

No. 11011/30/2015-LA
Government of India
Ministry of Road Transport & Highways

Transport Bhawan
1, Parliament Street,
New Delhi- 110001

Dated 13 January, 2016

To,

1. The Chairman,
National Highways Authority of India,
G-5&6, Sector-10, Dwarka,
New Delhi-75
2. The Managing Director,
National Highways Infrastructure Development Corporation Ltd,
PTI Building,
Parliament Street,
New Delhi-110001
3. The Director General, Border Roads,
Seema Sadak Bhawan,
Ring Road, Delhi Cantt
New Delhi-110010
4. Secretary/Principal Secretary,
Public Works Department,
All State Governments/Union Territories

Received
Rachid IRSHAD
14/1/16

SUBJECT : Applicability of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 to land acquisition under the National Highways Act, 1956 – reg,

Sir,

In continuation of this Ministry's letters of even number dated 29th April, 2015, 12th August, 2015 and 11th September, 2015 on the subject cited above, I am directed to say that for the purpose of settlement of the cases of acquisition of land for National Highways projects, where award of compensation had been made prior to 01.01.2015 but either the amount of compensation has not been paid to the erstwhile land owners or physical possession of the land so acquired has not been taken, the point of applicability of the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 was under consideration in this Ministry.

Contd./-

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2. The issue was referred to the Additional Solicitor General of India for legal opinion. The opinion has since been received and it has been opined that "in cases initiated under NH Act 1956 but award has not been announced by 31.12.2014, RFCTLARR Act 2013 will apply under Section 24(1) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013". You are, therefore, requested to take necessary action towards settlement of cases in accordance with the above opinion (copy attached for ready reference)

3. This issues with the approval of Minister (Road Transport & Highways and Shipping).

Yours faithfully,

Enclosure : As above.

(Maya Prakash)
Director
Telephone No. 2371 0454

- Copy for compliance to:-
1. Chief Engineers of all Project Zones of the Roads Wing of M/o RT&H
 2. All Regional Officers of M/o RT&H
 3. PS to Minister(RT&H)/PS to MoS(RT&H)
 4. S/ PPS to Secretary, RT&H/PPS to DG(RD&SS)
 5. PPS to all ADGs of the Roads Wings of M/o RT&H
 6. PPS to all Joint Secretaries of M/o RT&H

7. Copy to NIC for uploading on website.

for SSA (NIC)

5/11/16
10/2

PINKY ANAND

अपर महा-सॉलिसिटर
भारत
ADDITIONAL SOLICITOR-GENERAL
INDIA

5/01/2016

To

The Director,
Ministry of Road Transport & Highways,
Transport Bhawan,
1, Parliament Street,
New Delhi-110 001.

SUBJECT- Applicability of the Right to Fair Competition and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance 2014.

QUERIST- MINISTRY OF ROAD TRANSPORT AND HIGHWAYS.

QUERIES RAISED:

- (i) Para 10 (i) (3) makes 2013 applicable to the enactments relating to land acquisitions w.e.f 1.01.2015. It is not clear what constitutes land acquisition w.e.f 1.01.2015 ie. whether it would apply to cases of land acquisition where 3A is issued after 01.01.2015 or would it apply to cases where 3G have not been announced or compensation has not been distributed or possession has not been taken by 31.12.2014.
- (ii) Whether Section 24 of the new Act, which talks about land acquisition cases initiated under 1894 Act, is also applicable to cases of land acquisition initiated under NH Act 1956.
- (iii) If yes, then what constitutes majority land holdings whether it would be majority of land owners or majority in terms of land area?
- (iv) How to deal with cases of land acquisition which were initiated under NH Act 1956 but award has not been announced till 31.12.2014.

OPINION-

Subsequent to the notification of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance 2014, all provisions of the First (Determination of compensation), Second (Rehabilitation and Resettlement) and Third Schedule (Infrastructure facilities to be provided) to the Right to Fair Compensation

and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 have been made applicable to the National Highways Act 1956. Till the above stated notification of Ordinance as per Sec 105 of the RTFCTLARR Act 2013, the acquisition of land for National Highways Projects under the NH Act 1956 stood exempted from application of the provisions of the said Act of 2013.

Perusal of the documents shows that till the notification of RTFCTLARR Ordinance 2014, land acquired for National highways Project under National Highways Act 1956 was exempted from the RTFCTLARR Act 2013.

Para 10(i)(3) of the Ordinance states the amendment to section 105 of RTFCTLARR Act 2013 as follows:

"10. In the principal Act, in section 105-

(i) For sub section (3) the following sub section shall be substituted namely:-

(3) The provisions of this Act relating to determination of compensation in accordance with the First schedule, rehabilitation and resettlement in accordance with the second schedule and infrastructure and amenities in accordance with Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule w.e.f 1st January, 2015."

National Highways Act 1956 is at item no 7 in the Fourth Schedule of the RTFCTLARR Act 2013. Therefore w.e.f 01.01.2015 provisions of RTFCTLARR Act 2013 will also be applicable to National Highways Act 1956.

Answer to query no (i) - As per Section 105 of RTFCTLARR Ordinance 2014, determination of compensation in accordance with the First schedule, rehabilitation and resettlement in accordance with the second schedule and infrastructure and amenities in accordance with Third Schedule shall apply to the land acquired for National Highways Project under National Highways Act 1956.

Sec 24 of the RTFCTLARR Act 2013 will also be applicable on National Highways Act.

Sec 24 of the RTFCTLARR Act 2013 states-



“ Notwithstanding anything contained in this Act. in any case of land acquisition proceedings initiated under the Land Acquisition Act. 1894,-

(a) where no award under section 11 of the said Land Acquisition Act has been made, then, all provisions of this Act relating to the determination of compensation shall apply; or
(b) where an award under said section 11 has been made. (hen such proceedings shall continue under the provisions of the said Land Acquisition Act. as if the said Act has not been repealed.

(2) Notwithstanding anything contained in sub-section (1), in case of land acquisition proceedings initiated under the Land Acquisition Act. 1894, where an award under the said section 11 has been made five years or more prior to the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the said proceedings shall be deemed to have lapsed and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act:

Provided that where an award has been made and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries, then, all beneficiaries specified in the notification for acquisition under section 4 of the said Land Acquisition Act, shall be entitled to compensation in accordance with the provisions of this Act.”

On interpreting the proviso to Section 24 of the Act it can be interpreted that, the phrase “land acquisition w.e.f 01.01 2015” in 2014 Ordinance would be interpreted as- where 3A is issued after 01.01.2015 and in cases where compensation under Sec 3G has not been determined and if compensation under Sec 3G has been determined it has not been deposited in the account of the beneficiaries.

Hon’ble Supreme Court of India in CA no 886-894 of 2014 Pune Municipal Corporation and Ors vs Harakchand [2014(3) SCC 183] interpreted Sec 24 of RTFCTLARR Act 2013.



Hon'ble Supreme Court of India held- "we are of the view, therefore, that for the purposes of Section 24(2), the compensation shall be regarded as paid if the compensation has been offered to the person interested and such compensation has been deposited in the court where reference under Sec 18 can be made on happening of any of the contingencies contemplated under Sec 31(2) of the 1894 Act. In other words, compensation may be said to have been paid under Sec 24(2) when the Collector has discharged his obligation and deposited the amount of compensation in court and made that amount available to the interested person to be dealt with as provided in sections 32 and 33."

"From the above it is clear that the award pertaining to the subject land has been made by Special Land Acquisition Officer more than five years prior to the commencement of the 2013 Act. It is also admitted position that compensation so awarded has neither been paid to the land owners/ persons interested nor deposited in the court. The deposit of compensation amount in the government treasury is of no avail and cannot be held to be equivalent to the land owners/ persons interested. We have, therefore no hesitation in holding that the subject land acquisition proceedings shall be deemed to have lapsed under Section 24(2) of the new Act."

Answer to query no (ii) – Section 24 of the new Act which covers land acquisition cases initiated under 1894 Act will be applicable to National Highways Act 1956 w.e.f 01.01.2015.

Answer to query no (iii)– Section 3(n) of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 defines "holding of land" as total land held by a person as an owner, occupant or tenant or otherwise.

Section 3(r) defines land owner as-

Land owner includes any person-

- (i) Whose name is recorded as the owner of the land or building or part thereof, in the records of the authority concerned.

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- (ii) Any person who is granted forest rights under the Scheduled Tribes and Other Traditional Forest dwellers (Recognition of Forest Rights Act) Act 2006 or under any other law for the time being in force.
- (iii) Who is entitled to be granted Patta rights on the land under any law of the state including assigned lands or
- (iv) Any person who has been declared as such by an order of the court or authority.

Thus, the term majority land holding will constitute majority in terms of land area.

Answer to query no (iv) - Section 24(1) begins with non obstante clause and this provision has been given an overriding effect over all other provisions of 2013 Act. Clause (a) provides that where the land acquisition proceedings have been initiated under the 1894 Act but no award under Section 11 is made then the provisions of 2013 Act shall apply relating to the determination of compensation.

Similarly in cases initiated under NH Act 1956 but award has not been announced by 31.12.2014, RTFCTLARR Act 2013 will apply under Section 24(1) of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.


[PINKY ANAND]
Additional Solicitor General

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