otherwise compensate plot- holders displaced or affected by any development or rectification carried out in the process, or for the purpose, of regularisation and upgradation of *Gunthewari* developments;
 - (d) The regularisation of any *Gunthewari* development shall not confer any title or claim in respect of the land or building not already enjoyed by its holder prior to such regularisation.
- (3) The regularisation of *Gunthewari* development shall also be subject to the prior payment of compounding fee and development charge, as may be determined by the State Government, from time to time:

Provided that, the State Government may, authorise the Planning Authority to determine the compounding fee or development charge or both, in the area of its jurisdiction.

4. Procedure for regularisation:

- (1) The concerned plot-holder shall apply for regularisation of *Gunthewari* development within a period of six months from the date of the coming into force of this Act or such extended time as the Planning Authority may permit.
- (2) The application shall be accompanied, *inter alia* by —
 - (a) documentary proof of ownership or lawful possession of the plot;
 - (b) existing layout plan;
 - (c) plan of existing construction on such plot;
 - (d) rectification plan;
 - (e) an undertaking by the applicant to rectify uncompoundable infringements;
 - (f) demand draft, drawn on any scheduled bank to cover the amount due as compounding fee and development charge.
- (3) **The** Planning Authority shall scrutinise the case for fulfillment of the stipulated requirements laid down under sub-section (2), including proof of actual rectification of uncompoundable infringements, and thereafter, issue a certificate of regularisation if satisfied on all these counts.

5. consequences of regularisation:

- (1) Notwithstanding anything contained in any other law for **the time being in force, on** being regularised, the *Gunthewari* development shall be deemed to have been exempted under section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 from the provisions of Chapter III of the said Act and converted to non-agricultural use for all purposes of the Maharashtra Land Revenue Code, 1966, subject to the payment of nonagricultural assessment and the other terms and conditions of such conversion, and the provisions of the Development Plan or the Regional Plan, as the case may be, shall, so far as such development is concerned, stand modified or relaxed, as may be required.
- (2) On such regularisation of *Gunthewari* development under section 3, by the concerned Planning Authority, all Court cases or other proceedings, filed by such Planning Authority, and pending in any Court insofar as they relate to such unauthorised development, shall abate.

6. Upgradation of regularised Gunthewari development:

- (1) The amounts accruing to the Planning Authority on account of compounding fee shall be kept by the Planning Authority in a separate head of account, layout-wise and utilised for providing on-site infrastructure (other than electricity supply) in the layout:
- (2) Provided that, fifteen percent, of such amount shall be retained by the Planning Authority towards administrative charges.
- (3) The on-site development of the layout shall be undertaken in proportion to the amount of compensation received by the Planning Authority.
- (4) Common or indivisible infrastructure or services or amenities or facilities shall be provided by the Planning Authority only after such minimum proportion of number of plots in the layout, as may be determined by the State Government, from time to time, have been regularised.
- (5) Individual or divisible infrastructure or services or amenities or facilities may be provided as per the terms and conditions prescribed under the relevant law, after the plot has been regularised.

7. Control of Gunthewari development:

- (1) If any plot-holder has not applied for regularisation within the specified period, as provided in sub-section (1) of section 4, the Planning Authority shall, before initiating any action under sub-section (2), against the holder of such plot, for demolition of such unauthorised construction, give such plot-holder, one month's notice, to apply for regularisation of such unauthorised development.
- (2) On the plot-holder's failure to apply for such regularisation, as provided in sub-sections (1) and (2) of section 4, within the time limit specified in the notice, or his application for regularisation is rejected by the Planning Authority the Planning Authority shall demolish the unauthorised construction.

(3) The police shall provide adequate protection and support to the Planning Authority for carrying out the demolition under subsection (2).

(4)

(a) The Chief Executive Officer of the Planning Authority or the Collector, as the case may be, who fails to remove any *Gunthewari* development undertaken after the date of coming into force of this Act, within a period of six months from the date of its occurrence or the Commissioner of Police or the Superintendent of Police, as the case may be, who fails to provide adequate police protection and support for carrying out the demolition as aforesaid; or

(b) a person who in any way prevents or obstructs the Planning Authority or Collector or Commissioner of Police or Superintendent of Police, in the discharge of their duties as aforesaid; or

(c) a person who after the date of coming into force of this Ordinance, carries out any *Gunthewari* development; or

(d) a person who aids or abets such unauthorised development or prevention or obstruction of such demolition, shall be deemed to have committed an offence under this Act, and shall, on conviction, be punishable with fine upto rupees ten thousand:

Provided that, the incumbent Chief Executive Officer of the Planning Authority or the Collector shall not be liable unless he has held the post for not less than six months, immediately before the date of commission of the offence: Provided further that, no prosecution of the Chief Executive Officer of a Planning Authority or a Collector or a Commissioner of Police or a Superintendent of Police for any offence under this sub-section, shall. Be instituted except with the previous sanction of the State Government.

8. Power of entry:—

(1) The Planning Authority or any officer authorised by it, may enter into or upon any land or building with or without assistants or workmen for the purpose of,

(a) ascertaining whether any land is being or has been developed in contravention of any provision of this Act or any other law;

(b) making any measurement or survey or taking levels of such land or building;

(c) setting out and marking boundaries and intended lines of development;

(d) marking such levels, boundaries and lines by placing marks and cutting trenches;

(e) examining works under construction and ascertaining the course of sewers and drains

Provided that, —

- (i.) in the case of any building used as a dwelling-house, or upon any enclosed part of garden attached to such building, no such entry shall be made except between the hours of sunrise and sunset and without giving its occupier at least twenty-four hours notice, in writing, of the intention to enter;
 - (ii.) sufficient opportunity shall, in every instance, be given to enable women (if any), to withdraw from such land or building;
 - (iii.) due regard shall always be had, so far may be compatible, with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the land or building entered.
- (2) The powers of the Planning Authority or any person authorised by the Planning Authority in this behalf, shall extend only to the area under its jurisdiction.

9. Service of notice, etc:—

- (1) All documents, including notices and orders required by this Act or any rule or regulation made thereunder, to be served upon any person shall be deemed to be duly served, —
- (a) where a document is to be served on a Government department, railway, local authority, statutory authority, Company, corporation, society or other body, if the document is addressed to the head Of the Government department, General Manager of the railway, Secretary or Principal Officer of the local authority, statutory authority, company, corporation, society or any other body, at its principal, branch, local or registered office, as the case may be, and is either,—
 - (i.) sent by registered post to such office; or
 - (ii.) delivered at such office;
 - (b) where the person to be served is a partnership firm and if the document is addressed to such firm at its principal place of business, identifying it by the name or style under which its business is carried on, and is either,—
 - (i.) sent by registered post to such office; or
 - (ii.) delivered at the said place of business;
 - (c) in any other case, if the document is addressed to the person to be served, and,—

- (i.) is given or tendered to him; or
 - (ii.) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the land or building to which it relates; or
 - (iii.) is sent by registered post to that person.
- (2) Any document which is required or authorised to be served on the owner or occupier of any land or building may be, addressed “the owner” or “the occupier”, as the case may be of that land or building (naming or describing that land or building) without further name or description and shall be deemed to be duly served, —
- (a) if the document so addressed is sent or delivered in accordance with clause (c) of sub-section (1); or
 - (b) if the document so addressed or a copy thereof so addressed, is delivered to some person on the land or building.
- (3) Where a document is served on a partnership firm in accordance with this section, the document shall be deemed to have been served on each partner of such firm.
- (4) For the purpose of enabling any documents to be served on the owner of any property, the Planning Authority may, by notice in writing, require the occupier (if any), of the property to state the name and address of the owner thereof.
- (5) Where the person on whom a document is to be served is a minor, the service upon his guardian or any adult member of his family shall be deemed to be service upon the minor.

Explanation: — A domestic servant is not a member of the family within the meaning of this section.

- 10. Public notice how to be made known:** — Every public notice given under this Act or rules or regulations made thereunder shall be in Writing over the signature of such officer who may be authorised in this behalf by the Planning Authority and shall be widely made known in the locality to be affected thereby, affixing copies thereof in conspicuous public places within the said locality and by publishing the same by beat of drum or by advertisement in one or more local newspapers, and by such other means which the officer thinks fit.
- 11. Notices, etc. to fix reasonable time:** — Where any notice, order or other document issued or made under this Act or any rule or regulation made thereunder requires anything to be done for the doing of which no time is fixed in this Act or rule or regulations made thereunder, the notice, order or other document shall specify a reasonable time for doing The same.
- 12. Authentication of orders and documents:** — All permissions, orders, decisions, notices and all documents of a Planning Authority shall be authenticated by the signature of such officer as may be authorised by such Authority in this behalf.

13. Offences by companies:—

- (1) Where an offence under this Act, or the rules made thereunder, is committed by a company, every person who at the time when the offence was committed, was in-charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly

Provided that, nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act or the rules made thereunder, has been committed by a company with the consent or connivance of, or is attributable to or on the part of, any Director, Manager, Secretary or other Officer or servant of the company, such Director, Manager, Secretary or other Officer or servant concerned shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
Explanation. — For the purposes of this section, —

(a) “company” means a body corporate and includes a trust, a firm, a society, an institution or, other association of individuals; and

(b) “director” relation to-

(i.) a firm means a partner in the firm;

(ii.) a society, a trust, an institution or other association of persons or body of individuals, means the person who is interested under the rules or bye-laws of the society, trust, institution or other association or body with the management of \ the affairs of the society, trust, institution or other association or body, as the case may be.

14. Withdrawal of cases and compounding of offences:—

- (1) No Court case initiated for any offence punishable under this Act or rules made thereunder shall be withdrawn except with previous sanction of the Planning Authority or any officer authorized by such Authority in this behalf.
- (2) Except with regard to offences, the prosecution for which requires previous sanction of the State Government, the Planning Authority or any person authorised in this behalf by the Planning Authority, by general or special order may, either before or after the institution of the proceedings compound any offence made punishable by or under this Act or rules made thereunder.
- (3) When an offence has been compounded the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of the offence compounded.

- 15. Jurisdiction of courts: —** No Court inferior than that of a Judicial Magistrate of the First Class shall try an offence punishable under this Act.
- 16. Protection of action taken in good faith: —**No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rules or regulations made thereunder.
- 17. Members and officers to be public servants: —** Every member and every officer and other employee of the Planning Authority shall be deemed to be a public servant within the meaning of the Indian Penal Code.
- 18. Finality of orders: —** Every order passed or direction issued by the State Government or orders passed or notices issued by any Planning Authority under this Act shall be final and shall not be questioned in any suit or other legal proceedings.
- 19. Power to delegate: —**
- (1) The State Government may, by notification in the *Official Gazette*, delegate any power exercisable by it under this Act, or rules made thereunder to any officer of the State Government in such case and subject to such conditions, if any, as may be specified in such notification.
 - (2) The Planning Authority may, by an order in writing, delegate any power exercisable by it under this Act or rules or regulations made thereunder, to any officer of the Planning Authority in such cases and subject to such conditions, if any, as may be specified therein.
- 20. Powers of Planning Authority to be exercised by certain officers:—** The power and functions of a Planning Authority shall, for the purposes of this Act, be exercised and performed by the following officers, namely :-
- (i.) in the case of a Municipal Corporation, by the concerned Municipal Commissioner or such other officer as he may appoint in this behalf;
 - (ii.) in the case of a Municipal Council, by the concerned Chief Officer of the Council;
 - (iii.) in the case of the Nagpur Improvement Trust or a Special Planning Authority, by the Chief Executive Officer or person exercising such powers under the Acts applicable to such authorities; and
 - (iv.) in the case of Collector, either the Collector or such other officer as he may authorise in this behalf.
- 21. Control by State Government:—**
- (1) Every Planning Authority shall carry out such directions or instructions as may be issued from time to time by the State Government for the efficient administration of this Act.
 - (2) If in, or in connection with, the exercise of its powers and discharge of its functions by any Planning Authority under this Act, any dispute arises

between the Planning Authority and the State Government, the decision of the State Government on such dispute shall be final.

22. Returns and information: — Every Planning Authority shall furnish to the State Government such reports, returns and other information as the State Government may, from time to time, require.

23. Power to make rules: —

(1) The State Government may, by notification in the *Official Gazette*, and subject to the condition of previous publication makes rules to carry out the all or any of the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be, after it is made before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session or sessions immediately following, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made and notify such decision in the *Official Gazette*, the rule shall, from the date of publication of such decision, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

24. Power to make regulations: — The Planning Authority may, with the previous approval of the State Government, make regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act.

25. Repeal of Mah. Ord. XIII and saving: —

(1) The Maharashtra *Gunthewari* Developments (Regularisation, Upgradation and Control) Ordinance, 2001, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any rule made or notification or order issued) under the said Ordinance, shall be deemed to have been done, taken or issued, as the case may be, under the corresponding provisions of this Act.