
DELHI LAND POOLING POLICY: AN ULTRA VIRES ANALYSIS

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ABSTRACT

The phenomenon of rapid urbanization in Delhi has compelled the Delhi Development Authority (DDA) to propose the Land Pooling Policy (LPP), which came into effect in 2018, as an alternate strategy to compulsory acquisition of lands for urbanization. It aims at transforming landowners into stakeholders in the process of urbanization covering around 18,858 hectares of unutilized land. However, the LPP appears to be ultra vires to the Delhi Development Authority Act, 1957 on substantive and procedural grounds. Substantively, the DDA Act does not recognize any form of land transfer except compulsory acquisition by way of section 15. On procedural grounds, the LPP does not comply with the mandatory requirements of Zonal Development Plans as per sections 8, 9, and 11A before providing development licenses. Moreover, the LPP appears incompatible with other allied Acts such as the Delhi Land Reform Act, 1954 and Delhi Apartment Ownership Act, 1986. Based on a comparative study of constitutional provisions, judicial interpretations of the Supreme Court, and German statutory Umlegung provision, this paper argues that land pooling as a principle is not illegal. However, the DDA's attempt to incorporate land pooling through subordinate policy notifications without proper legislative support is constitutionally unacceptable.

I. Introduction

Delhi's population has grown tenfold in the last sixty years, and the city's infrastructure is in terrible shape.¹ To address this, Delhi Development Authority (DDA) introduced the Delhi Land Pooling Policy (LPP)², which was officially announced in 2018, under the framework of Delhi Development Act, 1957 (DDA Act, 1957)³ and operationalised by the Master Plan for Delhi 2021 (MPD-2021)⁴. It is one of the most ambitious efforts in urban land development in post-independence India. Under LPP, the landowners pool their properties together which is ceded to the Delhi Development Act (DDA) for development of public infrastructure, and a portion of the property is retained by the landowners with enhanced developmental rights. The aim of this project is to facilitate the planned growth of approximately 18,858 hectares of undeveloped urbanizable territory in Delhi's outer areas and the policy aspires shifting the planning paradigm from "compulsory acquisition" to "voluntary participation" by making landowners partners in development.⁵

This paper argues that although the LPP has transformative potential, it is both substantively and procedurally ultra vires the DDA Act, 1957. The doctrine of ultra vires which is the bedrock of administrative law holds that the very exercise of delegated authority must strictly remain within the boundaries set by the parent statute. When a statutory body acts beyond those powers, its actions is rendered void ab initio. The paper proceeds in four parts. Firstly, we discuss the statutory framework of the DDA Act, secondly, the arguments for LPP being ultra vires are advanced and substantiated through case laws, thirdly, we'll analyse the path towards reformation and necessary safeguards and lastly, the paper is concluded with a comparative note.

II. Statutory Framework and The Rule of Law

The Delhi Development Authority Act of 1957 regulates the planned growth of Delhi.⁶ Section

¹ Vrinda Bhardwaj, *Land Pooling Policy Delhi: A Fallacious Affair?* Volume 3 Issue 4 IJLSR, 214-224 (2021), <https://ssrn.com/abstract=3960088>.

² Land Pooling Policy Notification, Ministry of Housing and Urban Affairs, Gazette of India, Extraordinary, 2018.

³ The Delhi Development Act, 1957, No. 61, Acts of the Parliament, 1957 (India).

⁴ Delhi Development Authority, Master Plan for Delhi 2021 (updated Dec. 31, 2020), <https://dda.gov.in/planning/master-plan-delhi-2021>

⁵ Rima Mondal, *Evaluation of Land Pooling Policy in Delhi: Institutional Innovation in Land Development*, Volume 57 Issue 10 ECON. & POL. WKLY., 34-35 (2022), <https://www.epw.in/journal/2022/10/special-articles/evaluation-land-pooling-policy-delhi.html>

⁶ Bhardwaj, *supra* note 1

6 of the Act describes the functions and objectives of the DDA.⁷ Powers for the preparation of the "Master Plan", "Zonal Development Plans (ZDP)" are outlined in sections 7 and 8 of the Act and must be approved by the Central Government in accordance with both sections 9 and 10, after providing public notices, allowing objections prior to obtaining such approvals⁸. The method of amending a master plan is outlined in Section 11A of the Act and the development areas are declared in Section 12 of the Act.⁹ The primary process for acquiring land is by way of the Central Government's compulsory acquisition of land under the Land Acquisition Act of 1894¹⁰ with subsequent payment of compensation and transfer of ownership of the acquired land from the Central Government to the DDA. The DDA Act does not define the terms: "land pooling", "surrender", "Developer Entity", or "Development License".

The design of this structure is not an accident. It is based on the premise that property rights are protected by the Rule of Law through the laws of a government regulating their exercise by its citizens. A.V. Dicey stated that "no one may have power exercised over them except in accordance with prescribed law"¹¹. Justice H.R. Khanna provided what is arguably the clearest articulation of this principle in his famous dissent in *ADM Jabalpur*, that the rule of law is not simply a common law principle but also a constitutional limit on the actions of the Executive Branch, which limits even the most pressing need on the Police and the Government.¹² In regard to delegated legislation, the rule will be that DDA can only do what is delegated by the DDA Act for it to do and any act that exceeds such authorization is void.

III. Arguments for LPP being Ultra Vires

Firstly, LPP establishes a new model of land acquisition that finds no support under the DDA Act making it substantively ultra vires. Under Section 15 of the DDA Act, the Central Government has the right to acquire land needed for development in accordance with the provisions of the Land Acquisition Act of 1894.¹³ It is evident that this section sets out compulsory acquisition as the only means of gaining access to the land under the control of the

⁷ The Delhi Development Act, 1957, § 6, No. 61, Acts of the Parliament, 1957 (India).

⁸ The Delhi Development Act, 1957, § 7-10, No. 61, Acts of the Parliament, 1957 (India).

⁹ The Delhi Development Act, 1957, § 11A-12, No. 61, Acts of the Parliament, 1957 (India).

¹⁰ The Land Acquisition Act, 1894, No.1, Acts of the Parliament, 1894 (India)

¹¹ A.V Dicey, *An Introduction to the Study of The Law of the Constitution* (Universal Law Publishing Co., 10th ed. 2005)

¹² *Additional District Magistrate, Jabalpur v. Shivkant Shukla & Others* 1976 2 SCC 521

¹³ The Delhi Development Act, 1957, § 15, No. 61, Acts of the Parliament, 1957 (India).

DDA. The LPP ignores this requirement altogether.

The DDA employs the term “surrender” instead of “transfer” with the intention to avoid the application of the Transfer of Property Act, 1882, and the associated stamp duty and registration requirements.¹⁴ However, there is no statutory definition of “surrender” under the DDA Act. Moreover, there is no recognized meaning of the term “surrender” under property law which would justify a bulk transfer of title. There is no provision under the policy framework for any deed of release or relinquishment.

The Supreme Court in the case of *Dwarka Nath vs Municipal Corporation of Delhi*, held that a subordinate body performing statutory powers is bound by the four corners of the legislation under which such powers are conferred, and anything done in excess of that authority would be void because there would be absence of jurisdiction.¹⁵ In the context of the instant case, the DDA is a statutory body constituted by the DDA Act. The DDA has no powers of its own but only those powers which have been bestowed upon it by the DDA Act.

Secondly, the policy is procedurally ultra vires, which means that it failed to follow the mandatory preconditions or enabling steps required by the parent statute. The DDA Act mandates a systematic and sequential process that has to be undertaken before any development is done. Section 8 states that Zonal Development Plan (ZDP's) should be prepared for each zone indicating land use pattern, extent of development and the standard of infrastructure facilities to be provided.¹⁶ The requirement under Sections 9 and 10 involves submission to Central Government, public notification and objections to the draft ZDPs.¹⁷ These requirements are not merely good practices but they are conditions precedent.

According to Bhardwaj, no ZDP was ready in several sectors that had been selected for land pooling, whereas at the same time, there were plans to issue development licenses in these particular sectors. As long as there is no notification of a ZDP, there is nothing in the form of written guidelines about what can be done on the land.¹⁸

The mandatory nature of such requirements has been affirmed by the Supreme Court in

¹⁴ Bhardwaj, supra note 1

¹⁵ *Dwarka Nath vs Municipal Corporation of Delhi*, AIR 1971 SC 1844

¹⁶ The Delhi Development Act, 1957, § 8, No. 61, Acts of the Parliament, 1957 (India).

¹⁷ The Delhi Development Act, 1957, § 9-10, No. 61, Acts of the Parliament, 1957 (India).

¹⁸ Bhardwaj, supra note 1.

Govindlal Chhaggan Lal Patel v. Agricultural Produce Market Committee, Godhra, wherein the Supreme Court held that, where a provision seeks to ensure the protection of some substantive right and at the same time intends to confine the authority within the jurisdiction, the provision would have to be a mandatory one. Further, where the Legislature deliberately uses the word "shall" and a statutory scheme is made so as to see that a person against whom a regulation is sought to be enforced is given adequate notice prior to the imposition of any regulatory burden, then such a requirement is mandatory and non-compliance with it makes the ensuing action null and void.¹⁹ The ZDP requirements under Sections 8, 9 and 11A of DDA act have equally clear mandatory language that serves the purpose of protecting substantive rights of landowners having their land use regulated. If we read them as directory provisions, then whole legislation becomes meaningless.

In the case of *Banwarilal Agarwalla v. State of Bihar*, it was held that an exercise of statutory power without satisfaction of pre-conditions prescribed for that purpose would amount to an act of lack of jurisdiction and hence will be void. While assessing the mandatoriness of such a condition, the Court laid down that there were four factors that had to be considered, namely, language employed, legislative scheme, public interest that would flow from compliance, and public danger from failure of compliance. More importantly, the Court added that wherever the Legislature had provided another statutory mechanism for waiver under exceptional circumstances, it reflects the mandatory intent of the legislature.²⁰ While accessing the LPP with this backdrop, the land pooling without ZDP will violate the constitutional rights of the owners and there was no such emergency provision made in the DDA Act, hence the provisions were of mandatory nature. Developmental licences granted without prior notice to ZDP's were void.

Finally, LPP is irreconcilable with allied statutes. As a subsidiary legislation, the LPP is not in a position to invalidate other existing Acts of Parliament, although its implementation poses problems with regard to two such Acts. Section 33 of the Delhi Land Reform Act, 1954 states that no transaction of land shall take place unless there remain at least eight acres of land in the hands of the seller after such transactions have been effected.²¹ In this connection, the majority of land owners in the target areas of LPP have less than this threshold in land. The LPP fails to

¹⁹ *Govindlal Chhaggan Lal Patel v. Agricultural Produce Market Committee, Godhra And Others*, AIR 1976 SC 263.

²⁰ *Banwarilal Agarwalla v. State of Bihar*, AIR 1961 SC 849.

²¹ Delhi Land Reform Act, 1954, § 33. NO. 8, Acts of Delhi State Legislature, 1954 (India)

account for this, which will lead to the issuance of development permits in lands not declared developed under the law. The Delhi Apartment Ownership Act of 1986,²² was not taken into consideration in developing its scheme of group housing, making it impossible to reconcile the right of individuals to own apartments against the mandatory consortium requirement. This is not just an omission, but it is a conflict that cannot be resolved by any policy notification.

IV. Path to Reform and Safeguards

None of what has been mentioned above implies that land pooling is an illegal activity in India. The flaw in the LPP is its process, and not its objectives which can be cured through the administrative framework.

The first step is the need to amend the DDA Act so as to make land pooling permissible as an option other than compulsory acquisition under Section 15 of the Act. In this regard, it is necessary to define the means of transferring the land and establish the rights and duties of all parties involved. Secondly, preparation of ZDPs in relation to all zones within the scope of the LPP must be completed, notification must be made, and approval of the Central Government obtained prior to the issuance of any development licenses. This is not just a formality of administrative procedure but rather a constitutional prerequisite for ensuring that development is governed by the rule of law. Thirdly, legislative harmonization becomes essential. The Delhi Land Reform Act of 1954 needs amendment so as to create an exception that allows transfers under the eight standard acres limit through LPP. The Delhi Government should provide stamp duty exemption for lands surrendered through legislation. The Delhi Apartment Ownership Act of 1986 should also be amended to make apartment ownership possible within group housing of LPP. Otherwise, this policy will remain unworkable despite any administrative decision taken regarding it.

V. Conclusion: A Comparative Note

The weaknesses in the legal structure of the LPP become much clearer when compared with Germany's Umlegung, which is considered the benchmark for statutory land readjustment procedures. The German Federal Building Code explicitly provides for a constitutional basis that includes the following elements of land readjustment, a land readjustment authority makes a decision regarding land readjustment, identifies the rights and obligations of all parties,

²² Delhi Apartment Ownership Act, 1986, No. 27, Acts of the State Legislature, 1986 (India)

including the municipality, creates an obligatory plan with a map of the new boundaries of the property and furnishes a legal remedy to all concerned parties. Unlike the Delhi LPP, *Umlegung* does not depend on subordinate policy but is part of a statute. Benefit sharing is done among landowners who are affected.²³

Reflecting upon this theory as a part of my study on the Delhi LPP case, one can only notice the stark difference between the two scenarios is that while Germany realized long ago that land readjustment is an incredibly effective means which inevitably involves constitutional property rights, they took care of enshrining it in their primary laws with judicial involvement. In Delhi, the attempt was made at achieving similar results via a Master Plan notification, yet without any statutory underpinnings that could make this approach constitutionally legitimate. Land pooling, in itself, is not *ultra vires*, however, the method by which the DDA attempted to introduce it is. Until the Parliament provides the necessary legal basis for the LPP, it remains *ultra vires*.

²³ Landesamt für Geoinformation und Landesvermessung Niedersachsen [LGLN], *Umlegung*, LGLN NIEDERSACHSEN, https://www.lgln.niedersachsen.de/startseite/wertermittlung_amp_bodenordnung/bodenordnung/umlegung-147934.html (last visited Apr. 6, 2026).