

HUNDRED AND FIFTIETH REPORT

PUBLIC ACCOUNTS COMMITTEE (1982-83)

(SEVENTH LOK SABHA)

**RECEIPTS OF UNION TERRITORY OF DELHI—
STAMPS DUTIES AND REGISTRATION FEES—
EVASION/AVOIDANCE OF HIGHER RATES OF
STAMP DUTY**

MINISTRY OF HOME AFFAIRS



Presented in Lok Sabha on 29-4-1983

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NEW DELHI**

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PART II*

Minutes of sittings of the Public Accounts
Committee held on :

16 December, 1982

21 April, 1983

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PUBLIC ACCOUNTS COMMITTEE
(1982-83)

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3. **Shri K.K. Sharma—*Senior Financial Committee Officer.***

INTRODUCTION

I, the Chairman of the Public Accounts Committee as authorised by the Committee, do present on their behalf this Hundred and Fiftieth Report on Paragraph 3.20 of the Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume. I, Indirect Taxes relating to Receipts of Union Territory of Delhi—Stamp Duties and Registration Fees—Evasion/Avoidance of higher rates of stamp duty.

2. The Report of the Comptroller and Auditor General of India for the year 1980-81, Union Government (Civil), Revenue Receipts, Volume I, Indirect Taxes was laid on Table of the House on 31 March, 1982. The Committee examined the audit paragraph on the subject at their sitting held on 16 December, 1982(FN). The Committee considered and finalised the Report at their sitting held on 21 April, 1983. Minutes of these sittings of the Committee form Part II* of the Report.

3. In this Report, the Committee have observed that the circumvention of the transfer restrictions imposed by the Delhi Lands (Restrictions on Transfer) Act, 1972 and the consequential loss of stamp duty because of the restriction on transfers are fairly widespread. They have expressed distress at the indifferent attitude of the concerned authorities to the real harassment caused to owners of land in having to engage in illegal transfers and at the fact that no attempt has been made so far to remedy the situation by amending the provisions of 1972 Act suitably.

4. The Committee have observed that the Delhi Administration by its present land policy has been a party to the growth of unauthorised colonies in Delhi. They have recommended that before issuing instructions for acquisition of land, Government should assess with much more care than is in evidence, the requirements over a foreseeable future so as to curb speculative activities and growth of unauthorised colonies. In this connection, the Committee have felt that the working of the Land and Building Department of the Delhi Administration needs to be thoroughly revamped and streamlined in order to ensure orderly growth of the city. The Com-

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(iv)

mittee have therefore recommended that the Ministry of Home Affairs set up a Task Force to go thoroughly into the working of this Department with a view to taking necessary remedial measures.

5. While observing that no vacant land has been acquired/disposed in Delhi under the Urban Land (Ceiling and Regulation) Act, 1976 so far, the Committee have recommended that the Task Force recommended above should also look into the reasons for the tardy implementation of the Act which again is the responsibility of the Land and Building Department.

6. The Committee have endorsed the view expressed by the Home Secretary during evidence that "Delhi needs intensive and integrated administration instead of parallel authorities which result in wastefulness and also harassment to the citizens." As the Ministry of Home Affairs is itself finally responsible for the administration of the Capital city, the Committee expect that concrete steps would be taken without loss of time to provide an unified and integrated set up for the metropolis to fulfil the long cherished dream of the common man who has to run from pillar to post for getting odd jobs done for him.

7. For reference facility and convenience, the observations and recommendations of the Committee have been printed in thick type in the body of the Report and have also been reproduced in a consolidated form as Appendix to the Report.

8. The Committee place on record their appreciation of the assistance rendered to them in the matter by the Office of the Comptroller and Auditor General of India.

9. The Committee would like to express their thanks to the Officers of the Ministry of Home Affairs, Delhi Administration and Ministry of Law for the cooperation extended by them in giving information to the Committee.

NEW DELHI :

23 April. 1983

3 Vaisakha, 1905(S)

SATISH AGARWAL

Chairman

Public Accounts Committee.

REPORT

EVASION/AVOIDANCE OF HIGHER RATES OF STAMP DUTY

Audit Paragraph

1.1 According to the Delhi Lands (Restrictions on Transfer) Act, 1972, no person shall, except with the specific permission (in writing) of the competent authority, transfer or purport to transfer, by sale, mortgage, gift, lease or otherwise, any land or part thereof situated in the Union Territory of Delhi, which is proposed to be acquired under the Land Acquisition Act, 1894, for a public purpose, i.e., the Delhi Development Scheme. The Act prohibits registration of any document which purports to transfer by sale, mortgage, gift, lease or otherwise any such land unless the transferor produces before the registering officer written permission of the competent authority for such transfer. Persons contravening this condition are punishable with fine or imprisonment or both.

1.2 Under the Indian Stamp Act, 1899, as applicable to the Union Territory of Delhi, an instrument of power of attorney, when given for consideration and authorising the attorney, to sell any immovable property, is liable to stamp duty at the rate of 3 per cent of the amount of the consideration. A general power of attorney not involving immovable property when given without consideration is, however, chargeable with a fixed stamp duty of Rs. 10 only. The Act also lays down that the consideration and all other facts and circumstances affecting the chargeability of any instrument with duty or the amount of duty with which it is chargeable, shall be fully and truly set forth therein. Failure to do so, renders the executant or any person employed or concerned in or about the preparation of the instrument, liable to a fine under the Act, which may extend upto Rs. 5000.

1.3 Under the Indian Registration Act, 1908, a power of attorney with consideration to sell immovable property is compulsorily registrable.

1.4 In a departmental circular issued in April, 1975, the Inspector General of Registration drew the attention of the registering authorities to the fact that "certain unscrupulous persons have, instead of executing regular transfer deeds, taken recourse to the execution of general power of attorney in favour of the purchaser with a view to avoid compliance with the pro-

visions of Delhi Lands (Restrictions on Transfer) Act, 1972". The registering authorities were further advised "to call upon the parties concerned to comply with the requirement of the 1972 Act before registering documents."

1.5 Mention was made in paragraph 125 of the Report of the Comptroller and Auditor General of India for the year 1976-77 (Revenue Receipts, Volume I) of the widespread circumvention of the above provisions of law in Delhi through the device of transferring immovable properties by executing general powers of attorney with a stamp duty of Rs. 10 only. It was pointed out that in 48 cases test checked in audit (November 1977) transfer considerations were clearly involved, as receipts for such considerations were registered simultaneously and given to the vendees in the very same names although the corresponding powers of attorney made no mention whatsoever of such consideration. The Ministry of Home Affairs accepted the objections and had taken steps to recover the short levy of stamp duty.

1.6 Paragraph 112 of the Report of the Comptroller and Auditor General of India for the year 1978-79 (Revenue Receipts, Volume I) also mentioned 561 similar instruments of general powers of attorney executed by vendors during the years 1972-73 to 1977-78 involving total consideration of Rs. 99,53,500 and a short levy of stamp duty of Rs. 2,92,925.

1.7 In a test check of the documents registered in four sub-registries in Delhi, during 1978-79 and 1979-80 it was noticed again (February 1980 to June 1980 and April 1981 to July 1981) that 134 similar instruments of general powers of attorney were executed in favour of the purchasers of immovable properties authorising them to sell the properties without mentioning the sale or the consideration received. On cross verification with the receipts registered simultaneously it was observed in audit that a total sum of Rs. 51,12,939 was received by the executants in these 134 cases from close relatives of the vendees without mentioning the details of the properties and the considerations on the receipts. In respect of these 134 cases if the powers of attorney were properly executed with considerations totalling Rs. 51,12,939 for which receipts were presented, stamp duty (calculated at 3 per cent) of Rs. 1,53,388 would have been payable against the stamp duty of Rs. 1,340 only actually levied treating the instruments as 'general powers of attorney without consideration'. Besides, registration fee would also be payable on these 134 powers of attorney with consideration relating to immovable properties. Penalties to the extent of Rs. 6,70,000 could also be levied for not fully and truly setting forth the facts

in the instruments.

1.8 It would appear that the department was also aware of the *modus operandi* in such cases, which was as follows :—

- (i) the vender executes an irrevocable general power of attorney in favour of the vendee without mentioning the sale or the consideration received ;
- (ii) he also gets a receipt registered regarding the consideration of the sale deed, receives the consideration before the Sub-Registrar from the relations of the vendees without mentioning the details of property and the consideration in the receipt ;
- (iii) they reportedly execute an agreement to sell which is not produced before the Sub-Registrar for registration and no mention of this agreement to sell is made either in the power of attorney or in the receipt ;
- (iv) besides this, a “will” is also executed by the vender in favour of the vendee, in which case, the former bequeathes his concerned property in favour of the latter, after his death.

1.9 The following points would arise :—

(a) The fact that the consideration in these cases was not directly by the attorneys but by persons closely related to them (e.g. husband, wife, son, brother, father, mother etc.) on their behalf will not alter the position as there can be no denial of the fact that the power of attorney in these cases was given in consideration of money received by the executants.

(b) As there is clear undervaluation of the power of attorney with intent not to pay to the Government legitimate duty, particulars of the transaction could be called for and registration could be refused unless proper duty was paid as enjoined in a judicial pronouncement of the Madras High Court.

(c) The penal provisions in the Stamp Act, 1899, could be invoked for not fully and truly setting forth the facts in the instruments and fine upto a maximum of Rs. 5,000 could be levied.

1.10 The above points were reported to the department and to the Ministry in July 1981. The department stated (September 1981) that in the last 8-9 years many ‘unscrupulous colonisers/persons’ had been adopting

this practice 'to circumvent the provisions of the different Acts and the conditions of the leases laid down by the Delhi Development Authority and the Land and Development Organisation, Corporation etc.'. They added that it was 'very difficult to distinguish between the genuine cases and false cases ; it had, however, been, decided to amend the Delhi Lands (Restriction on Transfer) Act, 1972 to get over the difficulty'.

1.11 The reply of the Ministry of Home Affairs is awaited (December, 1981),

[Para 3.20 of the Report of the Comptroller and Auditor General of India for the year 1980-81 Union Government (Civil)—Revenue Receipts, Volume-I, Indirect Taxes.]

Restriction on the transfer of immovable properties in Delhi—Introduction.

1.12 The Delhi Lands (Restrictions on Transfer) Act, 1972, the Urban Land (Ceiling and Regulation) Act, 1976 and the Delhi Development Authority impose certain restrictions on the transfer of land and built up properties in the Union Territory of Delhi. According to a note furnished by the Ministry of Home Affairs to the Committee, in case any document is executed and the same amounts to sale or purport to sale, permission under Section 8 of the Delhi Lands (Restrictions on Transfer) Act, 1972 is to be obtained from the Competent Authority, if the land is acquired or notified under Section 6 of the Land Acquisition Act, 1894. Permission of the Competent Authority is also to be obtained under Section 26 of the Urban Land (Ceiling and Regulation) Act, 1976. Besides, compliance under Section 230-A of the Income-tax Act, 1961 is also necessary if the value of the property is more than Rs. 50,000. In case of property given by Delhi Development Authority, on lease basis, the lessee shall not be entitled to transfer, assign or otherwise part with the possession of the land/flat/shop except with the previous consent in writing of the lessor which he shall be entitled to refuse in his absolute discretion. Such consent shall not be given for a period of 10 years from the commencement of the lease unless, in the opinion of the lessor, exceptional circumstances exist for the grant of such consent.

1.13 The Ministry of Home Affairs further informed the Committee that in the event of the consent being given, the lessor/DDA may impose such terms and conditions as it thinks fit. The lessor/DDA shall also be entitled to claim and recover a portion being 50% of the unearned increase in the value of the land/flat/shop (i.e. difference between the premium paid and the market value) of the land/flat/shop at the time of sale, transfer,

assignment or parting with possession, provided that the lessor shall have preemptive right to purchase the land/flat/shop after deducting 50% of the unearned increase as aforesaid.

1.14 On the question of levability of stamp duty, capital gains tax etc. on such transfers, the Ministry of Home Affairs stated that under the Indian Stamp Act, 1899 the stamp duty was chargeable on conveyance in accordance with Article 23 of Schedule-IA appended to the said Act. Further, transfer duty is chargeable under Section 147 of Delhi Municipal Corporation Act, 1957, if immovable property falling within the jurisdiction of the Corporation is transferred. Transfer duty is also chargeable under the Punjab Municipal Act, 1911 as extended to the Union Territory of Delhi, in case of transfer of properties falling within the jurisdiction of N.D.M.C. In case of power of attorney, stamp duty is chargeable under Articles 48 of the said schedule of the Indian Stamp Act.

Regulation on Transfer of Lands

1.15 Section 4 of the Delhi Lands (Restrictions on Transfer) Act, 1972 lays down as follows :—

“No person shall except with the previous permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof situated in the Union Territory of Delhi which is proposed to be acquired in connection with the Scheme and in relation to which a declaration to the effect that such land or part thereof is needed for a public purposes having been made by the Central Government under Section 6 of the Land Acquisition Act, 1894, the Central Government has not withdrawn from the acquisition under Section 48 of that Act.”

Restrictions on registration of transfers of land.

1.16 Section 8 of the Delhi Lands (Restrictions on Transfers) Act, 1972 reads as follows :—

“Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section 7 of Section 17 of the Registration Act, 1908, purports to transfer by sale, mortgage, gift, lease or otherwise any land or part thereof referred to in section 4, no register-

ing officer appointed under that Act shall register any such document unless the transferer produces before such registering officer a permission in writing of the competent authority for such transfer."

1.17 Persons contravening this condition shall be punishable with fine or imprisonment or both.

Stamp Duty on Power of Attorney.

1.18. According to Article 48(f) of Schedule 1-A of the Indian Stamp Act, 1899, as applicable to the Union Territory of Delhi, an instrument of Power of Attorney when given for consideration and authorising the attorney to sell any immovable property, is liable to stamp duty at the rate of 3 per cent of the amount of consideration if the immovable property is situated within the limit of Municipality, Cantonment Board of Notified Area, and in other cases at the rate of 2 per cent.

1.19 A general Power of attorney not involving immovable property when given without consideration is chargeable with a fixed stamp duty of Rs. 10 only.

1.20 Section 27 of the Indian Stamp Act, 1899 provided :
 "The consideration 9 (if any) and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein."

1.21 Failure to comply with the provisions of Section 27 is liable to penalty under Section 64 which lays down that :—

"Any person who, with intent to defraud the Government :—

- (a) executes any instrument in which all the facts and circumstances required by Section 27 to be set forth in such instrument are not fully and truly set forth ; or
- (b) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances ; or
- (c) does any other act calculated to deprive the Government of any duty or penalty under this Act.

shall be punishable with fine which may extend to five thousand rupees."

Registration of transfer of immovable properties.

1.22 Under Section 17 of the Indian Registration Act, 1908, a power of attorney with consideration to sell immovable property, is compulsorily registrable.

modus-operandi adopted for circumventing transfer restrictions.

1.23. It is seen from the Audit Paragraph that in order to circumvent the restrictions on transfer of immovable property, the following *Modus-operandi* is being generally adopted in Delhi :—

- (i) Execution of general power of attorney authorising the holder of the power of attorney to sell immovable property owned by the executant of the instrument (involving payment of stamp duty of only Rs. 10/- in the absence of any consideration being mentioned in the instrument of power of attorney).
- (ii) Receipt for money obtained from the holder of the power of attorney (or his confident or *Benami*) by the owner of the property (or his confident or *Benami*). The receipt for money is registered generally along with the power of attorney on the same day and by the same registration officer.
- (iii) An agreement to sell the property to the person paying the money and holding the power of attorney (which, even if expressal irrevocable as per the recital in the instrument, is legally revocable ; and on which stamp duty of only Rs. 1.50 is payable) is executed to give a flimsy legal hold over the property to the person paying the money in the event of his getting possession of the property though he gets no title over the property. (the flimsy right accruss under Section 53 A of the Transfer of Property Act by part performance under the agreement to sell by taking possession of the property and doing some act in furtherance of the agreement even if it is not registered). Such an agreement on registration (which is also done along with above two documents becomes a notice to any future buyer of the property and strengthens the flimsy legal hold on it, enjoyed by the possessor, who still has no legal title over it.

- (iv) A will is executed by the owner of the property (it can always be revoked by him any time prior to his death) bequeathing the property to the person paying the money (or his confidant). The will is also registered on the same day and by the same registering authority along with the above three documents only for reasons of psychological sense of security, though it gives no legal protection ; unless the executor of the will dies without revoking it and there is no dispute over his power to bequeath it.

1.24 The Committee desired to know the sections of the different Acts which were violated in the transactions referred to in the Audit paragraph. The ministry of Home Affairs in their note stated as under :—

“Power of Attorney, Rereceipts, Agreement, Will etc., do not confer any rights, sale transfer, title etc. as under Power of Attorney the principal empowers the attorney to act on his behalf ; receipts only indicate the receipt of money ; agreement indicates the covenants and conditions of sale between the parties and will only operates after the death of the executor. Power of Attorney as well as will can be changed at any time by the Executor. Similarly, the agreement by the parties also can be changed and money can also be received back by the parties. So these documents do not violate any provisions of the Registration/Stamp Duty Act if properly stamped and registered under the respective provisions. In the opinion of this Administration, no other sections of other Acts are also violated.

Under the Indian Registration Act, 1908 documents which require compulsory registration are mentioned in Section 17 of the Act which include such documents which confer rights, title etc. in the immovable property. If such documents are not registered u/s 17 they do not confer any right or title of transfer etc. to the parties concerned and such document will be considered invalid for evidence purposes in the eye of law. Other documents of which registration is optional are register u/s 18 of the Registration Act. These document do not confer any title, right etc. in the immovable property of value more than Rs. 100/- Under Section 18 generally power of attorney agreement, receipts, will etc. are registered.

Power of Attorney simply empowers the Attorney to exercise the powers on his behalf and receipt is only a receipt of money and both these documents can neither be clubbed nor they can be considered as creating any right, title, transfer or sale of the property. Neither these documents can be refused for registration nor the Sub-Registrar can ask the party concerned to write the purpose or reference in the receipt itself. Further the registering officer is not competent to go into the validity or otherwise of the document brought before him for registration excepting that he has to satisfy that certain formalities under the different acts e.g. The Registration Act, 1908 ; The Indian Stamps Act, 1899 ; Income Tax Act 1961 ; Estate Duty Act, 1955 ; Delhi Municipal Corporation Act, 1957 ; Punjab Municipal Act, 1911 ; as applicable in the areas falling under the jurisdiction of NDMC, Delhi Land (Restriction on Transfer) Act, 1972 ; Urban Land (Ceiling and Regulation) Act, 1976 and the Transfer of Property Act, are complied with ; Registration and Stamp Acts are the positive Acts ; the documents are executed and got registered and properly stamped in order to obtain rights, title or any other purpose of the document and the registration of such documents is done in accordance with the provisions of the Registration Act and the Stamp Duty is charged under the provisions of the Stamp Act. It is not possible to go behind the documents or the registrations made by the parties. Stamp duties are simply charged on the basis of the contents and type of the instrument."

1.24A The Ministry of Home Affairs have further stated :

"In AIR-1971 S.C. 310(V-58-C 74) in case of Mathura Lal Vs. Keshar and another, the Court held that two documents, mortgage with possession Lease back to mortgager—were held valid though actually the mortgager did not give the possession of the House to the mortgagee and actually there were no transaction. So under the Indian Stamps Act the Stamp duty is on the instrument as it stands and not on the transactions. People can sell the property even without executing any document i.e. orally under the Registration Act or Indian Stamps Act. They cannot be compelled to execute/register document and put the Stamp duty.

In another decided case of Commissioners of Inlands

Revenue Vs. Angus, it was held by the Court.' the first thing to be noticed is that thing which is made liable to duty is 'instrument'. If a contract of purchase and sale or a conveyance by way of purchase and sale, can be, or is carried out without an instrument the case is not within section, no tax is imposed. It is not the transaction of purchase and sale which is struck at ; it is the instrument whereby the purchase and sale are effected which is struck at. And if any one carry through a purchase and sale without an instrument, then the Legislature has not reached that transaction.

1.25 When asked about the application of Stamp Act and Registration Act to the receipt relating to immovable property in which there was no reference to the purpose of transaction the Ministry of Home Affairs have stated in reply :—

“The definition of the word ‘Receipt’ as given in Section 2(23) of the Indian Stamp Act is follows :—

“Receipt” includes any note, Memorandum or writing :—

- (a) whereby any money, or any bill of exchange, cheque or promisory note is acknowledged to have been received, or
- (b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt, or
- (c) where any debt or demand, or any part of debt or demand, is acknowledged to have been satisfied or discharged, or
- (d) which signifies or import any such acknowledgement, and whether the same is or is not signed with the name of any persons.

It will be seen from the above definition that it does not enjoin upon an executor to define or mention the purpose for which the acknowledgement is made. The party generally executes the power of attorney and receipt as two separate documents for the purpose of registration. As already mentioned, the Powers of Attorney and the receipts which are treated as two separate documents for the purpose of registration, cannot be clubbed together for the purpose of stamp duty. While registering the document, the Sub-Registrar registers the

document keeping in view the various provisions of the Registration Act and Indian Stamp Act.”

1.26 The Committee desired to know the requirements under the Transfer of Property Act, Registration Act, Stamp Act, Delhi Lands Act, Income Tax, Wealth Tax, Gift Tax and Estate Duty Acts which are required to be complied with in the transactions referred to in the Audit Paragraph. The Ministry of Home Affairs in their note stated as under :—

“The Powers of Attorney under objection have been registered under section 18 of the Registration Act, and they do not require any compliance of other Acts. If any Power of Attorney with consideration is executed, the same is also to be registered under Section 18 of the Registration Act and the Stamp Duty is chargeable under article 48(F) of the Indian Stamp Act. No other requirement of any other Act is required for the registration of the document.”

1.27 Asked about the provisions in the various Acts for taking measures to recover taxes, duties etc. due to Government, local body etc, as also for levying penalty or for taking possession of property as a penal measure, the Ministry in thier note stated :—

- “(i) Under the Indian Stamp Act duties are chargeable as per articles of Schedule 1A of Indian Stamp Act. If any document is found not properly stamped or deficiently stamped, the same are impounded u/s 33 of the Indian Stamp Act by the Sub-Registrar or Presiding Officers of the Courts and other Public Officers. The same are sent to Collector of Stamps u/s 38 and Stamp duty as well as penalty are charged u/s 40 of the Act *ibid*.
- (ii) The party can be prosecuted u/s 62 of the Indian Stamp Act on the types of documents mentioned above and penalty upto Rs. 500/- can be imposed.
- (iii) If any party contravenes Section 27 of the Indian Stamp Act such parties can be prosecuted u/s 64 and penalty upto Rs. 5000/- can be imposed.
- (iv) The Presiding Officer of the court can also realise the stamp duty as well as penalty upto 10 times of the stamp duty before admitting the document for the purpose of evidence u/s 35 of the Indian Stamp Act.

- (v) Transfer duty is duly charged u/s 147 of the Delhi Municipal Corporation Act if the immovable property is transferred by the document.
- (vi) The property tax as well as the penalty are charged in respect of the building/land falling under the areas of M.C.D. and N.D.M.C. in accordance with the provisions of Section 120/123 of Delhi Municipal Corporation Act 1957 and Section 61 of Punjab Municipal Act, 1911 respectively."

1.28 The Committee enquired why the power of Attorney did not amount to mis-statement of facts in the light of the receipts, wills and agreements to sell. The Ministry of Home Affairs in their note stated :—

"In accordance with section 3 of the Indian Stamp Act, 1899 the stamp duty is chargeable on the instrument and not on the treatment..... It is not possible to link up such cases where the general power of attorney do not disclose any consideration for such execution and the receipt also does not show the purpose for which the amount has been given. The general power of attorney and the receipt are two documents executed separately. As advised by the Law Department of this Administration, the registering officer cannot ask the parties to indicate the purpose for which the receipt has been executed, nor he can refuse registration of such money receipts on the ground that purpose of consideration has not been disclosed.

It will thus be seen that the power of attorney executed does not amount to mis-statement of facts in the light of receipts, wills and agreements to sell."

1.29 When asked if such document would not become special powers of attorney for consideration on which duty at 3 per cent was leviable, the Ministry of Home Affairs replied in the negative.

1.30 On being asked why no action could be taken under Section 27,33,62 and 64 of the Indian Stamp Act, the Ministry of Home Affairs in their note stated :—

"The general powers of attorney, receipt, will and agreement to sell are separate instruments which cannot be linked together because Sub-Registrars do not have the powers to question the executants of these documents about the facts mentioned

therein. That being the position, it is very difficult to prove that there has been any mis-statement of facts actionable under section 64. Further, since these documents have been properly stamped, no action can be taken under section 33 of the Indian Stamp Act which empowers the Registrar to impound the document. Similarly, action cannot be taken under section 62 because the instruments have been properly stamped and hence not actionable under section 62 of the Act."

Departmental instructions for restricting transfers through Power of Attorney.

1.31 According to the Audit Paragraph, in a departmental circular issued in April, 1975, the Inspector General of Registration had drawn the attention of the registering authorities to the fact that "certain unscrupulous persons have, instead of executing regular transfer deeds taken recourse to the execution of general power of attorney in favour of the purchaser with a view to avoid compliance with the provisions of Delhi Lands (Restrictions on Transfer) Act, 1972." The circular (No. XXII/25/Regn./72 dated 14 April, 1975) had *inter alia* stated :

"Attention of all the Registering Officers is invited to section 4 of the Delhi Lands (Restriction on Transfer) Act, 1972 which, *inter-alia*, provides that no person shall, except with the previous permission in writing of the Competent Authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise, any land or part thereof situated in the Union Territory of Delhi which is proposed to be acquired/notified under section 6 of the Land Acquisition Act, 1894 for a public purpose. Section 6 of the aforesaid Act prohibits registration of any document required to be registered under the provisions of clauses (a) to (e) of sub-section (I) of section 17 of the Indian Registration Act, 1908 which purports to transfer by way of sale, mortgage, gift, lease or otherwise, any land or part thereof referred to in section 4 of the Act *ibid* unless the transferer produces the Registration Officer, permission in writing of the competent authority for such transfer.

2. It has been noticed that certain unscrupulous persons have, instead of executing regular transfer deeds, taken recourse to the execution of general power attorney in favour of the purchaser with a view to avoid compliance with the

provisions of Delhi lands (Restriction on Transfer) Act, 1972. These power of Attorneys have certain peculiar features like these being irrevocable, authorising the Attorney to appoint further Attorneys even without the knowledge or permission of the principal, execution of a large number of Attorneys by the same person in favour of different persons in respect of several Plots belonging to principal and the omission regarding the obligation of the Attorney about the disposal of the proceeds of the sale of the land in question. In the circumstances it is essential that the Registering Officers should satisfy themselves as to the fact whether or not, a particular document titled though Power of Attorney but in fact purport to transfer the land in terms of section 4 of the Delhi lands (Restriction on Transfers) Act, 1972. The decision on this point in each case will depend upon the evidence before the Registering Officers and the facts of the case. In cases where after taking into account the various relevant factors the Registering Officers come to the conclusion that the document in question purports to transfer the land in contravention of the provisions of the Delhi Lands (Restriction on Transfer) Act, 1972, they may, after according their findings in details call upon the parties concerned to comply with the requirements laid down in the said Act before registering the document. Care should be taken to ensure that no harassment is caused the reasons who execute a genuine Power of Attorney in the normal course for management etc. of their property."

1.32 Explaining the objective sought to be achieved by the above circular, the Ministry in their note stated :—

"This circular was issued as administrative instructions in order to discourage the registration of power of attorney which purport to transfer of land/building already acquired by the Government or notified u/s 6 of the land-acquisition Act. Under these instructions the Sub-Registrar may not accept such power of attorney for registration but they cannot refuse the registration of such power of attorney under the existing provisions of the Registration Act. The efforts of the department had been to discourage the registration of such suspected powers of attorney because the Sub-Registrar cannot distinguish between the genuine or non-genuine power of attorney."

1.13 The Committee enquired why the fact that a person parting

with money gets no title to the property in such cases was not adequately published in order to discourage people from falling victim to such *modus operandi* instead of issuing administrative instructions. In reply, the Ministry of Home Affairs in their note stated as follows :—

“Notice was displayed outside the offices of sub-registrars in the Union Territory of Delhi for the information of the public.”

1.33A. The notice referred to above reads as follows :—

“It is notified for the information and guidance of the General public that :—

1. Use of Agricultural land for residential commercial purposes is prohibited under the Delhi Land Reforms Act.
2. Construction of a house in an unapproved colony, constituted violation of the provisions of the Delhi Development Act, Delhi Municipal Corporation Act, etc.
3. A general power of attorney, authorising a person to sell land/property belonging to the principal, even if it is for a consideration, does not cover any property rights on the person so authorised.

Any transaction of land/property in violation of the provisions of the aforesaid Act, a part from being legally invalid also constitutes a punishable offence.”

1.34 During evidence the Secretary (Land & Building) stated :—

“The Registrar or a sub-Registrar may not know in a particular case whether a particular land falls in a particular area. But it is required of the person concerned to produce a document from the revenue records that it is not covered by the legislation which is notified under Section 6. So, when he produces that document, the Registrar/Sub-Registrar can refuse only on certain grounds which are mentioned in law. But he can also delay to an extent, though he cannot delay it beyond a particular limit.

1.35 On being asked how many cases were detected under this circular during each of the last three years, the Ministry of Home Affairs in their note stated:—

„As registration of such power of attorney has not been encouraged, no such records have been maintained.”

1.36. To a question as to in how many cases departmental instructions dated 14 April, 1975 were acted upon and registrations refused, the Ministry replied:—

“A notice was displayed on the notice-board of the sub-registrars in the Union Territory of Delhi. The public was also made aware by the concerned authorities of the consequences of such registrations. Thereafter, despite such advice, if some parties insisted upon registration, they could not be refused registration as the law does not envisage refusal of such registration.”

1.37 At the instance of the Committee, the Ministry of Home Affairs furnished the following details of the total number of documents registered, registration fee and the stamp duty realised from the sale of non-judicial stamp papers in during each of the years 1977-78 to 1981-82 :—

<i>Year</i>	<i>Total documents registered</i>	<i>Registration Fee realised</i>	<i>Stamp Duty realised</i>
1977-78	50,000	Rs. 11,00,000/-	Rs. 2,43,00,000/-
1978-79	70,299	Rs. 27,16,000/-	Rs. 1,87,53,000/-
1979-80	87,551	Rs. 17,01,000/-	Rs. 3,28,83,000/-
1980-81	84,974	Rs. 16,83,000/-	Rs. 4,54,19,000/-
1981-82	1,08,964	Rs. 22,18,000/-	Rs. 6,61,40,000/-

1.38. During evidence, the Committee enquired about the reasons for decrease in the amount of registration fee realised in 1979-80 while the number of documents registered had increased over the preceding year. The Secretary (Land & Building) stated :—

“It would be dependent on the type of the documents registered and the valuation.”

1.39 In a further note on the subject, the Ministry of Home Affairs stated that no specific reasons could be given for steep rise in realisation of registration fee in 1978-79 and its sudden drop in 1979-80 as also for drop in stamp duty realisation in 1978-79 and its sudden rise in 1979-80, as it would depend on the number of registrations and the sale of stamp papers respectively.

1.40 In this connection, the Committee desired to know the total number of General Powers of Attorney and transfer deed registered in Delhi since 1972.

The details furnished by the Ministry of Home Affairs are shown in the following Table :

Sl. No.	Year	Total No. of G.P.A.	Total No. of G.P.A. pertaining to D.D.A.	Total No. of transfer deeds registered	Total No. of transfer deeds pertaining to D.D.A.
1.	1972	8,398	322	47,995	136
2.	1973	26,605	973	30,486	3375
3.	1974	29,410	1,837	33,257	1278
4.	1975	8,984	1,457	1,4351	2741
5.	1976	5,846	1,308	9,368	1938
6.	1977	8,339	2,281	23,543	12417
7.	1978	9,862	3,417	21,013	7401
8.	1979	11,809	4,922	20,293	7913
9.	1980	9,880	3,500	19,322	4582
10.	1981	7,252	655	25,221	4144

Action Taken on Audit objections

1.41 Mention was made in Audit Reports 1976-77 and 1978-79 of the widespread circumvention of the provisions of law in Delhi through the device of transferring immovable properties by executing general powers of attorney with a stamp duty of Rs. 10 only. In para 125 of Audit Report 1976-77, it was pointed out that in 48 cases test check in Audit, transfer considerations were clearly involved, as receipts for such considerations were registered simultaneously and given to the vendees in the very same names although the corresponding powers of attorney made no mention whatsoever for such considerations. The Ministry of Home Affairs had then accepted the audit objection and had taken steps to recover the short levy of stamp duty.

1.42 Para 112 of Audit Report 1978-79. Indirect Taxes had mentioned 561 similar instruments of general powers of attorney executed by vendors during the years 1972-73 to 1977-78 involving total consideration of Rs. 99,53,500 and a short levey of stamp duty of Rs. 2,92, 995.

1.43 During evidence the Committee enquired why action analogous to that taken on the objection in para 125 of Audit Report 1976-77 was not taken on the 561 cases reported in para 112 of Audit Report 1978-79 and in the 134 cases reported in the present in Audit para. The Secretary (Land & Building) stated :

“Audit has been pursuing this question since 1972-73, From 1972 to 1975 they have pointed out 65 cases, out of which 48 cases were such in which the person who had executed the power of attorney was the same person who had executed the receipt. Therefore, we did accept that there could be a correlation which can be established and under section 62 of the Act we did miss the composition fee. As against Rs. 24,000 stamps duty, which was calculated by audit, we did try to recover Rs. 34,000 out of 48 cases. In 45 cases it has been recovered. After that period, when audit has noticed 561 cases, people became wiser. So, the person who executes the power of attorney does not himself sign the receipt for issue it ; it is done by his friend or relation. The point which Audit has raised is that you continue the same process, you can impose the composition fee even on those people who have executed the power of attorney, even if the receipts is in the name of a third party. In consultation with our Law Department, we have consultation with our Law Department, we have felt that it is not possible to impose the composition fee, because in law it is difficult to substitute proof under the Evidence Act for any presumption which we might raise. The presumption may be 100 per cent or 99 per cent correct, but we would not be able to prove it conclusively in a court of law. Similarly, we cannot impose the penalty under Section 64 of the Act.”

1.44 In a further note on the subject the Ministry of Home Affairs stated :

“In 48 cases, it was possible to link up the power of attorney with the receipt as both these documents had been executed

by the same parties and the consideration had been received by the executor from the executant who had been given *inter-alia* the power to sell the property. In the remaining 561 and 134 cases, the general power of attorney did not show that the same had been given for consideration though it authorised the attorney to sell immovable property. The receipt which had been executed separately does not show any transaction whatsoever between the executor of the general power of attorney and the attorney. It only acknowledged the receipt of money by a near relation of the executant. No purpose whatsoever, for which the money has been paid, is indicated in the receipt. As such, it cannot be said that such general powers of attorney have been executed with consideration. Further, receipt and the general power of attorney are two separate instruments which cannot be read together for the purpose of stamp duty. The registration authorities are not competent as advised by the Law Department of this Administration to compel the executants to indicate the purpose for which the receipt is being executed.

In the circumstances, it would appear that it is very difficult to bring such general powers of attorney within the ambit of Article 48 (1) of Schedule 1-A of Indian Stamp Act, 1899 to attract the stamp duty @ 3 per cent, since for doing so not only the fact of authorising the attorney to sell the immovable property has to be established but also the fact that general power of attorney has been given for consideration which, in the instant case, is not possible."

1.45 The Committee desired to know in how many out of 743 cases (48+561+134) pointed out by Audit mutations were effected in the records of the municipality (including electricity, water and sewage departments) even though no transfer of property had legally taken place. In reply, the Ministry of Home Affairs have stated in a note as follows :

"Mutations have been effected in the corporation records in 30 cases only. Information regarding mutations in respect of electricity, water and sewage departments, is still awaited and the same will be furnished in due course.

It may be mentioned that no mutation has been made in the records of Municipal Corporation of Delhi on the basis of G.P.A."

1.46 Enquired in how many cases transfer duty was collected by the department, the Ministry stated :

"Municipal Corporation of Delhi has charged transfer duty in three cases."

"Statement of case by Chief Controlling Revenue-authority to the Delhi High Court."

1.47 As per Section 57 (1) of the Indian Stamp Act, 1899, the Chief Controlling Revenue-authority may state any case referred to it or coming to its notice, and refer such case with its opinion thereon to the High Court for that State/Union Territory for advice/decision in the matter. The Secretary (Land and Building), Delhi Administration stated during evidence :

"Audit did suggest that we should refer the matter to the Ministry of Law. Ultimately, in one or two cases we did give notice to such parties under section 57 of the Stamp Act. As the Chief Controller of revenue authority, I have referred the case to the High Court under the advisory jurisdiction which lies with them, asking them the question whether in such cases it would be possible for us to impose the composition fee or to proceed with them criminally under the law. As soon as the opinion of the High Court is received, we would take action accordingly. This is the position with reference to revenue, which has been the main point of audit."

1.48 The Committee wanted to know whether any amendments to the Acts were under contemplation of the Delhi Administration with a view to curb the benami transactions in immovable property. The Ministry of Home Affairs in their note stated :—

"This Administration has already sent a proposal to the Government of India in the year 1975 for making suitable amendments in the Delhi Land (Restriction on Transfer) Act,

1972, to prevent clandestine transfer of land through the power of Attorney and the matter is still under consideration of the Ministry of Works and Housing."

1.49 Elaborating the proposed amendments and the reasons therefor, the Ministry have stated in a note :

"In the year 1976 a proposal was mooted to amend the Delhi Lands (Restriction on Transfer) Act, 1972 with a view to putting a stop to illegal transactions of land through General Power of Attorney.

The original amendment proposal forwarded by the Government of India, Ministry of Works and Housing vide their letter dated 28.8.76 was as under :

"No person shall, except with the previous permission in writing of the competent Authority execute any instrument creating a Power of Attorney empowering any other person to transfer or otherwise deal with any manner whatsoever any land referred to under Section 4 or part thereof and in the name of the such person."

The need for this amendment was felt as it was noticed that unscrupulous persons adopted new method of circumventing the provisions of Delhi Lands (Restriction on Transfer) Act, 1972 by executing General Power of Attorney, authorising the attorney to mortgage, look after and to sell land/property belonging to the principal.

The said bill was approved by Executive Council of the Administration for placing before the Metropolitan Council and the Administration finally vide its letter dated 9.9.1977 suggested the following amendments in the Delhi Lands (Restriction on Transfer) Act, 1972."

"Notwithstanding anything contained in the power of Attorney Act, 1882 or any other law for the time being in force, immovable property shall not be transferred in the Union territory of Delhi, on the basis of, or through a power of Attorney."

The matter was followed up with the Ministry of Works and Housing, Government of India constantly. The Ministry referred the case to the Ministry of Law. A meeting was held on 10.5.82 with Addl. Legal Advisor, Ministry of Law. During the course of meeting, the Addl. Legal Adviser, Ministry of Law expressed the view that this amendment covers all immovable properties in the Union territory of Delhi, whereas the main Act deals only with a particular clause of immovable property and as such the proposed amendment will not be appropriate. The Ministry of Law also desired to study the different language used in different Power of Attorneys executed by different persons to effect indirect transfer/sale of land, as according to them it did not seem possible to ban execution of power of attorney in general in respect of all immovable properties. Thereafter, this Administration forwarded the specimen powers of attorneys executed by some people to over-come the restrictions imposed by the Delhi Land (Restrictions on Transfers) Act, 1972 on transfer of land. It was further reiterated in our comments to the Ministry that if we try to restrict the execution of a certain specified form of power of attorneys in respect of the land notified, this the chance of people coming up with power of Attorney in a different language cannot be ruled out. The Ministry of Works & Housing, Government of India vide their letter dated 20.8.1982 desired that Delhi Administration may re-consider the matter and furnish its comments to the Ministry.

The matter was examined in consultation with the Legal Advisor of the Land and Building Department and Deputy Commissioner of Police (Special Cell) who is concerned with day to day trial of cases in the courts.

In some cases filed under the provisions of Delhi Lands (Restriction on Transfer) Act, 1972 before the courts, the courts have held that the transactions effected through power of attorneys cannot be termed as sale under provision of Transfer of Property Act and as such there is no viola-

tion of the provision of Delhi Lands (Restriction on Transfer) Act, 1972. Section 4 of the Delhi Lands (Restriction on Transfer) Act, 1972 bans the transfer of land in relation to which acquisition proceedings have been initiated. This clause also places restrictions on transfer or on transactions purported to be transferred by sale, mortgage or gift, lease or otherwise.

The Administration has therefore, now proposed insertion of the following clause in the Act to overcome the difficulty being faced in the courts:

“Notwithstanding anything contained in any other law for the time being in force, any transaction through power of attorney executed to authorise a person to transfer by sale, mortgage, gift, lease or otherwise, deal with any land or part thereof situated in the Union territory of Delhi and notified u/s.6 of the Land Acquisition Act, 1894 shall be deemed to be a sale for/the purpose of provisions of this Act unless the person executing it has obtained permission in writing from the competent Authority in respect thereof and the same is got registered in accordance with the provision of the Indian Registration Act, 1908.”

The proposal has been sent on 24.9.1982 to the Ministry of Works and Housing, Government of India once the Ministry accepts the above clause in principle, consequential changes shall also have to be effected in other provisions.”

1.50 Asked whether there were any amendments under contemplation of the Delhi Administration for rationalising registration fee and stamp duty fees/rates so as to increase revenues over a wider base *i.e.* by encouraging larger number of registration and stamp affixation at correct values, the Ministry of Home Affairs stated:

“Registration fee has already been revised in the light of the judgement of the High Court/Supreme Court in the case of “Delhi Cloth General Mills vs. Delhi Admn. and Others” in 1964 *vide* this Administration modification No.F. 12 (26)/64-Fin-(E), dated 27th June, 1964 according to which a maximum

registration fee of Rs.100 is chargeable on an instrument. The stamp duty is less in comparison to the rates prevailing in the neighbouring States. This Administration has already taken up the matter with the Govt. of India for increasing the present rates of stamp duty."

1.51 Explaining the details of proposals in relation to rates of Stamp Duty, taken up with Government of India and the manner in which it will rationalise or optimise the yield from Stamp Duty, the Ministry further stated:

"The Delhi Administration sent a proposal alongwith Delhi Stamp (Amendment) Bill to this Ministry proposing enhancement of the rates of Stamp Duty so that these rates could be brought at par with the neighbouring States. The matter was discussed in a meeting and it was considered appropriate to suggest an increase of 25% of the present rates in respect of articles mentioned in Schedule 'A' except those articles included in Schedule 'I' of the Act which are included in the Central List. Accordingly Delhi Administration was asked to prepare a revised Delhi Stamp (Amendment) Bill which has since been prepared by them and being vetted by their Law Department. As soon as it is finalised and accepted this is likely to generate additional revenue to the extent of R.1.80 crores annually.

1.52 The committee were informed that under the amendments to the Stamp Act effected in many States by way of a new Section 47A, the Collector can *suo moto* call for the documents for satisfying himself about the duty paid thereon. The period within which such action can be taken ranges from 2 to 5 years. The Committee wanted to know whether such an amendment was proposed for Delhi. The Ministry of Home Affairs in their note stated:

"The Administration has not proposed any such amendment."

1.53 Elaborating the proposals of the Government to protect revenue and check clandestine transactions in Delhi, the Home Secretary stated during evidence:

"There have been very many clandestine transactions, as mentioned in the Audit Report. These operators have become

necessary to notify under Section 4 large area of land. This has happened not only in Delhi but in other places also, in various forms"

Utilisation and development of land

1.69 Asked about the justification for having acquired land 25 years back but not developing and utilising it so far, the Secretary, Delhi Administration stated :

"In 1962 or 1959-60 before the Master Plan came into operation, it could not have been anticipated that there would be these delays...I would say that perhaps this is not a correct thing. DDA does not share this view."

1.70 Offering his views on the present system of acquisition of land in Delhi, the Home Secretary deposed in evidence :

"In principle, if Government acquires land or the officers of Government try to acquire land and serve notice under Section 4 and 6 without properly assessing the need for such an acquisition, and it is not utilised, probably there is a wrong judgement, misjudgement or even some other ulterior motive, because normally this kind of a situation should not arise, since the purpose is to acquire for a public purpose. Once it has been acquired, when the purpose for which it was acquired should be utilised, because there is no particular case in the knowledge of the Chief Secretary. I have suggested to him that, the Chief Secretary also feels-without prejudice to the acquisition of the land in future, if the public purpose so demands a notice on the lines suggested by the Committee will be published, it will be given due publicity.'".

1.71 In this connection, the Committee desired to know the total area of land frozen under Section 4 and 6 of the Land Acquisition Act in the Union Territory of Delhi as on 31st March, 1982. The Ministry of Home Affairs have stated:

"As per the available records 23063.61 acres of land stands notified under Section 4 of the Land Acquisition Act as on 31st March, 1982 within the urbanisable limits of Master Plan of Delhi for planned development of Delhi. This does

1.67 When asked whether the Administration was not duty bound to inform the people concerned particularly the agriculturists in such cases that their lands were not proposed to be acquired under Section 6 of the Land Acquisition Act so that they were not exploited by unscrupulous colonisers indulging in racketeering of land, the witness stated :

“Whatever may be the position in the other rural States, my own experience here tells me that the cultivators are quite awake they are fully aware of what is happening. In fact, they follow each and every notification and they are aware of the complications.”

1.68 The Committee wanted to know the system prevailing in the Department for finding out in how many cases and for what reasons the notification under Section 4 was allowed to lapse by not issuing the subsequent notification under Section 6 within prescribed period. The witness replied :

“In Delhi, because of various factors relating to increase in population, immigration, growth of urban area etc., development is taking place. It was always planned that it should take place in accordance with the phased development envisaged in the Master Plan 1960—80. It was in that context that it was thought that land would have to be acquired for public purposes. Sometimes there is constraint of funds. It is not always possible to have so much money in the kitty, because this is subject to budgetary provision by Parliament etc. There are also administrative problems, no doubt. That is why there has been some delay.

Earlier, the idea was that there should be a concept of land policy, in order that land was not encroached upon and not subjected to haphazard urban growth, that proper services are developed, that there is a proper availability of green area, roads other types of community services etc. That is why it became

that the zonal plans were prepared and they were to be approved and then only they should be acquired under Section 6 or under the Land Acquisition Act or under the Restriction Act of 1972 or under any other statute. There is no restriction on the transfer of land. However, it becomes known that land is proposed to be acquired and sometimes the Municipal Corporation or the DDA has issued notices that such and such land is to be acquired and therefore the people should not fall in the clutches of the unscrupulous persons who might try to acquire one land by unfair means. These notices were issued as a matter of caution."

1.64 The Committee desired to know whether it was also a fact that a large number of unauthorised colonies which came up on land covered by notification issued under Section 4 of the Land Acquisition Act were subsequently regularised by the Delhi Administration. In reply, the witness stated :

"A very large number of unauthorised colonies and structures have come up in various places and this matter has been under the consideration of the Ministry of Works & Housing and Government of India and because of the human consideration involved, a number of colonies had been regularised in 1969 and 1978 decision were taken to ensure that all the 612 unauthorised colonies were to be regularised."

1.65 Asked whether such regularisations had not resulted in loss of huge revenue to the Delhi Administration, the witness stated :

"This loss of revenue, if any, is of hypothetical nature....."

1.66 The Committee wanted to know whether the Delhi Administration had denotified any lands in respect of which notifications were initially issued under Section 4 but not followed up by notifications under Section 6. The Chief Secretary, Delhi Administration stated during evidence :

"The point is when notification under Section 6 has not been issued, notification under Section 4 automatically lapses."

"In most cases, it has been issued and, in certain cases, it has not been issued."

1.60 The Committee enquired how far it was justified in restricting sale and transfer of land when only an intention to acquire land was proposed by issuing a notification under Section 4 of the Land Acquisition Act. The Chief Secretary, Delhi Administration stated in evidence :

"This Act [Delhi Lands (Restriction on Transfer) Act, 1972] becomes applicable only after Section 6 notification has been issued. Section 4 notification is only a preliminary declaration of intent to acquire the land.....so this restriction [Vs. Delhi Lands (Restriction of Transfer) Act, 1972] comes into play only when Section 6 has been notified."

1.61 Asked when asked whether it was to be assumed that cases of transfers in respect of which notifications were issued under Section 4, 20 years back and notifications were issued under Section 6 of the Land Acquisition Act even in 1982 did not violate the provisions of the Delhi Lands (Restriction on Transfer) Act, 1972, the witness stated :

"That is the legal position."

1.62 Further asked is in all these cases where notification under Section 4 was issued but no notifications had been issued under Section 6 the authorities did not refuse permission to those people to transfer the lands, the witness replied :

"The competent authority is not entitled to issue any such notification. It should not be possible under law."

1.63. On being asked whether it was not a fact that people who come forward for registration of their land which was not acquired under Section 6 but only intended to be acquired as per notifications issued under Section 4 of the Land Acquisition Act were not allowed to transfer their land and the anti-social elements were allowed to occupy that land and sell it unauthorisedly at very exorbitant prices, the Chief Secretary Delhi Administration stated :

"Such things have come to notice. But under Section 4, a proposal was made for acquisition of land. The intention was

1.57 Asked whether it was a fact that on 13 November, 1959, the Delhi Administration acquired about 34000 acres of land at a stretch and the notices issued under Section 4 of the Land Acquisition Act, 1894 could not be enforced in certain cases till today and whether the purpose was to restrict transfer of land, the Chief Secretary, Delhi Administration stated :

“That was also the purpose because we could not acquire all the land and we could not take possession of the land. A notification under Section 4 was issued. Section 4 notification is only a declaration of intention and objections are invited”.

1.57A The witness added :

“Section 4 notification is the proposal and Section 6 is the declaration that land is required for public purpose. This has been made abundantly clear.”

1.58 When enquired about the period after which notifications under Section 6 of the Land Acquisition Act were issued in respect of the acquisition made in 1959 and when they actually required to be issued, the witness stated :

“In many cases, there was an interval of few years.....in 1967, an amendment had taken place in the Land Acquisition Act, which had restricted the gap in time between the notification under Section 4 of the Land Acquisition Act and under Section 6 of the Land Acquisition Act. Earlier there was no such period of time laid down. Now it is laid down under the 1967 Amendment that it has to be three years. In fact this is being further reduced to two years under the new Amendment which a view to protect the interest of the cultivator, particularly in the rural green belt surrounding the urbanised area in Delhi.”

1.59 Asked whether it was a fact that in many cases although the land has been notified under Section 4 in 1959, notifications under Section 6 had not been issued till date, the Chief Secretary, Delhi Administration stated ;

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

1.56 Section 6 of the Land Acquisition Act, 1894 provides that :

6. (1) Subject to the provisions of part VII of this Act, when the (appropriate Government) is satisfied, after considering the report, is any made under section 5A sub-section (2), that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders and different declarations may be made from time to time in respect of different parcels of any land covered by the same notification under section 4, sub-section (1) irrespective of whether one report or different reports has or have been made (wherever required) under section 5A, sub-section (2) :

[Provided that no declaration in respect of any particular land covered by a notification under section 4, sub-section (1), published after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, shall be made after the expiry of three years from the date of such publication :

Provided further that] no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues or some fund controlled or managed by a local authority].

(2) Every declaration shall be published in the Official Gazette, and shall state the district or other territorial division in which the land is situated, the purpose for which it is needed, its approximate area, and where a plan shall have been made of the land, the place where such plan, may be inspected.

(3) The said declaration shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be ; and, after making such declaration, the [appropriate Government] may acquire the land in manner hereinafter appearing.

implementation of the Master Plan, that is, for the development of new residential area, for the development of new colonies, etc. While these lands were being acquired under the land Acquisition Act, 1894, it was noticed that a number of unscrupulous persons and the colonisers were taking advantage of this and they were, more or less, cheating the gullible people, the innocent people, by transferring lands which were under notification. In order to stop this, in order to curb this, this Act was passed."

1.55 Section 4 of the Land Acquisition Act, 1894, reads as under :

4. (1) Whenever it appears to the (appropriate Government that land in any locality (is needed or) is likely to be needed for any public purpose, notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorised by such Government in this behalf, and for his servants and workmen—

To enter upon and survey and take levels of any land in such locality ;

To dig or bore into the sub-soil ;

to do all other acts necessary to ascertain whether the land is adopted for such purpose ;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

To mark such levels, boundaries and line by placing marks and cutting trenches ;

and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle ;

Iceverer. They are adopting more cleverer strategems to get over this. Very frankly I have had some discussions on certain cases which came to my notice, on the complaints which came to my Ministry, on the *modus operandi* which has been worked out by them. In some cases, registration has been done outside Delhi, so that there is no direct co-relation ; in other cases, the amount paid is by somebody else. All the things are happening. Some unscrupulous colonisers and even individuals have adopted clandestine methods for transfer of land. If I make a personal reference, when I was the Chief Secretary in 1972, even at that time some of these practices had come to our notice and a little of administrative effort was also made to warn or caution, or issue certain directions to the sub-registers. They did not work. Either there was some collusion, some legal difficulties were pointed out by the Delhi Administration. In so far as Delhi is concerned, we had suggested certain amendments. One is a restriction on transfer; the second is an amendment in the Stamp Act, on which the advisory opinion of the High Court has been requested. Certainly, because of these malpractices and clandestine practices, public interest has suffered; while the genuine seller is put to a lot of difficulties, the colonisers have taken advantage of it... Confining myself to the point of loss of revenue, I think an amendment in all the three Acts to bring some kind of harmony and consonance is very necessary. We will do that."

Acquisition of Land in Delhi

1.54 The Committee wanted to know the reasons for the enactment of the Delhi Lands (Restriction on Transfer) Act, 1972. The Chief Secretary, Delhi Administration stated during evidence :

"I would submit that the Delhi Lands (Restriction on Transfer) Act, 1972 was brought about in the context of the difficulties which were being experienced in the implementation of the Master Plan Delhi. The Master Plan had been prepared in early 60s and it became operative from 1962 onwards. In the course of this, we had to acquire large areas of land under the scheme of large scale acquisition of land in Delhi for the

not included the figures of proposed acquisition for department other than DDA. The area of land notified under Section 6 as on 31 March, 1982 is also the same i.e., 23063.61 acres.

As per records available about 210 acres of land was notified/renotified under Section 4&6 of the Land Acquisition Act for planned development of Delhi within the urbanisable limits of Master Plan of Delhi during 1st August, 1977 to 31st March 1982. In fact all the vacant land required for implementation of the Master Plan of Delhi were notified for acquisition under section 4 of the Land Acquisition Act during 1957 to 1961. In view of the amendment of the Land Acquisition Act in 1967, all lands notified under section 4 prior to the amendment had to be notified under section 6 of the Land Acquisition Act within the grace period of two years and the lands notified under section 4 were notified under Section 6 within the stipulated period. The lands notified for acquisition under section 4 subsequent to the amendment of Land Acquisition Act 1967 within the urbanisable limits of Delhi for the implementation of the Master Plan of Delhi had been only on account of either re-notification of the earlier notification quashed by an order of the court have been left out of the earlier notification inadvertently.

During 1980-81 the Administration has also issued notifications under section 4 of the Land Acquisition Act for an area of 16,455 acres outside the urbanisable limits of Master Plan of Delhi. But further proceedings in respect of 15405 acres of land had been stayed by orders of Court and hence notifications under section 6 of the Land Acquisition Act could not be issued. Notification in respect of 1050 acres of Land has been issued under Section 6 of the Land Acquisition Act."

1.71 The Ministry further stated :

"However, there was some difference between the area indicated as notified under section 4 and area notified under section 6 of the Land Acquisition Act. This difference was mainly on account of the fact that notifications under section 4 issued during the period 1955 to 1961 were issued by boundaries and not for specific area in terms of Khassara number and revenue estate."

1.73 On being asked to furnish the details of the total area of land acquired by the Delhi Administration other than for DDA as on 31 March, 1982, the yearwise pendency of utilisation of the land so acquired and the reasons for non-utilisation, the Ministry of Home Affairs in a note furnished after evidence stated :

“In case of acquisition of land other than for scheme of the Scheme of Large Scale Acquisition & disposal of Land in Delhi as contained in Govt. of India's letter dated 2nd May, 1961, this department on a request from the Government/Semi-Government Department/organisation issues a notification under Section 4 of the Land Acquisition Act in consultation with Land Acquisition Collector. After the issue of the notification under section 4 of the Land Acquisition Act, public objections are invited and notification under Section 6 of the Land Acquisition Act is issued declaring government decision to acquire the land. Thereafter the acquisition proceedings are held by Land Acquisition Collector in consultation with the department/Organisation concerned. Land Acquisition Collectors concerned directly request for funds from the department concerned and when funds are made available by the department, Land Acquisition Collector draws up the award, takes possession and transfers it to the department/organization concerned. Therefore, the details of the total area of the land acquired by the Delhi Administration other than for DDA are not readily available. However, if the Committee still desires the details shall have to be obtained from all other departments of Delhi Administration, Ministries of Central Government, Autonomous Bodies like International Airport Authority of India, Indian Oil Corporation, Municipal Corporation of Delhi etc.

In view of the position explained above once the possession of the land after acquisition is handed over to the department/organization concerned by the Land Acquisition Collector, this Department does not maintain any record of the utilisation of the land by them. If the Committee still desires, the information relating to unutilised lands and reasons for non-utilisation, the same would be collected from concerned departments/organisation.”

Compensation paid under Land Acquisition Act.

1.74 During evidence, the Committee enquired whether it had come to the notice of the authorities that in certain cases the compensation paid to the cultivators for the land acquired from them was quite inadequate. The Chief Secretary, Delhi Administration stated :

“...The Delhi Administration shares the concern that a very low inadequate compensation was paid to the cultivators for the acquisition of their rural lands. We would like to inform the Chairman and the Members of the Committee that Delhi Administration took the initiative last year in proposing certain amendments under the Land Acquisition Act to the Ministry of Works and Housing and the Ministry of Rural Reconstruction which is in charge of this Act for amendments to the various provisions relating to compensation, relating to solatium and relating to interest that is payable.

The Ministry of Rural Reconstruction and Rural Development has been considering the suggestions received from other States also and it was as a result of these efforts that an amending Bill has already been moved before the Parliament and we hope that this Amendment would be passed soon so that this deficiency is taken care of.”

1.75 The Committee were informed during evidence that it was stipulated that an acquisition of land from the agriculturist family, they would be provided 250 sq. metres of land. The Committee desired to know the number of cases for allotment of lands pending with the administration, years of pendency and the reasons therefore. In reply, the Ministry of Home Affairs have stated as follows :

“The number of cases pending for recommendations to DDA for allotment of alternative plots yearwise as on 1.1.1983 are as follows :

Pre	1979	...	23
	1979	...	90
	1980	...	610
	1981	...	691
	1982	...	547”

Implementation of the Urban Land (Ceiling and Regulation) Act in the Union Territory of Delhi.

1.76 The Committee desired to know as to which Ministry was responsible for overseeing the implementation of the Urban Land (Ceiling and Regulation) Act, 1976 in the Union Territory of Delhi. The Home Secretary replied :

“...this is actually being administered from Government of India angle through the Ministry of Works and Housing...As the local Government, it is the responsibility of the Delhi Administration. But the Controlling Ministry or the supervising Ministry at the Government of India level is the Ministry of Works and Housing so far as this is concerned.”

1.77 In this connection, the Chief Secretary, Delhi Administration added :—

“...This Act is administered by our Land and Building Department. They are incharge of the processing of applications for exemptions of various types under the Urban Land Ceiling Act...”

1.78 When asked about the extent to which Delhi Administration was involved in the implementation of the Act and the powers of Delhi Administration in this regard, the Secretary (Land and Building) Delhi Administration stated during evidence :—

“Delhi Administration has two competent authorities to receive applications for exemption under the Urban Land Ceiling Act, and those applications were received right from 1975 onwards. As the Home Secretary and the Chief Secretary have pointed out, various difficulties were experienced. One of them was that the persons concerned went to the court and finally the objective sought to be achieved under the Act, that is, the land should vest in the Government, was not achieved. This is one thing.

As the Chief Secretary pointed out, we exercise delegated powers of the Central Government; those powers have been delegated to Lt. Governor. The Ministry of Works and Housing took some time in formulating its guidelines which were communicated to us in 1977-78. In regard to commercial buildings and group housing societies, those guidelines were not very clear and then we sought certain clarifications. During the past one year, a number of cases of exemption of industrial plots were cleared.

Earlier, it is true, there was some hold-up. But once the guidelines were finally issued, these cases were cleared and the exemptions were issued. So far as group housing cases were concerned the question was of persons who had more than one residential plot in Delhi or outside and those were classified into two or three groups. Quite a number of those group housing cases were also cleared. But in the cases of New Delhi, a question did arise as to whether at the time the Master Plan was formulated and the zones were allocated, the services which were then provided would be or would not be adequate to take the load of group housing if that was to be allowed and the then Lt. Governor referred this larger question before he thought he would take up the general question of group housing flats in the New Delhi area where the Works and Housing Ministry has certain charges. There has been some hold-up on that account because that has still not been cleared ; that point is still under discussion.

So for as commercial buildings are concerned, they were cleared with approval of the Ministry of Works and Housing.

The question of amendment consequent to certain judgements of various High Courts and Supreme Court is under the consideration of the Ministry of Works and Housing ; that is a matter to be decided by the Government. This is by and large the picture of implementation.

There is only one point more. There were a number of people who had purchased plots above 500 sq. metres which was beyond the permissible size and they have been suffering because the colonisers had to seek exemption under the Urban Land Ceiling Act. The point was cleared in consultation with the Ministry, and these smaller people have been allowed relief in various parts of Delhi not only the bigger people in Greater Kailash but also the smaller people in Shahdhra and other areas."

1.79 The present position of the implementation of the Urban Land (Ceiling and Regulation) Act in Delhi as intimated by the Ministry of Home Affairs in their note furnished to the Committee after evidence is indicated in the following Table :

- | | |
|-------------------------------|-----------|
| 1. Date on which U.L.C.R. Act | 17.2.1976 |
| come into force. | |

2. Total area of vacant land in excess of the ceiling limit determined upto 31.12.82. 18, 95, 219.09 Sq. metres.
3. Total number of statements filed under section 6(1) of the Act. 8364.
4. Total area in respect of which notification under section 10(3) of the act issued for acquisition of excess vacant land issued. 2,33,580.46 Sq. metres.
5. Total area in respect of which further action subsequent to Notification under section 10(3) of the Act stayed. 2,12,098.96 sq. meteres.
6. Total area of land acquired Nil
7. Total area of land disposed off Nil
8. Compensation paid for the land acquired so far. Nil
9. Total number of applications for exemption received and disposed off category-wise :—

	<i>RECEIPT</i>	<i>DISPOSAL</i>	<i>PENDING</i>
RESIDENTIAL	1900	1379	521
COMMERCIAL	103	65	38
INDUSTRIAL	2059	1779	280
GROUP HOUSING	100	22	78
TOTAL :	4162	3245	917

1.80 Asked whether the Delhi Administration had suggested and amendments to the Urban Land Ceiling Act, in the light of their experience in implementing the Act in Delhi, the Chief Secretary, Delhi Administration stated in evidence ;

"You asked as whether we suggested specific amendments to the Act.

The answer to that is "No." There has been a dialogue regarding implementation of the various guidelines which have come down to us from the Ministry of Works and Housing. In the course of the discussion and dialogue on the implementation of the guidelines from the Ministry, certain suggestions have been made. Meanwhile, the Ministry of Works and Housing to my understanding, has been receiving suggestions from various other States also. There have been a number of High Court Judgements. The Ministry of Works and Housing has, therefore, to take an all India view regarding specific amendments to be carried out in the Urban Land Ceiling Act."

1.81 On being asked whether the Delhi Administration had made any specific suggestions to the Ministry of Home Affairs in this direction, the witness stated :

"Not to Home Ministry but to the Works and Housing Ministry ; not with reference to specific provisions of the Act, but with reference to guidelines."

1.82 The Committee desired to know the amendments in guidelines suggested by the Delhi Administration. In a note furnished to the Committee after evidence, the Ministry of Home Affairs stated .—

"The Delhi Administration had suggested the following amendments to the guidelines issued by the Ministry of Works and Housing :

- (a) Construction should be allowed on the entire plot including the exempted land.**
- (b) The exempted land should not be allowed to be transferred by way of sale, gift, mortgage without the permission of the exempting authority.**
- (c) That in case plots with an area of more than 950 sq. mts. but less than 2000 sq. mts. which are partly/nominally constructed and where owners have built garrage after covering an area of 45 sq. mts. or so and dwelling units on the first floor in accordance with the approved building plan, such partly constructed plots should be treated as built up plots for consideration of exemption upto 2000 sq. mts. under section 20 of the UL(C&R) Act,**

- (d) Reconsideration of the guidelines of the Ministry that the UL (C&R) Act prohibits voluntary transfers of excess vacant land by the land owners only and not involuntary transfer arising out of the court decree. This was so because it was felt that people would obtain cellusive decrees in courts.
- (e) Whether the group housing should be permitted on the entire plot after demolition of the existing structures or can be permitted at on the surplus land only.
- (f) Whether request of the plot holders having plots of very big size say more than 2000 sq. mts. should be allowed to undertake group housing keeping in view the environmental and aesthetic condition of the area and the available facilities such as sewage, water, electricity, transportation, education and other common services.

Suggestions contained at Sl. Nos. (b) and (c) have been accepted by the Ministry of Works and Housing. For (d) they have advised Administration to consider each case on merit. The suggestions at Sl. No. (e) and (f) have been referred back to the Administration for reconsideration and the same are under review."

1.83 The Committee wanted to know the experience of the Delhi Administration with regard to the implementation of the Urban Land Ceiling Act in the context of the restrictions against transfer of land imposed by the Delhi Lands (Restriction on Transfer) Act, 1972 and the reaction of the Department dealing with the Urban Land Ceiling Act in respect of the 743 cases pointed out by Audit in their Reports for the years 1976-77, 78-79 and 80-81. The Ministry of Home Affairs in their note *inter alia* stated :

"...the Urban Land (Ceiling & Regulation) Act covers the sale of land within the urbanisable limits as defined in the Act whether notified or not notified whereas the Delhi Lands (Restriction on Transfer) Act, 1972 restricts the sale of acquired and notified lands.

Although some cases purported to be transaction or transfer of notified lands in violation of the Delhi Lands (Restriction on Transfer) Act, 1972 in the form of execution of power of attorney, agreement to sell etc. have come to our notice, no

such violations of the provisions of Urban Land (Ceiling & Regulation) Act, 1976 by circumventing through execution of power of attorney has come to the notice of Delhi Administration."

Multiplicity of authorities in Delhi

1.84 On the role of the Delhi Administration in the acquisition of land in Delhi, the Home Secretary *inter alia* deposed during evidence :

"I would like to just mention, in fairness to the Delhi Administration the role of the Administration in respect of the DDA is different. It is DDA which works out the schemes.....and the role of the Delhi Administration is confined only to the land acquisition notices. The DDA does not function directly under the Delhi Administration but under the Ministry of Works & Housing. The position of Delhi Administration becomes difficult ; they go on asking for the information again and again....."

1.85 Asked whether they had any suggestions to offer in order to rectify the situation, the witness stated :

"So far as I am concerned, I believe that Delhi needs intensive and integrated administration instead of parallel authorities which result in wastefulness and also has assessment to the citizens."

1.86 Under the Delhi Lands (Restriction on Transfer) Act, 1972, no person shall, except with the specific permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise, any land or part thereof situated in the Union Territory of Delhi which is proposed to be acquired for public purpose under the Land Acquisition Act, 1894. The Act also prohibits registration of any document of transfer by sale, etc. of such land under the Indian Registration Act, 1908 unless the transferor produces before the Registering Officer, permission in writing of the competent authority for such transfer.

1.87 Under the Indian Registration Act, 1908 a power of attorney to sell immovable property for consideration is required to be registered. Under the Indian Stamp Act, 1899 (as applicable to the Union Territory of Delhi), a power of attorney to sell any immovable property is liable to stamp duty at the rate of 3 per cent of the amount of consideration. A general power of attorney, when given without consideration is chargeable with a fixed stamp duty of Rs. 10 only. The Act also lays down that the consideration and all

other facts and circumstances affecting the chargeability of any instrument with duty or the amount of with which it is chargeable, shall be fully and truly set forth therein. Failure to do so, renders the executant or any person employed or concerned in or about as the preparation or the instrument, liable to a fine under the Act, which may extend upto Rs. 5,000.

1.88 The Committee find that a test check of the documents registered in four sub-registries in Delhi during the years 1978-9 and 1979-80 by Audit had revealed that in 134 cases, the owners of lands etc. instead of executing regular transfer deeds, had taken recourse to the execution of general power of attorney in favour of the would be purchasers of the immovable properties and authorising them to sell the properties, but without mentioning the sale price or the consideration to be received. On cross verification with the receipts registered simultaneously it was observed by Audit that a total sum of Rs. 51.13 lakhs was received by the executants of the powers of attorney in these 134 cases from close relatives and friends of the would be purchasers but without mentioning the details of the properties or the fact, of the amount being the consideration, on the receipts. The Committee note that the Audit Report for the year 1978-79 had revealed 561 similar cases of execution of power of attorney during the years 1972-73 to 1977-78 involving a total consideration of Rs. 99.54 lakhs. The Audit Report for the year 1976-77 also dealt with 48 cases of similar circumvention of transfer restrictions by executing general power of attorney and consequential loss of stamp duties.

1.89 The details of the total number of transfer deeds and powers of attorney registered in Delhi since 1972 furnished by the Ministry of Home Affairs, revealed that in the year 1973, i.e. after the introduction of the Delhi Lands (Restriction on Transfer) Act, 1972, the total number of transfer deeds registered came down from 47,995 in 1972 to 30,486 whereas the total number of General powers of Attorney registered, increased from 8,398 in 1972 to 26,605. This trend was repeated in the subsequent year 1974 when the number of transfer deeds stood at 33,357 while the number of general powers of attorney registered went up 29,410. But for the short spell of two years in 1975 and 1976 when the total number of both, transfer deeds and power of attorneys, had come down, the total number of registrations of General Powers of Attorney had been showing an increasing trend vis-a-vis the total number of registrations. In view of the Committee this clearly indicates that after the enactment of the Delhi Lands (Restriction on Transfer) Act, 1972, people are increasingly resorting to transfer of

property through the instrument of general power of attorney instead of executing regular transfer deeds. Further, the result of the test checks conducted by the organisation of the C & Ar. G. in respect of documents registered reinforce the Committee's conclusion that the circumvention of the transfer restrictions imposed by the Delhi Lands (Restriction on Transfer) Act, 1972 and the consequential loss of stamp duty because of the restriction on transfers, are fairly widespread.

1.90 The Committee note that the following *modus operandi* was generally adopted, in the cases reported in the Audit Paragraph, in order to circumvent the restrictions against transfer of immovable properties which led also to consequential loss of stamp duty :

- (i) the would be Vendor (seller) executes an irrevocable general power of attorney in favour of the vendee without mentioning the fact of sale or the consideration received, because transfers are prohibited.
- (ii) the receipt for an amount as consideration for sale is from the friends or relations of the would be purchaser (this is received sometimes before the sub-registrar) but without mentioning the details of property or the purpose of the payment on the receipt ;
- (iii) the would be vendor and vendee reportedly execute an agreement to sell which is not produced before the Sub-Registrar for registration and no mention of this agreement to sell is made either in the power of attorney or in the receipt ; the agreement is however reportedly registered in some cases separately by the registrar.
- (iv) in addition a "will" is also executed by the would be vendor in favour of the would be vendee, by which the former bequethes his property in favour of the latter, after his death.

1.91 The Ministry of Home Affairs have explained that the General Power of Attorney, the Receipt, the Agreement to sell and the will do not confer any rights on the would be vendee. There is no sale or transfer of title effected by the above *modus operandi*. According to the Ministry, Power of Attorney only empowers the holder of the power to act on behalf of the executant. The receipt without reference to property gives no title. Agreement to sell gives no title and any will can be revoked at any time and has no effect till after death of the testator provided it has not been revoked before the testators death. Registration of will does not protect it from being

revoked by testator at any time before his death. In the type of cases mentioned in the Audit Paragraph, no title to the property passes. The Committee are surprised to note that the Delhi Administration has not made any serious effort to give adequate publicity to this fact. The explanation of the Ministry that a public notice was displayed outside the offices of Sub-registries in Delhi, which merely stated, "a general power of Attorney, authorising a person to sell land/property belonging to the Principal, even if it is for a consideration does not confer any property rights on the person so authorised" was certainly not adequate. Keeping in view the large number of such transactions and the astronomical rise in the prices of land over the years and the racketeering in purchase and sale of land in Delhi by unscrupulous colonisers, the Committee are of the view that notices of such vital public importance ought to have been given wider and more elaborate publicity and repeated at frequent intervals.

1.92 The Committee find that as far back as 1975 the Government were fully aware of the *modus operandi* adopted by people in order to circumvent the restrictions on transfer. On 14 April, 1975, the Inspector General of Registration had drawn the attention of all the registering authorities of Delhi to the fact that "certain unscrupulous persons have, instead of executing regular transfer deeds, taken recourse to the execution of general power of attorney in favour of the purchaser with a view to avoid compliance with the provisions of Delhi Lands (Restrictions on Transfer) Act, 1972". The registering authorities were further advised to "call up on the parties concerned to comply with the requirement of the 1972 Act before registering documents". What is shocking is the admission of the Ministry of Home Affairs, that the underlying idea of these instructions was to discourage registration of such general powers of attorney, even though the Ministry now contends that if some parties insisted upon registration of documents as per *modus operandi* indicated above, the registrars could not refuse to effect the registrations. It is also surprising that the department is now taking the stand that there is no evidence to dispute the plea of the executants that the instruments to be registered do not refer to any transfer. On enquiry by the Committee, the Department has stated that mutations had been carried out in the municipal records in 30 such cases and transfer duty was charged by municipal corporation in 3 cases and without reference to any general power of attorney (which cannot effect a transfer). If there was legally no transfer in any of these cases, as the department alleges, it is surprising that change of ownership in the municipal records was brought about. Such change is evidence for all, including the registrars who can take recourse to

the penal provisions of Stamp Duty Act on the ground that the non-transfer documents registered did not set out the full and true facts. The Committee are distressed over the indecision in the department as to whether action should be taken to block registration (as was the view in 1975) by actually collecting and using evidence pointing at the reality of the fact of sale or transfer, or whether the department should adopt an approach of legally closing its eyes to real facts as in fact its present stand typifies.

1.93 It is ironical that while the Act and the instructions issued thereunder were intended to curb transfer of property, the illegal transfer through the medium of the general power of attorney were in fact taking place and no further administrative instructions were issued to registrars that they should look for evidence indicating the full and true particulars of the real transactions and question, the simple receipts being advanced for registration, alleging that they were really sale receipts relating to illegal sales in violation of the 1972 Act. In the view of the Committee the 1972 Act created a contradictory state of affairs whereby sale was prohibited. But such prohibited sale was indulged in. By denying registration to such sale and by going along with an artificial set of documents and registering them, the department was giving reality to fiction and losing stamp duty in the bargain by its own action of registering such artificial documents. Far from curbing illegal transfers which have not only made a mockery of the relevant provision made in the legislation of 1972, the blind legal view that was taken helped in promoting illegal transfers. It is not that insistence on higher stamp duty would have curbed such illegal transfers. Law could not stop the urges to effect the transfers. The substantial loss of stamp duty is only an unfortunate side effect of the prohibition in the 1972 Act. The Committee cannot but express their distress at the indifferent attitude of the concerned authorities to the real harassment caused to owners of land in having to engage in illegal transfers and at the fact that no attempt was made to effect the right cure by amending the provisions in 1972 Act suitably. Also administratively more sympathetic reception to application of transfers under 1972 Act by the competent authorities alongside suitably advising the registrars to block fictitious transfers through the mediums of general powers of attorney were actions which were clearly warranted.

1.94 During evidence, the representative of the Delhi Administration stated that in the 48 cases pointed out in the Audit Report in 1976-77, it was possible to link up the power of attorney with the receipt as both the documents had been executed by the same parties and the considerations had been received by the executor from the executant who have been given *inter alia*

the power to sell the property. However, subsequently people became wiser. So, the person who executes the power of attorney does not himself sign the receipt or issue it, it is done by his friend or relation". In the 561 cases pointed out in Audit Report for 1978-79 and 134 cases indicated in the present Audit Report the general power of attorney did not refer to any consideration though it authorised the attorney to sell immovable property. The receipt also did not refer to any transaction whatsoever between the executor of the general power of attorney and the attorney. It only acknowledged receipt of money by a near relation of the purchaser from the executant. No purpose whatsoever, for which the money has been paid is indicated on the receipt. The Registration authorities are not competent to compel the executants to indicate the purpose for which the receipt was being executed. However, the Committee find that on 13 December 1982, the Chief Controlling Revenue Authority of the Delhi Administration referred a case to the Delhi High Court under the Advisory jurisdiction which lies with them under Section 57 (1) of the India Stamp Act 1899 seeking the opinion of the High Court on the question whether the General Power of Attorney and the Receipt in question can be clubbed and stamp duty charged under Article 48 (f) of Schedule 1-A of the Indian Stamp Act and also whether it would make any difference if such General Power of Attorney and Receipt indicate that the consideration mentioned in a separate receipt flows directly from the power of attorney. The Committee are surprised that the reference seeking advisory opinion does not make any reference to get confirmation of the inherent power of registrar to controvert the plea of the executant, when *prima facie* evidence is available with him or can easily be collected by him that executant has not set forth the real transaction fully and truly and charge the correct amount of stamp duty. The real issue for reference to the High Court is not merely whether duty would be chargeable under Article 48 (f) of Schedule 1-A in such cases but how *i.e.* whether it is open to the registrar to so confront the executant with *prima facie* evidence that the real transaction is not being fully and truly set forth in the document sought to be registered and that the simple money receipt in fact does not give the full and true facts relating to a real sale.

1.95 The Committee recommend that such a supplementary reference be made to the High Court accordingly (to be made part of the original reference). Considering the fact that the audit objections in respect of 561 cases were pointed out to the department as far back as in October 1977, the Committee find no justification whatsoever for the delay on the part of the registrars of the Delhi Administration in calling for full facts from executants

on such cases after October 1977. This is indicative of the indifferent and callous attitude of the authorities towards a situation which involved substantial loss of stamp duties in addition to manipulation of gullible citizens by unscrupulous dealers in land.

1.96 What is all the more shocking is that a proposal was mooted as far back as in August 1976, to amend the Delhi Lands (Restrictions on Transfer) Act, 1972 (and in such amendment lay right solution to the problem). The question of amendment has been shuttling between various departments of the Government of India for a period of about 7 years without any concrete result. An amendment proposed by the Ministry of Works and Housing in August 1976 was approved by the Executive Council of the Delhi Administration for being placed before the Metropolitan Council. The Delhi Administration vide its letter dated 9 September 1977 finally suggested certain further amendments. However, the meeting of the officials of the various Ministries including Law called to discuss the issue was held only about 5 years later, on 10 May 1982, after the irregularities had been highlighted in the Audit Paragraph under examination. According to the Ministry of Home Affairs during the interim period, "the matter was followed up with the Ministry of Works and Housing, Government of India, constantly". It is distressing to note that a vital issue involving substantial harassment to people (not to mention loss of revenue to the Government) was allowed to remain unresolved for such a long period of time. The Committee cannot but express their severe displeasure at this.

1.97 The Committee find that the Delhi Administration have now reconsidered the earlier amendment. But their revised amendment proposed on 24 September, 1982 in the light of the comments given by the Ministry of Works and Housing on the basis of their discussion held on 10 May 1982 is somewhat ill advised. The proposed amendment seeks to deem transfer of land through execution of a power of attorney as a sale unless the person executing the power of attorney has obtained prior approval from the Competent Authority under the 1979 Act and fulfills the necessary requirements. The Committee cannot but observe that such a proposal striking at the very root of time established concepts underlying the Transfer of Property Act is a case of barking up the wrong tree, when the real mischief to be cured is in the 1972 Act.

1.98 During evidence, the Home Secretary admitted that there had been many clandestine transactions of land in Delhi. He was also forthright in observing that, "some unscrupulous colonisers and even individuals have adopted clandestine methods for transfer of land". Recalling his personal

experience as Chief Secretary in Delhi, he stated that such practices had been prevailing in Delhi and the administrative efforts through warnings, cautions or directions to the sub-registrars did not work either because there was some collusion or some legal difficulties were pointed out by the Delhi Administration. He pertinently observed, "...because of these malpractices and clandestine practices, public interest has suffered; while the genuine seller is put to a lot of difficulties, the colonisers have taken advantage of it." According to him in order to check loss of revenue in the type of cases dealt with in the present Audit Paragraph, amendments in 1972 Act, Transfer of Property Act and Registration Act were very necessary to bring some kind of harmony and consonance. As stated earlier, under the Delhi Lands (Restriction on Transfer) Act, 1972 restrictions on transfer etc. are imposed on such land situated in the Union Territory of Delhi as are proposed to be acquired under the Land Acquisition Act, 1894. According to the present system of acquisition of land under the Land Acquisition Act, 1894, whenever it appears to the Government that land in any locality is needed or likely to be needed, a notification to that effect is issued under Section 4 of that Act. When the Government is satisfied that the land issued under Section 4 is required for a public purpose, a further notification is issued under Section 6 of the Land Acquisition Act, 1894. In other words, Section 4 notification is a proposal for acquisition whereas Section 6 notification is the declaration that the land is required for public purpose. Prior to 1967, there was no time limit for notifying the land under Section 6 after it was frozen under Section 4 of the Land Acquisition Act, 1894. By an amendment of the law in 1967 it has been provided that if notification under Section 6 is not issued within a period of 3 years from the date of freezing the land by notification under Section 4, the latter notification lapses. The Delhi lands (Restrictions on Transfer) 1972 imposes restrictions on transfer of such lands only which are notified for acquisition under Section 6 of the Land Acquisition Act and not under Section 4.

1.99 It is no secret that there has been widespread corruption and large scale racketeering in land in Delhi. Instances have come to notice where owners whose lands were notified under Section 4 were approached by anti-social elements and unscrupulous colonisers and told that their lands were going to be acquired. The poor land owners were induced to part with their land at throw away prices. Such lands were then sold by these anti-social elements at very exorbitant prices. During evidence, the Chief Secretary, Delhi Administration admitted that such cases had come to notice.

The Ministry of Home Affairs have stated that all vacant lands required for implementation of Master Plan of Delhi were notified under Section 4 during the year 1957 to 1961. Such lands (about 23,000 acres) have also been notified under Section 6. During 1980-81, 16,455 acres lying outside the urbanizable limits of Master Plan of Delhi were notified under Section 6, however Courts have stayed further proceedings in respect of 15,405 acres.

1.100 The Committee are constrained to observe that it was the responsibility of the Delhi Administration to educate the owners of land particularly the poor cultivators as to the correct and precise implications of the notification under Section 4 so as to protect them from falling a prey to the unscrupulous colonisers and colluding officials. The Committee are pained to note that the representatives of the Delhi Administration sought to undermine the necessity of giving such wide publicity by stating that the cultivators in Delhi are 'quite awake' and "follow each and every notification". They recommend that in respect of lands not notified under Section 6 of the Land Acquisition Act 1894 and in respect of which a notification has been issued only under Section 4 and that notification has lapsed publicity be given to the lapsing and the owners of such lands be advised of the lapse of notifications immediately. Wide publicity should be given through advertisement in newspaper and also by endorsing such notices to the gram panchayats and other local authorities about transferability of lands where only Section 4 notification have issued so that the owners are owners are not exploited by anti-social elements in and out-side the Administration. Where Section 4 notifications have not lapsed but Section 6 notification has not issued, the Committee recommend that within one year, such land as is required for public utility purpose under the approved development Plan only be notified under Section 6 for acquisition and acquire within one year and all other such lands be wholly denotified and their transfers under normal commercial practices be not restricted in any way.

1.101 What has perturbed the Committee is that as a result of the restrictions imposed by the Delhi Lands (Restriction on Transfer) Act, 1972 and the alleged refusal of the authorities to allow registration of transfer of such lands which were notified only under Section 4, a large number of unauthorized colonies came up in Delhi and they were subsequently regularised

by the Delhi Administration. The Committee cannot but conclude that the Delhi Administration by its present policy has been a party to the growth of unauthorised colonies in Delhi. This is a deplorable state of affairs and must be remedied without delay.

1.102 The Committee understand that some of the land acquired by the Delhi Administration more than 20-25 years back is still lying unutilised. The Committee do not find any justification in the acquisition of any land when the authorities concerned are not able to develop all utilise it within a reasonable period of time. The Committee recommend that before issuing notifications for acquisition of land Government should carefully assess the requirements with much more care than is in evidence over a foreseeable future so as to curb speculative activities and growth of unauthorised colonies.

1.103 The Committee are surprised to note in this connection that the Delhi Administration does not maintain any record of utilisation of land after the same has been acquired and possession handed over to the Department/organisation concerned. This is an appalling situation. The Committee consider that the working of the Land and Building Department of the Delhi Administration needs to be thoroughly revamped and streamlined for the administration to ensure orderly growth of the city. The Committee would urge the Ministry of Home Affairs to set up a Task Force to go thoroughly into the working of this Department with a view to taking necessary remedial measures. The Committee would like to be apprised of the action taken in this regard within six months.

1.104 The Committee understand that in certain areas in Delhi, very low compensation was paid to the cultivators towards the cost of their land. The Chief Secretary, Delhi Administration assured the Committee in evidence that after the introduction of certain amendments to the Land Acquisition Act (now before the Parliament) the position would improve. In para 5.29 of their 18th Report (Seventh Lok Sabha), the Committee had drawn attention to the exorbitant rates at which plots were sold by DDA after acquiring the land at very low rates. In para 1.39 of their 104th Report on action taken by Government on the 18th Report, the Committee have made some further recommendations for consideration by Government, while amending the Land Acquisition Act 1894. The

Committee expect that the matter would be gone into in all its aspects and it would be ensured that the poor land owners get at least some share of the overall profits of the DDA.

1.105 The Committee note that on acquisition of land from an agricultural family, it is stipulated that the family would be provided 250 sq. meter of land. The Committee regret to find that as on 1.1.1983 as many as 1961 applications were pending with Delhi Administration for being forwarded to DDA for providing alternative plots. What is still more shocking is that 23 cases were pending for periods prior to 1979 and 90 since 1970. It is a common knowledge that the delays generate corruption. The Committee would like that reasons for such prolonged delays in forwarding the applications to DDA should be thoroughly investigated and punishment awarded to those found guilty. Urgent step should also be taken to complete all the formalities and forward these applications to DDA within a stipulated period.

1.106 The Committee note that the Urban Land (Ceiling and Regulation) Act, 1976 is administered in Delhi by the Ministry of Works and Housing. The Committee were informed that no cases of circumvention of the Urban Land Ceiling Act by transfer through execution of power of Attorney had come to the notice of Delhi Administration. As regards implementation of the Act, the Committee were informed that as on 31 December 1982, 18.95 lakh sq. meters of vacant land in excess of the ceiling limit has been determined. Out of this, notifications for acquisition of vacant lands have been issued in respect of as few as 2.34 lakhs sq. mts. of lands. Even out of these, further action has been stayed by the Court in respect of 2.12 lakh sq. mts. of land. The total area of land acquired/disposed of is nil. No surprise, the Act has had hardly any impact on land prices. The Committee recommend that the Task Force recommended above should also look into the reasons for the tardy implementation of the Act which again is the responsibility of the Land and Building Department.

1.107 In this connection the Committee note that the Delhi Administration had suggested certain amendments to the guidelines issued by the Ministry of Works and Housing for the implementation of the Urban Land Ceiling Act. The Committee were informed that some of these suggestions have been accepted by the Ministry of Works and Housing while certain others have been sent back to the Delhi Administration for

re-consideration. The Committee desire that all the pending issues be sorted but expeditiously so as to facilitate better implementation of the Urban Land Ceiling Act.

1.108 The Committee were informed that the Delhi Administration has proposed certain amendments to the Stamp Act whereby the rates of duty are proposed to be enhanced so as to bring them at par with the neighbouring States. The proposed rates are expected to generate additional revenue to the extent of Rs. 1.80 crores per year. In the context of the examination of the present Audit Paragraph, the Committee were informed that under the amendments to the Stamp Act effected in many States by way of a new Section 47A, the Collector can *suo motu* call for the documents to satisfy himself about the duty paid thereon but such a provision does not exist in the Stamp Act of Delhi. The Committee recommend that the Ministry of Home Affairs should also examine the feasibility of incorporating a similar provision in the proposed Delhi Stamp (Amendment) Bill.

1.109 The Committee find that the role of Delhi Administration in the development of Delhi is unenviable. While the Delhi Development Authority works out the schemes, the role of Administration is confined only to the issue of land acquisition notes. The DDA does not function under the Delhi Administration, but under the Ministry of Works and Housing. The result is that the Delhi Administration is not in a position to satisfy itself while issuing acquisition notices that the land is actually required for the development of Delhi. Similarly, after the acquisition of land, the Administration is not aware if the land has been actually utilised or not. In this connection, the Committee endorse the view expressed by the Home Secretary that "Delhi needs intensive and integrated administration instead of parallel authorities which result in wastefulness and also harassment to the citizens." As the Ministry of Home Affairs is itself finally responsible for the administration of the Capital City, the Committee expect that concrete steps would be taken without loss of time to provide an unified and integrated set up for the metropolis to fulfil the long cherished dream of the common man who has to run from pillar to post for getting odd jobs done for him. The Committee would be interested

~~in knowing the action proposed to be taken by the Ministry of Home Affairs on this score.~~

NEW DELHI,

23 April, 1983

3 Vaisakha, 1905 (S)

SATISH AGARWAL

Chairman

Public Accounts Committee.

APPENDIX

Statement of Conclusions and Recommendations

S.No	Para No.	Ministry Concerned	Recommendations and Conclusions
1	2	3	4
1	1.86	Ministry of Home Affairs	Under the Delhi Lands (Restriction on Transfer) Act, 1972, no person shall, except with the specific permission in writing of the competent authority, transfer or purport to transfer by sale, mortgage, gift, lease or otherwise, any land or part thereof situated in the Union Territory of Delhi which is proposed to be acquired for public purpose under the Land Acquisition Act, 1894. The Act also prohibits registration of any document of transfer by sale, etc. of such land under the Indian Registration Act, 1908 unless the transfer or produces before the Registering Officer, permission in writing of the competent authority for such transfer.
2	1.87	-do-	Under the Indian Registration Act, 1908 a power of attorney to sell immovable property for consideration is required to be registered. Under the Indian Stamp Act, 1899 (as applicable to the Union Territory of Delhi), a power of attorney to sell any immovable property is liable to stamp duty at the rate of 3 per cent of the amount of consideration. A general power of attorney, when given without consideration is chargeable with a fixed stamp duty of Rs. 10 only. The Act also lays down that the consideration and all other facts and circumstances affecting the charge-

ability of any instrument with duty or the amount of duty with it is chargeable, shall be fully and truly set forth therein. Failure to do so, renders the executant or any person employed or concerned in or about the preparation or the instrument, liable to a fine under the Act, which may extend upto Rs. 5,000.

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The Committee find that a test check of the documents registered in four sub-registries in Delhi during the years 1978-79 and 1979-80 by Audit had revealed that in 134 cases, the owners of lands etc. instead of executing regular transfer deeds, had taken recourse to the execution of general power of attorney in favour of the would be purchasers of the immovable properties and authorising them to sell the properties, but without mentioning the sale price or the consideration to be received. On cross verification with the receipts registered simultaneously it was observed by Audit that a total sum of Rs. 51.13 lakhs was received by the executants of the powers of attorney in these 134 cases from close relatives and friend of the would be purchasers but without mentioning the details of the properties or the fact, of the amount being the consideration, on the receipts. The Committee note that the Audit Report for the year 1978-79 had revealed 561 similar cases of execution of power of attorney during the years 1972-1973 to 1977-78 involving a total consideration of Rs. 99.54 lakhs. The Audit Report for the year 1976-77 also dealt with 48 cases of similar circumvention of transfer restrictions by executing general power of attorney and consequential loss of stamp duties.

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4	1.89	Ministry of Home Affairs]	<p>The details of the total number of transfer deeds and powers of attorney registered in Delhi since 1972, furnished by the Ministry of Home Affairs, revealed that in the year 1973, i.e. after the introduction of the Delhi Lands (Restriction on Transfer) Act, 1972, the total number of transfer deeds registered came down from 47,995 in 1972 to 30,486 whereas the total number of General Powers of Attorney registered, increased from 8,398 in 1972 to 26,605. This trend was repeated in the subsequent year 1974 when the number of transfer deeds stood at 33,357 while the number of general powers of attorney registered went up 29,410. But for the short spell of two years in 1975 and 1976 when the total number of both, transfer deeds and power of attorneys, had come down, the total number of registrations of General Powers of Attorney had been showing an increasing trend <i>vis-a-vis</i> the total number of registrations. In the view of the Committee this clearly indicates that after the enactment of the Delhi Lands (Restriction on Transfer) Act, 1972, people are increasingly resorting to transfer of property through the instrument of general power of attorney instead of executing regular transfer deeds. Further, the result of the test checks conducted by the organisation of the C & Ar. G. in respect of documents registered reinforce the Committee's conclusion that the circumvention of the transfer restrictions imposed by the Delhi Lands (Restriction on Transfer) Act, 1972 and the consequential loss of stamp duty because of the restriction on transfers, are fairly widespread.</p>
5	1.90	-do-	<p>The Committee note that the following <i>modus-operandi</i> was generally adopted, in the cases reported in the Audit Paragraph, in order to circum-</p>

vent the restrictions against transfer of immovable properties which led also to consequential loss of stamp duty :

- (i) the would be Vendor (seller) executes an irrevocable general power of attorney in favour of the vendee without mentioning the fact of sale or the consideration received, because transfers are prohibited.
- (ii) the receipt for an amount as consideration for sale is from the friends or relations of the would be purchaser (this is received sometimes before the sub-registrar) but without mentioning the details of property or the purpose of the payment on the receipt;
- (iii) the would be Vendor and Vendee reportedly execute an agreement to sell which is not produced before the Sub-Registrar for registration and no mention of this agreement to sell is made either in the power of attorney or in the receipt ; the agreement is however reportedly registered in some cases separately by the registrar.
- (iv) in addition a "will" is also executed by the would be vendor in the favour of the would be vendee, by which the former bequeaths his property in favour of the latter, after his death.

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The Ministry of Home Affairs have explained that the General Power of Attorney, the Receipt, the Agreement to sell and the will do not confer any rights on the would be vendee. There is no sale or transfer of title effected by the above in *modus operandi*. According to the Ministry, a

Power of Attorney only empowers the holder of the power to act on behalf of the executant. The receipt without reference to property gives no title. Agreement to sell gives no title and any Will can be revoked at any time and has no effect till after death of the testator provided it has not been revoked before the testator's death. Registration of will does not protect it from being revoked by testator at any time before his death. In the type of cases mentioned in the Audit Paragraph, no title to the property passes. The Committee are surprised to note that the Delhi Administration has not made any serious effort to give adequate publicity to this fact. The explanation of the Ministry that a public notice was displayed outside the offices of Sub-registries in Delhi, which merely stated, "a general Power of Attorney, authorising a person to sell land/property belonging to the Principal, even if it is for a consideration does not confer any property rights on the person so authorised" was certainly not adequate. Keeping in view the large number of such transactions and the astronomical rise in the prices of land over the years and the racketeering in purchase and sale of land in Delhi by unscrupulous colonisers, the Committee are of the view that notices of such vital public importance ought to have been given wider and more elaborate publicity and repeated at frequent intervals.

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L 1.92 Ministry of Home Affairs

1.92 The Committee find that as far back as 1975 the Government were fully aware of the *modus operandi* adopted by people in order to circumvent the restrictions on transfer. On 14 April, 1975, the Inspector General of Registration had drawn the attention of all the registering authorities of Delhi to the fact that "certain unscrupulous persons have,

instead of executing regular transfer deeds, taken recourse to the execution of general power of attorney in favour of the purchaser with a view to avoid compliance with the provisions of Delhi Lands (Restriction on Transfer) Act, 1972. The registering authorities were further advised to "call upon the parties concerned to comply with the requirement of the 1972 Act before registering documents". what is shocking is the admission of the Ministry of Home Affairs, that the underlying idea of these instructions was to discourage registration of such general powers of attorney, even though the Ministry now contends that if some parties insisted upon registration of documents as per *modus operandi* indicated above, the registrars could not refuse to effect the registrations. It is also surprising that the department is now taking the stand that there is no evidence to dispute the plea of the executants that the instruments to be registered do not refer to any transfer. On enquiry by the Committee, the Department has stated that mutations had been carried out in the municipal records in 30 such cases and transfer duty was charged by municipal corporation in 3 cases and without reference to any general power of attorney (which cannot effect a transfer). If there was legally no transfer in any of these cases, as the department alleges, it is surprising that change of ownership in the municipal records was brought about. Such change is evidence for all including the registrars who can take recourse to the penal provisions of Stamp Duty Act on the ground that the non-transfer documents registered did not set out the full and true facts. The Committee are distressed over the indecision in the department as to whether action should be taken to

8 1.93 Ministry of Home Affairs

block registration (as was the view in 1975) by actually collecting and using evidence pointing at the reality of the fact of sale or transfer, or whether the department should adopt an approach of legally closing its eyes to real facts as in fact its present stand typifies.

It is ironical that while the Act and the instructions issued thereunder were intended to curb transfer of property, the illegal transfer through the medium of the general power of attorney were in fact taking place and no further administrative instructions were issued to registrars that they should look for evidence indicating the full and true particulars of the real transactions and question the simple receipts being advanced for registration alleging that they were really sale receipts relating to illegal sales in violation of the 1972 Act. In the view of the Committee the 1972 Act created a contradictory state of affairs whereby sale was prohibited. But such prohibited sale was indulged in by denying registration to such sale and by going along with an artificial set of documents and registering them, the department was giving reality to fiction and losing stamp duty in the bargain by its own action of registering such artificial documents. Far from curbing illegal transfers, which have not only made a mockery of the relevant provision made in the legislation of 1972, the blind legal view that was taken helped in promoting illegal transfers. It is not that insistence on higher stamp duty would have curbed such illegal transfers. Law could not stop the urges to effect the transfers. The substantial loss of stamp duty is only an unfortunate side effect of the Prohibition in the 1972 Act. The Committee cannot but express their distress at the indifferent attitude of the concerned authorities to the real harassment caused to owners of land in having to engage in illegal transfers and at the fact that no attempt was made to effect the right

cure by amending the provisions in 1972 Act suitably. Also administratively mohe sympathetic reception to application of transfers under 1972 Act by the competent authorities alongside suitably advising the registrars to block fictitious transfers though the medium of general powers of attorney were actions which were clearly warranted.

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During evidence, the representative of the Delhi Administration stated that in the 48 cases pointed out in the Audit Report in 1976-77, it was possible to link up the power of attorney with the receipt as both the documents had been executed by the same parties and the considerations had been received by the executor from the executant who have been given *inter alia* the power to sell the property. However, subsequently people became wiser. So, the person who executes the power of attorney does not himself sign the receipt or issue it, it is done by his friend or relation". In the 561 cases pointed out in the Audit Report for 1978-79 and 134 cases indicated in the present Audit Report the general power of attorney did not refer to any consideration though it authorised the attorney to sell immovable property. The receipt also did not refer to any transaction whatsoever between the executor of the general power of attorney and the attorney. It only acknowledged receipt of money by a near relation of the purchaser from the executant. No purpose whatsoever, for which the money has been paid is indicated on the receipt. The Registration authorities are not competent to compel the executants to indicate the purpose for which the receipt was being execute. However, the Committee find that on 13 December 1982, the Chief Controlling Revenue Authority of the Delhi

Administration referred a case to the Delhi High Court under the Advisory jurisdiction which lies with them under Section 57(1) of the India Stamp Act 1899 seeking the opinion of the High Court on the question whether the General Power of Attorney and the Receipt in question can be clubbed and stamp duty charged under Article 48 (f) of Schedule 1-A of the Indian Stamp Act and also whether it would make any difference if such General Power of Attorney and Receipt indicate that the consideration mentioned in a separate receipt flows directly from the power of attorney. The Committee are surprised that the reference seeking advisory opinion does not make any reference to get confirmation of the inherent power of registrar to controvert the plea of the executant, when *prima facie* evidence is available with him or can be easily collected by him that executant has not set forth the real transaction fully and truly and charge the correct amount of stamp duty. The real issue for reference to the High Court is not merely whether duty would be chargeable under Article 48(f) of Schedule 1—A in such cases but how *i.e.* whether it is open to the registrar to so confront the executant with *prima facie* evidence that the real transaction is not being fully and truly set forth in the document sought to be registered and that the simple money receipt in fact does not give the full and true facts relating to a real sale.

10 1.95 Ministry of Home Affairs

The Committee recommend that such a supplementary reference be made to the High Court accordingly (to be made part of the original reference). Considering the fact that the audit objections in respect of 561 cases were pointed out to the department as far back as in October

1977, the Committee find no justification whatsoever for the delay on the part of the registrars of the Delhi Administration in calling for full facts from executants on such cases after October 1977. This is indicative of the indifferent and callous attitude of the authorities towards a situation which involved substantial loss of stamp duties in addition to manipulation of gullible citizens by unscrupulous dealers in land.

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What is all the more shocking is that a proposal was mooted as far back as in August 1976, to amend the Delhi Lands (Restriction on Transfer) Act, 1972 (and in such amendment lay the right solution to the problem). The question of amendment has been shuttling between various departments of the Government of India for a period of about 7 years without any concrete result. An amendment proposed by the Ministry of Works and Housing in August 1976 was approved by the Executive Council of the Delhi Administration for being placed before the Metropolitan Council. The Delhi Administration *vide* its letter dated 9 September, 1977 finally suggested certain further amendments. However, the meeting of the officials of the various Ministries including Law called to discuss the issue was held only about 5 years later, on 10 May 1982, after the irregularities had been highlighted in the Audit Paragraph under examination. According to the Ministry of Home Affairs during the interim period, 'the matter was followed up with the Ministry of Works and Housing, Government of India, constantly'. It is distressing to note that a vital issue involving substantial harassment to people (not to mention loss of revenue to the Government) was allowed to remain unresolved for such a long period of

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12	1.97	Ministry of Home Affairs	<p>time. The Committee cannot but express their severe displeasure at this.</p> <p>The Committee find that the Delhi Administration have now re-considered the earlier amendment. But their revised amendment proposed on 24 September, 1982 in the light of the comments given by the Ministry of Works and Housing on the basis of their discussion held on 10 May 1982 is somewhat ill advised. The proposed amendment seeks to deem transfer of land through execution of a power of attorney as a sale unless the person executing the power of attorney has obtained prior approval from the Competent Authority under the 1972 Act and fulfills the necessary requirements. The Committee cannot but observe that such a proposal striking at the very root of time established concepts underlying the Transfer of Property Act is a case of barking up the wrong tree, when the real mischief to be cured is in the 1972 Act.</p>
13	1.98	-do-	<p>During evidence, the Home Secretary admitted that there had been many clandestine transactions of land in Delhi. He was also forthright in observing that, "some unscrupulous colonisers and even individuals have adopted clandestine methods for transfer of land." Recalling his personal experience as Chief Secretary in Delhi, he stated that such practices had been prevailing in Delhi and the administrative efforts through warnings cautions or directions to the sub-registrars did not work either because there was some collusion or some legal difficulties were pointed out by the Delhi Administration. He pertinently observed, "...because of these mal-practices and clandestine practices, public interest has suffered ; while the genuine seller is put to a lot of difficulties, the colonisers have taken advantage of it". According to him in order to check loss of revenue in the typ</p>

of cases dealt with in the present Audit Paragraph, amendments in 1972 Act, Transfer of Property Act and Registration Act were very necessary to bring some kind of harmony and consonance. As stated earlier, under the Delhi Lands (Restriction on Transfer) Act, 1972 restrictions on transfer etc. are imposed on such land situated in the Union Territory of Delhi as are proposed to be acquired under the Land Acquisition Act, 1894. According to the present system of acquisition of land under the land Acquisition Act, 1894, whenever it appears to the Government that land in any locality is needed or likely to be needed, a notification to that effect is issued under Section 4 of that Act. When the Government is satisfied that the land issued under Section 4 is required for a public purpose, a further notification is issued under Section 6 of the Land Acquisition Act, 1894. In other words, Section 4 notification is a proposal for acquisition whereas Section 6 notification is the declaration that the land is required for public purpose. Prior to 1967, there was no time limit for notifying the land under Section 6 after it was frozen under Section 4 of the Land Acquisition Act, 1894. By an amendment of the Law in 1967 it has been provided that if notification under Section 6 is not issued within a period of 3 years from the date of freezing the land by notification under Section 4, the latter notification lapses. The Delhi Lands (Restriction on Transfer) Act, 1972 imposes restrictions on transfer of such lands only which are notified for acquisition under Section 6 of the Land Acquisition Act and not under Section 4.

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It is no secret that there has been widespread corruption and large scale racketeering in land in Delhi. Instances have come to notice where owners whose lands were notified under Section 4 were approached by

anti-social elements and unscrupulous colonisers and told that their lands were going to be acquired. The poor land owners were induced to part with their land at throw away prices. Such lands were then sold by these anti-social elements at every exorbitant prices. During evidence, the Chief Secretary, Delhi Administration admitted that such cases had come to notice. The Ministry of Home Affairs have stated that all vacant lands required for implementation of Master Plan of Delhi were notified under Section 4 during the year 1957 to 1961. Such lands (about 23,000 acres) have also been notified under Section 6. During 1980-81, 16,455 acres lying outside the urbanizable limits of Master Plan of Delhi were notified under Section 6, however Courts have stayed further proceedings in respect of 15,405 acres.

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20 1.100 Ministry of Home Affairs

The Committee are constrained to observe that it was the responsibility of the Delhi Administration to educate the owners of land particularly the poor cultivators, as to the correct and precise implications of the notification under Section 4 so as to protect them from falling a prey to the unscrupulous colonisers and colluding officials. The Committee are pained to note that the representatives of the Delhi Administration sought to undermine the necessity of giving such wide publicity by stating that the cultivators in Delhi are "quite awake" and "follow each and every notification". They recommend that in respect of lands not notified under Section 6 of the Land Acquisition Act 1894 and in respect of which a notification has been issued only under Section 4 and that notification has lapsed publicity be given to the lapsing and the owners of such lands be advised of the lapse

of notificatins immediately. wide publicity should be given through advertisement in newspaper and also by endorsing such notices to the gram panchayats and other local authorities about transferability of lands where only Section 4 notification have issued so that the owners are not exploited by anti-social elements in and outside the Administration, where Section 4 notifications have not lapsed but Section 6 notification has not issued, the Committee recommend that within one year, such land as is required for public utility purpose under the approved development plan alone be notified under Section 6 for acquisition and acquired within one year and all other such lands be wholly denotified and their transfers under norma commercial practices be not restricted in any way.

16 1.101 -do-

What has perturbed the Committee is that as a result of the restrictions imposed by the Delhi Lands (Restriction on Transfer) Act, 1972 and the alleged refusal of the authorities to allow registration of transfer of such lands which were notified only under Section 4, a large number of unauthorised colonies came up in Delhi and they were subsequently regularised by the Delhi Administration. The Committee cannot but conclude that the Delhi Administration by its present policy has been a party to the growth of unauthorised colonies in Delhi. This is a deplorable state of affairs and must be remedied without delay.

17 1.102 -do-

The Committee understand that some of the land acquired by the Delhi Administration more than 22-25 years back is still lying unutilised.

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			<p>The Committee do not find any justification in the acquisition of any land when the authorities concerned are not able to develop and utilise it within a reasonable period of time. The Committee recommend that before issuing notifications for acquisition of land Government should carefully assess the requirements with much more care than is in evidence over a foreseeable future so as to curb speculative activities and growth of unauthorised colonies.</p>
18	1.103	Ministry of Home Affairs	<p>The Committee are surprised to note in this connection that the Delhi Administration does not maintain any record of utilisation of land after the same has been acquired and possession handed over to the Department/organisation concerned. This is an appalling situation. The Committee consider that the working of the Land and Building Department of the Delhi Administration needs to be thoroughly revamped and streamlined for the administration to ensure orderly growth of the city. The Committee would urge the Ministry of Home Affairs to set up a Task Force to go thoroughly into the working of this Department with a view to taking necessary remedial measures. The Committee would like to be apprised of the action taken in this regard within six months.</p>
19	1.104	-do-	<p>The Committee understand that in certain areas in Delhi, very low compensation was paid to the cultivators towards the cost of their land. The Chief Secretary, Delhi Administration assured the Committee in evidence that after the introduction of certain amendments to the Land Acquisition Act (now before the Parliament) the position would improve.</p>

In para 5.29 of their 18th Report (Seventh Lok Sabha), the Committee had drawn attention to the exorbitant rates at which plots were sold by DDA after acquiring the land at very low rates. In para 1.39 of their 104th Report on action taken by Government on the 18th Report, the Committee have made some further recommendations for consideration by Government, while amending the Land Acquisition Act 1894. The Committee expect that the matter would be gone into in all its aspects and it would be ensured that the poor land owners get at least some share of the overall profits of the DDA.

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The Committee note that on acquisition of land from an agricultural family, it is stipulated that the family would be provided 250 sq. metre of land. The Committee regret to find that as on 1.1.1983 as many as 1961 applications were pending with Delhi Administration for being forwarded to DDA for providing alternative plots. what is still more shocking is that 23 cases were pending for periods prior to 1979 and 90 since 1979. It is a common knowledge that the delays generate corruption. The Committee would like that reasons for such prolonged delays in forwarding the applications to DDA should be thoroughly investigated and punishment awarded to those found guilty. Urgent steps should also be taken to complete all the formalities and forwards these applications to DDA within a stipulated period.

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21 1.106 -do-

The Committee note that the Urban Land (Ceiling and Regulation) Act, 1976 is administered in Delhi by the Ministry of works and Housing

The Committee were informed that no cases of circumvention of the Urban Land Ceiling Act by transfer through execution of power of Attorney had come to the notice of Delhi Administration. As regards implementation of the Act, the Committee were informed that as on 31 December, 1982, 18.95 lakh sq. mts. of vacant land in excess of the ceiling limit has been determined. Out of this, notifications for acquisition of vacant lands have been issued in respect of as few as 2.34 lakh sq. mts. of lands. Even out of these, further action has been stayed by the Court in respect of 2.12 lakh sq. mts. of land. The total area of land acquired/disposed of is nil. No surprise, the Act has had hardly any impact on land prices. The Committee recommend that the Task Force recommended above should also look into the reasons for the tardy implementation of the Act which again is the responsibility of the Land and Building Department.

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1.107 Ministry of Home Affairs

In this connection the Committee note that the Delhi Administration had suggested certain amendments to the guidelines issued by the Ministry of Works and Housing for the implementation of the Urban Land Ceiling Act. The Committee were informed that some of these suggestions have been accepted by the Ministry of Works and Housing while certain others have been sent back to the Delhi Administration for re-consideration. The Committee desire that all the pending issues be sorted out expeditiously so as to facilitate better implementation of the Urban Land Ceiling Act.

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1.108

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The Committee were informed that Delhi Administration has proposed certain amendments to the Stamp Act whereby the rates of duty

are proposed to be enhanced so as to bring them at par with the neighbouring States. The proposed rates are expected to generate additional revenue to the extent of Rs. 1.80 crores per year. In the context of the examination of the present Audit paragraph, the Committee were informed that under the amendments to the Stamp Act effected in many States by way of a new Section 470 the Collector can *suo motu* call for the documents to satisfy himself about the duty paid thereon but such a provision does not exist in the Stamp Act of Delhi. The Committee recommend that the Ministry of Home Affairs should also examine the feasibility of incorporating a similar provision in the proposed Delhi Stamp (Amendment) Bill.

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1.109

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The committee find that the role of Delhi Administration in the development of Delhi is unenviable. While the Delhi Development Authority works out the Schemes, the role of Administration is confined only to the issue of land acquisition notices. The DDA does not function under the Delhi Administration, but under the Ministry of Works and Housing. The result is that the Delhi Administration is not in a position to satisfy itself while issuing acquisition notices that the land is actually required for the development of Delhi. Similarly, after the acquisition of land, the Administration is not aware if the land has been actually utilised or not. In this connection, the Committee endorse the view expressed by the Home Secretary that "Delhi needs intensive and integrated Administration instead of parallel authorities which result in wastefulness and also harassment to the citizens". As the Ministry of Home Affairs is itself

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finally responsible for the administration of the Capital City, the Committee expect that concrete steps would be taken without loss of time to provide an unified and integrated set up for the metropolis fulfil the long cherished dream of the common man who has to run from pillar to post for getting odd jobs done for him. The Committee would be interested in knowing the action proposed to be taken by the Ministry of Home Affairs on this score.

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