

## CASE NO.:

Appeal (civil) 6532 of 2001  
Appeal (civil) 6533 of 2001  
Appeal (civil) 6534 of 2001  
Appeal (civil) 6535-6536 of 2001

## PETITIONER:

L.K.MALIK AND ORS.

Vs.

## RESPONDENT:

D.D.A. & ORS.

DATE OF JUDGMENT: 20/09/2001

## BENCH:

V.N. Khare & S.N. Phukan

## JUDGMENT:

Phukan, J

Leave granted.

By this common judgment, we dispose of all the appeals, as relief sought for are similar and common.

The facts may be briefly stated. One of the appellants Shri N.N. Verma (hereinafter referred to as the coloniser) acquired certain lands by purchase in Delhi and submitted a lay out plan for establishment of a colony known as the Shama Prasad Mukherjee Park (shortly stated as SPMP). The lay out plan was sanctioned by the authority by Resolution dated 9.3.1957 and in the Resolution it was mentioned that the area of the lay out plan was 20 acres. On 13.11.1959, on the instruction of the Central Government, the Delhi Administration issued a notification under Section 4 of the Land Acquisition Act, 1894 (for short, the Act) for acquisition of over 34,000 acres of land within Delhi including the above land of the SPMP colony. The notification under Section 6 of the Act was also issued. The Central Government, however, took a policy decision that land of the colonies whose lay out plan was sanctioned would be released from acquisition. A statement was made by the Minister of Health, Works and Housing on March 10, 1960 on the floor of the House of Parliament. In the said statement, the Minister announced that Government had decided that as a measure to meet the acute housing shortage in Delhi, the colonies whose layout/building plans had been approved by the Delhi Municipal Corporation or the Delhi Development authority or any other competent authority would be released from the purview of notification under Section 4 of the Act. In the said statement names of 21 colonies including that of the SPMP colony were spelt out indicating the area. In respect of the SPMP colony the area was shown as 1,54,500 sq. yards. On 1.7.1960, the Delhi Administration issued a notification under Section 48 of the Act releasing the land of 21 colonies including the SPMP colony mentioned in the said statement of the Minister in the Parliament and the area of land of the SPMP colony was shown as 20 acres. According to the respondents, the Delhi Development Authority (for short the DDA) took possession of the remaining area

of the land under Section 16 of the Act, which was disputed by the appellants. The coloniser also made an application under Section 18 of the Act, which was also disposed of. There is a dispute regarding payment of compensation to the coloniser.

According to the appellants, the area of the lay out plan for the SPMP colony was 32.58 acres whereas the area released by the notification issued under Section 48 of the Act was only 20 acres of land. The matter was taken up with the Government of India, the Delhi Administration and the DDA but the balance area of land as claimed by the coloniser was not released on the ground that in terms of the statement of the Minister in the Parliament only 20 acres of land of the layout plan of the colony was approved, which was released to the coloniser of the SPMP colony and, therefore, the policy statement of the Minister was duly complied with.

Ultimately, the appellants filed Writ Petitions before the High Court, which was allowed by the learned Single Judge but dismissed by the Division Bench by the impugned judgment. That is how the parties are before this court. It may be stated that before the High Court as well as this court, only the DDA contested the writ petitions and the present appeals.

The learned Single Judge allowed Writ Petitions holding that the area of the land as per the layout plan was 28.24 acres and, therefore, remaining area of the land measuring 8.4 acres was directed to be released, though the plea of the appellants before the learned Single Judge was that the area to be released as per the approved plan was 32.58 acres. The Division Bench inter alia held that statement of the Minister made before the floor of the House was only a policy decision of the Government and having not been duly authenticated and communicated could not be said to be an executive order of the government. It was also held that as the possession of the land was taken over by the DDA, the disputed land could not be released under the Act in favour of the appellants. The Division Bench also rejected the plea of discrimination. According to the Division Bench, serious disputed questions of facts were involved.

In order to appreciate the submission of the learned counsel, it is necessary to extract the relevant portion of the statement of the Minister on the floor of the House on 10th March, 1960 and the Resolution of DDPA No.57 dated 9th March, 1957:  
STATEMENT:

In the mean time, however, Government have decided as a measure of meeting the acute housing shortage in Delhi that the colonisers or areas the layout/building plans of which had been approved by the Delhi Municipal Corporation, Delhi Development Authority or any other competent local authority may be released from the purview of the Delhi Administration Notification No.F 15[III] 59 LSG dated the 13th November, 1959. This decision was taken early in January, 1960.

The Chief Commissioner Delhi has collected necessary information from the Delhi Municipal Corporation and the Delhi Development Authority in regard to the colonies the layout plans of which have been approved by these bodies. According to the information furnished by these local bodies, the names of the colonies which had been approved by them and the area of each are as follow:

[i] Area of colonies approved by the Municipal

Corporation of Delhi.

1-11 \* \* \*

[ii] Area of colonies approved by the Delhi Development Authority.

1-4 \* \* \*

5. Shyama Prashad Mukherjee  
Park 1,54,500  
Sq. Yards

6-10 \* \* \*

Resolution of Delhi Development Provincial Authority  
(for short DDPA) No. 57 dated 9.3.1957.

RESOLUTION:

Subject: Layout Plan of Shyama Prashad  
Mukherjee Park.

The layout plan residential colony named Shyama Prashad Mukherjee park on Najafgarh Road had been submitted for the authoritys approved by messers Delhi Land and Development.

The proposed colony covers an area of 20 acres and has 235 residential plots and 23 shop sites. When fully developed, it is expected to cater for a population of 2,300 persons. Provisions have been made for a school site of 1-1/2 acres and for land measuring 2-1/2 acres for parks.

2. The standing committee for layout plan have examined the plan [laid on the table] and recommended that it may be approved subject to the following modifications.

[ i ] That 8 plots of 200 sq. yd. Each as shown on the plan be converted into an open park in view of the fact that all the plots are of 200 sq. yd.

[ ii ] That the building on plot No. 99 be demolished in order to provide an adequate access to the plots on the west of this house. In the layout plan the roads narrow down to 20 ft. but it needs to be widened to 40 ft.

3. If the authority agrees to the committees recommendations the coloniser will be asked to submit for approval plans and specification of the sanitary and engineering services proposed to be installed in the colony. As in other cases water supply and drainage arrangements, both interim and long term would be subject to be approved of the Superintending Engineer Health Services.

4. In this connection it is pointed out that the plan of the colony was received before the 26th February, 1957 from which date the revised development standards are to apply.

[File F41[171]/56-Admn]

-----  
Resolution 57

Resolved that the recommendations of the Standing committee be approved.

At the relevant time the DDPA was the competent local authority to approve such layout plan.

We have heard Mr. P.P. Rao, Mr. K.K. Venugopal, learned senior counsel for the appellants and Ms. Indu Malhotra, learned counsel for the DDA.

It is contended on behalf of the appellants by the learned senior counsel that though in the resolution dated 9.3.1957 the area was shown as 20 acres but the resolution and other documents would show that the area was 32.58 acres and this was supported by the fact that in the statement of Minister, area shown against the SPMP colony was 1,54,500 sq. yd. In reply the learned counsel for the DDA submitted that the resolution is clear inasmuch as the layout plan for 20 acres only was approved by the above resolution which was released as per the statement of the Minister.

It has been urged on behalf of the appellants that it is well settled that if there is discrepancy between area mentioned in the document/deed and the boundary of the land given in the map accompany the document, the area shown in the map shall prevail. In support reliance has been placed on various decision of the High Court as well as this court. The original layout plan and the map as submitted by the coloniser are not available. We have to ascertain approved area of the plan from the records available in these appeals. Therefore, we need not consider the decisions cited before us.

By letter dated 14th March, 1957, the DDPA communicated the entire resolution dated 9.3.1957 of the DDPA to the coloniser and in the said letter it was clearly indicated that the colony covers an area of 20 acres of land and the modifications to be carried out by the coloniser. By letter dated 2nd April, 1957, the coloniser thanked the DDPA for the approval and agreed to carry out the modifications as suggested. There was no protest in this letter regarding area of land approved for the colony and also regarding the items indicated in the said letter. Subsequently, on 6th April, 1957, the coloniser informed the DDPA that the correct area of the land of the colony was 32.58 acres and not 20 acres as stated in the letter of DDPA dated 14.3.1957. By this letter dated 6.4.1957, the coloniser informed the DDA that after re-verification of the sanctioned plan and ownership document, it was found that the correct area of the land of the colony was 32.58 acres and not 20 acres as stated in the letter of DDA dated 14.3.1957. From the letter we find that according to the coloniser, DDA gave a hearing and informed him that the proforma asking for detailed classification of the approved layout plan would be supplied to him and as it was not supplied, this letter was sent by the coloniser as a reminder. Thus, from this letter it is abundantly clear that the area of the sanction plan was 20 acres and the coloniser was aware of this fact. He asked for modification of resolution, which was not done and thereafter, no follow up action was taken up by the coloniser for modification of the resolution.

Thus, we have no hesitation to hold that the area of the SPMP colony approved by the resolution of the DDPA was 20 acres and not 32.58 acres as claimed by the coloniser. From the statement of the Minister the policy decision of the government was clear and unambiguous and, therefore, the government decided to release only 20 acres of land as approved by the DDPA.

From the statement of the Minister on the floor of the House, we find that the area indicated against the colony was on the basis of the information collected by the Chief Commissioner, Delhi and, therefore, from the statement, no conclusion can be arrived at that the area indicated in the said statement was the actual approved area of the layout plan for the SPMP colony.

Our attention has been drawn to the letter dated 18th December, 1956 from the coloniser to the DDPA. In the said letter it was stated that total gross area of the colony is 22 acres exclusive with area shown in the layout plan under 13 shops-cum-residential plots, 12 booths and a site for petrol pump which are others property. Nine items were indicated in the said letter including area for cinema site, hotel, residential plots, shops, etc. In the resolution of the DDPA dated 9th March, 1957, it was clearly stated that the area of the colony was 20 acres and has 235 residential plots and 23 shops sites. This resolution would establish that the entire proposal of the coloniser as stated in the said letter was not approved by the DDPA. Therefore, in our opinion as in the statement of the Minister more area of land was indicated for the colony, the coloniser took advantage of the statement and started negotiating with the Government of India, Delhi Administration, DDPA, etc. for release of balance area of the land for the colony as indicated in his letter dated 18th December, 1958.

Our attention has been drawn to letter dated 2nd June, 1972 from the Secretary to the Lt. Governor, Delhi to the coloniser. By this letter 23 shops each measuring 200 sq. yd. were offered to be released from acquisition subject to the condition, that the coloniser would furnish an undertaking that he would not agitate for release of any more area. No such undertaking was given and, therefore, the entire land was transferred to the DDA for disposal. Relying on this letter, learned counsel for the appellants has contended that these 23 shops were part of the approved plan. From the correspondence we find that as there were negotiations between the coloniser and the authorities, the DDA agreed to release 23 shops with condition stated above as a part of the said negotiations and not on the ground that these shops were within the approved plan and hence the coloniser cannot claim release of this area on the basis of the policy decision of the government as per the statement of the Minister.

Reliance has been placed on the report dated 23.5.1970 of Shri Bose Malick, Vice-Chairman of the DDA. The finding of the Vice-Chairman is at paragraph 9 and is quoted below: thus, a study of the available papers gives one the impression that the area of the Colony as approved by the DDPA was definitely not 32 acres, as contended by the coloniser. It would at the most be 138 bighas and 3 biswas (28.4 acres) ..

This is only an impression of the Vice-Chairman regarding the area of the colony and there is no clear finding in this regard. This observation of the Vice-Chairman does not support the case of the appellants as they have claimed 32.58 acres and not 28.4 acres. In fact the Vice-Chairman made out a new case. On perusal of the report we find that the Vice-Chairman did not consider the items mentioned in the resolution of the DDPA dated 9.3.1957. This report, therefore, does not improve the case of the appellants.

Learned counsel for the appellants has drawn our attention to some minutes of the decision of the Ministry of Works & Housing. From the minutes we find that there was a discussion between the Ministers and the coloniser and at one point of time it was decided to put the matter before the Cabinet but subsequently,

this decision was not followed up and the matter was left to be decided by the Delhi Administration. The Delhi Administration took the decision that as the area of the land of the approved plan was only 20 acres which was released from acquisition in view of the policy decision of the government that the coloniser was not entitled to get further land to be released from land in question.

As stated above the coloniser knew that the approved plan was only for 20 acres of land and he subsequently took up the matter for modification of the resolution, which was not done. After the statement of the Minister indicating a larger area for the colony, the coloniser made all attempts to include various items, e.g. Petrol Pump, Cinema Site, Shopping Complex, etc. This in our opinion is an after thought.

Mr. P.P. Rao, learned senior counsel for the appellants has contended that there was no rational consideration for release of 23 shop sites and its subsequent withdrawal. We are unable to accept the contention inasmuch as this offer was by way of negotiations and the offer was withdrawn, as the condition attested was not accepted by the coloniser.

Mr. Venugopal has urged that there is discrimination inasmuch as area indicated in the statement of Minister for other colonies were released but not in respect of the SPMP colony. We are unable to accept this contention of the learned senior counsel as area of each of colony has been considered on the basis of resolution passed by the concerned authorities. We have indicated that as per the resolution area of the approved plan was 20 acres of land, which was released.

For the reasons stated above we hold that the appeals have no merit and accordingly dismissed. Parties to bear their own cost.

..J.  
[ V.N. Khare ]

.....J.  
[ S. N. Phukan ]

September 20, 2001