

Landlocked in Peri-urban Politics around Delhi's Land Policy*

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Abstract

This paper explores the reasons for conflict of interests between policy, law and the real estate market that resulted in policy paralysis around urban expansion in the city state of Delhi. The present policy deadlock, following a series of exceptional circumstances since 2001, and before, has effectively halted the formal supply of peri-urban land in this megacity, for more than a decade. By analysing the phenomenon of policy making and unmaking around the capital's new land pooling policy, this paper locates the principal cause of this stalemate at the intersection of state strategy and the demands of Delhi's surrounding land market. As a result of the paralysis, Delhi has been unable to formally access any additional land supply planned for it under the latest master plan of the Delhi Development Authority. Informal urbanisation in this growing megacity continues unabated while the surrounding real estate markets undergo a slowdown. The paper concludes that resolution of these existing socio-political and juridical conflicts around land is only possible by involving all stakeholders through a regional land market approach combined with decentralised forms of urban governance for local and regional accountability. The paper also analyses DDA's land pooling policy and differentiates it from land readjustment as practiced internationally to find that land readjustment's potential, as a redistributive spatial planning tool, has also been compromised in this case.

Introduction

As in most developing countries, a key impediment to economic development in India is the availability of serviced land for urbanisation. Moreover, as a finite resource, conflicts around the competing claims on land are increasing with the growth of India's economy and population. With the majority of the population still reliant on land for their livelihood, the problem of expropriation of private land, especially in the peri-urban context becomes extremely significant. Compulsory land acquisition mandates a shift from primary sector agriculture-based occupations to the secondary and tertiary sectors. Without adequate policy support or alternatives for this transition, this form of expropriation of private land leads to conflict and contestation, as multiple interest groups stake competing claims on scarce urban and peri-urban land (Sami, 2011).

Given this background, this paper empirically examines the case of Delhi - the capital of India - where compulsory land acquisition as an urban development policy has been discontinued after four decades of practice, due to a series of challenges. Under the statutory protection of the

latest Master Plan of 2007, a new land pooling policy based on the technique of land readjustment has been notified in 2013, but has not yet been implemented. This policy sanctions the formal entry of private players for the first time in Delhi's controlled land market, under the latest Master Plan which is seen as one of the largest real estate opportunities of the nation (Certes Realty Ltd., 2015).

The legal status of the proposed form of land assembly is questionable while the legal sanction of Delhi's earlier land policy has been suspended at the national level. The rules for the new policy's implementation have not yet been approved by the federal government as required.¹ Certain arrangements with the provincial government (Government of National Capital Territory of Delhi, GNCTD), pre-requisites to implementation of the policy, are presently under negotiation with their own political complications (Joshi, 2015). Moreover, the established real estate market surrounding Delhi is currently experiencing a major slowdown. It is argued that all these factors are contributing to the policy paralysis around Delhi's peri-urban land assembly, a paralysis that is mirrored at the national level around the new land acquisition law of India.

This paper traces the origin of this paralysis in the context of the existing debate around expropriation of private land in India, and finds links with particular events of state control in Delhi's history, focussing on the urban planning decisions of the Delhi Development Authority (DDA).² Further this paper argues that through state intervention at the federal level, in the form of generating conflict around policy, law and real estate markets, both the formulation and implementation of this policy has been delayed. These delays benefit various actors, both inside and outside the government and the city state. The present policy paralysis then seems to be located at the intersection of an ever-evolving controlling state and demands of the existing political economy, which in this case is Delhi's surrounding land market (and its real estate implications).

The methodology followed for the empirical research presented in this paper is a series of semi-structured interviews with various stakeholders (policy makers, planners, real estate intermediaries and landowners) that were either associated with or interested in DDA's new

¹ Ministry of Urban Development (MoUD), Government of India representing the federal/central government in this case.

² The DDA is an autonomous city level planning and development agency responsible to the federally administered Ministry of Urban Development (MoUD).

policy, combined with secondary research and the personal experience of working with DDA on the formulation of the policy under question, between 2012-2013.

The paper is divided into six sections including this *Introduction* and the final concluding section. In order to understand land acquisition's impact on India's urbanisation and establish the relevance of alternatives in light of changing paradigms, the second section, *Access to land for urban India*, discusses the conflict around compulsory land acquisition by the state along with the ongoing debate on this issue in India.

This third section, *Urban expansion and spatial planning of the capital*, is an account of Delhi's historical expansion as both an imperial and national capital, under the administrative control of the changing state. This section includes a commentary on the planning and development regimes under the Delhi Development Authority (DDA), whose actions are attributed to the origin of the present deadlock, as part of a larger state strategy.

The subsequent section, *Conflict between policy and Delhi's land markets*, discusses the control of the state, not only over Delhi's land market but also over the surrounding real estate markets. These markets are also under the control of their respective state governments, within the larger statutory boundary of the federally established National Capital Region. This section establishes the emergence of conflict as an elaborate social governance strategy based on policy making and unmaking in peri-urban Delhi.³

The fifth and penultimate section, *Conflict between policy, law and Delhi's governance* explores the existing conflicts in terms of the legal and procedural impediments to the implementation of this policy, connecting them to the complexities arising out of an excessive control of the federal state on urban governance in Delhi, which sustains the present practice of social governance.

In the final section, *Delhi: Landlocked and growing*, this paper concludes that the existing policy paralysis arises out of an isolated attempt at planning and policy in Delhi by the DDA, regardless of surrounding institutions or their context, under the unrestrained control of the federal state and its complex network of social governance. This paper also argues that a regional approach to policymaking and planning in the capital, based on decentralised forms of urban and regional

³ The practice of social governance here is seen as the complexities that result out of multiple forms of socio-political interactions between various actors, both inside and outside the government. This conceptual framework is borrowed from Sundaresan (2013) who views "the formal state as a space of multiple negotiations and contest embedded in local social relations" (p. 48).

governance, can begin dispersing the forces that sustain the present stalemate, which exists in an absence of local or regional accountability in urban development in Delhi.

Access to land for urban India

In the history of European colonisation, Schmitt (2003) has attributed land appropriation as the basis of “power formations” in order to establish law founded on a land-based spatial order (p. 79). Consequently, in most countries of the world, the state has legal power to appropriate privately owned land for public use without consent of the owner. Origins of this supremacy are assumed to emerge from natural law in the inherent power of the sovereign, known as the legal principle of imperium under Roman law, and as the power of eminent domain in contemporary western context (Hong and Needham, 2007).⁴ The logic behind the state’s authority to condemn private landholdings is that the individual’s right and freedom to own and use property must yield to the community’s interests (Hong and Needham, 2007). India’s powers of land acquisition, i.e. expropriation of private lands for public purpose also arise from an archaic colonial legislation, the Land Acquisition Act of 1894, adopted by the Indian state after Independence.⁵

While the law seems to be colonial legacy, Chakravorty (2013) highlights that its use was quite frugal and spare under the British rule, unlike under the Indian state which used it expansively for the purpose of development. The exemplification of state supremacy through compulsory acquisition, using a vaguely defined and highly contentious public purpose, has been criticised time and again in India (Asif, 1999). Despite immense criticism, the use of this legislation for ‘development’ of Independent India increased dramatically, initially in rural and then urban scenarios, until the law’s provisions became a chief cause of contention in contemporary India. As resistance against this form of state-sanctioned expropriation - both legal and social - began to intensify, both in degree as well as number, the central government was forced to come up with an alternative. In 2011, a new Bill was proposed by the Centre in this regard.

After immense debate and discussion, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCTLARR) was enacted in 2013, and the

⁴ The term eminent domain or compulsory purchase is mainly used in the United States with European origins as it was derived from a legal treatise written by a Dutch jurist in the middle of the 19th century (Hong and Needham, 2007).

⁵ The Act was adopted with minor amendments that did not dilute the absolute authority of the state to expropriate private lands for an insufficiently defined ‘public purpose’ (Sivaramakrishnan, 2014).

former legislation was also largely repealed under this Act.⁶ The new law was an outcome of the sustained effort of social citizenry, whose protests and mobilisation movements played a phenomenal role in shaping and delivering this landmark legislation; though in a regressively modified form, as compared to the recommendations of the Parliamentary Committee who discussed the parent Bill (Sivaramakrishnan, 2014). However, certain provisions of the central legislation saw vehement opposition by both the industry and few state governments. These provisions mainly included the endorsement of consent of affected communities for acquisition and introduction of a mandatory social impact assessment for all proposed acquisition. On the other hand, other provisions like enhanced compensation were agreed to by all.

More than two years after its promulgation, this legislation has not been implemented, as the rules have not yet been finalised. Presently, the fate of this legislation hangs in uncertainty, with certain amendments proposed by the new Indian government allegedly in favour of Industry, being fervently opposed in the Indian Parliament, mainly for political reasons. Consequent to this stalemate, land acquisition for the purpose of urban expansion has also been effectively stalled across India, due to the repeal of the former legislation.

The supply of serviced land for urbanisation is critical for any developing nation, and India, the world's second most populous nation with more than 1200 million people, has been experiencing rapid urbanisation, especially post liberalisation.⁷ The nation has urbanised faster than expected between 2001 to 2011, an increase in the urbanisation levels from 27.7% to 31.1% reversing the decline in the urban growth rates over the 1980s and the 1990s (Bhagat, 2011).⁸ India is expected to continue urbanising at an accelerated rate in the future, as the nation grows rapidly (Planning Commission, 2011), a result of the economic reforms which had a clear role in the previous decade's acceleration (Bhagat, 2011). By 2011, more than 8000 urban settlements of India were inhabited by 377 million residents, and estimates on the projected growth of India's urban population, seems to be another 400 million people moving to urban areas by 2050 (United Nations, 2014).

⁶ The previous legislation was not repealed only for specifically 13 legislations which could continue to use its sanction (and not follow the provisions of the new law) to acquire land for projects of national importance such as railways, roadways, mining, power etc. This exception was only valid for a year under the provisions of the new law.

⁷ The economic reforms were undertaken in 1991, dismantling the prevailing licensing regime and its effects on urban growth began unveiling in the latter half of the decade.

⁸ India's urbanisation levels are quite low as the Indian definition of urban is quite broad-based and indicates levels of development unlike other developing nations, especially its neighbours in South Asia (Bhagat, 2011).

This anticipated influx would require an unprecedented scale of expansion in urban areas of India, both vertically and horizontally. The latter would imply the need for a constant supply of urbanisable land, previously accessed through compulsory acquisition in many urban centres. An uncertain future for the state's legal sanction in this matter, coupled with cash-strapped urban local bodies in most of these urban settlements could pose a particular kind of challenge for India's urban future.⁹

State interventions in urban land markets through land policies based on public acquisition are sought for reasons of efficiency, equity and social justice (Srirangan, 1997). In absence of these redistributive benefits, peri-urban land markets of India in their undeveloped state with unclear regulations and inefficient land record management, would either result in conflicts, neo-liberal capture or informal urbanisation. Moreover, in post-liberalisation India, policy makers and citizens have begun to advocate more market-friendly and socially equitable methods to access land instead of the reliance on the arbitrary use of power to compulsorily acquire land at below-market prices (Deuskar & Sanyal, 2012). Therefore, land assembly in India through compulsory acquisition is a key challenge and there is a need for an alternative.

In this context, Home (2007) has explained that:

There are two standard methods of development-land assembly – voluntary cooperation between landowners, or compulsory purchase by a public authority (or a mixture of the two). With private rights to property generally protected under the law (including human rights law), any state expropriation has to be justified as in the public interest and subject to due process, with compensation paid in accordance with an accepted valuation code. (p. 459)

Despite this statement being in the context of the United Kingdom, India's colonial legacy, especially in terms of land acquisition, permits it to hold true here as well. The city-state of Delhi has introduced a new land policy known as the 'Policy of Public-Private-Partnership in Land Assembly and Development in Delhi' based on the land pooling technique (a variant of land readjustment) which seems to be an attempt at mixing the two methods as outlined by Home.¹⁰

⁹ Many of the major Indian cities have para-statal agencies i.e., Urban Development Authorities (UDAs) or similar institutions which are responsible for planning and future urban development (Sivaramakrishnan, 2014). While some of these UDAs are financially quite solid but outright purchase of peri-urban lands in these growing urban centres with their exorbitant land prices would be unlikely.

¹⁰ Sivaramakrishnan (2014) has clarified that "none of the Indian megacities, including Delhi can be described as a city state in the true sense of the term where the city is responsible for dealing with both domestic and external matters" (p. 40). The term is used here and ahead in a diluted form representing the dichotomy of Delhi being popularly seen as both a city and a state.

The term 'Land Pooling' has been defined by Connellan (2002) as a method of land assembly, where landowners combine interests in order to take part in assembly of land, its servicing and disposal as per a plan which occurs with the assistance of the state, and involves the techniques of the private sector in assembling land, while permitting private landowners to retain their stake in their lands, if they so desire. The significance of access to land for urbanisation in Delhi along with the origin of the spatial planning regime and the new policy is discussed in the following section.

Urban expansion and spatial planning of the capital

The prominence of India's major cities in terms of their share in the nation's urbanisation levels is quite significant. Out of all the urban settlements, 53 settlements, each having a million inhabitants or more account for 160 million i.e., less than 1% settlements house 42% of the urban population in 2011 (Sivaramakrishnan, 2014). Based on Census data, the city state of Delhi accounts for nearly 5% out of India's total urban population with 16.3 million urban inhabitants (Registrar General, 2011),¹¹ indicating the primacy of the capital as a megacity amongst urban settlements of India.

Origins of Delhi as the national capital can be traced to a colonial decision of the early 1900s, to shift the capital from Calcutta (now Kolkata) to New Delhi.¹² This decision along with others led to the growth of Delhi from a city of approximately 0.4 million inhabitants at the start of the 20th century to one having more than 1.3 million inhabitants at the beginning of the 21st century (Registrar General, 2011). The major increase in the city's population occurred after the independence of India and its partition from Pakistan in 1947. Delhi became a city of refugees as its population nearly doubled from 0.9 million in 1941 to 1.7 million in 1951, and the next year it also became a part-C state which would function under the administration of a Chief Commissioner (later Lieutenant Governor) of Delhi (Committee of Experts on New DMC Act, 2014).

In 1953, it was decided by the States Reorganisation Commission that Delhi would remain under the control of the Union Government as a Union Territory (UT) considering its special status as a capital (Committee of Experts on New DMC Act, 2014), the same year that the parliamentary

¹¹ Refers to the National Capital Territory of Delhi (NCTD) and does not include the inhabitants in the surrounding urban agglomerations that lie outside this political boundary.

¹² The new city, designed by Edwin Lutyens and Herbert Baker and completed in 1931, popularly referred to as Lutyen's Zone under the present planning regime.

Bill to establish the Municipal Corporation of Delhi (MCD) under the Delhi Municipal Corporation Act of 1953 was introduced. A few years later, the Delhi Development Authority (DDA) was established in 1957 under the chairmanship of the Lieutenant Governor of Delhi, followed by the MCD in the same year.

All this while, the capital kept witnessing continuous growth, mostly due to “migration attracted by economic opportunities” (Sivaramakrishnan, 2014, p. 26), especially after the 1991 economic reforms,¹³ the same year when the UT was declared a quasi-state known as the National Capital Territory of Delhi under the administration of the Lieutenant Governor (Committee of Experts on New DMC Act, 2014). Partial statehood after a Constitutional amendment provided Delhi’s elected legislative assembly powers to make its own laws except on the subjects of public order, policing and land.¹⁴ Under this exception, these subjects continue to be controlled by the Centre through the Lieutenant Governor, who is also the chairman of DDA, the single largest land holder in the city (Buch, 1981). Conflicts around the demand for complete statehood have arisen in the present day,¹⁵ which has direct implications on the city’s new land policy that requires political co-operation with the state government.

Parallel to these processes of urbanisation, migration and state control in Delhi, the perceptions of the city as a successful economic centre also improved. The average per capita income of Delhi, considered amongst the highest in India, was more than INR 0.2 million in 2012-13, nearly three times the estimated all-India average, making it the richest state in the country by 2013 (Government of NCT of Delhi, 2013). The fact that Delhi has also been the preferred state in terms of infrastructure availability, transportation options, education, health have helped this situation further.¹⁶ The capital is one of the most preferred real estate destinations in the country and the entire National Capital Region’s real estate market has always been positioned around the desire to live and work near Delhi. Despite this phenomenal growth and immense

¹³ Decadal growth rates of population were the highest at 51.45% in the decade of 1981-91 and 47.02%, slightly lower in 1991-2001, and the same fell to 20.96% as Delhi grew from 13 million inhabitants in 2001 to nearly 17 million inhabitants in 2011 (Directorate of Economics and Statistics, 2012).

¹⁴ Based on the provisions of The Constitution (Sixty Ninth) Amendment Act, 1991 and The Constitution of India.

¹⁵ The newly elected Aam Aadmi Party (AAP, Common Man’s Party) of Delhi has been demanding complete statehood recently and has had a number of altercations with the Lieutenant Governor (The Hindu, 2015). AAP has alleged attempts to control and restrict the authority of the state by the ruling government at the Centre i.e., Bharatiya Janata Party, which is a noted rival after an astounding loss in the assembly elections earlier this year (Krishan Partap Singh, 2015).

¹⁶ Delhi has a high percentage of land use under transportation (mainly roads, flyovers and grade separators), the first elevated and underground Mass Rapid Transit System in the country, and better education and health infrastructure (Government of NCT of Delhi, 2013).

potential, the formal supply of peri-urban land, for urbanisation of this megacity, has been effectively at a standstill for almost the last decade and a half. To understand the reasons for this lockdown, it is important to delve into the history of the city's urban institutions in order to trace the rise of state control around the subjects of land and planning, from colonial to post-colonial times.

Even though the British had established a municipal committee in 1863, it was only after the revolt of 1857, that a decision to sanitise and improve Delhi was taken, with "a view to establishing order and containing disaffection" for the state (Sharan, 2006, p. 4906). After the rebellion, a third of the city had been demolished and then rebuilt, resulting in segregation within the city.¹⁷ This decision also gradually led to a distinction between Old Delhi and thus, New Delhi (Mann, 2005),¹⁸ which Ruet (2005) felt had commenced the development of this city "through geographical extension" (p. 65).

The imperial capital was shifted to Delhi in 1911 while a small Nazul office was established in 1922, comprising of a handful of officials who formed the first authority to regulate the planned development of the city, and its land (Delhi Development Authority, 2006).¹⁹ In the early 20th century, comprehensive extension was considered by preparing outlines of a general scheme for urban expansion in the next 30 years, and such improvement over time began to "acquire the veneer of a plan" that only further severed these "two cities of Delhi" (Sharan, 2006, p. 4907).

Subsequently, the Delhi Improvement Trust (DIT) was established in 1937 based on the United Provinces Town Improvement Trusts Act of 1919, whose original aims included buying peri-urban land and assisting the municipal corporation (Mann, 2005). The foundations of this bureaucratic authority lay in a report on 'Relief of Congestion in Delhi', where it was felt that such an institution's statutory authority would be able to ignore politics and perform in public

¹⁷ The northward extension of the Civil Lines in Delhi towards the Ridge (a green buffer, now the Northern Ridge) (Mann, 2005), separated the existing city from this extension and the colonisers from the colony.

¹⁸ The existing walled city of the erstwhile Mughal capital (Shahjahanabad) and its ancient surroundings were referred to as Old Delhi (Mann, 2005). The newly built capital city of the British Empire in India was known as New Delhi and was planned by Edwin Lutyens and Herbert Baker in 1912 (Delhi Development Authority, 2006).

¹⁹ Nazul Land is defined as land that is vested with a public authority for the purpose of development as per the stipulations of that authority (Kundu & Basu, 1999).

interest, unlike an elected urban local body (Sharan, 2006). This was a sentiment that was echoed by the state in the capital after independence.

After independence, the 'Birla Committee' was set up by the Government of India in 1950 to review the performance of the DIT,²⁰ which recommended the setting up of an exclusive planning and development authority for Delhi (Sharan, 2006; Sivaramakrishnan, 2014), considering the inadequacies in the functioning of the trust and the significance of the task in hand (Mann, 2005). Accordingly, under the Delhi Control of Building Operations Ordinance of 1955 issued by the Parliament, the Delhi Development Provisional Authority was set up in 1955 as a temporary institution for this purpose (Delhi Development Authority, 2006). A Joint Committee was set up in the Parliament to discuss the Delhi Development Bill of 1955, that introduced this authority, and a raging debate on the top-down nature of this organisation ensued, due to its proposed mandate distinct from the workings of the already existing Delhi Municipal Corporation (DMC).²¹

A resolution proposed by the government was agreed upon that any development undertaken by this authority, would be in consultation with the DMC who would declare the areas (land) under consideration as development areas, and this provision was included in the Delhi Development Act of 1957 which was passed by the end of 1957. The government also mentioned that the DDA was envisioned as "a temporary body to be wound up after completion of its tasks with the advantages and benefits of development [eventually] going to the DMC" (Sivaramakrishnan, 2014, p. 47). Therefore, Delhi Development Authority (DDA) was established as an autonomous planning and development authority in the capital, and the colonial approach of state control over institutions continued even after Independence. The DMC was also established in the same year but with a reduced mandate than originally proposed (Sivaramakrishnan, 2014).

While the pre-independence imagination of evasion of politics was through the creation of an institution as an intermediary between the colonial state and the elected municipality, the Indian state's "urban planning operated not by evading politics but by making it distinct from technical calculations" (Sharan, 2006, p. 4908). Therefore, at the behest of the Ministry of Health, a decision was taken to prepare a Master Plan for Delhi with the assistance of the Ford

²⁰ The popular way of referring to the Delhi Improvement Trust Enquiry Committee set up under the aegis of the reknowned industrialist G. D. Birla (Mann, 2005; Sivaramakrishnan, 2014).

²¹ The Delhi Municipal Corporation had been setup even before the establishment of a separate state government (Sivaramakrishnan, 2014).

Foundation in 1956 (Mann, 2005; Sharan, 2006). A detailed study was carried out with a team of foreign and Indian professionals, which resulted in DDA presenting their first Plan for the city in 1961 (Sivaramakrishnan, 2014).

The Master Plan for Delhi-1962 (MPD-1962) covered the period of two decades from 1962 to 1981 and was based on a regional approach with analysis and recommendations for the Delhi Metropolitan Area (DMA).²² The publication of this plan, initiated the saga of state controlled metropolitan planning in Delhi that subsequently spread to other Indian metropolises (Sivaramakrishnan, 2014). Since the plan was formulated in a specific context of checking undesirable speculation of land and curbing private land development (Sivam, 2003), its underlying hypothesis was that “the control of land can be a good instrument for determining city growth” (Buch, 1981, p. 159).

Simultaneously in 1961, the socialisation of Delhi’s land market commenced through Independent India’s first major urban land policy (B. Acharya, 1988), with 30,800 hectares of land notified under the Land Acquisition Act (Risbud, 2002). The policy was based on large-scale land acquisition to assemble land for future urban development and dispose the same on a leasehold basis (B. Acharya, 1988). Popularly referred to as the infamous “Delhi experiment” in large-scale land acquisition (Bhan & Shivanand, 2013), this initiative was an attempt to control Delhi’s land market and curb speculation through the largest compulsory expropriation of peri-urban lands (Howland, 1975).²³

As Acharya (1988) appreciated the envisaged “coordinated growth, through an apex planning, land-development, and controlling authority” along with the concept of a revolving fund which implied using “land as a resource for the common good”, the policy was extensively chided for numerous failures (Buch, 1981; Sivam, 2003; Srirangan, 1997): increasing land prices; creating artificial scarcity of land for housing; encouraging unauthorised land development; and even lauded for its unintended, redistributive implications on informal settlers of the city (Bhan & Shivanand, 2013).

The chief limitation of this urban land policy, apart from the concerns with compulsory expropriation of land, was attributed to the decision to appoint DDA as the sole planning,

²² The DMA included the Delhi Union Territory whose boundary was nearly co-terminus with that of DDA, and six Ring Towns from the surrounding states (Delhi Development Authority, 1962).

²³ The Delhi Land and Finance (DLF) company, a major private developer who had developed several post-partition neighbourhoods of Delhi (Praveen Donthi, 2014), eventually shifted their focus outside Delhi after this period, and played a key role in establishing Delhi’s surrounding real estate market.

development and land disposal agency (Buch, 1981). In effect, the Delhi experiment had failed in its original objectives of equity, efficiency and social justice in the land market but had ended up distorting the market through the state controlled apparatus of planning regulations which were used indiscriminately to distribute public land resources on one hand and encourage unauthorised informal development on the other, often through collusion of state and non-state actors (Srirangan, 2000).

While the acquisition continued, DDA prepared their second Master Plan for the period of 1981-2001 in mid-1980s, continuing on their philosophy of public sector-led growth and development by substantially reiterating the planning concepts outlined in the first Plan (Sivaramakrishnan, 2014). A large part of Delhi's urban areas - nearly 700 sq. km. including the Old city and New Delhi also, were developed by DDA using this method for four decades from the policy's inception until the plan period of the second Plan ended in 2001 (Delhi Development Authority, 2007). During this phase, the entire financial benefits of converting peri-urban agricultural lands to high value land for urban development was captured by DDA, without delivering on the original agenda of such a social endeavour (B. P. Acharya, 1987; Morris, 2007).

The pace of acquisition and development was problematic from the beginning resulting in large swathes of land that were notified for acquisition but never acquired for various reasons (Sivaramakrishnan, 2014). Also focus on financially viable commercial and industrial development over residential development led to a dearth of housing (Buch, 1981), especially for the lower income categories and even a land disposal process that raised the prices artificially (Srirangan, 1997). The failures of the policy led to criticism from all fronts and the challenges to acquisition intensified. While the shortcomings were mostly attributed to DDA, it is imperative to also keep in mind the complex administrative structure of Delhi's urban governance with the DDA under the central government (Risbud, 2002).

Post 1991, India's liberalisation from its past regime of economic controls spurred it to embrace "market competition in order to attract foreign investment, foster technological change, and increase economic efficiency [which led to] a shift in urban planning practices" (Deuskar & Sanyal, 2012). Consequent to immense criticism and the effect of economic reforms, DDA began to consider the option of involving private developers in land and housing development in the latter half of the decade (Sivam, 2003). This decision was also being considered due to acquisition becoming a difficult and tedious process that was fraught with litigation, agitations and delays.

These issues arose mainly due to low compensation under the law that was incomparable to market value of the land, along with an increased awareness among owners regarding the benefits associated with participation in urban development (Delhi Development Authority, 2007). Later in 2003, a study report was also commissioned to the Association of Municipalities and Development Authorities (AMDA) by DDA for proposing alternatives to the existing land policy. This was also the same year when the Ministry of Urban Development (MoUD) issued guidelines to DDA for formulating the next Master Plan (Delhi Development Authority, 2005).

Since 2001, the final year under the vision of the capital's earlier master plan, till 2007, DDA was carefully preparing this Plan i.e., the Master Plan for Delhi 2021 (MPD-2021) on the behest of the MoUD, attributing the delay in preparation to a series of public consultations and studies (Delhi Development Authority, 2005). This plan would direct future urban development till 2021 and was the first plan to propose involvement of the private sector in assembly and development of land along with provisions for adding 22,000 hectares of urbanisable land (Delhi Development Authority, 2007).

Considering the total land area of NCT of Delhi with its political boundary contains only 1483 sq. km., out of which more than half has already been developed, this plan foresaw the limited scope of future urbanization and proposed a review and analysis of the accomplishments, shortfalls and complications of implementing the previous plans (Delhi Development Authority, 2007). The draft of this Master Plan was published in 2005 and a public notice was published in the newspapers within three weeks,²⁴ inviting objections or suggestions within 90 days as per the provisions of the Delhi Development Act, 1957. The final plan, after the required consideration of public inputs, was approved only in 2007 by MoUD.

In the meanwhile, the commissioned report was submitted by AMDA in 2008 which meant the detailed recommendations of the revised land policy were not included in the plan. The AMDA report titled *Alternative Modes of Assembly and Development of Land in the NCT of Delhi* (2008) studied various forms of land assembly in India, mainly from the neighbouring states along with a special case of the state of Gujarat, and recommended a method of land pooling based on the Town Planning Scheme of Gujarat which is termed as a hybrid form of land readjustment by Deuskar & Sanyal (2012).

²⁴ Published in the Gazette of India, Extraordinary, No. S.O. 318(E) dated 16.03.2005.

After the publication of this plan in 2007, DDA spent another six years formulating the new land policy for operationalising private sector participation in assembling and developing the additional land proposed for urbanisation under MPD-2021. The policy formulation process by DDA was based on the guidelines issued by Ministry of Urban Development (MoUD) in 2008 after a consultation was held in the same year with private developers to discuss a draft policy based on the recommendations of AMDA along with an online call for objections and suggestions. AMDA's recommended model for land pooling was rejected by the private sector as not being feasible with the low quantum of land being returned to the participant and the guidelines were issued accordingly to reframe the policy.

Subsequently, the final policy was finalised in consultation with experts from National Council of Applied Research (NCAER), who were also commissioned to analyse the financial feasibility of three models formulated by AMDA, DDA and a separate research and advisory wing of DDA. Inputs from multiple stakeholders representing the real estate sector were also considered at the bidding of the MoUD and the final model was approved by DDA in 2013. As per provisions of its parent Act, the policy was published as a modification under the statutory nature of the MPD-2021 in the same year and after public inputs was finally approved by the MoUD and notified in September 2013.²⁵

The published policy advocates land readjustment as a preferable model of access to land in NCTD. Land readjustment as an option to assemble land has been used in international contexts mainly in Japan, Germany, Korea and has been sparingly experimented with in other parts of India, apart from the well-known case of Gujarat (Deuskar & Sanyal, 2012; Sorensen, 2000a). This technique is responsible for the development of more than 50 per cent of the total built-up area of Asian cities like Seoul and one-third of urban areas in Japan (Sorensen, 2000), and is a method of lowering transaction costs while coordinating exchange of property in land assembly (Hong & Needham, 2007).

However, land readjustment's potential as a redistributive urban planning tool has been compromised in this particular case of Delhi which may negatively impact the perception of this method as an alternative to compulsory acquisition in the country. The land pooling policy as formulated by DDA is similar to the Town Planning Scheme of Gujarat in certain aspects, which

²⁵ The policy was added to MPD-2021 as a new chapter on Land Policy published in the Gazette of India, Extraordinary, No. S.O. 2687 (E) dated 05.09.2013.

are different from land readjustment as it is practiced in countries such as Germany, Japan, and Korea (Hong, 2007; Sorensen, 2000a).

The state government initiates the process in the former, while in the latter urban local bodies and landowners commence and manage the land readjustment process and projects. In the case of state controlled DDA, the second possibility is unlikely. Similarly, the Gujarat method does not require the consent of landowners before launching a scheme, and participation in the schemes are compulsory. There is also a mention in the approved policy that lands under the urbanisable area under the policy that do not participate in the process of land pooling shall be compulsorily acquired by DDA. In the present context, this may not be possible due to the political stalemate around acquisition at the Centre. In contrast, land readjustment requires consent of a majority of stakeholders, and they use compulsory land acquisition only in the case of minority holdouts (Schnidman, 1988; Sorensen, 1999, 2000b).

Lastly, the process of land readjustment treats the landowners as stakeholders who assist in shaping the design, finances, and management of the scheme (Hong 2007), whereas the process as defined by DDA seems to be top down in nature without any significant participation in the process, which has never been a forte of this centralised planning authority.

Conflict between the policy and Delhi's land markets

The authority of the union government is not restricted to the capital and extends beyond, only by the virtue of the problems encountered in managing Delhi's urban expansion, a failure which is also attributed to the state-controlled DDA. The National Capital Territory of Delhi (NCTD) is located at the centre of the National Capital Region (NCR),²⁶ an interstate regional planning boundary of approx. 34,000 sq. km. created under National Capital Region Planning Board (NCRPB) Act of 1985 by the central government with the concurrence of the neighbouring states of Haryana, Uttar Pradesh and Rajasthan (Sivaramakrishnan, 2014).

This region was established with a separate planning authority, the NCRPB under its Act, responsible for coordinating between the capital's urbanisation needs and the planning and development strategies of the various urban centres included, which are also influenced by their respective state governments (Bedi, 2014). The need for this concept was recognized even before the second Master Plan for Delhi was promulgated in the mid-1980s considering that the

²⁶ The NCR has been further increased to 45,888 sq. km in late 2014 by adding 3 new districts from Haryana and Rajasthan (Sivaramakrishnan, 2014).

capital would always be an attraction for migrants from all over the country and have a sizeable land requirement, being the seat of the Central government (Delhi Development Authority, 2005). After its establishment, the NCRPB published two regional plans that governed the development of this region by modifying Delhi's surrounding master plans.

Apart from the NCTD, the NCR includes some of India's most successful high-end high-stakes real estate ventures in the neighbouring cities of Gurgaon and Noida. The NCTD is not only bounded by the city of Gurgaon - arguably the country's most successful private sector led development initiative,²⁷ but other established or emerging realty markets like NOIDA, Faridabad, Ghaziabad etc.; developed as countermagnets to Delhi and which form the Central NCR²⁸ (Sivaramakrishnan, 2014), all competing for the market share in the region. Delhi and its surrounding urban centres form the second most populous urban agglomeration in the world with 25 million residents in 2014, and will remain so even in 2030 with 36 million residents,²⁹ closely following the present leader Tokyo's projected 37 million (United Nations, 2014).

The first Regional Plan-2001 (for a perspective period till 2001) was published in 1989, a period that coincided with the real estate growth of Gurgaon gaining momentum. Despite the first regional plan's focus on decongesting the capital, the population of Delhi overshot the estimation by nearly a million inhabitants in 2001. This trend reversed in the subsequent decade with the CNCR growing by an additional half a million residents while the population of the capital remained well below the projections. This period coincided with the preparation of the MPD-2021 and the publication of the second Regional Plan-2021 in 2005 with its perspective period till 2021.

An explanation for this reversal of growth in the capital and an increase in the CNCR from 2001 onwards, lies in two separate state interventions. The first is the case of repeal of the Urban Land (Ceiling and Regulation) Act of 1976 by the Centre in 1999 which led to a prompt repeal of

²⁷ Gurgaon was initially developed as a prime real estate destination in close proximity to the south of Delhi in the 1980s by DLF (Praveen Donthi, 2014), the same private developer who had earlier been involved in residential development in Delhi before the freeze on private sector led land assembly.

²⁸ The CNCR (known as the DMA prior to Regional Plan-2021) includes New Okhla Industrial Development Authority's area (NOIDA) which emerged as a burgeoning urban centre, after the DMA was envisioned earlier.

²⁹ At the same time, Mumbai's agglomeration which will rank fourth in the world with around 28 million inhabitants (United Nations, 2014), further emphasising the importance of Delhi's experience in terms of impact on other Indian settlements that may rapidly grow in this period.

the Act by the neighbouring state of Haryana,³⁰ resulting in the emergence of large-scale private townships in Gurgaon and Faridabad over the next decade (Sivaramakrishnan, 2014). This period of intense real estate activity in the surroundings of Delhi also coincided with the delay in the preparation of the MPD-2021, whose guidelines were issued by the Ministry only in 2003 and the plan approved in 2007.

The second intervention as clarified by Bedi (2014) was the abstinence of DDA from any large-scale land development programmes since 2001, when the property prices saw an unprecedented rise and the process of preparing the MPD-2021 with redevelopment policies and private sector involvement was begun. Bedi has also explained that private developers in the capital, forbidden from large-scale land assembly for development unlike the rest of CNCR, took to adding more storeys or redeveloping existing stock as multi-storeyed buildings, by utilising the maximum floor space permitted, and sometimes even exceeding the same in connivance with authorities.

The approval of MPD-2021 with higher Floor Area Ratio and Ground Coverage norms under a variety of plot sizes and land uses has further propelled this market of redevelopment of existing stock in Delhi. According to Bedi, the increase in property prices by 2011 was more than ten times in less than a decade. On the other hand, the surrounding real estate markets saw a surge until 2008 when the global recession impacted the sector for a short while (Nandy, 2015; Praveen Donthi, 2014). In parallel, due to lack of formal supply of land, unauthorised development in the periphery of Delhi continued.

The observations of the Draft MPD-2021 (2005) regarding seamless development of Delhi in a spatial context beyond the capital's geographical boundaries and the limitations of existing statutory provisions, in realizing the basic objectives of a concept of the NCR seem quite contradictory to the decisions and actions of DDA after 2007. Moreover, the CNCR is also expected to nearly double in terms of population by 2021 under the revised regional plan for NCR (Sivaramakrishnan, 2014).

In this manner, the existing policy paralysis in Delhi seems to be intricately linked with the different forms of real estate development, both around and inside Delhi. Therefore, the present

³⁰ The central Urban Land (Ceiling and Regulation) Act of 1976 was passed during the times of 'Emergency' rule in India during 1975-77 and emerged as an alternative to urban land acquisition for expropriating private lands through limits on private ownership defined by state governments. The Act was repealed through the Urban Land (Ceiling and Regulation) Repeal Act of 1999 mainly due to misuse of the original Acts provisions, especially the clause of exemptions by states (Sivaramakrishnan, 2014).

deadlock does not seem to have an end in the near future, considering the present real estate slowdown across the NCR (Nandy, 2015).

Conflict between policy, law and Delhi's governance

Master Plans for Delhi are prepared under the provisions of the Delhi Development Act, 1957, an Act passed by the Indian Parliament which governs the establishment and operation of the DDA. The statutory nature of the Delhi Master Plan is also derived from this central legislation, a practice that is different from most states in India (Sivaramakrishnan, 2014), which usually derive this power from a separate spatial planning legislation that has been enacted by the state government, and have even seen amendments if improvements are required.³¹

In the case of Delhi, any improvement is a challenge, as amending this Act would entail a long drawn process of negotiating a proposed bill through both the lower and upper houses of the Indian Parliament and would require complex political negotiations spanning across the breadth of the nation, convincing a majority of political stakeholders who are not accountable to the electoral needs of the capital. Knowledge of this humongous task and its implications have played a significant role in further delaying the implementation of DDA's new land policy.

The previous land policy of DDA derived its legal sanction from the erstwhile Land Acquisition Act, 1894 which was replaced in 2013 with a new Act. A year after the enactment of this new law, the Government of India on December 31, 2014 issued an ordinance making significant changes to the Act's landmark provisions including removal of the mandatory consent clause for certain uses and promotes compulsory acquisition in favour of large-scale industrial, infrastructural, defence and real estate related expansion.³² Noteworthy are the exemptions related to the process of social impact assessment and consent clauses for the five exempted areas.

Therefore, the new Indian government elected in 2014 negated the seemingly significant gains made through the progressive law which would have benefited project-affected communities, and not just owners of private property. Land pooling (or readjustment) as a method of land assembly does not find any mention under the new overarching legislation. Legal legitimacy to

³¹ For example, the Gujarat Town Planning and Urban Development Act, 1976 has seen key amendments in the 1990s which have improved the performance of their Town Planning Scheme mechanism (Ballaney & Patel, 2009).

³² An ordinance by the ruling government is valid only for a period of six months until either the ordinance is re-promulgated or introduced as a legislative proposal in the Parliament to be made law.

the new land pooling policy was also not provided under the parent Act regulating urban development in Delhi. Instead, it was legitimised under the MPD-2021, by introducing a new chapter rather than an amendment to the Delhi Development Act, 1957. DDA based on its internal legal advice decided not to amend the Delhi Development Act, 1957 or the Delhi Land Reforms Act, 1961 along with the respective municipal Acts which would have eased the implementation of the policy. The argument of the internal Committee set up to operationalise the policy was that neither was its use clearly negated based on various legal interpretations (even conflicting) of the related provisions by DDA's legal counsel. Therefore, DDA did not comprehensively empower this policy with a robust legal sanction, due to which an uncertainty around the success of the policy in face of legal enquiry ensures the stalemate persists.

Moreover, despite the centralised approach of the Authority in formulating its new land policy under the instructions and advice of the MoUD, its implementation requires co-operation beyond decisions of DDA. The parent Act requires declaration of development areas in conjunction with the erstwhile MCD (now trifurcated as three ULBs), and only then can it proceed to "acquire, hold and manage land" for the purposes of urban development.³³ Along with this, while the agricultural land of villages will have to be declared as required, even the villages themselves will have to be declared as urban villages under the relevant provisions of the Act governing the urban local bodies.³⁴

Since March 2015, DDA has requested these declarations from GNCTD and the same are still under process as the request remains pending, contributing to the existing status quo around this policy. GNCTD was not involved in the policy formulation process at all and was only given the same opportunity as general public to file their objections or suggestions under the DDA's statutory requirements before modifying the Plan. In this regard, the Department of Urban Development, GNCTD had also sent a letter to DDA requesting consideration of their views on the policy.³⁵ The political ramifications on these interdependencies are further complicated by the existing rivalry between the present state government and the chairman of DDA i.e., the Lieutenant Governor allegedly representing the Centre (Chandra, 2015).

Similarly, there is another interdependency that these circumstances necessitate. The process of land pooling under the new policy requires complete surrender of privately owned, pooled

³³ Provisions under Section 6 of the Delhi Development Act, 1957.

³⁴ Provisions under Section 507 of the Delhi Municipal Corporation Act, 1953.

³⁵ Letter No. F. 13/52/UD/MB/2013/124-125 dated 23.07.2013 was received in DDA before the new policy was finalised in September 2013.

land which shall either be reconstituted and readjusted or merely readjusted within the scheme, based on the proposed land uses under which the respective land falls and then proportionately returned to the private entity. In essence, the pooled land shall be transferred twice, once when it is surrendered to the government and the second time when the respective share is returned to the pooling entity. These exchange of immovable property will involve the payment of the respective stamp duties and registration charges to the state government for both transactions, with the former being prohibitively expensive as it is based on a certain percentage of the guidance value of the transacted property.

This exorbitant entry level cost may derail the entire land value capture envisioned by DDA through its readjustment policy unless the GNCTD provides an exemption of stamp duty for the process as per the provisions of the applicable law. This in turn would translate to a huge loss of potential income for the state exchequer, which has not been party to any stage of this policy making process. The logic of this exemption lies in the provisions of the former land policy being based on compulsory acquisition which were exempt from any such financial requirements in the pursuit of expropriation for public purpose. On the other hand, the new policy envisions transactions on the developed land at much higher values once it has been returned to the private entities in either built form or as serviced urban land.

Therefore, the number of obstacles to the implementation of the new policy are numerous and require intervention at both central and state government levels, in resolving both legal and political concerns.

Delhi: Landlocked and growing

By 2015, Delhi has not been able to formally access any additional land supply that was planned for it under the MPD-2021; informal urbanisation in this growing megacity continues unabated; and the surrounding real estate markets are undergoing a slowdown while the NCR continues to grow. Combined with the uncertain fate of compulsory land acquisition, the impact of these socio-political and juridical conflicts on land assembly for urbanisation in Delhi will be detrimental to the formal expansion of the city.

The consequent increase in unauthorised development, in and around the city combined with the speculative benefits or losses of those who have invested in peri-urban lands of the city shall further contribute to the real estate bubble, both inside and outside Delhi, including an impact on the NCR. Despite the potential of land readjustment as an alternative in reducing the conflict

and injustice that accompanies any form of compulsory acquisition, the dilution of this technique combined with the state's strategy of using the new land policy for benefits to the surrounding real estate market, renders this method ineffective in the present context.

The policy paralysis is an outcome of (un)intended consequences of state strategy through a series of exceptional decision making, involving a range of state and non-state actors, in order to control the regional land market of the capital. The empirical evidence in this paper clarifies the limited role that policy or planning institutions play in the regulation of such complex peri-urban land markets. The resolution of this impasse lies in dismantling the existing networks of social governance that serve the prevailing demands of the political economy, and attempt to satisfy diverse stakeholders in Delhi's land market.

A regional approach to planning and land policies is recommended to reduce the ability of the formal state to govern a continuous regional land market through a set of isolated jurisdictions and complementing land policies. As Buch (1981) stated more than three decades ago, there cannot be "meaningful land use planning so long as the Master Plan is confined to the Union Territory of Delhi" (p. 166). This approach to planning should be complemented by decentralised forms of urban governance, that ensure local and regional accountability of the institutions involved, in the respective jurisdictions under the NCR which can then negotiate an amicable end to the existing stalemate, under the socio-political pressures of a demanding electorate.

Similarly the resolution of the existing conflicts in terms of legal and procedural impediments between the various institutions should be attempted as a collective under this regional platform with its enhanced political mileage. Legal and institutional frameworks that focus on inclusion of all potential stakeholders in an equitable manner would be essential for the process of collective decision-making in the National Capital Region.

GNCTD under the present ruling government has not only demanded full statehood but complete control over the DDA and the ULBs in the city (Mohammed Iqbal, 2015). Recently, the Delhi assembly has adopted a resolution to transfer the DDA to the state government, with the ruling party's legislative members asserting that the land owning body should answer to a democratically-elected government rather than the Lieutenant-Governor (Mohammed Iqbal, 2015). The resolution of this impasse between seemingly divergent views from within the state does not appear to lie in the near future, and the end of the present policy paralysis still depends on co-operation between all stakeholders towards a common goal.

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