

Mr. Federal

EXH-M-43

सूचना
संख्या
दिनांक

स.प्र.सं.
SHEENA, IAS



सत्यमेव जयते

भारत सरकार,
भूमि संसाधन विभाग
ग्रामीण विकास मंत्रालय
Government of India
Department of Land Resources
Ministry of Rural Development

2015/01/2014-LRD(PL)


Dated 26th October, 2015

Please refer to your letter No.R&FD/General-2014 CR-31/A4, dated the 11th September, 2014 regarding directions under section 113 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

The issues raised by you along with the views of this Department were sent to the Department of Legal Affairs, Ministry of Law & Justice for opinion in the matter. The issues raised by the Government of Maharashtra and the opinion of the Department, as concurred in by the Department of Legal Affairs, thereon are enumerated below:-

No.	Issues raised by the Government of Maharashtra	Opinion of the DoLR
1.	While determining the amount of compensation under Section 27 of the RFLARR Act, 2013 of Hon'ble Supreme Court's orders are followed or cost of assets have to be separately computed in addition to cost of land?	Under Section 26 of the RFLARR Act, 2013 <u>market value of land</u> is determined while under section 27, value of <u>all assets attached to the land</u> is added to the market value to determine the amount of compensation. Thus, it is not contradictory to the Supreme Court's orders quoted in the letter of Maharashtra Government.
2.	Under Section 24(1), the reference date for calculating 12% interest should be date of preliminary notification under Land Acquisition Act, 1894.	Under section 24(1), the reference date for calculating 12% interest should be date of preliminary notification under Land Acquisition Act, 1894. Department of Land Resources agrees to this, as there is no other reference date, that can be treated as equivalent to date of SIA notification under the RFLARR Act, 2013.
3.	For calculation of market value, under Section 24(1)(a), reference date should be 01.01.2014 (commencement of RFLARR Act, 2013) or date of issuing preliminary notification under Land Acquisition Act, 1894?	The reference date for calculation of market value, under Section 24(1) (a) should be 01.01.2014 (commencement of RFLARR Act, 2013), as

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		<p>the Section reads "in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, 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. Under section 26 reference date is date of preliminary notification, but section 24 is a special case of application of the Act in retrospective cases, and a later date of determination of market value is suggested (i.e. 01.01.2014) with a view to ensure that the land owners/farmers/affected families get enhanced compensation under the provisions of the RFLARR Act, 2013 (as also recommended by Standing Committee in its 31st report).</p>
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Yours sincerely,

Sd/-

(Hukum Singh Meena)

Shri Manu Kumar Srivastava
Principal Secretary
Revenue & Forest Department,
Government of Maharashtra,
Mumbai-400032

Copy to :-

All Principal Secretaries of States/UTs (except of States of Maharashtra & Govt. of Jammu & Kashmir) for information and necessary action.

AMC
29/10/15


(Hukum Singh Meena)
Joint Secretary (LR)
Tele.No.011-23063462

SUPREME TODAY

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ALLAHABAD HIGH COURT
BEFORE : TARUN AGARWALA AND AMAR SINGH CHAUHAN, JJ.
PRAHLAD SINGH AND OTHERSPetitioners
Versus
STATE OF U.P. AND OTHERSRespondents
(Civil Misc. Writ Petition No. 15804 of 2016, decided on 26th September, 2016)

Land Acquisition Act, 1894-Sections 4, 6, 11, 16 and 31-Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013-Sections 11, 24(1)(a), 24(1)(a) Proviso, 113 and 114-land Acquisition-Land of petitioners acquired under old Act of 1894 in 1974-But no award was made under 11-Inspite of it, its possession was forcibly taken without paying any compensation in October, 2014-New Act of 2013 came into force on 1.1.2014-In view of Legal changes by this New Act, compensation be determined and be paid to petitioners in accordance with provisions of New Act of 2013, as provided by Sections 24(1)(a) and Proviso to Section 24(1)(a)-For determination of compensation, market value of land, as existed on 1.1.2014 be applied, by virtue of Sections 113 and 114-Entire legal aspects, considered and elaborated by High Court-Compensation be deposited in Court and not in Treasury for payment to petitioner. [Paras 4 to 7 and 9 to 12]

Result; Petition Allowed.

Cases referred:

2014 (3) SCC 183 (Para 12)-Relied on.

**RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION,
REHABILITATION AND RESETTLEMENT ACT : Proviso.113, Proviso.114, S.11, S.34(1)(a)
LAND ACQUISITION ACT : S.11, S.16, S.31, S.4, S.6**

JUDGMENT

By the Court.-In spite of a stop order, no counter-affidavit has been filed. As oral request was made by learned Standing Counsel to grant further time to file the counter-affidavit. Such request is rejected since there was a stop order by an earlier order of the Court dated 26.9.2016 granting the respondents three week's and no more time to file a counter-affidavit.

2. The petitioners' father Kashmira singh was the original tenure holder of the land in question being Khasra No. 311-M measuring 0.8350 hectares in village Lohari Khurd, Pargana Charthawal, Tehsil Sadar, District Muzaffarnagar. The name of Kashmira singh was recorded in the revenue record. Upon

his death, petitioners' name was recorded in the Khatauni of 1420 Fasli to 1425 Fasli. The petitioners' land was acquired sometimes in the year 1974-75. Pursuant to Notification issued under Sections 4 and 6 of the Land Acquisition Act, objections were filed by the petitioners which was rejected. For reasons best known to the respondents the award insofar as the petitioners are concerned, was not made under Section 11 of the Land Acquisition Act. The award of the co-sharers was however made. The petitioners were forcibly dispossessed from the land in the year 2014. Being aggrieved by this forceful dispossession, the petitioners filed Civil Misc. Writ Petition No. 52791 of 2014 which was disposed of by an order dated 7.10.2014 directing the petitioners to make a representation before the Collector, Muzaffarnagar who would decide the same by a reasoned and speaking order. The petitioners made a representation which was disposed of by an order dated 18.2.2016. The Collector, in its order, admitted that the land of the petitioners has been acquired and that neither the award has been made nor compensation has been paid. It has also been indicated that compensation was kept in the revenue deposit. The Collector has further directed the Special Land Acquisition Officer, Muzaffarnagar to determine the compensation by taking the market value of the land as existed in the year 1981 which was the date when the respondents deposited the amount in respect of other land holders in the revenue deposit.

3. The petitioners being aggrieved by the said order has filed the present writ petition.

4. Having heard the learned counsel for the parties, we find that the Land Acquisition Act has been repealed with effect from 1.1.2014 in view of Section 114 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the Act of 2013). With effect from 1.1.2014, the new Act of 2013 has come in force. Section 24(1)(a) of the Act provides that where no award under Section 11 of the Land Acquisition Act has been made, then compensation has to be determined under the Act of 2013. Section 26 of the Act 2013 provides the criteria for determining the market value of the land by the Collector. Proviso to Section 26 of the Act states that the date for determination of market value shall be the date on which the notification has been issued under Section 11 of the Act of 2013.

5. In the instant case, the notification was issued under the Act of 1894 which has now been repealed. The question that arises for consideration as to what would the appropriate date for determination of the market value of the land in question. As per impugned order, the Collector has directed the Special Land Acquisition Officer to determine the market value of the land on the date when the compensation was deposited in the revenue deposit. Prima facie this direction appears to be arbitrary. We find that under Section 113 of the Act, the Central Government has the power to make such provision or give such direction in case any difficulty arises for implementation of the Act.

6. For facility, Section 113 of the Act of 2013 is extracted hereunder:

"113 Power to remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of this part, the Central Government may, by order, make such provisions or give such directions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for the removal of the difficulty:

Provided that no such power shall be exercised after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament."

7 In pursuance of the aforesaid provision, the Central Government has issued a D.O. No.

13013/01/2014-LRD(Pt.) dated 26.10.2015. In the said D.O., an issue was raised by Government of Maharashtra at Item No. 3 which is extracted hereunder:

"For calculation of market value, under Section 24(1)(a), reference date should be 1.1.2014 (commencement of RFCTLARR Act, 2013) or date of issuing preliminary notification under Land Acquisition Act, 1894."

8. The opinion given by the Government of India is extracted hereunder:

"The reference date for calculation of market value, under Section 24(1)(a) should be 1.1.2014 (commencement of RFCTLARR Act, 2013), as the Section reads "in any case of land acquisition proceedings initiated under the Land Acquisition Act, 1894, 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. Under Section 26 reference date is date of preliminary notification, but Section 24 is a special case of application of the Act in retrospective cases, and a later date of determination of market value is suggested (i.e. 1.1.2014) with a view to ensure that the land owners/farmers/affected families get enhanced compensation under the provisions of the RFCTLARR Act, 2013 (as also recommended by Standing Committee in its 31st report)."

9. The Government of India has forwarded the aforesaid direction to all the Principal Secretaries of States/Union Territories for information and necessary action.

10. In our opinion the order issued by the Central Government is required to be implemented uniformly by all the State Governments and Union Territories including the State of U.P. There is no reason why the Collector should not apply the market value as existing as on 1.1.2014 on the land in question.

11. In the light of the aforesaid, the impugned order passed by the Collector, Muzaffarnagar dated 18.2.2016 is modified to the extent that compensation is required to be determined under Section 24 of the Act of 2013. The market rate of land would be such as applicable as on 1.1.2014 as per the D.O. of the Central Government dated 26th October, 2015. Such determination shall be made by the Collector/Special Land Acquisition Officer within six weeks from the date of production of a certified copy of this order and payment would be released accordingly within two weeks thereafter.

12. We also find from the impugned order that the compensation was kept in the revenue deposit. The Supreme Court in the case of Pune Municipal Corporation and another v. Harakchand Misirimal Solanki and others, 2014 (3) SCC 183, held that compensation is required to be deposited in the Court and deposit of compensation amount in the Government treasury was of no avail and cannot be held to be equivalent to compensation paid to the land owners. The issue involved in this case is squarely covered by the said decision of the Supreme Court.

13. The writ petition is allowed.