

GOVERNMENT OF THE MAFIA, BY THE MAFIA AND FOR THE MAFIA.

▪ **By Dr. M.N. Buch**

The people of Bhopal fought a valiant battle against the Draft Bhopal Development Plan which, if it had been approved, would have negated the last vestige of urban planning in the capital of Madhya Pradesh. Because the Chief Minister was responsive to the public mood and because Shri Kailash Joshi, M.P. and former Chief Minister, who presided over the committee which heard objections under section 17A of the Madhya Pradesh Town and Country Planning Act was eminently fair and objective, the voice of the people was heard and the plan was scrapped. Amongst the most objectionable features of the draft plan were:

1. The freedom given to developers to take agricultural land and, with some token approval, to convert it to other use, regardless of the land use prescribed in the Development Plan.
2. The almost total freedom given to those claiming to run educational institutions to acquire land virtually at will and then to permit them to construct their own campuses on such land. This meant that regardless of the infrastructure plan prepared for Bhopal, these institutions could construct where they wanted and willy-nilly at some future date the authorities would have to extend infrastructure to these campuses. In the process all the intervening land would be illegally constructed upon and government would be forced to regularise such construction. It is to prevent this sort of totally unplanned growth that there was great public objection and outcry.

I created and headed the Housing and Environment Department in 1971 but I did not realise that this very department would become so perverted in its outlook that it would find back door methods of subverting the very purpose of the scrapping of the Development Plan. Having failed to gain its nefarious objectives through the Development Plan route the department has now come up with rules allegedly framed under section 24 of the Town and Country Planning Act. The draft rules were published sometime in June 2010 under notification No. F3-4/32/09. Section 24 vests control over land use in government and through government in the Director, Town and Country Planning. Under sub-section 3 of section 24 government can frame rules for development of land within the planning area, which is why land development rules are framed, quite often as part of the Development Plan of the city. The Legislature has not delegated to government the power to use section 24 to notify that development regulations will supersede the provisions of the statutory development plan duly notified under section 19 of the Act. The notification, therefore, is bad in law.

The real purpose of framing these rules has inadvertently been self confessed by the department in Rule 5 of the draft Rules. Sub-rule 4 of rule 5 says and I quote. "There shall be no ceiling limit for holding agricultural land to be purchased by the owner/developer for such object because the land will be diverted for the purpose of establishing of special township and Krishi Jyoti Uchittam Seema Adhinyam 1960 is not applicable on diverted land. Hence this provision shall not be applicable on such lands". The ceiling on agricultural holding is prescribed under an Act of the Legislature, the administrative department for which is the Revenue Department under the Business Allocation Rules framed under Article 166 (3) of the Constitution. The Housing and Environment Department is not competent to pass any orders relating to an Act which lies within the jurisdiction of the Revenue Department and in any case, through delegated legislation, that is, Rules, no department of government can determine whether an Act of the Legislature will apply or not. I have spent fifty-three years in

Madhya Pradesh and this is the first known incident of a department using rules to set aside the operation of an Act of the Legislature. Has our Secretariat, the entire hierarchy right upto the level of Principal Secretary, become so incompetent that it did not advise against such a step, or if orders were given, decided not to implement the orders? The entire scheme of these rules is hit by the legal infirmity of overruling an Act of the Legislature. I can only weep at the level to which officers of Indian Administrative Service have now reduced themselves that they do not have the competence or the desire to advise their ministers correctly.

If anyone can build anything anywhere why prescribe land use at all or have a statutory development plan? As per the schedule attached to the draft rules a special township can be built as a technology park, a medical or health care township, an education township, a tourism related township or a sports township or even a residential township. There is a provision of a gross floor area ratio of 1:1, but this excludes all greens, water bodies, etc., which means that the net FAR can be anything at all. Anything can be built, including commercial clusters, which is clear from the table giving parking requirement, which covers residential, hotel, educational, institutional, community purpose, business offices, mercantile, industrial and storage facilities. What else is left? I have been aware for quite sometime that there is a very strong lobby of builders and real estate developers which has consistently tried to render the Development Plan of Bhopal completely infructuous. I had no idea about how deep the inroads of this lobby are and to what extent it has purchased government. I had no idea, in my innocence, about how much government had succumbed to the blandishment of this lobby. In the Gettysburg address Abraham Lincoln had said, "Government of the people, by the people, for the people shall not perish on earth". In Madhya Pradesh for "people" substitute the word "mafia".
