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# Community Land Reserves

SHIRISH B PATEL

Community Land Reserves (called Community Land Trusts in the us) have been in existence around the world for over 40 years. They are non-profit organisations with a mission to provide affordable housing to low income groups, for all time. Someone starts one off by providing a gift of land. The organisation then takes this gift of land off the market to hold it in trust forever thereafter.

Ownership of the land remains with the organisation, which cannot sell it. Individual parcels are given out to owners who build on them and own the construction but not the land. On resale, the owner recoups the cost of his construction, adjusted to present-day value, but not the appreciation in land value. As a result, the incoming occupant can also get housing at an affordable price, because it is unburdened by land value.

Critical to success are the format of governance of the organisation and the resale formula.

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If poor people are to have affordable housing distributed through a city, the cost of land on which they reside needs to be somehow taken out of the equation. One way of doing this is by policies of inclusionary housing (Patel 2011), by which when anyone builds anything in the city, whether it is a mall, or a cinema, or an office building or high value residential apartments, a specified fraction of the built floor space is additionally constructed, on the same plot or a plot close by, for inclusionary housing. The cost of construction is fully reimbursed to the developer, but not the cost of land. Approval of his principal construction, which is for sale, is contingent on his making this inclusionary housing available, at the cost of construction only, to the agency designated to manage it.

The proportion of floor space to be so built is about 25% in most countries; in Spain it is 50%. Given our complete neglect of public housing in the past, in India the figure should perhaps be closer to Spain's than to other countries'. Any such policy will be stoutly opposed by builders, but they might console themselves by recognising that no builder in the world, anywhere, likes his country's policy of inclusionary housing.

In India, where such inclusionary housing is sold to the occupant, usually at well below market value because land cost is excluded when computing the price, there is often a condition that the occupant will not sell for 10 years. But what happens thereafter, on resale? The cost of acquiring the property, formerly heavily subsidised, for the incoming occupant is now market value, including appreciation in the cost of land. Affordability, after 10 years, is lost. The property is now priced at market value, of which land is often the major component.

A similar situation arises with sites-and-services development of the kind we see in Charkop, Mumbai. Sites given to

the original occupants at relatively low cost are now, 30 years later, resold at market prices, with land value almost invariably the major component of cost. The smallest and cheapest dwellings, once affordable for the lowest income groups, are now no longer within their reach.

We need a different strategy if our objective is to provide affordable housing for low income groups not only immediately but well into the future. There will always be poor people in the city, and let us say our purpose is to provide affordable housing for the city's bottom 40 percentile of family income, for all time.

## Taking Land Off the Market

One way of doing this is to form a Community Land Reserve (CLR), where ownership of the land on which poor families reside is transferred by way of gift or subsidy in purchase price. Ownership of the construction on the land vests in the homeowner, but ownership of the land remains with the CLR. Importantly, on resale, gains on account of appreciation in land value remain with the CLR; only the appreciated value of construction is due to the home-owning occupant. The home can then be sold (or rented) to a new incumbent at a price that excludes the value of the underlying land.

Such organisations exist in the largest numbers in the us, where they are called Community Land Trusts (CLTs). The earliest were established in the 1970s.<sup>1</sup> Since in India the term "Trust" implies a particular format of governance, from which the CLT departs, we prefer the term CLR. The terminology is similar to that of a Forest Reserve or a Wildlife Reserve, and implies reservation of a block of land exclusively for a specific purpose.

The mission of the CLR is to provide affordable housing to lower income groups, throughout the city, in perpetuity. It does this in the following way:

- (1) Through its format of governance.
- (2) Through the adoption of a resale formula, which returns to the homebuyer the amount he or she has invested in construction, adjusted for inflation, or the rate specified by the tax-free return on a sovereign paper, or any other formula

that is linked to the investment in construction, but any appreciation in land value remains with the CLR.

### Format of Governance

Land within the CLR is treated as a common resource, not as an individual possession.<sup>2</sup> Title to multiple parcels is held by a single non-profit corporate owner that manages these lands on behalf of an identified community, present and future. The ethic is that of stewardship.

Also, land is removed permanently from the market, never resold by the non-profit owner.

All structures are owned separately from the land, with title to structures (but not the land) held by individual homeowners, business owners or housing or business cooperatives.

A ground lease lasting many years gives the owners exclusive use of the land on which they construct their buildings.

The landowner is a private corporation, a Section 8 company under the new Companies Act, non-profit, and governed by Company Law.

The CLR has two categories of membership: resident members (who reside on CLR land) and general members (who reside in a geographically defined outer area).<sup>3</sup>

Corporate members or other organised entities such as NGOs are permitted only as resident members, and the houses given to them are usually on rent, not ownership. They have a single vote, regardless of the number of houses they occupy. However, instead of this, the individual occupants of the houses may be admitted as members, each exercising a single, individual, independent vote.

Resident members elect one-third of the board, general members elect another one-third of the board, and these board members then elect the remaining one-third of the board, including experts, professionals, government servants or any distinguished persons who represent the public interest in the CLR.

To maintain parity between the three different interest groups, the size of the board is normally a fixed number, usually nine or 12 or 15, with a three-year term (in the case of nine or 15 person boards) or a two-year term (in the case

of 12 person boards).<sup>4</sup> The number of successive terms a board member can serve is limited, with re-election to the board permitted after a year's break, but again with a limit on the permissible number of re-elections.

Usually, board meetings would happen once a month. They would be open to all members to attend. This is different from normal corporate practice in India, where companies are strongly board controlled, and involvement of the membership is limited to a dreaded, brief and more or less ceremonial meeting once a year. In a CLR, by contrast, members' participation is welcomed at board meetings.

The board may choose to go into executive session for certain confidential or difficult matters. Such sessions, from which members are excluded, are for discussion only. All decisions are taken in open session. Certain significant matters, such as a change in the by-laws, or sale of land, or modification of the resale formula (see below) or dissolution of the CLR, require the approval of two-thirds of the entire board plus two-thirds of the members attending the meeting.

### Resale Formula

The underlying principle at the time of transfer of possession is that the resident members should be fully compensated for their investment in housing, adjusted for inflation, or adjusted in any manner that provides equivalence to the return on sovereign investment, but not for any appreciation in the market value of land. A variety of formulae are in use in existing CLTs, of which the simplest for us to adopt in India would be one of the following:

(a) Accounts are maintained for each property of how much was spent by way of capital investment in each year. This is then indexed to the current year based on a published index, such as the cost of living. This has the advantage of being simple to calculate, but requires careful maintenance of accounts.

(b) As above, but assuming the amount spent on construction in any year had been invested in a sovereign instrument, calculate what it would have accumulated to in the current year, after taxes.

(c) Current cost of construction suitably adjusted for wear and tear. This requires

no historic accounting. The current cost of construction is published in the Ready Reckoner, by PWD, CPWAD, and NBO and any of these (or an average) could be selected as the basis for computation. Wear and tear could be treated as depreciation and measured through a generalised formula. This would be the simplest to operate.

### Situation in India

The central difficulty in India is that we live in an environment where credibility in public initiatives is lacking, and mistrust of individuals is the starting point of all transactions. We have to work out transparent and fair mechanisms for selecting new incoming occupants because in essence, the CLR will be providing them with housing at well below market rates. For instance, the Champlain Housing Trust in Vermont has an elaborate and transparent points system for selecting new incumbents (family size is one parameter; family income is another). We should perhaps set an upper limit on the size of accommodation permitted in the CLR, to make sure that occupants are families at or below the median income. The size may vary from city to city.

We should recognise that on a greenfield site the layout most appropriate for a CLR would be row housing, or individual plots around a courtyard, as in Charkop (Patel 2015). Multistorey buildings are, of course, possible, and do exist in some of the US CLTs, but such construction demands an upfront investment. Mortgages would help, but the possibility of incremental construction, investing as and when possible over a period of decades, and the affordability that this provides, is completely lost. Row housing, or plots around a courtyard, retain this possibility. And the volume of potential construction can be automatically constrained by a limit on the number of permissible floors.

We could try out such schemes on land that is owned by government and given to the CLR. This could be a greenfield site, or it could be an existing slum, provided individual plots can be properly demarcated and access to each is adequate.

To minimise chances of political take-overs, we should perhaps limit the number of general members to not more than, say, three-fourths of the resident membership. In most CLTs, changes in the by-laws require approval of two-thirds of the board as well as two-thirds of the total membership. We do not want the membership numbers overwhelmed by general members.

The availability of mortgage finance is critical to the success of the CLR. Most housing finance corporations will not lend to anyone whose income is below the median. They may do so if the CLT takes on the responsibility for repayment of instalments. In any case, the CLT collects its own monthly charges from individual occupants. So collection of mortgage repayments would not be a significant additional administrative burden.

In regard to the usefulness of existing legislation, the "Panchayat in Slum Improvement Area" (called Slum Panchayat for brevity) as provided for in the Maharashtra Housing and Area Development Act 1976 (or, in other states, the corresponding act),<sup>5</sup> comes closest in concept to a CLR. But this does not provide the format of governance that we want and thus may be of limited value. However, it does provide a precedent for something quite similar in intent.

Another possibility is to add a provision in the Maharashtra Regional and Town Planning Act under Section 22 "Contents of Development Plan." This would call for not only a designation of selected sites for implementation of CLRs, but a detailed outline of the guiding principles for setting up a CLR.

We will also need to declare that the Rent Act does not apply within the boundaries of a CLR.

We may need to declare that the SARFAESI Act (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002) applies within the boundaries of a CLR. If this is not workable, we need somehow to give the CLR powers of eviction in case of failure to meet mortgage repayments. We presume the board governing the CLR will be cautious and restrained in forcing evictions. Given the structure of the board, and the fact that board

meetings are open to all members, this is probably the best we can do.

### Legislation Required

In principle, no new legislation should be required to implement a CLR. As an organisation it would be governed by Company Law, and its own Memorandum and Articles of Association. These would spell out its mission of providing affordable housing distributed through the city. However, to ease the process of setting up CLRs, it may be advisable to amend the MRTTP Act as indicated above.

Further, if we want rentals to form a significant part of the housing in a CLR, as indeed we should, we will need to declare that the Rent Act does not apply in the area owned by the CLR. That little piece of legislation will definitely help. We need no change to confirm that the Transfer of Property Act applies, as does SARFAESI Act.

### Potential Trials of CLR

Cooperative societies have blossomed in Mumbai. They work well for middle income groups. But for the lowest income groups, who need to be well distributed throughout the city so that they can be close to places of work, the cost of land is beyond their capacity to pay. In such cases, where inclusionary housing policies throw up pockets of land to be used for low income housing, with no cost for the land, the CLR model, if applied to these pockets, would be a simple way of ensuring that this housing remains affordable far into the future.

Similarly, in particular slums where the government owns the underlying land and can be gifted to the occupants, if their plots are clearly defined, a CLR could ensure that this land remains affordable thereafter. Whether the occupants would agree to forgo their interest in the value of the land is something to be tried out in a few places. They do not own the underlying land anyway. Their option today is free housing on a portion of their plot if a builder agrees to saleable development on the rest. The CLR would be an alternative, which they might well prefer, because it opens up two other possibilities: one is incremental improvement, with the assurance that investment in construction and improvements is legal and

recoverable at the time of resale; the other is redevelopment, without being crowded out by for-sale construction, as long as the occupants themselves pay their own construction costs.

### Conclusions

CLRs as described above that has been in use in the US for over 40 years offer a scheme for perpetually affordable housing in cities. To work well, such CLRs must not be in ghettos but should form an integral part of comprehensive housing developments that offer housing across the spectrum of income groups, with the CLR forming part of a larger housing development.

Incidentally, there is no systematic gathering of data that can tell us income distribution across the population of any of India's towns or cities. So there is no official data that can reliably tell us what the median income is, or what percentage of the population falls within a specified income range. It should be a fairly simple undertaking to remedy this glaring deficiency in our economic data.

### NOTES

- 1 Much of the material that follows is from White (2011).
- 2 This part is from the opening chapter of Davis (2010).
- 3 The idea is to open this membership to neighbours who while not resident in the CLR area nevertheless have an interest in its development.
- 4 The reason for a fixed size board is to ensure always an equality of representation of the three different interest groups that make up the board.
- 5 I am indebted to V K Phatak for this suggestion.

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