



**A Manual of Guidelines**  
**On**  
**Land Acquisition for National Highways**  
**Under**  
**The National Highways Act, 1956**

**Government of India**  
**Ministry of Road Transport and Highways**

**December 2018**



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**Ministry of Road Transport and Highways,**  
**Government of India**



## **FOREWORD**

The total length of National Highways notified in the Country was about 91,000 kms when the present Government took charge in May, 2014. We have been working assiduously for the expansion of NH network during this period and I am happy to share that we have notified about 1,29,000 kms length of National Highways as on date. The Ministry has spearheaded construction of more than 28,000 kms of National Highways till March 2018, which is no mean achievement. We constructed National Highways @ 27 kms per day during FY 2017-18, registering a phenomenal increase, and we hope to reach a construction pace of about 35 kms per day during the current financial year.

The Indian Road Construction industry is well established by now and I believe that the Ministry and its project execution agencies have the potential to construct National Highways @ 50 kms/ day, if we are able to meet the major challenge of timely availability of land for the Right of Way (ROW) for construction of new Highways. Introduction of a new Act for Land Acquisition effective from 01.01.2014, and the applicability of its select provisions to the National Highways Act, 1956 in this behalf, brought about a major change not only in the project cost structure but also the processes. Learning from previous experience, the Ministry has introduced a number of policy initiatives.

The present volume in the form of a Manual of Guidelines on the subject of Land Acquisition for the National Highways addresses various issues in a holistic manner, be it related to legal issues or the processes involved at all stages. This volume is the outcome of single-handed labour of Sh. Y. S. Malik, Secretary, Road Transport & Highways, who has shown his in-depth understanding of the subject right since he joined as Chairman NHAI in November 2016 and thereafter as Secretary during his present tenure. It is amazing to learn that, working over-time, he has been able to write this Manual himself in spite of so many work pressures a Secretary of the Ministry faces. Sh. Malik has addressed various aspects of the subject in a lucid manner. I am sure that meticulous follow-up action would not only lead to all fairness for the landowners but also ensure against any mischiefs encountered in the process of land acquisition. It is my fervent appeal to all concerned, the officers of the Project executing agencies, the Competent Authorities for Land Acquisition and other officers from the State Governments to go through the contents of this volume, word by word, and help us in taking the process of land acquisition forward for the development of National Highways in a seamless manner.

- Nitin Jairam Gadkari



## **P R E F A C E**

Land Acquisition constitutes the first basic requirement for capacity addition of an existing road notified as a National Highway or development of a Green-field National Highway. The introduction of RFCTLARR Act, 2013 and application of its select provisions (First, Second and Third Schedules) with effect from 01.01.2015 for acquisition of land under the National Highways Act, 1956 has added an altogether new dimension for compensation to the landowners.

As per the information gathered from the National Highways Authority of India (NHAI), the average cost of land acquisition was about Rs. 80.00 Lakh per Hectare before 01.01.2015, which has now gone up to about Rs. 3.60 crore per Hectare. Out of a total expenditure of Rs. 1,52,000 crore during the period of last four years (April 2014 to March 2018), the NHAI has spent an amount of Rs. 81,000 crore on the Land Acquisition as against an expenditure of about Rs. 41,000 crore on the Civil Works.

Introduction of an altogether new regime for determination of compensation for acquisition of land under the RFCTLARR Act of 2013 and its application to the NH Act, 1956, led to a number of ambiguities and lack of clarity in the initial stages. The sheer size and scale of expenditure on Land Acquisition for construction and development of National Highways led to a lot of concerns. Notification and application of Multiplication Factor, method of calculation of the total compensation amount, and levy of Administrative Charges for LA for the National Highways by about 13 states, all varying from state to state, emerged as another set of major concerns.

It was at this stage that the issues were identified through an in-depth analysis and a set of Comprehensive Policy Guidelines were issued on the subject vide Ministry's letter dated 28.12.2017. However, a number of issues have been identified requiring further clarity on the subject. Therefore, need arose for addressing these related issues, with updates and legal opinions, which are being addressed through this Manual of Guidelines for all concerned, be it the DPR Consultants, the officers of MoRTH and its project implementing agencies (NHAI, NHIDCL, BRO and the State PWDs), or the Competent Authorities appointed as such for undertaking the Land Acquisition for NH projects. I have made an attempt to cover as much of the ground as possible till date. The need for its further updates cannot be ruled out as we go along. I hope all concerned associated with the process of Land Acquisition for the National Highways and associated purposes find it useful in undertaking the process forward in a seamless manner.

Y.S. Malik  
Secretary to Government of India,  
Ministry of Road Transport & Highways





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## Chapter - 1

### NH Project Alignments and the Role of DPR Consultants

- 1.1 Project Alignment and hindrances/ encumbrances for the Right of Way (RoW):**
- (i) Delineation and determination of the most optimal alignment of a National Highway artery is the basic requirement for efficient implementation of a National Highway project. This is the first step based on which the proposals for land acquisition are drawn up. As such, it is critical that the alignments are determined/ finalized after undertaking due diligence.
  - (ii) Broadly speaking, there are two approaches to the construction/ development of National Highways, first relating to capacity expansion of an existing road (which is generally referred to as a Brown-field project and constitute a large majority), and second, development of an altogether new Highway along a Green-field alignment. Historically, road arteries have been developed in India to connect towns and cities and since these habitations are not located in a straight alignment (i.e. the shortest routes), the distances from origin to destination points are not the shortest or most efficient. Further, typical of India, we compulsively like to create anything under the sun with its location abutting a road. To further add, the Utility owing agencies (electricity/ water supply lines etc.) also do not follow the rigour of installation of their utilities along the extreme edge of the RoW of a road. As a result, there is hardly any vacant/ open space left along an existing road, making it challenging to undertake any capacity addition of any road within the existing Right of Way (RoW). The practice of unauthorised encroachments further adds to these challenges on top of above all, as our system is equally tolerant to the unauthorised encroachers.
  - (iii) While taking up a Brown-field NH Project, one is faced with a number of challenges, most important of which comprise of: (a) prohibitively expensive land abutting the road for acquisition of additional RoW, (b) residential, commercial, religious and community buildings situated in the additional RoW required (which have to be demolished entailing additional compensation), (c) shifting of all kinds of utilities (most common of which are electricity and water pipelines) entailing huge time and costs, and (d) felling of trees entailing statutory permissions. It has been found that an altogether green-field and straighter alignment, slightly away from the existing road, is a much better proposition, both in terms of speed of execution and financial costs. However, it may still be desirable to develop a NH with two-lane + paved shoulder configuration (10 mtrs wide carriageway), which can be achieved within a Row of 16 to 20 mtrs. This can easily cater to a traffic density of about 15000 PCUs/ Day without any compromise on the service level. In case the existing road already has a traffic density of more than 15,000 PCUs/ Day, it qualifies to be 4-laned with divided carriageway. In many cases, it would make eminent sense to plan for a new green-field alignment.

- (iv) In cases where the existing RoW is about 25 to 30 mtrs and the road qualifies to be developed with configuration of a four-lane divided carriageway, capacity expansion of the existing road, which is doable within a RoW of about 40 to 45 mtrs, may be the optimal course. However, in such cases, it is always desirable to ignore the central line of the existing road and take up Land Acquisition on one side of the existing carriageway. This would save at least 50% of the tree-felling and 50% of the Utility shifting, if the alignment is planned with due care and diligence. The Ministry has already issued Policy Guidelines dated 26.02.2018 regarding alignments (attached as [Annexure 1.1](#)) and Guidelines dated 10.05.2018 regarding Land acquisition on one side of the road (attached as [Annexure 1.2](#)).
- (v) A good number of hindrances faced during the course of implementation of NH projects could be avoided at the stage of determination/ finalization of the alignment, if due diligence is undertaken at the appropriate stage. These hindrances could primarily be in the nature of a Forest area, a Wildlife sanctuary or a water body or a different topography. In other cases, the hindrances or obstructions in particular relate to major utilities (electricity lines/ gas pipelines/ water supply pipelines/ telecom lines) and other obstacles (religious structures, cremation grounds, private structures) coming in the way of alignment, which need to be addressed in due course at the implementation stage and become time consuming, impacting the pace of project implementation. While encumbrances of both categories may be encountered in case of Brown-field projects, those mentioned in the first category may generally be encountered while determining a green-field, crow-flight alignment.

## **1.2 Role and responsibilities of DPR Consultants**

- (i) The DPR consultants have an extremely important role in determining optimal alignments, taking care of geometrics of the road to meet the safety parameters. It has been observed that DPR Consultants invariably do not visit the complete stretch of the proposed alignment at the DPR stage to appreciate and factor in the ground realities, conveniently leaving out these hindrances/ obstacles unattended, faced at the implementation stages. It is, therefore, imperative that the DPR consultants perform their work with professional commitment. The scope of work of the DPR consultants has been considerably widened now, with increased mandate for use of technology. They are expected to make use of LiDAR and Drones and capture the ground images so as to use the same as evidence at the appropriate stage of land acquisition, if required.
- (ii) Further, where the DPR consultant proposes a new alignment or a bypass, its due validation by a field visit on the proposed alignment by the concerned officers of the Project Implementing Agencies along with the DPR Consultant is a must. Since the alignments have to be approved at sufficiently senior levels (Member in NHAI, MD in NHIDCL, ADGs in the Ministry), the competent authority approving the alignment must take a certificate, jointly signed by the DPR Consultant and the concerned PD, to the effect that all such hindrances (religious and private structures/ public buildings/ major Utilities etc. have been identified and avoided

(to the extent feasible) while delineating the alignment or the nature of hindrances, which are unavoidable and fall in the proposed RoW of the road alignment are identified, pointed out and marked upfront. The DPR consultant must make a specific mention of the following hindrances while proposing an alignment:

- (a) Any religious structures (Temple/ Mosque/ Mazar/ Church/ Gurudwara/ Cemetery/ Cremation ground coming in the proposed RoW;
  - (b) Any other commercial/ industrial/ institutional/ residential structures in the proposed RoW;
  - (c) The Utilities (Electrical lines/ Water supply lines/ Gas Pipelines etc. coming in the RoW;
  - (d) Ensure that location of any Structure (Bridge/ Flyover/ VUP) is suitably adjusted avoiding shifting of High Tension Electricity Lines of 66/132/ 220/ 400/ 765 KV levels.
- (iii) The fact of the level of the competent authority (with name & designation), who has approved the alignment, should be specifically mentioned while submitting the proposal for land acquisition under Section 3A of the NH Act, 1956. The Land Acquisition Division shall also ensure that Section 3A proposals are not cleared in the absence of a certificate to this effect.
- (iv) Going forward, the DPR Consultant/ concerned officer of the Project Implementing Agency should give an indicative assessment of the tentative cost of land acquisition based on the Collector/ Circle rates applicable in such areas before issue of notification under Section 3D. If the indicative cost of Land Acquisition is found to be prohibitively high, appropriate changes in the project alignment/ features should be considered to bring the cost of LA to an acceptable/ reasonable level.
- (v) To the extent feasible, any Notification under Section 3A and Section 3D in respect of the jurisdiction of one CALA should be issued as single composite Notifications rather than doing the same in piecemeal.
- (vi) It has to be appreciated that development/ expansion of any brown-field NH project is dependent on the availability of additional land required for the RoW. The land available under the existing RoW does not help in taking the project forward. It is, therefore, important that, at the time of appraisal of the project, the status of availability of encumbrance-free land is given with respect to the additional land to be acquired, and not the total land by including available RoW. This is required to ensure availability of contiguous reaches to commence the project. Ideally, the bids for a project should be received only after publication of Award under Section 3G in respect of 90% of the additional land to be acquired.

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## **Annexures to Chapter-1**





No. NH-15017/21/2018 – P&M  
**Government of India**  
**Ministry of Road Transport & Highways**  
(Planning Zone)

Transport Bhawan, 1, Parliament Street, New Delhi – 110001

Dated: February 26, 2018

To

1. The Chief Secretaries of all the State Governments/ UTs
2. The Principal Secretaries/ Secretaries of all States/ UTs Public Works Department dealing with National Highways, other centrally sponsored schemes.
3. All Engineers-in-Chief and Chief Engineers of Public Works Department of States/ UTs dealing with National Highways, other centrally sponsored schemes.
4. The Chairman, National Highways Authority of India, G-5 & 6, Sector-10, Dwarka, New Delhi-110 075.
5. The Managing Director, NHIDCL, PTI Building, New Delhi-110001
6. All CE-ROs, ROs and ELOs of the Ministry
7. The Director General (Border Roads), Seema Sadak Bhawan, Ring Road, New Delhi-110 010.

**Subject: Determination of alignment/ route for widening of National Highways – approach reg.**

The Ministry of Road Transport & Highways has been undertaking development of National Highways across the country through its various project executing agencies, namely, the NHAI, NHIDCL, the State PWDs and the BRO. The programme for construction and development of National Highways acquired a new dimension with the construction of Golden Quadrilateral (GQ) and the North-South and East-West Corridors in the country. Though the National Highways account for only about 2% of the total road network of the country, it is primarily because of construction of national corridors that the NHs today carry and support movement of more than 40% of the road traffic.

2. With the exception of GQ and the North-South and East-west corridors and a few more prominent green-field Highways/ Expressways, the Central Government has been generally taking up development of NH Projects through up-gradation of the existing State Highways, major district roads and other roads, which, in other words, are known as the brown-field projects. The configuration of National Highways varies from - Two-lane with paved shoulders (largely covering the NHs connecting interiors, backward & tribal areas, tourist destinations, and the roads constructed in the hill states of North-west and North-east), to up-gradation from the existing 2-lane roads to four-lane/ six-lane and eight-lane, depending upon traffic volumes between the origin, intervening and destination points.

3. Approval of the Bharatmala Pariyojana by the CCEA in October 2017, marks a major shift in approach, with focus on corridor approach, wherein it is planned to optimise the efficiency of existing National Corridors, develop Economic Corridors and new Expressways, take up roads for inter-connectivity, apart from construction of ring roads/ bypasses around 28 major towns to remove the congestion and choke points. The ultimate intended objective is to construct major road corridors with improved geometry, which reduce travel time and costs, and help in faster movement of people and goods with attendant road safety parameters.

4. The lower categories of existing roads contain several inherent deficiencies especially in conformance to design standards, alignment/ geometry, land width etc. which at times also become road safety hazards and which are not addressed before declaration of these roads as National Highways. Up-gradation of the existing road arteries to National Highways has been found to be sub-optimal in many cases due to the following factors:

- (i) Existing roads have been developed with greater focus on connecting the en-route towns and places, which is often seen to be compromising on the road geometry and leading to longer distance between the major origin-destination points. A majority of these roads follow serpentine alignments as compared to crow-flight alignments;
- (ii) Expansion of an existing road necessarily involves: (a) acquisition of additional land for the required Right of Way (RoW), (b) shifting of utilities, and (c) felling of trees along the existing alignment. Further, as road arteries are considered to create huge value to the land abutting the road and the adjoining areas, the land situated along/ abutting any existing road artery (including a rural road) costs at least twice as much as the land under a greenfield alignment would do;
- (iii) Serious constraints have been faced in acquisition of land for widening of an existing road especially in areas where habitations/ commercial activities have come up over time, which necessitate demolition of existing structures in such inhabited areas, which often leads to compromise on the required uniform RoW and entail associated costs & time;
- (iv) Removal/ demolition of existing built-up structures along the required RoW makes it not only difficult but also far more expensive in terms of the associated costs. It becomes all the more challenging when it comes to removal of religious structures (e.g. temples, mosques churches etc. which are again found to be in existence in large numbers along the existing roads);
- (v) Widening of existing roads further necessarily requires shifting of the utilities (electrical, water supply and other utilities) laid along the existing RoW, entailing considerable costs and time;
- (vi) Further, in the same vein, widening of the existing roads require felling of trees, requiring forest related approvals and associated costs in terms of payment of NPV and felling charges apart from damage to the existing green cover and the

time taken in completion of these processes.

5. As such, the determination of proper alignment of a NH project has become very critical. While selecting the route/ alignment of the National Highways, various factors are to be considered such as the cost of land, cost of building/ establishment, cost of shifting of utilities, construction cost of the road, cost of the safety features, transportation cost/ road user cost, maintenance cost etc. In such a situation, there is every likelihood of achieving a better alternative in the form of a green-field alignment, a few km away, to the left/ right or north/south of the existing alignment. A few test cases have shown that most of these challenges are effectively met if we take up construction of green-field NH arteries, especially where the traffic volumes justify up-gradation of a two-lane road to higher configurations, which offer the following advantages:

- (i) Typically, the available RoW in an existing 2-lane road varies between 12 mtrs to 24 mtrs maximum. As per the NH norms for a 4/6/8 lane Highway, we require a minimum RoW of 60 mtrs. (the norm for an Expressway is 90 mtrs.). It has been found that it is eminently feasible to acquire a RoW of 60 to 70 mtrs for the green-field in the same cost as involved in expansion of an existing road, especially when we take into account the associated costs and time taken in utility shifting, tree-felling, additional compensation for demolition of structures coming in the expanded RoW;
- (ii) A green-field Highway with a RoW of 60 to 70 mtrs. would cater to the traffic-flows and up-gradation of such Highway up to 8-lanes, along with service roads, wherever required (say, it gives a long term perspective of about next 30 to 40 years);
- (iii) Offers the choice of a near-perfect (crow-flight) road geometry, with reduced distance and savings on travel-time and fuel costs. The towns situated in close vicinity to such alignments can always be connected to the Highway with spurs;
- (iv) The land acquisition is faster, with minimal resistance and cost-effective;
- (v) It opens up the potential for development of new areas and wealth creation for the less developed areas.

6. It has also been observed that in case National Highways are developed along the existing roads alignments, the problems of traffic hazards are not substantially resolved especially in the city/ town area, which may lead to delays and congestion costs also. In case of green-field alignment, it becomes feasible to avoid such delays and congestions. As such, in carrying out the cost-benefit analysis of both the options, factors such as environmental and social impact may also be considered besides carrying out cost comparison towards delays and congestion removal.

7. Accordingly, the Consultants involved in preparation of DPRs for development of National Highways, especially where it is proposed to upgrade an existing two-lane Highway to a higher configuration of 4/6/8 lane, and where Notification under Section 3D

of the NH Act, 1956 has not yet been issued, shall necessarily carry out a comparative cost-benefit analysis while recommending the route/ alignment of highway development along the existing alignment, with the alternate option of a green-field alignment, which is a few kms away from the existing alignment. While carrying out the cost benefit analysis of both the options, the following factors shall be considered:

- (i) Extant of land acquisition and the associated costs;
- (ii) Number of structures required to be acquired along their extant and costs.
- (iii) The quantum of utilities and costs required for their shifting.
- (iv) The extent of tree-felling and the associated cost & time for obtaining the requisite permissions.

8. Keeping the aforesaid in view, agencies executing the NH projects on behalf on MoRTH, are hereby advised to:

- (i) Require their DPR consultants for each project (especially wherein it is envisaged to be upgraded to 4-lane and above configurations and in respect of which Notification under Section 3D has not been issued), to examine the feasibility of development of a green-field NH in each case;
- (ii) While examining the feasibility of a green-field alignment between the origin and destination points, it should, as far as possible, follow a crow-flight route alignment with a little distance from the existing habitations/ towns and identify the towns that need to be connected through spurs.
- (iii) Clearly bring out in its report the advantages in terms of reduction in length/ distance, geometric improvements and other advantages along with the cost-benefit analysis so as to enable the competent authority to take considered decisions in this behalf.

9. Approach to development of NH along a Green-field alignment:

In case the green-field alignment option works out to be a preferred option, then -

- (i) The entire ROW (60m-70m) may be acquired for a maximum capacity of 8 lane main carriage-way with provision for service roads. In case of Expressways, 90m ROW shall be acquired.
- (ii) Initially 4-lane carriage-way with 4-lane structures shall be developed with additional land left in the median for future expansion.
- (iii) The highway shall have provision for service roads, preferably of 10 mtrs width, with maximum access-control for the main carriage-way.
- (iv) Access to the towns/ cities/ establishments located on the existing National Highway, may be provided through spurs from the green-field route.

10. It has, therefore, been decided with the approval of competent authority that such

analysis is to be made an integral part of the DPR preparation. Accordingly, the contents of this circular may be incorporated in the TOR of the DPR consultancy. All the executive agencies are requested to adhere to these guidelines.

sd/-  
(Sudip Chaudhury)  
Chief Engineer (Planning)

**Copy to:**

1. All CEs in the Ministry of Road Transport & Highways
2. The Secretary General, Indian Roads Congress
3. Technical circular file of S&R (R) Section
4. NIC-for uploading on Ministry's website under "What's new"

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2. PPS to DG (RD) & SS/
3. PPS to AS&FA/
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8. JS (EIC)



No. NH-15017/21/2018 – P&M  
**Government of India**  
**Ministry of Road Transport & Highways**  
(Planning Zone)

Transport Bhawan, 1, Parliament Street, New Delhi – 110001

May 10, 2018

To

1. The Chief Secretaries of all the State Governments/UTs
2. The Principal Secretaries/ Secretaries of all States/UTs Public Works Department dealing with National Highways, other centrally sponsored schemes.
3. All Engineers-in-Chief and Chief Engineers of Public Works Departments of States/ UTs dealing with National Highways and other centrally sponsored schemes.
4. The Chairman, National Highways Authority of India, G-5&6, Sector-10, Dwarka, New Delhi-110075.
5. The Managing Director, NHIDCL, PTI Building, New Delhi-110001
6. The Director General (Border Roads), Seema Sadak Bhawan, Ring Road, New Delhi-110010.

**Subject: Policy Guidelines for land acquisition, tree felling, utility shifting across the alignment therefor – approach reg.**

Sir,

The Ministry of Road Transport & Highways, along with its executing agencies, has taken up development of highway projects of various standards namely, two lane with paved shoulder (10 mtrs. carriageway), 4 lane, 6 lane and 8 lane, both as greenfield projects as well as brownfield projects. A majority of these National Highway projects are brownfield i.e. up-gradation of the existing roads.

2. Up-gradation project of any National Highway involves, (i) Acquisition of additional land, (ii) Shifting of utilities, (iii) Felling of trees, and (iv) Removal of existing structures which fall in the Right of Way (ROW) of the proposed expansion. Meeting these pre-requisites not only entails heavy cost but also involves a lot of time and effort. Further, the felling of grown-up trees leads to adverse effects on environment. It has been observed that shifting of utilities, felling of trees and structures can be considerably reduced (by about 50%) if the land for expansion of any highway is acquired on one side of an existing road, as against doing the same on both sides.

3. Accordingly, in continuation of the Circular of even number dated February 26, 2018 issued with regard to alignment of NHs, it has been decided that the project implementation agencies shall undertake additional land acquisition on one side of an existing road to the extent feasible for expansion of existing roads to next level of configurations. It may also be noted that the acquisition side shall be decided based on the intensity of the existing utilities

and trees (following overall cost savings principle) and such side may change from one stretch to another stretch depending upon the most optimal alignment. Following policy guidelines shall be followed henceforth to minimize the requirement of additional land acquisition, optimization of utility shifting and felling of trees:

- (i) For roads being developed as Two-lane with paved shoulders and where traffic is below 5,000 PCUs, the expansion shall be carried out within the existing ROW and land acquisition shall be limited to only re-alignments and bypasses. In cases where the ROW permits expansion through eccentric widening (expansion of 3 mtrs on one side), the same shall be adopted as it reduces the need for utility shifting and tree felling to one side of the ROW, thereby reducing costs and saves the environmental footprints.
- (ii) For roads being developed as Two-lane with paved shoulders with traffic between 5,000 to 10,000 PCUs, and where the projected traffic may go up to 40,000 PCUs in due course of about next 25-30 years, the additional Land shall be acquired for achieving a total ROW of 45 meters (existing + additional) in such a manner that the present construction (eccentric widening to two lane with paved shoulders) and future expansion (4 lane eccentric widening) would impact utility shifting and tree-felling only on one side of the Right of Way (RoW). In nutshell, the development of the 2-Lane with PS will be undertaken on one side of the ROW of 45 mtrs so that as & when it matures for 4-laning, the other part of the divided carriageway and the Median do not disturb the existing carriageway of 2-Lane +PS. The additional land acquisition in these cases shall be done only when no parallel alignment is proposed or cannot be developed in future to diversify traffic. In case of traffic diversification potential, the two-lane with paved shoulders shall be developed within the available ROW.
- (iii) For expansion of an existing two-lane or two lane with paved shoulders road to 4 lane with paved shoulder Highways, the following guidelines shall be followed for end-lane status and the stage development based on the present traffic (including the induced traffic:

Present traffic including induced traffic (PCU)	Present Lane Status	End Lane Status	Stage development	ROW
Upto 20,000 PCUs	Upto 2L+PS	8 Lane	4 lane highway with 4 lane structures	70 m
20,000 - 30,000 PCU	Upto 2L+PS	8 lane	6 lane highway with 8-lane structures	70 m
30,000 – 40,000 PCU onwards	Upto 2L+PS	8 lane	8 lane highway with 8 lane structures	70 m
40,000 PCU onwards	Upto 2L+PS	12 lane	8 lane highway with 8 lane structures	100 m



Present traffic including induced traffic (PCU)	Present Lane Status	End Lane Status	Stage development	ROW
40,000 PCU onwards	4-Lane	8 Lane	<ul style="list-style-type: none"> <li>Option of Green-field alignment or 8 lane with 8 lane structures (where lifecycle cost is lower)</li> <li>6 lane with 6 lane structures in cases, where portion of the corridor has been 6 laned or 6 lane structures have already been developed on 4 lane highway or Cost of land acquisition for brown-field expansion is very high.</li> </ul>	70 m

4. The project executing agencies may suitably advise their DPR consultants to follow these guidelines in all such cases where Section 3 (A) notifications are yet to be issued.

sd/-  
(Sudip Chaudhury)  
Chief Engineer (Planning)

**Copy to:**

1. All CEs in MoRT&H
2. The Secretary General, Indian Roads Congress
3. Technical circular file of S&R(R) Section
4. NIC- for uploading on Ministry's website under "What's new"

**Copy for kind information to:**

1. Sr. PPS to Secretary (RT&H)
2. PPS to DG(RD) & SS
3. PPS to AS&FA
4. PS to ADG (Zone-I)/ADG(Zone-III)/ADG(Zone-V)
5. PS to JS(T)/JS(H)/JS(LA&C)/JS(EIC)



## Chapter - 2

### Land Acquisition under the National Highways Act, 1956 and Legal Issues

2.1 The land acquisition for development of National Highways and associated purposes was done under the Land Acquisition Act, 1894 before amendment to the National Highways (NH) Act, 1956 through Act No. 16 of 1997 (effective from 24.01.1997). The NH Act, 1956 was amended vide Act No. 16 of 1997 whereby provisions for acquisition of land for the National Highways and associated purposes were made under Section 3 of the NH Act, 1956. The provisions of Section 3 of the NH Act, 1956 are reproduced below for ready reference:

#### **"3. Definitions.- In this Act, unless the context otherwise requires,-**

- (a) "competent authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification;
- (b) "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth.

**3A. Power to acquire land, etc.-** (1) Where the Central Government is satisfied that for a "public purpose" any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land;

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substances of the notification to be published in two local news papers, one of which will be in a vernacular language.

**3B. Power to enter for survey, etc. -** On the issue of a notification under subsection (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to-

- (a) make any inspection, survey, measurement, valuation or enquiry;
- (b) take levels;
- (c) dig or bore into sub-soil;
- (d) set out boundaries and intended lines of work;
- (e) mark such levels, boundaries and lines placing marks and cutting trenches; or
- (f) do such other acts or things as may be laid down by rules made in this behalf by that Government.

**3C. Hearing of objections.-** (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

**Explanation:-** For the purposes of this sub-section “legal petitioner” has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority under sub-section (2) shall be final.

**3D. Declaration of acquisition.-** (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority has disallowed the objection under subsection (2) of that section the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.

(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been published under subsection (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect: Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3A is stayed by an order of a court shall be excluded.

(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority.

**3E. Power to take possession.-** (1) Where any land has vested in the Central Government under sub-section (2) of section 3D, and the amount determined by the competent authority under section 3G with respect to such land has been deposited under the sub-section (1) of section 3H, with the competent authority by the Central Government, the competent authority may by notice in writing direct the owner as well as any other person who may be in possession of such land to surrender or deliver possession thereof to the competent authority or any person duly authorised by it in this behalf within sixty days of the service of the notice.

(2) If any person refuses or fails to comply with any direction made under sub-section (1), the competent authority shall apply -

(a) in the case of any land situated in any area falling within the metropolitan area, to the Commissioner of Police;

(b) in the case of any land situated in any area other than the area referred to in clause (a), to the Collector of a District,

and such Commissioner or Collector, as the case may be, shall enforce the surrender of the land to the competent authority or to the person duly authorized by it.

**3F. Right to enter into the land where land has vested in the Central Government -** Where the land has vested in the Central Government under section 3D, it shall be lawful for any person authorised by the Central Government in this behalf, to enter and do other act necessary upon the land for carrying out the building, maintenance, management or operation of a national highway or a part thereof, or any other work connected therewith.

**3G. Determination of amount payable as compensation -** (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten percent of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3C, before the competent authority, at a time and place and to state the nature of their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

- (a) the market value of the land on the date of publication of the notification under section 3A;
- (b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;
- (c) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;
- (d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

**3H. Deposit and payment of amount.-** (1) The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.

(2) As soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled there to.

(3) Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.

(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.”

2.2 It may be noted that Section 3 of the NH Act, 1956 did not contain any provisions for payment of solatium and the interest. As such, the issue came to be challenged through a few Civil Writ Petitions in the Punjab & Haryana High Court and the Madras High Court as under:

- (i) Civil Writ Petition in the matter of *Golden Iron & Steel Forging vs. Union of India & Ors.* in a bunch of Writ Petitions including CWP No. 11461 of 2005 before the Punjab & Haryana High Court. By its judgement dated 28th March 2008, the High Court declared Sections 3G and 3J of the NH Act, 1956 as unconstitutional. It further held that Sections 23(2), providing for solatium amounting to 30% of the market value, and Section 28 (providing for payment of interest on the enhanced compensation amount) of the Land Acquisition Act, 1894 would be applicable to all acquisitions under the National Highways Act, 1956.
- (ii) Madras High Court also held Section 3J of the NH Act, 1956 as unconstitutional vide its judgement dated 04.03.2011 in *T. Chakrapani vs. Union of India* in WP No. 15699 of 2010. It directed that the petitioners before it were "*entitled to compensation of additional market value under Section 23(1)(a), solatium under Section 23(2) and interest as provided under the Land Acquisition Act*".
- (iii) The judgment of Punjab & Haryana High Court was challenged before the Supreme Court of India. The Supreme Court of India upheld the legality and correctness of the judgment of High Courts vide its order dated 11th August 2016 in *NHAI v. RLF Industries*, while restricting the benefit of the said judgment to cases which do not already stand concluded. The relevant portion of the order of Supreme Court reads as under:

“We have considered the submissions advanced. In *Gurpreet Singh v. Union of India*, (2006) 8 SCC 457, this Court, though in a different context, had restricted the operation of the judgment of this Court in *Sunder v. Union of India*, (2001) 7 SCC 211 and had granted the benefit of interest on solatium only in respect of pending proceedings. We are of the view that a similar course should be adopted in the present case also. **Accordingly, it is directed that the award of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in *Golden Iron & Steel Forgings v. Union of India* i.e. 28.03.2008. Concluded cases should**

**not be opened.** As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (came into force on 01.01.2014), which Act has been made applicable to acquisitions under the National Highways Act, 1956 by virtue of notification/order issued under the provisions of the Act of 2013.

With the aforesaid modification and clarification in the order of the High Court, these civil appeals are disposed of”.

- (iv) As the NHAI faced some difficulties and lack of clarity in implementation of the order on the issue of "Concluded cases", it made a reference to the Attorney General of India for his opinion. The detailed opinion received from the Ld. Attorney General of India in this behalf is attached as [Annexure 2.1](#).
- (v) While issues relating to the matters associated with the above orders have been settled with the acceptance of legal advice/ opinion from the Attorney General of India, another set of issues emerged with the enactment of "*The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*" (referred to as the "RFCTLARR Act" hereinafter).
- (vi) The Ministry of Road Transport and Highways issued a number of orders/ clarifications regarding the applicability of provisions of the RFCTLARR Act to the NH Act, 1956 from time to time between January 2015 till December 2017. Since there were ambiguities and lack of clarity on a number of issues qua the applicability of the RFCTLARR Act to the NH Act, the Ministry made a detailed reference to the Attorney General of India vide its letter dated 14th December 2017 (copy attached as [Annexure 2.2](#)). Detailed advice/ opinion was received from the Ld. Attorney General vide his letter dated 23rd December 2017 (copy attached as [Annexure 2.3](#)), based on which the Ministry issued comprehensive guidelines vide its letter dated 28.12.2017. The said guidelines are being re-iterated to a large extent in this chapter in the following paragraphs.

### **2.3 Applicability of the 'RFCTLARR Act 2013' to the enactments mentioned in the Fourth Schedule of the Act *ibid*:**

- (i) The 'RFCTLARR Act 2013' came into force with effect from 01.01.2014. Section 105 of the Act deals with the subject of applicability of provisions of the RFCTLARR Act, 2013 to the related statutes enumerated in the Fourth Schedule. Provisions of Section 105 (3) read as under:

“(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and

resettlement as may be specified in the notification, as the case may be.”

- (ii) The Central Government came out with an Ordinance (No. 9 of 2014) dated 31<sup>st</sup> December, 2014, entailing an amendment to, inter-alia, Section 105 vide Clause 10 of the Ordinance, substituting sub-section (3) of Section 105 and omitted Sub-section (4) of Section 105. The substituted sub-Section (3) is reproduced below:

“(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1<sup>st</sup> January 2015.”

- (iii) The provisions of Ordinance No. 9 of 2014 were continued further vide Ordinance No. 4 of 2015 dated 03.04.2015 and vide Second Ordinance dated 30.05.2015 (No. 5 of 2015) which was valid up to 31<sup>st</sup> August, 2015.

- (iv) Subsequently, the Department of Land Resources, Ministry of Rural Development, Government of India, issued The RFCTLARR (Removal of Difficulties) Order, 2015 vide Notification dated 28<sup>th</sup> August, 2015. The said Order is reproduced below:

“(1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1<sup>st</sup> day of September, 2015.

(3) The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.”

- (v) It is clear from a reading of the above that requisite action in compliance of Section 105(3) was taken within one year’s time with the promulgation of Ordinance No. 9 of 2014 dated 31.12.2014. This position continued with the issuance of two Ordinances in 2015, which was thereafter followed by the ‘Removal of Difficulties Order’ without any break in time. As such, operation of the provisions contained in Section 105(3) of the RFCTLARR Act 2013, has been given effect in respect of the enactments specified in the Fourth Schedule (including the NH Act, 1956) with effect from 01.01.2015, in compliance of sub-section (3) of Section 105 of the RFCTLARR Act, 2013.

- (vi) Following the notification of aforesaid Ordinances, the Ministry of Road Transport & Highways issued a letter dated 29.04.2015 whereby the select provisions of RFCTLARR Act, 2013 were made applicable to the NH Act, 1956 with effect from 01.01.2015. A con-joint reading of the aforesaid shows that the Ordinance (Amendment) remained in force till 31<sup>st</sup> August 2015. ‘*Removal of Difficulties*



*Order*’ was issued by the Department of Land Resources on 28<sup>th</sup> August 2015, which took effect from 01.09.2015. However, since the date of application of the selected relevant provisions of the RFCTLARR Act, 2013 to the NH Act, 1956 was 01.01.2015 in terms of the Ordinance (Amendment) No. 9 of 2014, it remains an unambiguous and accepted position that the provisions of *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule have been made applicable to all cases of land acquisition under the NH Act, 1956, i.e. the enactment specified at Sr. No. 7 in the Fourth Schedule to the RFCTLARR Act, **with effect from 01.01.2015.**

#### **2.4 Applicability of Section 24 of the RFCTLARR Act 2013 to the NH Act, 1956.**

- (i) MoRT&H had issued instructions vide OM bearing No. 11011/30/2015-LA dated 13<sup>th</sup> January 2016 stating that Section 24 of the RFCTLARR Act, 2013 was applicable to the NH Act, 1956. However, the issue as to whether Section 24 of the RFCTLARR Act, 2013 is applicable to the NH Act, 1956 has been under consideration and re-visited in consultation with the Ld. Attorney General, who has observed as under:

“A reading of Section 24 makes it abundantly clear that the provision is applicable only to acquisitions that have been undertaken under the Land Acquisition Act, 1894, in as much as the legislative intent can be ascertained from the specific mention of the ‘Land Acquisition Act, 1894’. Further, Section 105(1) of the RFCTLARR Act 2013 specifically excludes the application of any Section of the RFCTLARR Act 2013 to the Acts mentioned in the Fourth Schedule. The only exception to Section 105(1) is Section 105(3), which makes only the First, Second and Third Schedule applicable to the Fourth Schedule Acts.”

- (ii) As such, it is now settled that Section 24 of the RFCTLARR Act, 2013 is not applicable to the acquisitions under the NH Act, 1956.

#### **2.5 Date of determination of market value of land:**

- (i) Another related but important question is regarding the date on which the market value of land is to be determined in cases where land acquisition proceedings had been initiated under the NH Act, 1956 and were at different stages as on 31.12.2014. While there is no ambiguity regarding land acquisition proceedings initiated on or after 01.01.2015, this question assumes significance in view of the financial implications in respect of cases where the process of acquisition was at different stages as on 01.01.2015.
- (ii) Section 26 of the RFCTLARR Act stipulates that *“the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3A of the NH Act)”*. Same was the position under the 1894 Act. This is further fortified from the provisions contained in Section 69(2) of the RFCTLARR Act. As such, it is clarified that the relevant date of

determination of market value of land is the date on which notification under Section 3A of the National Highways Act, 1956 is published.

- (iii) By now, it is also a settled position that the First, Second and Third Schedules of the RFCTLARR Act, 2013 are applicable to the NH Act, 1956 with effect from 01.01.2015. As such, the following is clarified:
- (a) All cases of land acquisition where the Awards had not been announced under Section 3G of the NH Act till 31.12.2014 or where such awards had been announced but compensation had not been paid in respect of majority of the land holdings under acquisition as on 31.12.2014, the compensation would be payable in accordance with the First Schedule of the RFCTLARR Act, 2013.
- (b) In cases, where the process of acquisition of land stood completed (i.e. Award under Section 3G announced by CALA, amount deposited by the acquiring agency with the CALA, and compensation paid to the landowners in respect of majority of the land under acquisition) as on or before 31.12.2014, the process would be deemed to have been completed and settled. Such cases would not be re-opened.

## **2.6 Payment of additional amount calculated @ 12% on the market value in terms of sub-section (3) of Section 30 of the RFCTLARR Act, 2013**

- (i) Another issue that has emerged pertains to the admissibility of payment of an additional amount calculated @12% per annum on the market value of land in respect of acquisitions under the NH Act, 1956 as it is not mentioned under the First Schedule to the RFCTLARR Act, 2013. The position has been carefully examined in terms of the provisions in this behalf. Sub-section (3) of Section 30 of the RFCTLARR Act reads as under:

“In addition to the market value of the land provided under Section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve percent per annum on such market value for the period commencing on and from the date of publication of the notification of the Social Impact assessment study under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.”

- (ii) Sub-section (3) of Section 105 of the RFCTLARR Act stipulates that:

“The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.”

- (iii) The proviso under Section 26 of the RFCTLARR Act stipulates that *“the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3 A of the NH Act)”*. Similarly, Section 69(2) of the RFCTLARR Act, 2013 also stipulates that such additional amount is to be *“calculated @ 12% on such market value for the period commencing on and from the date of publication of the preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier”*. Since the acquisition of land for the National Highways is exempted from the Social Impact Assessment, it is absolutely clear from a harmonious reading of all related provisions that the calculation of such amount shall be made with effect from the date of publication of the Notification under Section 3A of the NH Act, 1956 till the date of Award or possession of land, whichever is earlier.
- (iv) The compensation amount has to be determined in accordance with the First Schedule, (which contains references to Section 26, 29 and 30(1) of the RFCTLARR Act) in its application to the NH Act. Provision for the amount calculated @ 12% interest is under sub-section (3) of Section 30 of the RFCTLARR Act, to which no reference has been made in the First Schedule. Further, Section 30(3) stipulates that the additional amount calculated @ 12% is payable with effect from the date of publication of the notification of the Social Impact Assessment Study, which is not applicable to the land acquisition for National Highways. On the other hand, Section 69(2) of the RFCTLARR Act, 2013 stipulates that the additional amount calculated @ 12% is to be calculated from the date of publication of the preliminary notification under Section 11 (corresponding to Section 3A of the NH Act, 1956). The Ordinances and the Removal of Difficulties Order do not include the underlined portion of the sub-section: *“being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be”*. Hence, a strict textual reading of the relevant provisions shows that it is an arguable point if the ‘amount’ under Section 30(3) is payable in respect of land acquired under the NH Act, 1956 or not.
- (v) However, a harmonious reading of all the related provisions of the RFCTLARR Act, the pronouncements of the Courts on payment of compensation under Section 23 (1A), Section 23(2) and Section 28 of the Land Acquisition Act, 1894 in respect of land acquired under the NH Act, 1956, read with Section 105(3) of the RFCTLARR Act, 2013, especially when the market value has to be reckoned as on the date of publication of notification under Section 3A of the NH Act, would go to show that payment of ‘amount’ of 12% on the market value of land from the date of publication of Section 3A of the NH Act, 1956 till the announcement of award under Section 3G or taking possession of land, whichever is earlier, is payable.
- (vi) This issue has been examined in detail by the Ld. Attorney General who has finally opined *“that a holistic reading of the provisions of the RFCTLARR Act, 2013 would*

*require the payment of the 'amount' mentioned under Section 30(3) of the RFCTLARR Act, 2013".* As such, in supersession of the OM bearing No. NH-11011/140/2017-P&M/LA dated 7<sup>th</sup> September 2017, vide which it was clarified that the said 'amount', not being part of the First Schedule to the Act, was not payable in respect of land acquisition under the NH Act, 1956, it has been clarified vide guidelines dated 28.12.2017 that the 'amount' calculated @ 12% per annum, as prescribed under Section 30(3) of the RFCTLARR Act, 2013, though not specifically mentioned in the First Schedule, would be payable to the landowners.

- (vii) Still, another set of two questions arise i.e. (a) the date from which the amount payable under Section 30(3) is to be calculated, and (b) as to whether the 'amount' as mentioned in Section 30(3) of the RFCTLARR Act, 2013 is a **stand-alone component and paid as such** or it would get added to the market value, and then count for the purposes of Multiplication Factor and/ or Solatium also. This issue has also been examined by the Ld. Attorney General, whose opinion is reproduced below:

“There are **two other issues** that are related to payment of 'amount' under Section 30(3). **The first** is in regard to the date from which this amount has to be calculated. Section 30(3) states that this date will be the date of 'social impact assessment' under Section 4 of the RFCTLARR Act. However, Section 4 is not applicable to the National Highways Act. Therefore, as was being done earlier, this amount may be paid from the date of issuance of preliminary notification under Section 3A of the National Highways Act. **The second issue** is in regard to whether this 'amount' is a standalone component or whether the same has to be calculated after addition of the multiplication factor and solatium. The answer to this question is to be found in Section 30(3) which clearly states that the amount is payable in addition to the market value of the land and is calculated as a percentage of 'market value'. There is a distinction between 'market value' and compensation. Market value is determined under Section 26. Section 27 provides that the Collector having determined the total market value, will proceed to determine the compensation. This compensation is determined under Section 28 of the Act. Therefore, a reading of these sections would lead to the conclusion that the 'amount' has to be awarded only on the 'market value' which in turn is determined under Section 26 of the Act.”

- (viii) It may be noted that the computation of different components of the total compensation is in seriatim and sequential from Section 26 to Section 30 of the RFTCLARR Act, 2013. Keeping the aforesaid opinion of the Ld. Attorney General in view, and the fact that the payment of 'amount' under Section 30(3) has been prescribed as “In addition ...” after the provision for payment of solatium, **it is clarified that it would be payable as a 'stand-alone component' and shall not count for the purposes of Multiplication Factor and the Solatium.** The method of calculation has been illustrated in Chapter 3 at appropriate place.

## **2.7 Issue of the Multiplication Factor (MF)**

- (i) It is clear that the compensation of land acquired under the NH Act, 1956 with effect from 01.01.2015 is to be determined in accordance with the provisions

contained in the First Schedule to the RFCTLARR Act, 2013 (in so far as it relates to the Multiplication Factor prescribed by the appropriate government).

- (ii) The Department of Land Resources (DoLR), Ministry of Rural Development, Government of India issued a Notification dated 9<sup>th</sup> February 2016 in this behalf, which reads as under:

“In exercise of the powers conferred by column No. 3 of serial No. \*2 of the First Schedule read with sub-section (2) of Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government, hereby, notifies that in the case of rural areas, the factor by which the market value is to be multiplied shall be 2.00 (two).”

- (iii) Soon after the aforesaid Notification was issued by the Department of Land Resources, certain states like Andhra Pradesh, Maharashtra, Punjab, Jharkhand, and Bihar started using a Multiplication Factor of 2.00 in respect of land acquired/ to be acquired for the NH Projects (read Central Government Projects) on the basis of 9<sup>th</sup> February Notification of the Department of Land Resources whereas the Multiplication Factor applicable to the jurisdiction of the state was to be notified by the appropriate government. MoRTH also issued two OMs dated 12.08.2015 and 08.08.2016 on the subject. A reference was made in this behalf by the then Chairman, NHAI to the Secretary, Department of Land Resources. Certain references were also made by the states. The reference specifically mentioned the issue of two different sets of MFs being adopted by certain states for the Central Projects and the State Projects.
- (iv) Some of these confusions have been set at rest and clarified by the DoLR vide its letter F. No. 13013/ 02/ 2016-LRD dated 8<sup>th</sup> May, 2017, more specifically the issue of differential MFs for the State and the Central Projects. The DoLR has further clarified vide its F. No. 13013/02/2016-LRD dated 14<sup>th</sup> December 2017 that the DoLR Notification of 9<sup>th</sup> February 2016 was applicable only to the UTs, except Puducherry, as the DoLR is the appropriate Government only in respect of the UTs, except Puducherry.
- (v) The DoLR Notification of 9<sup>th</sup> February 2016 prima facie appears to be inconsistent with the provisions contained in the First Schedule, especially in respect of the following three points:
- (a) Firstly, it gave an impression (though erroneous) as if the Central Government was the ‘appropriate government’ to notify the Multiplication Factor (MF) in respect of all Central Government projects across all the states;
  - (b) Secondly, it did not clearly state that the Notification was applicable only in relation to the Union Territories, except Puducherry; and
  - (c) Thirdly, the prescription of a MF of 2.00 without co-relating the distance of the project from the urban area is prima facie inconsistent with the provisions of the First Schedule. The said entry under the First Schedule is reproduced as under:

Serial Number	Component of Compensation package in respect of land acquired under the Act	Manner of determination of value	Date of determination of value
(1)	(2)	(3)	(4)
2.	Factor by which the market value is to be multiplied in the case of rural areas	1.00 (one) to 2.00 (Two) based on the distance of project from the urban area, as may be notified by the appropriate Government.	

(vi) The DoLR, however, has clarified the position with regard to the points mentioned at (a) and (b) of para (v) above, as mentioned under para (iv) above. The DoLR has clarified vide its OM of 8<sup>th</sup> May 2017 that there cannot be two sets of Multiplication Factors, one for the state projects and the other for the Central projects. Since the issue regarding sub-para (c) of para (v) above still remained unsettled, the matter was referred to the Ld. Attorney General, who opined as under:

“The MoRTH has sought my opinion on whether it is open to the appropriate Government to fix a uniform multiplication factor of 2 for all rural lands. The query is a result of notifications issued by the Department of Land Resources and certain states like ... which have stated a multiplication factor of 2 in respect of land acquired/ to be acquired for all National Highway Projects whereas a different multiplication factor has been prescribed for land acquired by the State Government.

In my opinion, the appropriate government must have a graded approach to fixing the multiplication factor. This is evident from the words in the schedule “1.00 (one) to 2.00 (two) based on the distance of project from the urban area”. For this purpose, the appropriate government has to apply its mind and take into consideration the distance of lands from urban areas.”

(vii) Most of the states have already notified the graded scale of Multiplication Factor as applicable in their respective jurisdiction. The position in this behalf, as available with MoRTH on the date of issue of these guidelines, is enclosed as [Annexure 2.4](#). While the matter has been taken up with the DoLR again to revisit its Notification of 9<sup>th</sup> February 2017 with regard to a single Multiplication Factor of 2.00 for the rural areas *qua* the UTs (except the state of Puducherry). MoRTH has also taken up the issue with the concerned State Governments (namely, Uttrakhand, UP, Bihar, Jharkhand and Gujarat). The concerned officers of MoRTH and NHAI/ NHIDCL are advised to pursue the matter with these 5 states where a uniform MF of 2.0 has been notified for the Rural Areas without using a scale/ graded MF linking the distance of the project area from the urban limits. The Chief Secretaries of the concerned states like Gujarat, Jharkhand, Uttrakhand, Uttar Pradesh and Bihar may also be requested to take necessary corrective measures in this matter in order to ensure that the ‘multiplication factor’ notified in their respective states is in conformity with the legal provisions in the First Schedule to the RFCTLARR Act, 2013, as also advised by the Attorney General of India.

(viii) Keeping the aforesaid in view, it is clarified as under:

(a) The multiplication factor by which the ‘market value’ is to be multiplied in

case of urban areas shall be 1.00 (One) as specified in the First Schedule. The 'Urban Area' shall mean the area situated within and up to the boundary of the Urban Local Body as notified by the concerned State Government (i.e. a Municipal Corporation/ Council/ Committee, by whatever name it may be called).

- (b) The multiplication factor by which the market value is to be multiplied in case of rural areas (from the end-point of urban limit) shall be the one as notified by the concerned State Government, being the appropriate government for such state. It may be noted that the Multiplication Factor notified by the State shall remain the same for the projects of the state government and the central government requiring land acquisition. There cannot be two different sets of "multiplication factors" in the same state, as already clarified by the Department of Land Resources, Ministry of Rural Development, vide its O.M. dated 8<sup>th</sup> May, 2017.
- (c) As regards the Multiplication Factor in the case of rural areas in the Union Territories (other than Puducherry), the issue of review and revision thereof is under correspondence with the DoLR.
- (d) The Multiplication Factor by which the market value is to be multiplied in case of rural areas situated in the Union Territory of Puducherry shall be the same as notified by the Government of Union Territory of Puducherry.

## 2.8 Bulk Acquisitions/ Purchase of Land through Consent of Landowners:

- (i) Various state governments have come out with their respective guidelines/ policies/ rules/ statutes for acquisition of land on consent basis. Proposals have been received in MoRTH from such state governments for acquisition of land for the National Highways within their jurisdiction under their respective consent acquisition policies/ guidelines/ statutes. MoRTH had agreed to the proposals of the following states and issued OMs in this connection subject to the condition that the compensation amount paid in such cases is in consonance with the provisions of the RFCTLARR Act 2013, as applicable to the NH Act, 1956 for the purpose:

Sr. No.	Subject	Date of Issue
(i)	Kerala, Chhattisgarh	02.08.2016
(ii)	West Bengal, Uttar Pradesh, Telangana, Punjab,	03.08.2016
(iii)	Rajasthan, Goa, Odisha,	24.08.2016
(iv)	Bihar,	29.08.2016
(v)	Maharashtra, Himachal Pradesh	26.09.2016
(vi)	Karnataka	16.11.2016
(vii)	Madhya Pradesh	06.09.2017

- (ii) In super-session of the above OMs, it has been decided by the Competent Authority that following guidelines shall be followed henceforth (i.e. from 28.12.2017) and until further orders regarding Bulk acquisition/ Purchase of Land through Consent of landowners:-
- (a) There is a specific Central statute for acquisition of land for the National Highways i.e. **National Highways Act, 1956**. As such, legally, the Central Government is competent to acquire land for the construction/ development of National Highways under the NH Act, 1956 and the States do not have a case to insist that the land for the NHs in their jurisdiction should be acquired under the statutes/ policies framed by the State Governments/ UT Administrations. As a matter of fact, the NH Act, 1956 is applicable throughout India without any exceptions.
  - (b) However, considering the urgent need for minimizing litigation and ensuring timely availability of land for completion of the NH projects, land for NH projects can be acquired/ procured through direct purchase with the consent of the landowners in accordance with the existing Acts/ Rules/ Policies of the concerned State Governments, as already clarified vide Comprehensive Guidelines dated 28.12.2017, subject to the condition that the total amount of compensation so worked out **will be no more than** what is payable when the land is acquired under the NH Act, 1956, which in any case is in conformity with the compensation payable in accordance with the provisions of RFCTLARR Act, 2013.
  - (c) Further, MoRTH/ NHAI/ NHIDCL would also be agreeable to acquisition of land for the NH Projects in accordance with such consent mechanism of the state subject to the condition that the concerned State Government/ UT Administration agrees to bear the incremental cost, if any, from its own resources. To illustrate, if the amount of total compensation payable for one hectare land in terms of the First Schedule to the RFCTLARR Act, 2013 [including the amount calculated @ 12% in terms of Section 30 (3) of RFCTLARR Act, 2013] is Rs. 1.50 cr. per hectare and the amount determined under the consent mechanism of the state government works out to Rs. 1.75 cr. per hectare, the State Government/ UT Administration would have to bear the differential compensation amount of Rs. 25.00 Lakh per hectare from its own sources.
  - (d) Henceforth, as clarified vide guidelines dated 28.12.2017, with the above principles having been laid down, there will be no need to issue any state specific guidelines on the subject.

## 2.9 Acquisition of Land for Missing Plots

- (i) The Ministry has issued detailed guidelines vide its letter dated 15.03.2016 for acquisition of land through consent of landowners, preferably limited to 10% of total quantum of land acquisition in a construction package in the cases of (a)



Missing plots which are inadvertently left out from the bulk acquisition, and/ or (b) additional land required due to alteration of alignment at the implementation stage. These guidelines, reproduced at [Annexure 2.5](#), shall continue to remain in force until further orders.

- (ii) It has been observed that these missing plots invariably remain ignored or pending in the hope that the landowners would agree to transfer the same to the project executing agencies at the same rates of compensation amount as paid to the landowners of adjoining plots, which is not the case always. As such, the Officers-in-Charge of the Project are advised to immediately prepare Notification under Section 3A for the missing plots in the first instance, get the same published and then try to negotiate the purchase of land involved therein. Any such negotiated purchase should be tried and closed before issue of Notification under Section 3D. In case it is found that the owners of such missing plots are agreeable to sell such plots as per MoRTH Policy on the subject up to or before issue of Notification under Section 3D, the same may be procured through sale/ purchase deeds while process of acquisition for the balance land under the missing plots may continue further.
- (iii) Wherever the missed out plots are procured through private agreements, sale-deeds need to be executed for the same. As per the orders in force earlier, it required an officer from the Ministry to act as a representative of the Central Government (i.e. the President of India) for execution of the sale-deeds. Similar has been the position regarding completion of mutation proceedings in respect of the land parcels acquired under the law. Looking at the difficulties faced in this behalf, the matter was taken up with the Ministry of Home Affairs (MHA) for requisite authorisation of the field officers. Agreeing with the proposal of MoRTH in this behalf, the MHA has issued notification vide S.O. 3837(E) dated 3rd August 2018, copy of which is enclosed as [Annexure 2.6](#). The substance of the said Notification is to authorise the field level officers of the Project Implementing Agencies to act as representatives of the Central Government before the competent authority for necessary action, and which reads as under:

*"In rule 2 of the Authentication Orders and other Instruments) Rules, 2002, a New Section (49) may be inserted to read as: -*

*(49) In the case of orders and other instruments relating to the Ministry of Road Transport and Highways limited to the execution of mutations/ conveyance deeds in respect of land acquired for the National Highways in the name of the President of India through the Ministry of Road Transport and Highways by the concerned Project Director or Regional Officer of the National Highways Authority of India (NHAI)/ National Highways Infrastructure Development Corporation Limited (NHIDCL) and by the Regional Officer or other officer of the rank of Assistant Executive Engineer and above posted in the offices of the Ministry of Road Transport and Highways in cases where the projects are executed through the State Public Works Departments (PWDs)."*

Further, the State Governments are expected not to charge/ levy/ require any Stamp Duty on such Conveyance Deeds executed in the name of the President of India.

**2.10 Notification of a stretch as NH under Section 2 of the NH Act, 1956 before initiating the process of Land Acquisition under Section 3 of the NH Act?**

- (i) The issue as to whether it is necessary to notify a certain stretch as a National Highway under Section 2 of the NH Act before initiating the process of acquisition of land for building a National Highway under Section 3 of the NH Act has come up for consideration. The Ministry has been of the view that Section 2 and Section 3 of the NH Act are independent of each other. This issue was also referred to the Ld. Attorney General for his opinion. The Attorney General has advised vide his supplementary reference dated 24.12.2017 ([Annexure 2.7](#)) as under:

“Section 3A deals with the power to acquire land and Section 3A(1) provides as follows:

3A Power to acquire land, etc. – (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.

Under Section 3A(1), the Central Government may acquire land for the purpose of building a National Highway. The term ‘building’ is not defined in the National Highways Act. The New Webster’s Dictionary of the English Language (Deluxe Encyclopaedic Edn.) defines ‘building’ as ‘the act of one who builds’. The term ‘build’ is defined as ‘to construct or erect, as a house; to form by uniting materials into a regular structure; to make; to establish by gradual means; to raise as on a support or foundation’. When the Central Government notifies land for acquisition, the nature of these lands may be paddy fields or waste lands or vacant lands. These lands cannot be called a Highway. What is acquired is only land without a Highway existing at the time. The very concept of a Highway is defined in common law as ‘a way over which there exists a public right or passage... at all seasons of the year freely... to pass and re-pass without let or hindrance (Halsbury’s Laws of England, 4<sup>th</sup> Edn. Vol 21 Page 9). Vacant lands and paddy fields can never be termed as Highways. It is only when the road is built/ constructed and established, and is able to take traffic, and when a passage comes into existence for persons to pass and re-pass, that it can be notified.

In view of the above, my answer to the query is that it is not necessary to notify a road project as a National Highway in terms of Section 2 of the National Highways Act, 1956 for initiating the process of land acquisition under Section 3A of the Act .

I advise accordingly.”

- (ii) Accordingly, it is clarified that it is not necessary that a stretch must be notified as a National Highway under Section 2 of the NH Act, 1956 before initiating the process of land acquisition under Section 3 for building a National Highway.

## 2.11 Administrative charges for Land Acquisition for NH Projects

A total of 13 states levy administrative charges for acquisition of land for the National Highways. Earlier, these charges varied from about 10% of the compensation amount to 20.5% of the compensation amount. This issue was deliberated in-depth and the States were requested to rationalise the same and cap it at a maximum of 2.5% of the compensation amount. A copy of the letter sent to all the Chief Secretaries with detailed justification in this behalf is enclosed as [Annexure 2.8](#). Pursuant to rigorous follow-up by the Ministry with the respective State Governments, most of the States have already agreed to rationalise the same. Wherever formal orders have not been issued by the state concerned, MoRTH and/or its executing agencies have been paying this amount with a cap of 2.5% of the compensation amount. These rates are applicable with effect from 01.01.2015 i.e. the date since when compensation is being paid as per the First Schedule of the RFCTLARR Act, 2013. Any excess amount paid earlier would be adjustable against future dues. It has also been decided that wherever a state does not agree to cap these charges @ 2.5% of the Compensation amount, MoRTH or its executing agencies would not take up any National Highway works in such state. The details of Administrative Charges being levied by the States as on date are enclosed [Annexure-2.9](#).

## 2.12 Appointment of Arbitrator

- (i) Section 3G (5) of the NH Act, 1956 provides that *“If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.”*
- (ii) The Hon’ble High Court of Sikkim appointed an Arbitrator in a matter relating to acquisition of land under the NH Act, 1956. The issue arose as to whether the Hon’ble High Court could intervene and appoint the Arbitrator in a matter of arbitration under the NH Act. Orders of the High Court were challenged by the NHIDCL before the Hon’ble Supreme Court of India. The Hon’ble Supreme Court has held in Civil Appeal No. 5250 of 2018 (arising out of S.L.P. (C) No. 20049 of 2017) vide its order dated May 16, 2018 (enclosed as [Annexure 2.10](#)) that the Central Government alone is competent to appoint the Arbitrator under Section 3 (G) (5) of the NH Act, 1956. This issue has been addressed in detail in **Chapter 5** of this Manual.

## 2.13 Competent Authority for Land Acquisition (CALA) and due diligence at the time of determination of compensation amount by the Competent Authority.

- (i) The Central Government (i.e. the Ministry of Road Transport & Highways) appoints the Competent Authority for Land Acquisition (CALA) in exercise of its powers under Section 3(a) of the NH Act, 1956. As such, the CALA appointed by the Central Government, is obliged to take all action for acquisition of land under the NH Act, 1956 and the guidelines issued by the Central Government on the subject.

- (ii) The CALA, while announcing the Award under Section 3G, shall append a certificate at the end of his Award that he/ she has strictly followed the legal provisions and the Ministry guidelines in determination of the compensation amount.

#### **2.14 Payment of Interest on delayed payment of the amount of Compensation**

- (i) Formerly, the Land Acquisition Act, 1894 and presently the RFCTLARR Act, 2013 contains provisions for payment of interest on the amount of enhanced compensation to the landowners. Such provisions existed under Section 28 of the 1894 Act and subsist under Section 72 of the RFCTLARR Act, 2013. As per the provisions contained in the National Highways Act, 1956, the acquiring agency is required to deposit the amount on demand with the CALA for announcement of the award and the CALA, in turn, is required to tender such amount to the landowners or the persons interested in such land as per "*The National Highways (Manner of Depositing the Amount by the Central Government with the Competent Authority for Acquisition of Land) Rules, 1998*" (as amended from time to time). Once the amount of award has been placed at the disposal of CALA by the Acquiring Agency and the CALA has notified the landowners/ persons interested therein to receive/ collect such amount, there is no provision for payment of any such interest on account of delayed disbursement of compensation because such delayed disbursement is on account of delay on the part of the landowners. Therefore, it may be noted that no such amount of interest is payable in respect of any delays in disbursement of compensation amount qua the Award announced by the CALA.
- (ii) While no interest is payable on the awarded amount on account of any delays in disbursement of the same to the landowners, it is equally important to note that in cases where the amount of compensation determined under the Award is challenged before the Arbitrator, and the Arbitrator decides to enhance the awarded amount, interest is payable to the landowners on the enhanced component in terms of sub-section (5) and (6) of Section 3H as reproduced below:

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit."

#### **2.15 Section 3G (2) of the NH Act, 1956, no longer in operation:**

With the application of First Schedule of the RFCTLARR Act, 2013 to the NH Act, 1956 regarding payment of compensation amount, (including the additional amount calculated @ 12% on the basic market value, as provided under Sub-section (3) of Section 30 of the RFCTLARR Act, 2013), the provision contained in Sub-section (2) of Section 3G of the NH Act, 1956 ceases to operate. As such, the CALA shall not

include any such amount in his Award.

#### **2.16 Super-session of previous guidelines:**

With the issue of comprehensively revised guidelines dated 28.12.2017, it was specifically stated that the guidelines mentioned under **Part B of Annexure-1** of the guidelines dated 28.12.2017 were superseded and the revised guidelines became effective from the date of issue. The same is re-iterated here. It was further stated that the guidelines mentioned at **Part A of Annexure-1** of the said guidelines would continue to remain in operation for the time being till these are also comprehensively revised. The same are being comprehensively revised now.

#### **2.17 Savings:**

The guidelines dated 28.12.2017 contained this clause under para 15 thereof. The same is re-iterated as under:

“The Ministry has been issuing guidelines on the subject of Land Acquisition from time to time based on clarifications/ developments as these came along, which may have resulted in higher outgo on account of amounts of compensation paid to the landowners. Since it is practically not feasible to recover any such excess paid amount from the landowners/ interested persons, it is clarified that any compensation amount paid in the past in terms of guidelines issued by the Ministry from time to time, and which may not be payable in terms of these revised guidelines, shall be deemed to have been paid as per the extant guidelines and shall not be called into question on account of these revised guidelines.”

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## **Annexures to Chapter-2**





Legal Opinion of the Attorney General of India on the issue of "Concluded cases" arising from the Order of Hon'ble Supreme Court in the matter of Union of India vs. Golden Iron case.

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**K.K. Venugopal**  
Attorney General for India

Supreme Court of India  
New Delhi-110001  
Tel: 23383254, 23070046  
Fax: 23782101

October 10, 2018

**OPINION**

**Querist: National Highways Authority of India (NHAI)**

1. The Querist, National Highways Authority of India (NHAI) has sought my opinion on the interpretation of the order dated 11<sup>th</sup> August 2016 of the Supreme Court of India in *NHAI Vs. RLF Industries (CA 8872-73 of 2013)*. There are seven queries raised by the Querist. These are:

(i) What is the import and purport of the direction of the Hon'ble Supreme Court in *RLF Industries* when it has held that "concluded cases should not be opened."

(ii) Whether the phrase concluded cases would include within its ambit the land acquisition proceedings which have been initiated post 28.03.2008 but no demand/proceedings seeking enhancement of compensation and/or solatium and interest have been preferred until the order of the Hon'ble Supreme Court dated 11.08.2016 or where the proceedings were initiated, the same were decided prior to 11.08.2016?

(iii) Whether the phrase "concluded cases" would include land acquisitions proceedings in which though the orders of the Competent Authority for Land Acquisition (CALA) were passed prior to 28.03.2008 no judicial proceedings were pending, *albeit* the demand/proceedings seeking enhancement of compensation and/or solatium and interest were initiated within the period of limitation and/or the land owner has initiated writ proceedings after 28.03.2008?



(iv) If the answer to above query (iii) is in affirmative, whether the NHAI is liable to pay solatium and interest, if the proceedings have been initiated within the period of limitation from the date of award, although technically on the cut-off date there are no proceedings pending.

(v) Whether the land owners are also entitled to payment of additional amount under Section 23(1A) i.e. an amount calculated at the rate of twelve per centum per annum on market-value for the period commencing on and from the date of the publication of the notification under section 3A, as the judgment in Golden Iron (supra) restricts payment of benefits in accordance with 23(2) (Solatium) and 28 (interest) of the Land Acquisition Act, 1894?

(vi) In what manner and method, the amounts deposited by the NHAI @ of 30% of the compensation in FDRs in Nationalized Bank pursuant to various orders of the High Court of Punjab & Haryana and the Supreme Court is required to be disbursed. If the land owners are eligible for 30% solatium as per Section 23(2) of LA Act, 1894 who will retain the interests generated on FDRs, land owners or the NHAI?

(vii) Whether the interest component under Section 28 of the Land Acquisition Act, 1894 is payable on the entire enhanced compensation or only on the Solatium amount, in the light of the Hon'ble Supreme Court of India Order dated 11.08.2016?

2. I have gone through the documents contained in the file and I have also held a conference with the Querist. I shall, before I answer the queries posed, briefly set out the factual background in which my opinion has been sought.





(5) *If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government—*

(6) *Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.*

(7) *The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration—*

(a) *the market value of the land on the date of publication of the notification under section 3A;*

(b) *the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;*

(c) *the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;*

(d) *if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.”*

**“3J. Land Acquisition Act 1 of 1894 not to apply.—***Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act.”*

4. By its judgment dated 28<sup>th</sup> March 2008, the High Court declared Sections 3G and 3J of the National Highways Act, 1956, unconstitutional. It further held



that Sections 23(2) & 28 of the Land Acquisition Act, 1874 would be applicable to all acquisitions under the National Highways Act, 1956. The relevant portion of the judgment reads as under:

*“As we have upheld the legality of the proceedings for acquisition, the writ petitions are dismissed in respect thereof. But as the provisions of Section 3J and 3G are ultra vires of Article 14 of the Constitution of India, all acquisitions made under the National Highways Act, 1956 would necessarily have to grant solatium and interest, in terms similar to those contained in Section 23(2) and Section 28 of the Land Acquisition Act”*

5. This judgment of the Punjab & Haryana High Court was challenged before the Supreme Court of India. The Supreme Court of India in its order dated 11<sup>th</sup> August 2016 in *NHAI v. RLP Industries (supra)* was dealing with an appeal against the said judgment. Without going into the merits of the matter, the Supreme Court merely fixed a cut-off date for the applicability of the judgment of the High Court. In my view, the effect would be that the Supreme Court upheld the legality and correctness of the judgment of the High Court, while restricting the benefit of the said judgment to cases which do not already stand concluded.

The relevant portion of the order of the Supreme Court reads thus:

*“We have considered the submissions advanced. In Gurpreet Singh v. Union Of India., (2006) 8 SCC 457, this Court, though in a different context, had restricted the operation of the judgment of this Court in Sunder v. Union Of India, (2001) 7 SCC 211 and had granted the benefit of interest on solatium only in respect of pending proceedings. We are of the view that a similar course should be adopted in the present case also. Accordingly, it is directed that the award*



*of solatium and interest on solatium should be made effective only to proceedings pending on the date of the High Court order in Golden Iron & Steel Forgings v. Union of India i.e 28.03.2008. Concluded cases should not be opened.* As for future proceedings, the position would be covered by the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (came into force on 01.01.2014), which Act has been made applicable to acquisitions under the National Highways Act, 1956 by virtue of notification/order issued under the provisions of the Act of 2013.

*With the aforesaid modification and clarification in the order of the High Court, these civil appeals are disposed of”.*

6. Meanwhile, in other proceeding arising out of different land acquisition proceedings undertaken by the Querist, the Madras High Court in its judgment dated 4.03.2011 *T. Chakrapani v. Union of India (WP No. 15699 of 2010)* also held Section 3J of the National Highways Act, 1956, to be unconstitutional. It directed that the Petitioners before it (i.e. the landowners) are “*entitled to compensation of additional market value under Section 23(1)(a), solatium under Section 23(2) and interest as provided under the Land Acquisition Act.*” This judgment was challenged by the Querist before the Supreme Court of India. By its order dated July 21<sup>st</sup> 2016, the Court disposed of the matter by holding that “*the respondents – writ petitioners be paid solatium as due in terms of the impugned order(s) along with interest thereon.*”



7. While the Supreme Court referred expressly to solatium, and not to the amount payable in terms of Section 23(1A) of the Land Acquisition Act, 1894, I do not believe that the Supreme Court intended to exclude the applicability of Section 23(1A) to land acquisition proceedings under the National Highways Act, 1956. This is because the Supreme Court did not set aside the judgment of the Madras High Court, which had declared Section 3J of the National Highways Act, 1956 to be unconstitutional. As I have noted earlier, the effect of the setting aside of Section 3J would be that the provisions relating to payment of compensation, including Section 23(1A) and Section 23(2) would be applicable to acquisitions under the National Highways Act, 1956.

8. Apart from the judgment of the Madras High Court in *T. Chakrapani (supra)*, a Single Judge of the Karnataka High Court in *Lalita&Anr v. Union of India & Ors* also held that “*the landowners are entitled for additional market value under Section 23(1A), solatium under Section 23(2) and interest as provided under Section 28 of the LA Act.*” I was informed that this judgment of the High Court of Karnataka was appealed before the Division Bench and the Division Bench has stayed the judgment of the Single Judge. However, the issue being covered by the aforementioned decisions of the Supreme Court of India, the proceedings before the Karnataka High Court may not be of much relevance to the issues at hand.



9. The Querist had earlier sought the opinion of the then Solicitor General of India on the issues raised for my opinion. The Solicitor-General by his opinion dated 21<sup>st</sup> March 2017 opined as under:

*“In view of the aforesaid analysis, period of limitation may commence from the date of notification under section 3D of the NH Act, 1956. Solatium and interest will not be payable in respect of those proceedings filed before the High Court after the period of limitation so as not to overlook the delay that may have occurred on the part of the landowner(s) in approaching the court and thus may open floodgates for en-masse litigation on the issue.*

*The intent of the Hon'ble Supreme Court while observing that “concluded cases should not be opened”, is to prevent from opening of floodgates for litigation qua those who approach Courts after the High Court judgment to get the benefit of the judgment of the High Court. Concluded cases would also include those land acquisition proceedings against which solatium and interest as per LA Act, 1894 has not been paid as there is no award for solatium by CALA/ Arbitrator and there is no appeal within the limitation, but concluded cases may not include where solatium and interest has been deposited in FDRs in terms of Court order against land acquisition proceedings which were entertained by the High Court beyond the period of limitation.”*

10. The Querist appears to still face some ambiguity with regard to the correct interpretation of the order of the Supreme Court passed on 11.08.2016. In my view, the position which emerges from the decisions of the Supreme Court, dated 21.07.2016 (arising from the Madras High Court) and 11.08.2016 (arising from the Punjab & Haryana High Court), is as follows:





- a. The Punjab & Haryana High Court, in *Golden Iron & Steel (supra)* had held that Sections 3G and 3J of the National Highways Act, 1956, are unconstitutional. Section 3G dealt with the compensation payable to landowners whose lands are acquired under the the said statute, and Section 3J rendered the provisions of the Land Acquisition Act, 1894, inapplicable to acquisitions under the National Highways Act, 1956. The effect of these provisions being set aside would, obviously, be that the provisions of the Land Acquisition Act, 1894, dealing with the payment of compensation, would apply to acquisitions of land under the National Highways Act as well.
- b. The High Court had, therefore, in its operative order expressly held that the Querist is liable to pay solatium and interest on solatium in respect of all acquisitions undertaken under the National Highways Act, even though the National Highways Act expressly omitted to provide for solatium and interest on solatium.
- c. The Madras High Court, *T. Chakrapani (supra)*, also declared Section 3J of the National Highways Act, 1956, unconstitutional. It expressly directed that the petitioners before it would be entitled to payment of “*additional market value under Section 23(1)(a)*,”



*solatium under Section 23(2) and interest as provided under the Land Acquisition Act”.*

- d. The above judgments of the High Courts were approved by the Supreme Court of India, by order dated 11.08.2016 and 21.07.2016 respectively. However, in its order of 11.08.2016, the Supreme Court confined the operation of the judgment of the High Court of Punjab & Haryana from 28.03.2008 onwards.
- e. As a consequence, as and from 28.03.2008, the National Highways Authority would be liable to make payment under Section 23(1A), 23(2) and Section 28 of the Land Acquisition Act, 1894 for all acquisitions initiated post 28.03.2008.

11. A question may arise as to the meaning of the terms ‘proceedings pending’ and ‘concluded cases’ used by the Supreme Court in its order of 11.08.2016. In my view, if the landowner accepted the award rendered prior to 28.03.2008 by not filing an appeal within the period of limitation, the proceedings can no longer be said to be pending. Equally, if an appeal has been filed by the landowner which is pending, or if the limitation period for filing an appeal has not expired, the proceedings cannot be stated to have been concluded. It is well settled that an appeal is a continuation of the original proceeding and consequently, proceedings



in which an appeal can be preferred cannot be said to have concluded. The Supreme Court of India in *Darshan Singh v. Ram Pal Singh*, 1992 Supp (1) SCC 191 held:

“34. The meaning of the word ‘contest’ is, according to Black’s *Law Dictionary*, to make defence to an adverse claim in a court of law; to oppose, resist or dispute; to strive to win or hold; to controvert, litigate, call in question, challenge, to defend. The contest continues right up to the final decision or, in other words the right to contest comes to an end only when a final decision is given one way or the other putting an end to the litigation between the parties with regard to the alienation. It is well settled proposition of law that appeal is a continuation of a suit and any change in law, which has taken place between the date of the decree and the decision of the appeal, has to be taken into consideration. When a suit filed by a reversioner is dismissed and he files an appeal then before the appellate court also he is contesting the alienation. If he does not contest or challenge the alienation, then he cannot achieve success. Therefore, when the axe has fallen before the contest was over, let the axe lie where it falls.

12. Similarly, in *RachakondaNarayana v. PonthalaParvathamma*, (2001) 8 SCC 173 the Court held “an appeal is a continuation of the suit. When an appellate court hears an appeal, the whole matter is at large. The appellate court can go into any question relating to rights of the parties which a trial court was entitled to dispose of provided the plaintiff possesses that right on the date of filing of the suit.”



With this discussion, I shall proceed to answer each of the queries posed for my opinion.

- (i) **What is the import and purport of the direction of the Hon'ble Supreme Court in RLF Industries when it has held that "concluded cases should not be opened."**

The import and purport of the direction of the Supreme Court in holding 'concluded cases should not be opened' is that cases that have stood concluded prior to 28.03.2008 will not be re-opened.

- (ii) **Whether the phrase concluded cases would include within its ambit the land acquisition proceedings which have been initiated post 28.03.2008 but no demand/ proceedings seeking enhancement of compensation and/ or solatium and interest have been preferred until the order of the Hon'ble Supreme Court dated 11.08.2016 or where the proceedings were initiated, the same were decided prior to 11.08.2016?**

In regard to cases initiated post 28.03.2008, if the period for limitation for filing objections and/or challenging the award has already expired, and no challenge has been made within the period of limitation, the Querist would be entitled object to payment of Solatium and Interest on Solatium on the ground that the claim is time barred. However, even in regard to acquisitions initiated after 28.03.2008, if a claim for solatium and/or interest on solatium is made by the



landowner, within the prescribed period of limitation, the same would have to be accepted by the Querist.

- (iii) **Whether the phrase “concluded cases” would include land acquisitions proceedings in which though the orders of the Competent Authority for Land Acquisition (CALA) were passed prior to 28.03.2008 no judicial proceedings were pending, *albeit* the demand/ proceedings seeking enhancement of compensation and/or solatium and interest were initiated within the period of limitation and/or the land owner has initiated writ proceedings after 28.03.2008?**

The obligation to pay Solatium and interest on Solatium in all cases of land acquisition initiated prior to 28.03.2008 would only arise if the said cases were still pending as on 28.03.2008. Therefore, if no judicial proceedings are pending as on 28.03.2008 or if the time for filing of an appeal has already expired and no appeal has been filed, the claim of the landowner is liable to be rejected. Consequently, even if no proceedings were pending as on 28.03.2008, but the land owner is still within his/her right to file an appeal/challenge to the award, the obligation to pay Solatium and interest on Solaitum will continue.

It is true that no period of limitation is prescribed for writ petitions. However, if a writ petition is filed after the limitation period for the filing of an appeal in respect of compensation has expired, the same would have to be contested by the Querist on the ground that entertaining the writ petition would be



tantamount to permitting a concluded case to be reopened, and would fall foul of the clear direction of the Supreme Court in its order of 11.08.2016.

- (iv) **If the answer to above query (iii) is in affirmative, whether the NHAI is liable to pay solatium and interest, if the proceedings have been initiated within the period of limitation from the date of award, although technically on the cut-off date there are no proceedings pending.**

As stated above, even if no proceedings are technically pending as on 28.03.2008, if the landowner files an appeal within the period of limitation, the NHAI will be liable to pay solatium and interest on solatium.

- (v) **Whether the land owners are also entitled to payment of additional amount under Section 23(1A) i.e. an amount calculated at the rate of twelve per centum per annum on market-value for the period commencing on and from the date of the publication of the notification under section 3A, as the judgment in Golden Iron (supra) restricts payment of benefits in accordance with 23(2) (Solatium) and 28 (interest) of the Land Acquisition Act, 1894?**

For the reasons set out in paragraph 7 of this opinion, I answer this query in the affirmative. In other words, the landowners are entitled to payment in terms of Section 23(1A) of the Land Acquisition Act, 1894.



- (vi) **In what manner and method, the amounts deposited by the NHAI @ of 30% of the compensation in FDRs in Nationalized Bank pursuant to various orders of the High Court of Punjab & Haryana and the Supreme Court is required to be disbursed. If the landowners are eligible for 30% solatium as per Section 23(2) of LA Act, 1894 who will retain the interests generated on FDRs, land owners or the NHAI?**

It would appear that pursuant to orders passed by the Punjab & Haryana High Court, the amounts due to the landowners in terms of Section 23(2) of the Land Acquisition Act have been deposited by the Querist in Fixed Deposits, pending a final resolution of the matter by the Courts. If this be so, once it is held that the landowners are entitled to these amounts, any interest earned thereon, during the pendency of the matter before the High Court and the Supreme Court, would also, in my opinion, have to be paid over to the land owners.

- (vii) **Whether the interest component under Section 28 of the Land Acquisition Act, 1894 is payable on the entire enhanced compensation or only on the Solatium amount, in the light of the Hon'ble Supreme Court of India Order dated 11.08.2016?**

Section 28 of the Land Acquisition Act, 1894, reads as follows:

*"28. Collector may be directed to pay interest on excess compensation. - If the sum, which in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the collector shall pay interest on such excess at the rate of [nine per centum] per annum from the date on which he took*

*K.K. Venugopal*



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*possession of the land to the date of payment of such excess into Court.”*

A plain reading of this Section makes it clear that the interest only has to be paid on the ‘excess’ amount and not on the entire amount of compensation. However, the word ‘excess’ can include not just ‘solatium’ but any amount that is awarded by the Court in excess of the amount awarded by the Collector.

I advise accordingly.

**(K.K. Venugopal)**  
**Attorney General for India**

Instructed By:

MV Kini  
Law Firm  
Kini House  
6/39, Jangpura –B  
New Delhi



**Copy of detailed reference to the Attorney General of India**

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D.O. No. 327/ Secy. /RTH/2017  
December 14, 2017

**Subject: Issues relating to acquisition of Land under the National Highways Act, 1956 – regarding.**

**Respected Sir,**

Kindly refer to my D.O Letter dated October 23, 2017 on the subject. I am taking the liberty of making this revised reference to you directly without routing through the Ministry of Law, as we need to have your considered advice on substantive legal issues and processes involved in land acquisition for the National Highways.

2. I may submit that I have some nodding familiarity with the Land Acquisition Act, 1894, the provisions contained in the RFCTLARR Act, 2013 and the provisions contained in the NH Act, 1956 in this behalf. Based on my understanding of the issues that we are currently facing, I have prepared a background note containing all the related issues. Copy of the said note is enclosed for ready reference.

3. I am more or less convinced that, ideally, we should completely re-write Section 3 of the NH Act, which may be a difficult proposition in the present context. However, we have to keep operating under the given dispensation. As such, I request you to kindly examine the issues raised in the background Note.

I look forward to your early response.

**With regards,**

Yours Sincerely,  
sd/-  
(Y. S. Malik)

Sh. K. K. Venugopal  
Attorney General of India,  
**Office Address:**  
Chamber No. 26,  
2<sup>nd</sup> Floor, Supreme Court of India,  
New Delhi – 110001  
**Res. Address:**  
10, Moti Lal Nehru Marg, New Delhi

**Subject: Background Note and issues relating to Land Acquisition for the National Highways**

1. Pursuant to the enactment of the RFCTLARR Act of 2013 (referred to as the 'Principal Act' hereinafter) and its coming into force with effect from 01.01.2014, provisions of the RFCTLARR Act, 2013 became applicable to the other related Acts mentioned in the Fourth Schedule including the NH Act, 1956 (mentioned at Sr. No. 7 in the Fourth Schedule). Starting with the first O.M. dated 29.04.2015, the Ministry has so far issued the following OMs/ Circulars on the subject during this period. These are tabulated below:

<b>Sr. No.</b>	<b>Subject</b>	<b>Date of Issue</b>
(i)	RFCTLARR (Amendment) Ordinance, 2015	03.04.2015
(ii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – First Schedule - reg.	29.04.2015
(iii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Multiplication Factor - reg.	12.08.2015
(iv)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Second and Third Schedule - reg.	11.09.2015
(v)	Acquisition of land for NH Projects – Return of unutilized land – reg.	09.12.2015
(vi)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – First Schedule - reg.	13.01.2016
(vii)	Guidelines for monitoring of Land acquisition for NH Projects – engagement of consultant – reg.	19.04.2016
(viii)	Facilities to CALA and TILR – reg.	16.06.2016
(ix)	Guidelines for monitoring of Land acquisition for NH Projects – appointment of additional CALA – reg.	20.07.2016
(x)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Multiplication Factor - reg.	08.08.2016
(xi)	Facilities to Arbitrator – reg.	04.10.2016
(xii)	Administrative Charges and other charges payable to State Government – reg.	17.10.2016
(xiii)	Acquisition of missing plots through consent – reg.	15.03.2016
(xiv)	Acquisition of land through consent as per concerned State Government – reg.	
(a)	Kerala, Chhatisgarh	02.08.2016
(b)	West Bengal, Uttar Pradesh, Telangana, Punjab,	03.08.2016
(c)	Rajasthan, Goa, Odisha,	24.08.2016
(d)	Bihar,	29.08.2016
(e)	Maharashtra, Himachal Pradesh	26.09.2016
(f)	Karnataka	16.11.2016

2. The Department of Land Resources, Ministry of Rural Development, which is the nodal department for the purposes of the RFCTLARR Act, 2013 has also issued a few Notifications/ clarifications on the subject. These are mentioned below:

Sr. No.	Subject	Dated
(i)	The RFCTLARR (Removal of Difficulties) Order, 2015 – making the RFCTLARR Act applicable to all cases of enactments specified in the Fourth Schedule (effective from 01.09.2015)	28.08.2015
(ii)	Notification regarding Multiplication Factor for Rural Areas	09.02.2016
(iii)	Position in respect of the applicability of the multiplying factor provided in the First Schedule to the RFCTLARR Act, 2013	08.05.2017

3. Lack of clarity on various issues involved in the process of Land Acquisition, instructions issued and revised by the Ministry from time to time have led to various inconsistencies, which need to be regularised for whatever has been done in the past and streamlined for the future. The specific points of reference on which legal advice is required are mentioned as follows:

**3.1 Applicability of the ‘RFCTLARR Act, 2013’ to the enactments mentioned in Fourth Schedule – All India**

(i) The ‘RFCTLARR Act’ came into force with effect from 01.01.2014. Section 105 of the Act deals with the subject of applicability of provisions of the RFCTLARR Act, 2013. Provisions of Section 105 (3) read as under:

“(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.”

(ii) The Government came out with an Ordinance (No. 4 of 2015) dated 3<sup>rd</sup> April 2015, proposing an amendment in Section 105 vide Clause 12 of the Ordinance, substituting sub-section (3) of Section 105 and omitted Sub-section (4) of Section 105. The substituted sub-Section (3) is reproduced below:

“(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1<sup>st</sup> January 2015.”

(iii) The provisions of Ordinance No. 4 of 2015 were continued further vide Second Ordinance (No. 5 of 2015), which was to lapse on 31<sup>st</sup> August 2015. Accordingly, the

Government issued The RFCTLARR (Removal of Difficulties) Order, 2015 vide Notification dated 28<sup>th</sup> August, 2015. The said Order is reproduced below:

“1. (1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with immediate effect from the 1<sup>st</sup> day of September, 2015.

2. The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.”

- (iii) A question has been raised before one High Court raising the issue that the Central Government has not issued the notification as stipulated under Section 105(3) of the RFCTLARR Act, 2013. The Ministry has taken the position that since the Central Government came out with an ordinance before the expiry of one year (refer to Clause 10 of Ordinance No. 9 of 2014 dated 31<sup>st</sup> December 2014), followed by Clause 12 of Ordinance No. 4 of 2015 dated 3<sup>rd</sup> April, 2015, further followed by Clause 12 of Ordinance No. 5 of 2015 dated 30<sup>th</sup> May 2015, further followed by the ‘Removal of Difficulties Order’ dated 28<sup>th</sup> August 2015 and the fact that the Ministry of Road Transport & Highways has issued instructions whereby the said provisions have been made applicable with effect from 01.01.2015, the needful has been done in letter and spirit.
- (iv) Following the notification of the aforesaid Ordinance, the MoRTH issued a letter dated 29.04.2015 whereby the select provisions of RFCTLARR Act, 2013 were made applicable to the NH Act, 1956 with effect from 01.01.2015. The Ordinance (Amendment) remained in force till 31<sup>st</sup> August 2015. ‘Removal of Difficulties Order’ was issued by the Department of Land Resources on 28<sup>th</sup> August 2015, which took effect from 01.09.2015. However, since the date of application of the selected relevant provisions of the RFCTLARR Act, 2013 to the NH Act, 1956 was 01.01.2015 in terms of the Ordinance (Amendment) No. 4 of 2015, it remains an unambiguous and accepted position that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the NH Act, 1956, i.e. the enactment mentioned at Sr. No. 7 in the Fourth Schedule to the said Act, with effect from 01.01.2015. This view may be validated.

### **3.2 Applicability of Section 24 of the RFCTLARR Act 2013 to the NH Act 1956:**

- (i) Section 105 (3) of the RFCTLARR Act, 2013 stipulates as under:

“(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.”

- (ii) The matter was referred to the ASG (Ms. Pinky Anand) by the Ministry for her advice in the matter. She interpreted the legal position and advised that “Section 24 of the new Act which covers land acquisition cases initiated under 1894 Act will be applicable to National Highways Act, 1956 with effect from 1.1.2015”. A copy each of the Ministry’s reference and her opinion are enclosed for ready reference. Though the Ministry accepted her advice, it prima facie appears to be inconsistent with the provisions of Section 105(3) of the RFCTLARR Act, 2013 or the provisions of the Ordinance issued by the Government in this behalf. The position needs to be revisited and revalidated or otherwise.

### **3.3 Date of determination of market value of land - regarding.**

- (i) Another related but important question that arises is regarding the date on which the market value of land is to be determined in cases where land acquisition proceedings had been initiated under the NH Act, 1956 and were at different stages as on 31.12.2014. While there is no ambiguity regarding land acquisition proceedings initiated on or after 01.01.2015, this question assumes significance in view of the financial implications therein. Section 26 of the RFCTLARR Act stipulates that “the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3 A of the NH Act)”. Same was the position under the 1894 Act.
- (ii) The Chief Minister Bihar made a reference to the Union Minister for Road Transport & Highways vide his DO Letter dated 14.03.2016 (copy enclosed) making reference to the AG’s opinion and suggesting that “it is clear that farmers are entitled for compensation at the market rate prevailing on 01.01.2014 in cases where farmers of majority of land holdings have not been paid compensation till 01.01.2014.” Under the situation, it is for consideration as to on what date the basic market price of the land is to be determined.
- (iii) In our view, the basic market value of land is to be determined as on the date of the preliminary notification under Section 3-A of the NH Act, 1956. This may be validated.

### **3.4 Issue of the Multiplication Factor (MF)**

- (i) It is clear that the compensation of land acquired under the NH Act, 1956 w.e.f 01.01.2015 is to be determined in accordance with Sections 26 to 30 of the RFCTLARR Act, 2013 read with the First Schedule (in so far as it relates to the Multiplication Factor prescribed by the appropriate government). The nodal

department i.e. the Department of Land Resources has created problems and confusion in this behalf with the issue of its Notification dated 9<sup>th</sup> February 2016, which reads as under:

“In exercise of the powers conferred by column No. 3 of serial No. \*2 of the First Schedule read with sub-section (2) of Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government, hereby, notifies that in the case of rural areas, the factor by which the market value is to be multiplied shall be 2.00 (two).”

- (ii) Soon after the aforesaid Notification was issued by the Department of Land Resources, certain states like Andhra Pradesh, Maharashtra, Punjab, Jharkhand, Chhatisgarh and Bihar started using a multiplication factor of 2.00 in respect of land acquired/ to be acquired for the NH Projects (read Central Government Projects) on the basis of 9<sup>th</sup> February Notification of the Department of Land Resources whereas the Multiplication Factor prescribed for the state was different. The MoRTH also issued two OMs dated 12.08.2015 and 08.08.2016 on the subject. A reference was made in this behalf by the then Chairman, NHAI to the Secretary, Department of Land Resources. Certain references were also made by the states. The reference specifically mentioned the issue of two different sets of MFs being adopted by certain states for the Central Projects and the State Projects.
- (iii) The DoLR Notification of 9<sup>th</sup> February 2016 appears to be suffering from legal defects from two angles:
- (a) Firstly, it gives an impression (though erroneous) as if the Central Government is the ‘appropriate government’ to notify the Multiplication Factor (MF) in respect of all Central Government projects across all the states;
- (b) Secondly, it does not clearly state that the Notification is applicable only in relation to the Union Territories, except Puducherry;
- (c) Thirdly, the prescription of a MF of 2.00 without co-relating the distance of the project from the urban area is prima facie inconsistent with the contents under Col 3 of Sr. No. 2 of the First Schedule. The said entry reads as under:

Serial Number	Component of Compensation package in respect of land acquired under the Act	Manner of determination of value	Date of determination of value
(1)	(2)	(3)	(4)
2.	Factor by which the market value is to be multiplied in the case of rural areas	1.00 (one) to 2.00 (Two) based on the distance of project from the urban area, as may be notified by the appropriate Government.	

- (iv) Some of these confusions have been set at rest and clarified by the DoLR vide its letter F. No. 13013/02/2016-LRD dated 8<sup>th</sup> May, 2017, more specifically the issue of differential MFs for the State and the Central Projects. It also becomes clear (though

by implication) that the DoLR Notification of 9<sup>th</sup> February 2016 was applicable only to the UTs, except Puducherry, as the DoLR is the appropriate Government only in respect of the UTs, except Puducherry. Copy of the DoLR Letter dated 8<sup>th</sup> May 2017 is enclosed for ready reference.

- (v) The undersigned had called on the Secretary, DoLR and flagged these issues to him sometime back. Though he was in agreement with my views on both these issues, and he is seized of these issues, for the present, these may be treated as Work-in-Progress items.
- (vi) Interestingly, a number of State Governments of West Bengal have applied their mind and notified the Multiplication Factor for Rural Areas in true sense of the provisions contained in the First Schedule in this behalf. However, there are certain other states, including the Department of Land Resources, Ministry of Rural Development, who have straightway notified a Multiplication Factor of 2 (Two) for the Rural Areas without using any scale. A summary of the Multiplication Factors notified by different states for Rural Areas is enclosed as Annexure-1 for ready reference.
- (vii) It is now clear that the Multiplication Factor shall apply as notified by the appropriate Government (State governments concerned for the state jurisdiction and the DoLR in the case of UTs, except Puducherry) for their respective jurisdictions and that there cannot be two different sets of MFs, one for the State Projects and the other for the Central Projects. This position may be validated.
- (vii) Further, the issue arises as to whether the states who have notified the Multiplication factor of 2.0 (Two) for the Rural areas without linking the distance of the project from the urban limits is legally correct or not. The Ministry has no option but to continue to pay the compensation amount as determined by the Competent Authorities for Land Acquisition (CALAs) in accordance with the Multiplication Factors notified by the concerned states, being the appropriate government. It may be advised if the matter could be taken up with the concerned states to rationalise the Multiplication Factor in view of the provisions contained in the First Schedule.

### **3.5 Payment of “additional amount” @ 12% on the Basic Market Value:**

- (i) Another issue has emerged with regard to the payment of additional amount of 12% on the ‘Basic Market Value of Land’ for acquisition of land under the NH Act, 1956. We have carefully gone through the provisions in this behalf. Sub-section (3) of Section 30 of the RFCTLARR Act reads as under:

“In addition to the market value of the land provided under Section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve percent per annum on such market value for the period commencing on and from the date of publication of the notification of the Social Impact assessment study under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.”

(ii) Sub-section (3) of Section 105 of the RFCTLARR Act stipulates that:

“The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.”

(iii) The proviso under Section 26 of the RFCTLARR Act stipulates that “the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3 A of the NH Act)”.

(iv) The compensation amount has to be determined in accordance with the First Schedule, (which contains references to Section 26, 29 and 30(1) of the RFCTLARR Act, 2013) in its application to the NH Act, 1956 as one of the statutes mentioned in the Fourth Schedule. Provision for 12% additional amount is under sub-section (3) of Section 30 of the RFCTLARR Act, to which no reference has been made in the First Schedule. Hence, a strict textual reading of the provisions shows that prima facie it has no place for this additional amount calculated @12% on the basic market value from the date of issue of Preliminary Notification under Section 3A till the date of announcement of Award under Section 3G or taking possession of land, whichever is earlier. The justification for payment of this amount has to be found with reference to date on which the basic market value is to be determined. It is an accepted position that the market value of land is frozen on the date of Section 3A Notification. Though the landowner continues to enjoy the deliverables (crop/fruits) from the land till its possession is taken, he is not entitled to be compensated for any improvement in or upon the subject land after the Initial Notification under Section 3-A or any increase in the price of land on a date subsequent to that. As such, it is in the nature of an additional compensation for this freezing the basic market value as on the date of initial notification.

(v) However, non-payment of this additional amount will make it extremely difficult to continue with the land acquisition programme to keep pace with the government’s ambitious programme on road construction. It is important to give the background in this context in the following sub-paras:

(a) Section 23 (1A) of the 1894 Act contained provisions for payment of an additional amount calculated @ 12% per annum on the basic market value of land from the date of publication of Notification under Section 4 of the said Act till the date of announcement of Award (this amount has generally been referred to as Interest), and further payment of an amount calculated @ 30% of such market value in lieu of compulsory nature of acquisition in terms of Section 23(2) of the 1894 Act (this amount has generally been referred to as Solatium). The NH Act, 1956 does not contain any provisions for payment of “additional amount” and the Solatium.



- (b) This issue came up before the Punjab & Haryana High Court in CWP No. 11461 of 2005 - the matter of Golden Iron vs. the Union of India wherein the High Court held the provisions of Sections 3J and 3G the NH Act, 1956 as ultra vires of Article 14 of the Constitution of India and directed to pay the Solatium and Interest in terms of Section 23(2) and Section 28 of the Land Acquisition Act, 1894. Similar orders were passed by the Madras High Court in a bunch of Writ Petitions vide its orders dated 04.03.2011 (T.K. Chkarapani and ors. Vs Union of India) where it directed to pay the amount mentioned under Section 23 (1A), 23(2) and Section 28 of the 1894 Act. Finally, the matter came before the Supreme Court where the Supreme Court directed the payment of both these components with effect from 28<sup>th</sup> March 2008. As such, we have been paying these amounts since then notwithstanding the fact that the NH Act, 1956 does not contain any provisions to this effect.
- (c) While the amount of 30%, as prescribed under Section 23 (2) of the 1894 Act has been substituted by the expression 'Solatium' under Section 30(1) of the RFCTLARR Act, 2013 and also mentioned in the First Schedule of the Act *ibid*, the payment of "additional amount" has been prescribed under Section 30 (3) of the RFCTLARR Act, 2013, it has not been mentioned as the amount payable under the First Schedule, which is applicable to the NH Act, 1956 qua determination of compensation vide the three Ordinances and the Removal of Difficulties Order as mentioned in para 3.1(iii) above.
- (d) The fact remains that almost all the CALAs in the states have been providing for the additional amount calculated @ 12% while determining the compensation amount and the same is being paid. A reference was received from the Chief Engineer-cum-Regional Officer, Uttarakhand seeking clarification from the Ministry if this amount was payable, to which a clarification was issued by the Ministry at the level of Deputy Secretary/ Joint Secretary stating that it was not payable since it has not been mentioned in the First Schedule. This has raised a major issue as the State Government officials are insistent upon the admissibility of the amount payable under Section 30(3) as is admissible in respect of the acquisitions under the RFCTLARR Act, 2013. The landowners are agitated and will not be agreeable to part with their land if this component is denied to them. As a result, all further acquisition for the roads proposed to be constructed under the Char-Dham Project and disbursement of compensation amount is at a standstill. Similar would be position elsewhere in the country.
- (e) It may be stated here that the Ministry of Road Transport and Highways has been constructing roads at a phenomenal pace. The targets for Award of Contracts, which is dependent on availability of land, and Construction of Roads has been as under during the last five years:

Sr. No.	Year	Award of Contracts		Construction of Roads	
		Targets	Achievements	Targets	Achievements
1	2013-14	9638 kms	3620 kms	6,330 kms	4260 kms
2	2014-15	11095 kms	7972 kms	6,385 kms	4410 kms
3	2015-16	15000 kms	10,098 kms	10,000 kms	6061 kms
4	2016-17	25,000 kms	15,948 kms	15,000 kms	8231 kms
5	2017-18 (as on 30.11.2017)	25,000 kms	2917 kms	15,000 kms	4944 kms

- (f) The expenditure on Land Acquisition has gone up steeply with the new Act coming into force. As against an average cost of Rs. 0.90 crore per hectare of land during 2013-14, the average cost per hectare of land has gone up to Rs. 3.60 crore. The expenditure incurred on Land Acquisition during the last five years is as under:

Sr. No.	Financial Year	Land Acquired (in Hec.)	Expenditure (in cr)
1	2012-13	6762	5404
2	2013-14	8465	7794
3	2014-15	6733	9097
4	2015-16	9285	21933
5	2016-17	7491	17823
6	2017-18 (up to Nov.)	About 4600	15990

- (g) It is a fact that if this additional amount of 12% is not paid, it will raise a serious question on our ability to acquire the land for the Highway projects. The cost of delay in acquisition is going to be much more expensive than the pay out liability on account of this additional amount.

- (vi) Section 105(3) of the RFCTLARR Act, 2013 is reproduced below:

“The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

However, the latter part of the provision which reads “being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the

notification, as the case may be.” is neither a part of the First Schedule nor mentioned in the Ordinances and the Removal of Difficulties Order.

- (vii) Notwithstanding the above and in view of the ground realities together with the judgement of the Supreme Court in the Golden Iron case, a conjoint reading of all the related provisions of the RFCTLARR Act, especially when the basic market value has to be reckoned as on the date of issue of Section 3A of the NH Act, 1956 and the provision of the Section 105(3) of the RFCTLARR Act, would perhaps indicate the intention of the Parliament to include payment of the additional amount calculated @ 12% on the market value of land from the date of Section 3A till the announcement of award under Section 3 G or taking possession of land, whichever is earlier. Once having paid the said amount under the NH Act, 1956 in terms of Supreme Court order since 28<sup>th</sup> March 2008, and the said amount being payable under Section 30(3) as part of the total compensation amount under the RFCTLARR Act, 2013, justifiably we cannot refuse the inclusion of the said amount if we have to continue to acquire land for the development of National Highways. This is a very small amount as compared to the total outgo on account of land acquisition. The Ministry is of the considered view that it is payable and has no reservations in paying the same in the larger public interest of construction and development of National Highways in the country. As such, in our view, the additional amount calculated @ 12%, as prescribed under Section 30(3) of the RFCTLARR Act, 2013, though not specifically mentioned in the First Schedule, should be continued to be paid. May kindly advise on this issue.
- (viii) Another related issue is the date from which and the date up to which the 12% additional amount is to be computed. Section 30(3) stipulates the same from the “date of publication of the notification of the Social Impact Assessment study”, which is not applicable in respect of the NH Act, 1956 and the national Highway Projects, being Infrastructure Projects are exempted from the requirement of Social Impact Assessment Study. There appears to be some inherent inconsistency in the RFCTLARR Act, 2013 in this behalf. The clarity has to be found under Section 69(2) and the proviso under Section 26 of the RFCTLARR Act, 2013. As such, it is our considered view that in the case of acquisition of land, the provision contained in Section 69(2) will be applicable. This may be validated.
- (ix) Still, another question would arise i.e. as to whether the interest component is a stand-alone component and payable as such or it would count for the purposes of Multiplication Factor and the Solatium also. In our view, the calculation of total compensation amount, as prescribed under Sections 26 to Sections 30 is in seriatum and sequential. Since it has been prescribed separately under Section 30(3) after all other eligible payments, it is to be calculated on the basic market value of land and will not count for the purposes of Multiplication Factor and Solatium. It would be payable as a stand-alone component. This understanding may be validated.

**3.7 Status of Arbitrator under the NH Act Section 3G(5) vis-à-vis that of the Authority under Section 64 read with Section 51 of the RFCTLARR Act for the purposes of payment of Compensation amount:**

- (i) MoRTH and its project executing agencies have been facing problems on account of the time taken in disbursement of the compensation amount. This not only delays possession of land for the National Highway projects but also involves financial implications in the form of continued liability of payment of interest on the compensation amount till it is disbursed. The Hon'ble Supreme Court ruled in this behalf vide order dated 24<sup>th</sup> January 2014 in the Pune Municipal Corporation case that if the compensation amount is deposited in the Reference Court under Section 31 of the 1894 Act, the compensation amount shall be deemed to have been made.
- (ii) There is a peculiar situation which, it appears, did not engage the attention of the Hon'ble Supreme Court at the time of deciding the Pune Municipal Corporation case. Section 31 of the 1894 Act had to be read with Section 18(1) of the 1894 Act. Section 64(1) of the RFCTLARR Act, 2013 is a verbatim reproduction of Section 18(1) of the 1894 Act. It stipulates that "any person interested who has not accepted the Award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority..." It signifies that the interested person has to make a written application to the Authority (reference Court under Section 18(1) of the 1894 Act) regarding his objection. Thus, the requirement of Section 18(1) has to be fulfilled before taking action under Section 31 of the 1894 act, or else the Reference Court (under the 1894 Act) or the Authority (under Section 64 (1) of the RFCTLARR Act, 2013) can refuse to entertain any such reference by the Collector. As such, as far as the payment of compensation under the NH Act is concerned, the requirement of law is satisfied as soon as the Collector announces the Award and offers to pay the compensation amount in terms of Section 3H(2) of the NH Act, 1956.
- (iii) The NHAI faces a peculiar problem in payment/ disbursement of the compensation amount. There are a number of landowners/interested persons who may be absentee landowners or others who neither come forward to receive the compensation amount nor file their objections in terms of Section 64(1) of the RFCTLARR Act. As a result, the pendency of actual payment of compensation to such landowners seriously delays the Road Projects.
- (iv) Section 64 of the RCTFLARR Act corresponds to Section 18 under the 1894 Act. While there was provision for the Reference Court under Section 18 of the 1894 Act, it has been replaced by an Authority, to be set up by the appropriate Government under Section 51 of the RFCTLARR Act of 2013. In the case of NH Act (Sub-section (5) of Section 3G), there is a provision for appointment of an Arbitrator by the Central Government. Thus the Arbitrator under the NH Act is the counterpart of the Authority under the RFCTLARR Act.
- (v) If the understanding under para (iv) above is correct, it needs to be ascertained if the CALA could be requested through an application made by the Acquiring Agency to deposit the undisbursed amount with the Arbitrator after 60 days of the

announcement of the Award by the CALA, whereupon the payment shall be deemed to have been made.

- (vi) If the above construction is correct, we could put in place a process as under:
- (a) With the announcement of Award by CALA under Section 3G of the NH Act, all the landowners are notified to collect the compensation amount within a period of 60 days of announcement of the Award. This notice should also state that in case the landowners do not come forward to lift the compensation amount (to the extent the bank Account details of landowners are not available with the CALA) within the prescribed period of 60 days, the balance amount in respect of all such landowners shall be deposited in an account with the Arbitrator.
  - (b) Upon expiry of 60 days and receipt of request from the representative of the Central Government (RO in the case of Ministry and PD concerned in the case of NHAI), the CALA shall deposit the undisbursed amount with the Arbitrator and cause another public notice to be issued in this behalf stating that the landowners whose bank accounts had not been made available and who have not lifted the compensation amount, may approach the office of Arbitrator for disbursement of the compensation amount.
- (vii) The legality of above proposed process needs to be ascertained. It may also be advised as to whether the Government could make the above process as part of the rules in exercise of its rule making powers under Section 9 (2) (aa) read with Section 3 H (6) of the NH Act, 1956.
- (viii) Alternatively, the liability of the Land Acquiring Department/ MoRTH/ NHAI to pay interest on the undisbursed amount of the Award in terms of Section 28 of the 1894 Act may be spelt out if the NHAI deposits the entire Award amount with the CALA keeping in view the ruling of the Supreme Court in Pune Municipal Corporation case regarding the "compensation amount paid."

**3.8 Is it necessary to notify a road Project as a National Highway in terms of Section 2 of NH Act, 1956 for initiating the process of land acquisition under Section 3 of the NH Act, 1956 ?**

A question has arisen as to whether a road project must be notified as a National Highway in terms of Section 2 of the NH Act, 1956 before initiating the process of land acquisition under Section 3 of the NH Act, 1956. In our view, Sections 2 and 3 are independent of each other. For example, where the Ministry or its executing agencies have to take up construction of a Greenfield Road Project, it cannot be notified as a National Highway till its completion. As such, the legal position may be clarified in this behalf.

sd/-  
(Y. S. Malik)  
Secretary, RT&H  
14/12/2017



## Opinion of the Attorney General of India on the issues raised in Annexure 2.2



सत्यमेव जयते

**K.K. Venugopal**  
Attorney General for India

Supreme Court of India  
New Delhi-110001  
Tel: 23383254, 23070046  
Fax: 23782101

23<sup>rd</sup> December 2017**WRITTEN OPINION**

**Querist: Ministry of Road Transport & Highways**

The Ministry of Road Transport & Highways (MORTH), has sought my opinion on various aspects relating to the applicability of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act 2013) to the National Highways Act, 1956. The queries are contained in paragraphs 3.1 – 3.6 of the Secretary to the Department's letter dated 14<sup>th</sup> December 2017, which is being annexed with this opinion. My opinion on each of these queries is as follows:

**3.1 Applicability of RFCTLARR Act 2013 to the enactments mentioned in Fourth Schedule.**

The provisions of RFCTLARR Act 2013 have been made applicable to the National Highways Act 1956 with effect from 1.1.2015 vide Ordinance no. 4 of 2015. By means of this ordinance Section 105(3) of the RFCTLARR Act 2013 was substituted by the following:

Section 105(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 with effect from 1st January, 2015.”

National Highways Act 1956 is at item no 7 in the Fourth Schedule of the RFCTLARR Act 2013. The provisions of Ordinance No. 4 of 2015 were continued further vide Ordinance (No. 5 of 2015). This ordinance was to lapse on 31<sup>st</sup> August 2015. Therefore, the Government vide notification dated 28<sup>th</sup> August 2015 issued the RFCTLARR (Removal of Difficulties) Order, 2015 which provided as follows:

“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 all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.”

The removal of difficulties order was brought into effect from 1<sup>st</sup> September 2015. This is because the previous ordinance was to lapse on 31<sup>st</sup> August 2015. The consequence of the two ordinances and the removal of difficulties order is that with effect from 01.01.2015, the first, second and third schedule of the RFCTLARR Act 2013 will be applicable to National Highways Act 1956.

### **3.2 Applicability of Section 24 of the RFCTLARR Act 2013 to the National Highways Act 1956.**

Section 24 of the RFCTLARR Act 2013 provides for lapsing of certain acquisitions initiated under the Land Acquisition Act, 1894. The MORTH seeks my



opinion on whether this Section also applies to acquisitions undertaken under the National Highways Act, 1956. Section 24 of the RFCTLARR Act 2013 states as follows:

*“24. 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.”*

A reading of Section 24 makes it abundantly clear that the provision is applicable only to acquisitions that have been undertaken under the Land Acquisition Act, 1894, in as much as the legislative intent can be ascertained from the specific mention of the ‘Land Acquisition Act, 1894’. Further, Section 105(1) of the RFCTLARR Act 2013 specifically excludes the application of any Section of the RFCTLARR Act 2013 to the Acts mentioned in the fourth schedule. The only

exception to Section 105(1) is Section 105(3), which makes only the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> schedule applicable to the fourth schedule Acts.

### **3.3 Date of Determination of market value of land**

The provisions of the RFCTLARR Act 2013 have been made applicable from 1.01.2015. A question has arisen in regard to the date of determination of market value for land acquisition proceedings initiated (but not completed) under the National Highways Act, 1956, prior to 01.01.2015.

The National Highways Act, 1956 is a complete code and Sections 3A to 3J provide for all aspects of acquisition, including the determination of market value of the land. Section 3G(7) provides that the relevant date for determining market value of land is the date on which notification under Section 3A is published.

#### ***Section 3G. Determination of amount payable as compensation.—***

*(7) The competent authority or the arbitrator while determining the amount under sub section (1) or sub-section (5), as the case may be, shall take into consideration—*

*(a) the market value of the land on the date of publication of the notification under section 3A.*

From 01.01.2015, the provisions of the first schedule of the RFCTLARR Act 2013 (relating to determination of compensation) have been made applicable. Compensation under the RFCTLARR Act 2013 is determined under Section 26 and therefore, for proceedings of land acquisition initiated under the National highways Act, 1956 after 01.01.2015, market value of land will have to be determined under

Section 26 of the of the RFCTLARR Act 2013. The relevant portion of Section 26 of the RFCTLARR Act 2013 reads as follows:

**Section 26. Determination of market value of land by Collector.**—(1) *The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—*

.....  
 .....

*Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.*

Section 26 of the RFCTLARR Act 2013 requires that market value be determined as on the date of the notification under Section 11 of the RFCTLARR Act 2013, which corresponds to Section 3<sup>A</sup> of the National Highways Act. Therefore, post 01.01.2015, the relevant date for determination of market value of land is the date on which notification under Section 3A of National Highways Act, 1956 is published.

### **3.4 Issue of Multiplication Factor**

Row 2 of the first schedule (which is applicable to acquisitions under the NH Act) provides for a multiplication factor. It states as follows:

<b>Serial Number</b>	<b>Component of Compensation package in respect of land acquired under the Act</b>	<b>Manner of determination of value</b>	<b>Date of determination of value</b>
(1)	(2)	(3)	(4)
2.	Factor by which the market value is to be multiplied in the	1.00 (one) to 2.00 (two) based on the distance of project	

	case of rural areas	from the urban area, as may be notified by the appropriate Government.	
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The MORTH has sought my opinion on whether it is open to the appropriate Government to fix a uniform multiplication factor of 2 for all rural lands. The query is a result of notifications issued by the Department of Land Resources in certain States like Andhra Pradesh, Maharashtra, Punjab, Jharkhand, Chhattisgarh and Bihar which have stated a multiplication factor of 2 in respect of land acquired/to be acquired for all National Highway Projects whereas a different multiplication factor has been prescribed for land acquired by the State Government.

In my opinion, the appropriate government must have a graded approach to fixing of the multiplication factor. This is evident from the words in the schedule “1.00 (one) to 2.00 (two) based on the distance of project from the urban area” For this purpose, the appropriate government has to apply its mind and take into consideration the distance of lands from urban areas.

### **3.5 Payment Of Interest On Basic Market Value**

A question has arisen as to whether the amount under Section 30(3) of the Right to Fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013(RFCTLARR Act 2013) is applicable to the provisions of the National Highways Act, 1956. Section 30 provides as follows:

**Section 30. Award of solatium.—**

(1) *The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a —Solatium amount equivalent to one hundred per cent. of the compensation amount.*

**Explanation.**—*For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.*

(2) *The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.*

(3) In addition to the market value of the land provided under section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent. per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

This question has arisen because under Section 105(3) of the Act, what is made applicable is only the provisions of this Act relating to determination of compensation in accordance with the First schedule and the first schedule nowhere mentions the ‘amount’ under Section 30(3). I have examined the relevant provisions and it could be argued that this amount is not payable for the following reasons:

1. A reading of Section 30 will go to show that the provision is divided into three separate parts. Section 30(1) deals with Solatium and an amount of one hundred per cent of the compensation amount is to be paid as Solatium. This amount is therefore to be paid after the Collector has determined the total compensation to be paid. Such determination is made under Section 27, 28 and 29 of the RFCTLARR Act, 2013. Section 30(2) deals with the obligation of the Collector to issue individual awards. Section 30(3) independently deals with

the payment of an additional amount at the rate of 12% per annum. Although a part of the provision titled 'award of solatium', this provision is in fact a separate and stand alone provision.

2. Section 105(3) of the RFCTLARR Act, 2013 specifically provides that only the provisions of the RFCTLARR Act, 2013 relating to the determination of compensation in accordance with the first schedule and rehabilitation and resettlement specified in the second and third schedule are applicable to the Acts mentioned in the fourth schedule. The National Highways Act is at serial no. 7 in the fourth schedule.
3. The components of compensation mentioned in the first schedule are: (a) market value of land (under Section 26) (b) multiplication factor (c) value of assets attached to land or building (d) solatium and (e) market value in case of rural areas. It is immediately evident that 'amount' under Section 30(3) is not mentioned in the first schedule. Therefore, on a textual reading of the provisions of the Act, the provision providing for the payment of amount would not be made applicable to the National Highways Act.
4. Section 30(3) provides for 'amount' to be paid "*in addition to market value of land*" for the "*period commencing on and from the date of publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4, in respect of such land, till the date of the award of the Collector of the date of taking possession of the land, whichever is earlier*". Therefore, it is evident that the start date for calculation of interest is the 'social impact

assessment'. However, the 'social impact assessment' provision under Section 4 of the RFCTLARR Act, 2013 does not find mention in the first, second or third schedule and is therefore not made applicable to the National Highways Act. The entire acquisition process for the purpose of National Highways continues to be undertaken under Sections 3A to 3I of the National Highways Act. This by itself would go to show that Section 30(3) has been made inapplicable to acquisitions under the National Highways Act.

However, on the other hand, a strong case can also be made out to hold that this amount is payable and if this issue were to be litigated, it is likely that the courts would lean in favour of making Section 30(3) applicable to the acquisitions under the National Highways Act. This is in tune with past precedent of the High Courts and the Supreme Court which have held that even though Section 3J of the National Highways Act excludes the applicability of the Land Acquisition Act, 1894, Solatium, interest on Solatium and the 'amount' under Section 23(1A) of the Land Acquisition Act are applicable to the National Highways Act. The High Court of Madras in *T.K. Chakrapani v. Union of India (WP 15699 of 2010 decided on 4.03.2011)* had directed the National Highways Authority to pay the amount under Section 23(1A) of the Land Acquisition Act, 1894. In *Golden Iron v. Union of India 2011 (4) RCR 375 (Civil)*, the Punjab and Haryana High Court had directed the National Highways Authority to pay Solatium and Interest in terms of Section 23(2) and Section 28 of the Land Acquisition Act, 1894. All these cases were brought to the Supreme Court and by its

order dated 11<sup>th</sup> August 2016 in *Sunita Mehra v. Union of India (Civil Appeal No. 10553 of 2011)*, the Supreme Court refused to interfere in these matters (including the matter of *TK Chakrapani*). Therefore, if this issue were to be litigated, it is possible that the courts would hold that the ‘amount’ under Section 30(3) (which is *pari materia* to Section 23(1A))

Apart from the above, it may also be noted that Section 105(3) provides in the first sentence that “the provisions of this Act relating to determination of compensation in accordance with the First schedule...” It can be argued that the intention of the Legislature was to make the provisions in relation to ‘compensation’ applicable to the fourth schedule Acts. It cannot be disputed that the amount mentioned in Section 30(3) is a component of ‘compensation’ that is payable to the landowner.

In view of the ambiguity in the legal position, I am of the view that this amount ought to be paid to the landholders. I have been told that this additional amount is in fact being paid in many cases and nonpayment may also lead to agitations. I am informed that the Char-Dham project in Uttarakhand has come to a standstill because of the claim by the landowners for payment of the ‘amount’ under Section 30(3).

The building of highways is in national interest and the Ministry of Road Transport and Highways has, in the recent past, been constructing roads at a phenomenal pace. The Ministry for the year 2017-2018 has targeted the award of contracts for 25,000 Kms. It has thus far awarded contracts for 2917 Kms. In regard to construction of roads, it has targeted 15,000 Kms and has achieved 4944 Kms. The



availability of land is a *sine qua non* for the Ministry to achieve its targets. In this view of the matter, I am of the opinion that a holistic reading of the provisions of the RFCTLARR Act, 2013 would require the payment of the 'amount' mentioned under Section 30(3) of the RFCTLARR Act, 2013.

There are two other issues that are related to the payment of 'amount' under Section 30(3). The first is in regard to the date from which this 'amount' has to be calculated. Section 30(3) states that the date will be the date of 'social impact assessment' under Section 4 of the RFCTLARR Act. However, Section 4 is not applicable to the National Highways Act and no 'social impact assessment' is conducted in acquisitions under the National Highways Act. Therefore, as was being done earlier, this amount may be paid from the date of issuance of preliminary notification under Section 30<sup>A</sup> of the National Highways Act. The second issue is in regard to whether this 'amount' is a standalone component or whether the same has to be calculated after addition of the multiplication factor and solatium. The answer to this question is found in Section 30(3) which clearly states that the amount is payable in addition to the 'market value' of the land and is calculated as a percentage of 'market value'. There is a distinction between 'market value' and compensation. Market value is determined under Section 26. Section 27 provides that the Collector, having determined the total market value, will proceed to determine the compensation. This compensation is determined under Section 28 of the Act. Therefore, a reading of these sections would lead to the conclusion that the 'amount' has to be awarded only on the 'market value' which in turn is determined under Section 26 of the Act.

**3.6 Status of Arbitrator under Section 3(G) vis-à-vis that of the Authority under Section 64 read with Section 51 of the RFCTLARR Act for the purposes of payment of compensation amount.**

The final question on which the MORTH seeks my opinion is on the status of Arbitrator under the National Highways Act and the payment/disbursement of the compensation amount. The query sought is whether the compensation amount can be deposited with the arbitrator 3G(5) of the National Highways Act. The rationale for such deposit is the *Pune Municipal Corporation (2014 3 SCC 183)* judgment of the Supreme Court of India where the Court held that the compensation amount for the purposes of Section 24 of the RFCTLARR Act is deemed to be paid when it is deposited with the reference court under Section 18 of the Land Acquisition Act, 1894. According to the MORTH, the status of the arbitrator under Section 3G(5) corresponds to that of the Reference Court under Section 18 of the Land Acquisition Act and therefore, the amount of compensation may be deposited with the arbitrator.

I must state at the outset that the judgment of the Supreme Court in *Pune Municipal Corporation* was rendered in the context of Section 24 of the RFCTLARR Act and I have already stated above that this Section is not applicable to the National Highways Act. In any event, the National Highways Act is a complete code in itself and provides in detail for the manner in which the compensation has to be deposited. Section 3H (1) provides that the “amount determined under Section 3G shall be deposited by the Central Government in such manner as may be laid down by the

rules made in this behalf by that Government, with the competent authority before taking possession of the land.” Section 9(2)(aa) of the National Highways Act, 1956 empowers the Central Government to make rules governing the manner in which the amount shall be deposited with the competent authority. Pursuant to this Section, the Central Government has enacted *National Highways (Manner of Depositing the Amount by the Central Government with the Competent authority for Acquisition of Land) Rules, 1998*. Rule 2 of these Rules provides:

**2. The manner of depositing money with the competent authority .(1) Subject to the provisions of the act, the existing agency authorised by the Central Government in this behalf shall deposit,**

*(a) the amount determined under section 3-G of the Act, and*

*(b) where the amount determined by the arbitrator under section 3-G of the Act is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded by the arbitrator, within seven days of such determination or award by the competent authority or by the arbitrator, as the case may be, with the competent authority through demand draft.*

*(2) The competent authority shall deposit the amount received under sub-rule (1) in a separate Public Deposit Account in the Public Account of India and the provisions of sub-sections (2) to (4) of section 3-H of the act shall apply to such deposit.*

Therefore, the amount of compensation is to be deposited by the agency authorized by the Central Government in a Public Deposit Account in the Public Account of India and thereafter, the provisions of Sections 3G(2) to (4) apply to such deposit. Under Section 3E (1), the Central Government has power to take possession of the land that has vested and compensation has been deposited as per the provisions of Section 3H (1) of the National Highways Act. Section 3H(2) thereafter provides

that “as soon as may be after the amount has been deposited under sub-section (1), the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.”

The arbitrator under the National Highways Act has the power to ‘determine’ the compensation amount in the event the said amount is not acceptable to either of the parties. Section 3(G) (5) – (7) of the National Highway Act, 1956 provides for the jurisdiction of the arbitrator. On the other hand, as first stated, there are detailed provisions in the National Highways Act that deals with the manner in which the compensation amount has to be deposited by the competent authority. I am therefore of the opinion that the National Highways Authority should continue to follow the scheme under the Act that governs it.

I advise accordingly

  
K.K. Venugopal 23/12/2017

Annexure - 2.4

Multiplication Factor notified by the State Governments in compliance to Sr. No. 2 of the First Schedule to the RFCTLARR Act, 2013					
Sr. No.	State	Multiplication factor for Rural areas			Reference No.
1.	Andhra Pradesh	<b>Sr. No.</b>	<b>Area</b>	<b>MF Factor</b>	Revenue Department's GOM no. 389 dated 20.11.2014
		(i)	Other than Scheduled Areas	1.25	
		(ii)	Scheduled Areas (Tribal area)	1.50	
2.	Bihar	2.00			
3.	Chhatisgarh	1.00 since October 2017			Revenue Department's letter dated 28 October 2017
4.	Gujarat	2.00			Revenue Department's resolution dated 10.11.2016
5.	Haryana	Sr. No.	Shortest/ crow-fly/ radial distance from the outer boundary of any of the Urban Area in the State	MF	Revenue and Disaster Management Department's Notification dated 23rd January 2018
		(i)	Up to 10 kms	1.25	
		(ii)	>10 up to 20 kms	1.50	
		(iii)	>20 up to 30 kms	1.75	
		(iv)	Above 30 kms	2.00	
6.	Himachal Pradesh	1.00			HP Government's notification dated 01.04.2015
7.	Jharkhand	2.0			Jharkhand Govt's letter dated 24.10.2014
8.	Karnataka	<b>Sr. No.</b>	<b>Distance from nearest urban area</b>	<b>MF Factor</b>	Revenue Department's order dated 03.05.2014
		a)	Upto 05 Km	1.5	
		b)	Above 05 Km	2.00	
9.	Kerala	<b>Sr. No.</b>	<b>Distance from nearest urban area</b>	<b>MF Factor</b>	Government of Kerala's Order No. B1/321/2017-REV dated 09.08.2017
		a)	Upto 10 Km	1.2	
		b)	From 10 Km to 20 Km	1.4	
		c)	From 20 Km to 30 Km	1.6	
		d)	From 30 Km to 40 Km	1.8	
		e)	From 40 Km and above	2.00	

**Multiplication Factor notified by the State Governments in compliance to Sr. No. 2 of the First Schedule to the RFCTLARR Act, 2013**

Sr. No.	State	Multiplication factor for Rural areas			Reference No.
10.	Madhya Pradesh	1.00 (One)			Governor's order dated 29.09.2014
11.	Maharashtra	<b>Sr. No.</b>	<b>Description of area</b>	<b>MF Factor</b>	Govt's notification dated 26.05.2015
		a)	Areas of municipal corporation, municipal councils, industrial townships, special planning authorities, area development authorities, new town development authorities etc.	1.00	
		b)	Area covered by regional Plans for districts, etc.	1.5	
		c)	Rural areas excluding the areas mentioned in above entries	2.00	
12.	Meghalaya	<b>Sr. No.</b>	<b>Distance from nearest urban area</b>	<b>MF Factor</b>	Revenue and Disaster Management Dept's notification dated 10.09.2014
		a)	Below 10 Kms	1	
		b)	10 Kms and above	1.1	
		c)	20 Kms and above	1.2	
		d)	30 Kms and above	1.3	
		e)	40 Kms and above	1.4	
		f)	50 Kms and above	1.5	
		g)	60 Kms and above	2.00	
13.	Odisha	<b>Sr. No.</b>	<b>Distance from nearest urban area</b>	<b>MF Factor</b>	Government of Odisha's letter dated 07.02.2014
		a)	Upto 10 Km	1.0	
		b)	From 11 Km to 20 Km	1.20	
		c)	From 21 Km to 30 Km	1.40	
		d)	From 31 Km to 40 Km	1.80	
		e)	Above 40 Km	2.00	
14.	Punjab	<b>Sr. No.</b>	<b>Distance from nearest urban area</b>	<b>MF Factor</b>	Revenue, rehabilitation and Disaster managements Department's notification
		a)	Upto 10 Km	1.00	

**Multiplication Factor notified by the State Governments in compliance to Sr. No. 2 of the First Schedule to the RFCTLARR Act, 2013**

Sr. No.	State	Multiplication factor for Rural areas			Reference No.
		b)	Above 10 Km	1.25	dated 30.10.2014
15.	Rajasthan	<b>Sr. No.</b>	<b>Distance from nearest urban area</b>	<b>MF Factor</b>	Revenue Department's order dated 14.06.2016
		a)	0 Km to Upto 10 Km	1.25	
		b)	Above 10 Km and upto 20 Km	1.50	
		c)	Above 20 Km and upto 30 Km	1.75	
		d)	Above 30 Km	2.00	
16.	Tamilnadu	<b>Sr. No.</b>	<b>Distance from nearest urban area</b>	<b>MF Factor</b>	Tamilnadu Govt' Notification dated 21.09.2017
		a)	Within 30 Km	1.25	
		b)	Beyond 30 Km and within 50 Km	1.5	
		c)	Beyond 50 Km	2.00	
17.	Telangana	<b>Sr. No.</b>	<b>Area</b>	<b>MF Factor</b>	Revenue Department's GOM no. 50 dated 19.12.2014
		a)	Other than Scheduled Areas	1.5	
		b)	Scheduled Areas (Tribal area)	2.00	
18.	Uttarakhand	2.00			Revenue Department's notification dated 10.10.2016
19.	Uttar Pradesh	2.00			Revenue Department's order dated 22.10.2014
20.	West Bengal	<b>Sr. No.</b>	<b>Distance from nearest urban area</b>	<b>MF Factor</b>	Kolkata Gazette No. 2083-LA/3M-49/14 dated 30.07.2014
		a)	Upto 20 Km from nearest urban area	1.1	
		b)	Above 20 Km and upto 40 Km	1.2	
		c)	Above 40 Km and upto 80 Km	1.3	
		d)	Above 80 Km and upto 100 Km	1.5	
		e)	Above 100 Km and upto 120 Km	1.75	
		f)	Above 120 Km	2.00	

**Multiplication Factor notified by the State Governments in compliance to Sr. No. 2 of the First Schedule to the RFCTLARR Act, 2013**

Sr. No.	State	Multiplication factor for Rural areas	Reference No.
21.	All UTs (except Puducherry)	2.00	Notified by DoLR

0-0-0-0-0



No. NH-11011/30/2016-LA  
**Government of India**  
**Ministry of Road Transport & Highways**

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Transport Bhawan, 1, Parliament Street,  
New Delhi – 110 001.  
Dated, the 15th March, 2016.

To

1. The Chairman,  
National Highways Authority of India  
G-5&6, Sector- 10, Dwarka, New Delhi-110 075.
2. The Managing Director,  
National Highways Infrastructure Development Corporation Ltd,  
PTI Building, Parliament Street, New Delhi- 110 001.
3. The Director General Border Roads,  
Seema Sadak Bhawan, Ring Road, Delhi Cantt., New Delhi- 110 010.
4. Secretary/Principal Secretary,  
Public Works Department,  
All State Governments/Union Territories

**Subject: Acquisition of missing plots from bulk acquisition through consent- reg.**

Sir,

I am directed to say that whenever land is required for the purpose of National Highways, provisions of the National Highways (NH) Act, 1956 are invoked. At times, some of the plots have been observed to have been missed from the bulk land acquisition. It is initially due to deviation in the boundaries while interpreting the revenue map, change in Khasra number as a result of land consolidation process and poor maintenance of revenue records. The deviations are more pronounced in case of bypasses where there is no pre-defined road boundary as a reference mark. In addition to these missing plots, some more plots are also required at times to accommodate minor alterations necessitated due to unforeseen technical, social or environmental considerations not noticed at the Detailed Project Report(DPR) stage.

2. Proposals have been received from some of the Project Implementing Authorities to acquire these missing plots through private negotiations. It is mainly to avoid delays in handing over the sites to the concessionaires; it is contemplated that if such lands are acquired through NH Act, 1956 it will cause further delay in handing over the sites to the concessionaires. Moreover, this may also result into contractual claims by the contractors. As generally is the case, the land acquisition through the NH Act, 1956 is time consuming; therefore, it is felt that land acquisition of these missing/ additional plots through consent would be helpful in several ways to achieve the goals as follows:

- (a) The land could be taken in possession immediately for implementing the scheme;

- (b) Inherent delays noticed in the acquisition of land could be avoided;
- (c) The expenditure incurred on publication of notifications under section 3(a), 3(A) and 3(D) under the NH Act, 1956 in the local newspapers is saved;
- (d) There would be no court case challenging a land acquisition causing abnormal delays in the process;
- (e) The lump sum award could be given straight away.

3. The proposal has been considered in this Ministry and it has been decided that the process of acquisition of land through consent may be adopted as an exception, preferably up to 10% of total quantum of land acquisition in a construction package, only in the following cases:

- (a) Missing plots which are left out from the bulk acquisition; and
- (b) Additional land required due to alteration of alignment at implementation stage.

4. However, for acquiring the land through consent, enough protective mechanism is required in respect of rates to be adopted and for establishing the rightful ownership. For this purpose, the following procedure/ guidelines may be followed henceforth in cases of acquisition through consent:

- (i) The proof of legal ownership for the plots shall be obtained from the revenue officials not below the rank of Tehsildar;
- (ii) The plot shall be measured exactly and verified through the village/ circle/ taluka level revenue official on the ground and on the map;
- (iii) The legal owner shall be consulted by the Project Implementing Authority. Prior to their formal consent, the concerned Project Implementing Authority shall process each case and obtain the approval of the Competent Authority. The rates for the consent shall be the maximum of compensation rates declared by the Competent Authority for similar type of land in the adjoining area or the circle rate/ guideline value of similar land use, if notified by revenue authorities for such areas;
- (iv) In order not to deprive a land owner who has willingly given his land on mutual consent, of the benefits of an enhanced award, which may be declared by an arbitrator and accepted by the Project Implementing Authority subsequent to the date of agreement for sale, the enhanced rate awarded by the arbitrator for same nature and type of land in adjoining area during bulk acquisition shall be paid to such a land owner. However, the arbitral award should pertain to land acquisition under NH Act, 1956 for which notification under section 3A thereof has been published on or prior to the date of agreement for sale by the land owner with Ministry. The gross enhanced compensation rate {including enhanced rate awarded under sections 3G(2) & 3G(7) (b), (c) & (d) of the NH Act, 1956} awarded by the arbitrator during bulk acquisition under the NH Act, 1956 in the locality for same nature and type of land in adjacent plots may be given to the land owner. To pass on the benefits of enhanced rate awarded by an arbitrator and accepted by the Project

Implementing Authority, to a land owner who has agreed to give land to the Project Implementing Authority on mutual consent, a condition that if on a future date an award is passed by the arbitrator enhancing the rate of compensation for adjoining area of land which is of similar nature and type and which has been acquired under NH Act, 1956 such benefit will be given to the land owner whose land has been acquired on a mutual consent for the same project. This should be further subject to the condition that the arbitral award should pertain to land acquisition under NH Act, 1956 for which notification under section 3A thereof has been published on or prior to the date of agreement for sale by the landowner with the Project Implementing Authority. The aforesaid conditions shall have to be included in the agreement for sale so that there is no ambiguity as to the fact that the enhanced award shall be applicable only when the date of the related notification under section 3A under the NH Act, 1956 for land against which enhanced award has been passed by the arbitrator is on or before the date of agreement for sale between the land owner and the Project Implementing Authority.

**Note:** For avoidance of any doubt, it is being clarified that missing plots/ survey nos. left out from bulk acquisition which are acquired on mutual consent basis may be purchased at rate already awarded by arbitrator and accepted by the Project Implementing Authority, for adjoining area of same nature and type of land which was acquired under NH Act, 1956 for the same project.

- (v) The rate used by the Competent Authority or the circle rate/ guideline value shall be the maximum upto which the Project Implementing Authority may agree to acquire the land. In case of application of the rate of enhanced award by an arbitrator for similar nature and type of land in adjoining area acquired under NH Act, 1956 the enhanced rate shall be the maximum rate at which a plot of land shall be acquired on mutual consent subject to the conditions stated in (iv) above. However, in case of projects funded by multilateral funding agencies, where an Rehabilitation and Resettlement framework has been agreed to, land shall be negotiated at the replacement value worked out through the procedure agreed in the Rehabilitation and Resettlement framework for the project. The Project Implementing Authority will certify in his proposal that in no case the rates negotiated with the title-holders exceed those adopted by the Competent Authority for similar type of land in the adjoining areas or the replacement value in case of projects funded by multilateral funded agencies.
- (vi) After receiving the approval, the formal consent of individual title-holder shall then be recorded on a stamp paper and duly notarized. The sample format of consent is enclosed at Annexure-I. The concerned Project Implementing Authority shall then finalize the sale deed in the prescribed sample format enclosed at Annexure- II and shall get the transaction registered with the office of the concerned Registrar;

- (vii) The account payee cheque towards the compensation/ replacement value of land shall be given to the title-holder at the time of registry. All taxes, registration charges and other expenses like value of the stamp papers, etc. shall be borne by the Project Implementing Authority;
- (viii) Assets other than the land, viz, structures, wells, trees, etc. shall not be registered. The compensation of the assets shall be paid on the basis of the prevailing Basic Schedule of Rates of the State Public Works Departments. In such cases the valuation shall be done by the Project Implementing Authority with the help of a Government approved Valuers. For trees, the help of Forest/ Horticulture Departments shall be taken;
- (ix) All the sale deeds shall be sent to the concerned revenue office for transfer of the land in the name of Government of India. The Project Implementing Authority shall ensure that the land acquired through negotiation is mutated in the name of Government of India and shall keep a separate record of all such land;
- (x) The Project Implementing Authority shall maintain a copy of the consents verified and duly counter-signed by an officer of appropriate level in original with them.

5. This may be brought into the notice of all concerned authorities dealing with the acquisition of land and ensure that all determination of compensation for acquisition of land under the NH Act, 1956 are in consonance with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 and respective State Government's land laws.

6. This issues with the approval of Minister (Road Transport and Highways).

Yours faithfully,  
sd/-  
(Maya Prakash)  
Director  
Tele/Fax No.23710454

Annexes: As Above (I and II)

**Copy for compliance to:**

- (a) All Coordinators, Roads Wing, M/o RT&H  
(b) Chief Engineers of all Project Zones, Roads Wing, M/o RT&H  
(c) All Regional Officers of M/o RT&H

**Copy for information to:**

- (a) PS to Minister (RT&H)/ PS to MoS (RT&H)  
(b) Sr. PPS to Secretary (RT&H)/PPS to DG(RD&SS)  
(c) PPS to all ADGs of the Roads Wings of M/o RT&H  
(d) PPS to all Joint Secretaries of M/o RT&H

Copy of the Gazette Notification of MHA authorising the Field Officers of MoRTH/ NHAI/ NHIDCL to represent the President of India for execution of Sale Deeds/ Mutations

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99



# भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

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NEW DELHI, FRIDAY, AUGUST 3, 2018/SHRAVANA 12, 1940

गृह मंत्रालय

आदेश

नई दिल्ली, 3 अगस्त, 2018

**का.आ. 3837(अ).**—भारत के संविधान के अनुच्छेद 77 के खंड (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राष्ट्रपति अधिप्रमाणन (आदेश एवं अन्य लिखत) नियम, 2002 [अधिप्रमाणन (आदेश एवं अन्य लिखत) संशोधन नियम, 2005 के तहत दिनांक 18 जनवरी, 2006 को और अधिप्रमाणन (आदेश एवं अन्य लिखत) संशोधन नियम, 2006 के तहत दिनांक 25 अगस्त, 2006 को और अधिप्रमाणन (आदेश एवं अन्य लिखत) संशोधन नियम, 2009 के तहत दिनांक 09 सितम्बर, 2009 को और अधिप्रमाणन (आदेश एवं अन्य लिखत) संशोधन नियम, 2010 के तहत दिनांक 02 अगस्त, 2010 को और अधिप्रमाणन (आदेश एवं अन्य लिखत) संशोधन नियम, 2014 के तहत दिनांक 07 नवम्बर, 2014 को यथासंशोधित] को पुनःसंशोधित करते हैं।

- (i) अधिप्रमाणन (आदेश एवं अन्य लिखत) नियम, 2002 में उपर्युक्त संशोधन को अधिप्रमाणन (आदेश एवं अन्य लिखत) नियम, 2018 कहा जाएगा।
- (ii) ये सरकारी राजपत्र में इनके प्रकाशन की तारीख से प्रवृत्त होंगे।
- अधिप्रमाणन (आदेश एवं अन्य लिखत) नियम, 2002 के नियम 2 में एक नई धारा (49) जोड़ी जाए जिसे निम्नानुसार पढ़ा जाए :—

“(49) राष्ट्रीय राजमार्ग के लिए अधिगृहीत भूमि के संबंध में नाम परिवर्तन/हस्तान्तरण विलेखों तक सीमित सड़क परिवहन एवं राजमार्ग मंत्रालय से संबंधित आदेशों और अन्य लिखतों के मामले में सड़क परिवहन एवं राजमार्ग मंत्रालय के माध्यम से भारत के राष्ट्रपति की ओर से भारतीय राष्ट्रीय राजमार्ग प्राधिकरण/राष्ट्रीय राजमार्ग अवसंरचना विकास निगम के संबंधित परियोजना निदेशक अथवा क्षेत्रीय अधिकारी द्वारा तथा ऐसे

मामलों में, जहां परियोजनाएं राज्य लोक निर्माण विभाग (पी डब्ल्यू डी) द्वारा निष्पादित की जाएं, सड़क परिवहन एवं राजमार्ग मंत्रालय के कार्यालयों में नियुक्त क्षेत्रीय अधिकारी अथवा सहायक अधिशाषी अभियंता की रैंक और इससे ऊपर के अन्य अधिकारी द्वारा।”

(ह./-)

राम नाथ कोविन्द

भारत के राष्ट्रपति

[फा. सं. 23/1/2018-पब्लिक]

श्री प्रकाश, संयुक्त सचिव प्रशासन

**MINISTRY OF HOME AFFAIRS**

**ORDER**

New Delhi, the 3rd August, 2018

**S.O. 3837(E).**—In exercise of powers conferred by clause (2) of Article 77 of the Constitution of India, the President of India is pleased to further amend the Authentication (Orders and other Instruments) Rules, 2002, [amended on January 18, 2006 vide Authentication (Orders and other Instruments) Amendment Rules, 2005 and on August 25, 2006 vide Authentication (Orders and other Instruments) Amendment Rules, 2006 and on September 9, 2009 vide Authentication (Orders and other Instruments) Amendment Rules, 2009 and on August 2, 2010 vide Authentication (Orders and other Instruments) Amendment Rules, 2010 and on November 7, 2014 vide Authentication (Orders and other Instruments) Amendment Rules, 2014], namely : -

1. (i) The above amendment to the Authentication (Orders and other Instruments) Rules, 2002 may be called the Authentication (Orders and other Instruments) Amendment Rules, 2018.
- (ii) They shall come into force on the date of their publication in the Official Gazette.
2. In rule 2 of the Authentication (Orders and other Instruments) Rules, 2002, a New Section (49) may be inserted to read as:—

“(49) In the case of orders and other instruments relating to the Ministry of Road Transport and Highways limited to the execution of mutations/conveyance deeds in respect of land acquired for the National Highways in the name of the President of India through the Ministry of Road Transport and Highways by the concerned Project Director or Regional Officer of the National Highways Authority of India (NHAI)/ National Highways Infrastructure Development Corporation Limited (NHIDCL) and by the Regional Officer or other officer of the rank of Assistant Executive Engineer and above posted in the offices of the Ministry of Road Transport and Highways in cases where the projects are executed through the State Public Works Departments (PWDs).”

Sd./-

RAM NATH KOVIND

PRESIDENT OF INDIA

[F. No. 23/1/2018-Public]

SHRI PRAKASH, Jt. Secy. (Admn.)

Copy of Supplementary Opinion of the Attorney General of India on the construct of Section 2 and Section 3 of the NH Act, 1956



**K.K. Venugopal**  
Attorney General for India

Supreme Court of India  
New Delhi-110001  
Tel: 23383254, 23070046  
Fax: 23782101

24<sup>th</sup> December 2017

**SUPPLEMENTARY OPINION**

**Querist: Ministry of Road Transport & Highways**

On 23<sup>rd</sup> December 2017, I gave my opinion on issues 3.1 - 3.6 contained in the Secretary to Department's letter dated 14<sup>th</sup> December 2017. The MORTH has now sought my opinion on an additional issue, *i.e.*, whether it is necessary to notify a road project as a National Highway in terms of Section 2 of the National Highways Act, 1956 for initiating the process of land acquisition under Section 3A of the Act.

I have examined the relevant provisions. Section 2 of the National Highways Act provides as follows:

*2. Declaration of certain highways to be national highways.—(1) Each of the highways specified in the Schedule 2 \*\*\* is hereby declared to be a national highway.*

*(2) The Central Government may, by notification in the Official Gazette, declare any other highway to be a national highway and on the publication of such notification such highway shall be deemed to be specified in the Schedule.*

*(3) The Central Government may, by like notification, omit any highway from the Schedule and on the publication of such notification, the highway so omitted shall cease to be a national highway.*

Section 3A deals with the power to acquire land and Section 3A (1) provides as follows:

*3A. Power to acquire land, etc.—(1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.*

Under Section 3A(1), the Central Government may acquire land for the purpose of building a National Highway. The term 'building' is not defined in

the National Highways Act. The New Webster's Dictionary of the English Language (Deluxe Encyclopedic Edn) defines 'building' as '*the act of one who builds*'. The term 'build' is defined as '*to construct or erect, as a house; to form by uniting materials into a regular structure; to make; to establish by gradual means; to raise as on a support or foundation*'. When the Central Government notifies land for acquisition, the nature of these lands may be paddy fields or waste lands or vacant lands. These lands cannot be called a Highway. What is acquired is only land without a Highway existing at the time. The very concept of a Highway is defined in common law as '*a way over which there exists a public right or passage.....at all seasons of the year freely...to pass and re-pass without let or hindrance.*' (Halsbury's Laws of England, 4<sup>th</sup> Edn., Vol 21 Page 9) Vacant lands and paddy fields can never be termed as Highways. It is only when the road is built/constructed and established, and is able to take traffic, and when a passage comes into existence for persons to pass and re-pass, that it can be notified.

In view of the above, my answer to the query is that it is not necessary to notify a road project as a National Highway in terms of Section 2 of the National Highways Act, 1956 for initiating the process of land acquisition under Section 3A of the Act.

I advise accordingly

Corrections to Opinion dated 23<sup>rd</sup> December 2017

In the opinion dated 23<sup>rd</sup> December, the reference to Section 3G in the second paragraph at Page 6 and Page 11 may be corrected to Section 3A.

  
( K.K. Venugopal )



**Copy of DO Letter to Chief Secretaries of States for rationalisation of Administrative Charges on acquisition of land for the National Highways**

---

D.O. No. NH-11011/73/2016-LA (pt.)  
December 11, 2017

Dear Sh. \_\_\_\_\_

Kindly recall my D.O. letter dated 06.07.2017 on the subject of Administrative Charges being levied by your state for acquisition of land for the National Highway Projects as a percentage of the compensation amount (copy enclosed for ready reference).

2. It may be noted that the states of Andhra Pradesh, Jammu & Kashmir, Karnataka, Odisha, Telangana, Rajasthan, North-Eastern states (except Assam) do not levy any administrative charges for acquisition of land for the National Highways. However, 13 states including your state have been levying these charges as per the details given in Annexure-1. Excepting the state of Uttarakhand (who have agreed with the Ministry's proposal), we have not received any response to my aforesaid DO reference from any other state.

3. It is understood that your state has prescribed these charges as a percentage of the amount of compensation towards administrative costs under the rules framed under the 1894 Act. The determination of compensation amount, use of multiplication factor and provision of 100% solatium under the revised law has completely changed the landscape whereby the compensation amount has gone up by 3 to 4 times whereas the prescribed percentage of administrative costs has not been rationalized. On the other hand, the States appoint the Competent Authority for Land Acquisition (CALA) for acquisition of land for the National Highways, who are not committed to this work on full-time basis and the support system is left wanting. As a result, the NHAI/ NHIDCL supplement these resources and deploy Land Acquisition Supporting Units comprising of retired revenue officials and other support systems. As such, it is the need of the hour to re-visit these charges and rationalise the same.

4. The administrative costs involved in Land Acquisition for NHs and associated facilities by a state involve the process/ steps as tabulated in the enclosed Annexure-2. A perusal of the details given in the enclosure shows that even if an officer i.e. CALA, along with a supporting staff of two personnel, and then the costs associated with the functions discharged by the Arbitrators appointed under Section 3-G(5) for settlement of arbitral issues, are deployed on full-time on the given jobs, their salaries, office expenses, office accommodation, use of vehicle(s) etc. for a period of one full year also would only be a small fraction of the administrative charges vis-à-vis the amount calculated @ 2.5% of the compensation amount.

5. You would appreciate that construction of NHs generate a lot of value and economic activity. As a matter of fact, these serve as major arteries of economic development and growth in the state concerned. Ideally, keeping in view that the state is the major beneficiary of the economic gains arising from National Highways developed/ constructed within its jurisdiction, the administrative costs should be borne by the state government as its token

contribution in this behalf. You would agree that the administrative costs on land acquisition for the National Highways cannot be reckoned as a source of additional revenue generation for the state. As such, the states are expected to contribute their bit in this endeavour and the least they can do is to assist in the administrative process as part of their contribution. In any case, treatment of levy of administrative charges for Land Acquisition by the State concerned as a source of revenue generation, beyond the actual costs incurred in the process, is unacceptable.

6. Notwithstanding the above, in case you still decide to levy and recover the administrative costs for acquisition of land for the National Highway Projects in your state, I request you to kindly revisit the existing level of administrative costs and take recourse to any of the following options:

- (i) Raise a bill for the actual expenditure incurred by the State Government on land acquisition for the National Highways (this would entail a complex accounting problem in terms of working out the part time and effort of the deployed officers); or
- (ii) Consider prescribing a fixed amount per hectare acquisition cost (as in the case of Haryana, it is Rs. 1.00 lakh per acre or Rs. 2.5 lakh per hectare); or
- (iii) Cap the administrative charges at a uniform rate of 2.5% of the compensation amount, while allowing for adjustment of the expenditure incurred by the Project Implementing Agencies of this Ministry, on engagement of the Special Land Acquisition Support Units to assist the CALAs.

7. The project executing entities of MoRTH (e.g. NHAI/ NHIDCL and others) have been advised to restrict the payment of administrative charges up to 2.5% of the compensation amount in respect of land acquisition for all the on-going and future NH projects. I am constrained to clarify that it will be extremely difficult for the MoRTH and its project executing agencies to proceed further with their NH projects in your state without any further reference on the subject in the event your state has any reservations in accepting the above principle. I would be grateful if the Ministry could be informed about the decision of the state in the matter.

**With regards,**

Yours sincerely,  
**Sd/-**  
(Y. S. Malik)

**Chief Secretaries of the concerned 12 States**

<b>Annexure-2 (to the DO Letter dated 11.12.2017)</b>			
<b>Sr. No.</b>	<b>Activity</b>	<b>Scope of work</b>	<b>Agency bearing/ sharing the Costs</b>
<b>A. Land Acquisition proceedings</b>			
1	Section 3(a) of the NH Act, 1956	Notification of Competent Authority for Land Acquisition (CALA) by the Ministry on the recommendations of the State concerned	Involves no administrative costs. Invariably, CALAs are full-time serving officers who look after this work in addition to their own office work.
2	Section 3-A of the NH Act, 1956	Preparation of the Notification Issue of initial Notification containing brief description of the land.	Basic ground-work done by the Land Acquisition Supporting Unit (comprising a team of contract/retired revenue officials) engaged by NHAI/ NHIDCL and cost met by the acquiring agency.
		Vetting and issue of Notification by CALA	The time and effort put in by the CALA and his supporting staff of one or two employees is very limited.
		Publication in the newspapers	Cost of publication in the newspapers is borne by MoRTH or its agency e.g. NHAI, NHIDCL etc.
3	Action under Section 3-B of the NH Act	Survey and Investigation of the land	Action by CALA duly supported by the DPR Consultant and the Land Acquisition Supporting Unit of NHAI/ NHIDCL.
4	Section 3-C of the NH Act, 1956	Invitation, examination and settlement of Objections received/ filed by the landowners/ interested persons	This is a substantive work but the inputs are provided by the DPR Consultants/ Land Acquisition Supporting Unit
7	Section 3-D of the NH Act, 1956	Declaration of Acquisition	The basic ground work and details under this sub-section are prepared by the DPR Consultants and the Land Acquisition Supporting Units, of course with due involvement/ association of the revenue officials of the jurisdiction. The actual expenditure on issue/ publication of Notices in the local newspapers is in any case borne by the land acquiring agency
8	Section 3-E of the NH Act, 1956	Power to take possession	-do-
9	Section 3-F of the NH Act, 1956	Entering upon the land vesting in the Central Government	-do-
10	Section 3-G of the NH Act, 1956	Determination of amount payable as compensation	The details under this sub-section are prepared by the DPR Consultants and the Land Acquisition Supporting Units, of course with association of the revenue officials of the jurisdiction. The actual expenditure on issue/ publication of Notices in the local newspapers is borne by the land acquiring agency.
11	Section 3-H of the NH Act, 1956	Deposit and payment of amount	-do-
<b>B. Arbitral proceedings</b>			
12	Section 3 G (5) of the NH Act, 1956	Appointment of Arbitrator	By the Central Government on the recommendations of the State Government
		Receipt of claims	By the Arbitrator's Office
		Hearings	By the Arbitrator

<b>Annexure-2 (to the DO Letter dated 11.12.2017)</b>			
<b>Sr. No.</b>	<b>Activity</b>	<b>Scope of work</b>	<b>Agency bearing/ sharing the Costs</b>
		Adjudication of the Claim	By the Arbitrator
	<p>Note:            The NHAI separately pays financial assistance for engagement of supporting staff required to assist the Arbitrator for all the processes (up to a period of one year):</p> <p>(i) An amount of Rs. 40,000/- per month where the no. of Arbitration cases are up to 150.</p> <p>(ii) An amount of Rs. 60,000/- per month if the number of Arbitration cases are more than 150.</p>		

<b>Details of Administrative Costs/ Charges levied by states on acquisition of land for the National Highways.</b>			
<b>Sr. No.</b>	<b>State</b>	<b>Administrative Charges (AC)</b>	<b>Remarks</b>
1.	Andhra Pradesh	Nil	
2.	Arunachal Pradesh	Nil	
3.	Assam	10% of the Compensation Amount	Being paid @ 2.5% only
4.	Bihar	2.5% of the Compensation Amount	Orders issued recently
5.	Chhattisgarh	2.5% of the Compensation Amount	State Government notification No. F7-09/2018-7-1 dated 01.06.2018.
6.	Goa	NIL	
7.	Gujarat	NIL	Orders not available
8.	Haryana	Rs. 1.00 lakh per acre as per clause 19(ii) of Government of Haryana Government Notification dated 09.11.2010	
9.	Himachal Pradesh	2.5% of the total award value	HP Government PWD's letter dated 07.05.2018
10.	Jammu & Kashmir	Nil	
11.	Jharkhand	2.5% of the Compensation Amount	State Government guidelines No. 8/ LAD NH (Admn)-39/2018/242/A dated 23.04.2018.
12.	Karnataka	Nil	
13.	Kerala	2.5% of the Compensation Amount	State Government guidelines No. B1-74/2018/RD dated 24.02.2018.
14.	Madhya Pradesh	2.5% of the Compensation Amount	State Government guidelines No. F-3/2014/19/Yo 347 dated 23.01.2018
15.	Maharashtra	2.5% of the Compensation Amount	State Government guidelines No. 01/2018 11/A-2
16.	Manipur	Nil	
17.	Meghalaya	Nil	
18.	Mizoram	Nil	
19.	Nagaland	Nil	
20.	Odisha	20% of the estimated compensation amount	Being paid @ 2.5% of the Compensation amount
21.	Punjab	Nil	
22.	Rajasthan	Nil	
23.	Sikkim	Nil	

<b>Details of Administrative Costs/ Charges levied by states on acquisition of land for the National Highways.</b>			
<b>Sr. No.</b>	<b>State</b>	<b>Administrative Charges (AC)</b>	<b>Remarks</b>
24.	Tamil Nadu	Nil	
25.	Telangana	Nil	
26.	Tripura	Nil	
27.	Uttarakhand	2.5% of the Compensation Amount. However, if the actual expenditure incurred by the State Government on land acquisition for the National Highways is more, then Administrative charges shall be the actual expenditure incurred by the State Government or 5% of the compensation amount, whichever is lower.	State Government guidelines No. 21/XVIII (3)/2018-02 (47)2017 dated 17.01.2018.
28.	Uttar Pradesh	(a) For expenditure incurred towards establishment of acquisition units. (Includes pay, allowances, leave, pay, pension, gratuity and all other relevant expenses) – administrative cost @ 2.50% of compensation cost.  (b) For expenditure incurred towards preparation of records, preliminary spot inspections and other works in the preliminary stages of acquisition, expenses on the process where consent of affected family has to be obtained or not to be obtained, as the case may be. – Administrative cost shall be the real expenditure on land acquisition establishment unit.	UP Government Notification dated 13.04.2018
29.	West Bengal	2.5% of the Compensation Amount	2.5% (No order issued but agreed in Chief Secretary meeting, compensation being paid accordingly).

1

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5250 OF 2018  
(Arising out of S.L.P. (C) NO. 20049 OF 2017)

GENERAL MANAGER (PROJECT),  
NATIONAL HIGHWAYS AND INFRASTRUCTURE  
DEVELOPMENT CORPORATION LTD. APPELLANT(S)

VERSUS

PRAKASH CHAND PRADHAN & ORS. RESPONDENT(S)

WITH  
CIVIL APPEAL NO. 5251 OF 2018  
(Arising out of S.L.P. (C) No. 595 of 2018)

O R D E R

Leave granted.

Section 3-G of the National Highways Act, 1956 provides for determination of the amount that is payable by way of compensation. We are concerned in these appeals with sub-sections (5) and (6) of Section 3-G which read as under:

"(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act."

Signature Not Verified  
Digitally signed by  
SUDHE KUMAR  
RAKHEJA  
Date: 2018.12.18  
17:59:43 IST  
Reason:

A cursory reading of sub-section (5) shows us

that appointment of the arbitrator under the said sub-section is only in the hands of the Central Government. Sub-section (6) begins with the important expression "subject to the provisions of this Act", the provisions of the Arbitration and Conciliation Act, 1996 shall apply.

Having heard learned counsel for the parties, we are, therefore, of the view that a Section 11 application under the 1996 Act cannot be made as the Central Government alone is to determine who is to be an arbitrator under Section 3-G (5) of the National Highways Act. If a demand is made for the appointment of an arbitrator, and the Central Government does not appoint an arbitrator within a reasonable time, the remedy that is to be availed of is a writ petition or a suit for the said purpose, and not Section 11 of the Arbitration and Conciliation Act, 1996.

A similar provision contained in Section 86 (1)(f) of the Electricity Act, 2003 specifically gives the State Commission power to refer any dispute for arbitration. In this view of the matter, this Court in Gujarat Urja Vikas Nigam Ltd. vs. Essar Power Ltd., (2008) 4 SCC 755, held as under:

"28. Section 86(1)(f) is a special provision and hence will override the general provision in Section 11 of the Arbitration and Conciliation Act, 1996 for arbitration of disputes between the licensee and generating



companies. It is well settled that the special law overrides the general law. Hence, in our opinion, Section 11 of the Arbitration and Conciliation Act, 1996 has no application to the question who can adjudicate/arbitrate disputes between licensees and generating companies, and only Section 86(1)(f) shall apply in such a situation."

We respectfully agree with the ratio of the said judgment. Likewise, Section 3-G of the National Highways Act is a special provision which will be given effect insofar as the appointment of an arbitrator is concerned.

Learned counsel appearing on behalf of the respondents has, however, argued that an arbitrator has now been appointed under Section 11 of the Arbitration and Conciliation Act, 1996 and, that, therefore, no prejudice will be caused if he is allowed to continue. This arguments ignores the fact that Section 11 of the Arbitration and Conciliation Act does not apply and that, under Section 3-G, the Central Government alone can appoint an arbitrator.

Accordingly, the impugned judgment is set aside and the appeals are allowed.

.....J.  
(ROHINTON FALI NARIMAN)

.....J.  
(ABHAY MANOHAR SAPRE)

NEW DELHI,  
MAY 16, 2018

ITEM NO.39

COURT NO.11

SECTION XIV

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (C) No(s). 20049/2017

(Arising out of impugned final judgment and order dated 05-07-2017 in ARBP No. 01/2017 passed by the High Court of Sikkim At Gangtok)

**GENERAL MANAGER (PROJECT), NATIONAL HIGHWAYS  
AND INFRASTRUCTURE DEVELOPMENT CORPORATION LTD.      Petitioner(s)**

**VERSUS**

**PRAKASH CHAND PRADHAN & ORS.      Respondent(s)**

**WITH**

**SLP(C) No. 595/2018 (XIV)**

**Date : 16-05-2018 These petitions were called on for hearing today.**

**CORAM :**

**HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN  
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE**

**For Petitioner(s)**      Mr. Anupam Lal Das, Adv.  
Mr. Kabir Shankar Bose, Adv.  
Mr. Shashank Manish, Adv.  
Mr. Sameer Kumar, AOR

Mr. Vikramjit Banerji, A.S.G.  
Mr. Ashok K. Srivastava, Adv.  
Ms. Sunita Sharma, Adv.  
Mr. Arvind Kumar Sharma, AOR  
Mr. Anshul Gupta, Adv.  
Mr. Gurmeet Singh Makker, AOR

**For Respondent(s)**      Mr. Sunil Kumar Jain, AOR  
Mr. A.K. Shah, Adv.  
Mr. Punya Garg, Adv.  
Mr. Abhishek Jain, Adv.

Mr. Anupam Lal Das, Adv.  
Mr. Kabir Shankar Bose, Adv.  
Mr. Shashank Manish, Adv.  
Mr. Sameer Kumar, AOR

**UPON hearing the counsel the Court made the following**

**O R D E R**

**Leave granted.**

**The appeals are allowed in terms of the signed order.**

**Pending applications, if any, shall also stand disposed of.**

**(SUSHIL KUMAR RAKHEJA)  
COURT MASTER (SH)**

**(SAROJ KUMARI GAUR)  
BRANCH OFFICER**

**(Signed Order is placed on the file)**



## Chapter: 3

### Process of Land Acquisition under the NH Act, 1956

#### Process of Land Acquisition and the steps involved therein:

#### 3.1 Appointment of Competent Authority for land Acquisition (CALA) under Section 3(a) of the NH Act, 1956.

- (i) The first step in the process of Land Acquisition for National Highways under the National Highways Act, 1956 relates to the appointment of Competent Authority for Land Acquisition (CALA) under Section 3(a) of the NH Act, 1956. The CALA is invariably an officer dealing with the land administration in the area and is the custodian of all revenue/ land records, and so appointed by the Central Government on the recommendations of the State Government. This step takes considerable time in getting timely response from the States.
- (ii) It has been observed that the work relating to acquisition of land in various states is undertaken by certain designated officers in their ex-officio capacity. For instance, in Haryana, it is the District Revenue Officer (DRO) who is designated as the Land Acquisition Officer in his ex-officio capacity as the DRO. Wherever such an arrangement is in existence, it is always useful to request the State Government for a standing order from the higher authorities in the State recommending notification of such Officers as CALAs for acquisition of land for the National Highways also. This would save considerable time in getting recommendations in individual cases. The States of Haryana, Tamil Nadu and Andhra Pradesh have already issued such orders. As a sample, the Order issued by the Financial Commissioner, Department of Revenue & Disaster Management, Government of Haryana, is enclosed as [Annexure- 3.1](#).

#### 3.2 Notification under Section 3A of the NH Act, 1956.

*"3A. Power to acquire land, etc.- (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land;*

*(2) Every notification under sub-section (1) shall give a brief description of the land.*

*(3) The competent authority shall cause the substance of the notification to be published in two local newspapers one of which is will be in vernacular language."*

- (i) Once the CALA is appointed under Section 3(a), representative of the land acquiring agency/ PD concerned approaches the CALA for issue of Preliminary Notification under Section 3A of the NH Act, 1956. This draft Notification is invariably prepared by the DPR consultant based on revenue records obtained from the office of CALA. Preparation of Notification under Section 3A is a demanding job, especially in a linear project, as the possibility of missing out certain small revenue/ *Khata*

numbers cannot be ruled out. This draft notification thus, as submitted to the CALA, must pass through a two or three eye-check so as to ensure that the incidence of missing numbers/ plots is minimised. This draft is then vetted by the CALA before he signs and uploads the same on *Bhoomi Rashi* portal for approval of the competent authority and its publication in the Gazette.

- (ii) Publication of Notification under Section 3A is now much easier and faster with the development, roll-out and implementation of *Bhoomi Rashi* software. The chances of any mistakes creeping in are also minimised in the process.
- (iii) Besides publication of Notification under Section 3A in the Official Gazette, it is equally important that the Notification is also immediately published in two newspapers circulating in the area, of which one must be in vernacular. It has to be noted that the subsequent Notifications under Section 3D and other public notices are also got published in the same set of newspapers.
- (iv) Publication of Notification under Section 3A enables the land acquiring agency to undertake the activities specified under Section 3B, which is reproduced below:

*"3B. Power to enter for survey, etc. - On the issue of a notification under subsection (1) of section 3A, it shall be lawful for any person, authorised by the Central Government in this behalf, to-*

- (a) make any inspection, survey, measurement, valuation or enquiry;*
- (b) take levels;*
- (c) dig or bore into sub-soil;*
- (d) set out boundaries and intended lines of work;*
- (e) mark such levels, boundaries and lines placing marks and cutting trenches;*  
*or*
- (f) do such other acts or things as may be laid down by rules made in this behalf by that Government.*

### **3.3 Hearing of Objections (filed under Section 3C and settlement thereof):**

*"3C. Hearing of objections.- (1) Any person interested in the land may, within twenty-one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.*

*(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector and may, after hearing all such objections and after making such further enquiry, if any, as the competent authority thinks necessary, by order, either allow or disallow the objections.*

***Explanation:-** For the purposes of this sub-section "legal petitioner" has the same meaning as in clause (i) of sub-section (i) of section 2 of the Advocates Act, 1961 (25 of 1961).*

*(3) Any order made by the competent authority under sub-section (2) shall be final."*

- (i) It is clear from a reading of the above that the landowners are given an opportunity by law to file objections before the concerned CALA in respect of the proposed acquisition of their land, be it with respect to the *Khata* numbers, the area under such field number, the nature of land shown in the preliminary notification or any other issue. The landowner is required to file his/ her objection within a period 21 days of the publication of preliminary notification under Section 3A of the NH Act, 1956.
- (ii) It has been brought to the notice of the Ministry that the CALAs have been adopting different practices in calculation of the period of 21 days. While some of them compute the period of 21 days from the date of publication of Notification under Section 3A in the newspapers, certain others have been computing the period of 21 days from the date of publication of the Notification under Section 3A in the Official Gazette. While the Official Gazette is in public domain and, legally speaking, publication of Notification in the Official Gazette is the correct reference point for computing the period of 21 days, however, it has been observed that expecting the landowners in remote rural areas to know about the Government's intent to acquire their land from the Gazette Notifications alone may be a very textual approach. As such, it has been decided that, from now onwards, the period of 21 days for filing objections under Section 3C is to be counted from the date of last publication of the Notification under Section 3A in the newspapers. It is also for these reasons that the publication of Section 3A Notification in the locally circulating newspapers should be an immediate action.
- (iii) It has also been brought to the notice of the Ministry that the CALAs and the officers of MoRTH have generally been treating the particulars of any land, as reflected in Section 3A Notification, as sacrosanct and are reluctant to change/ correct the status even upon receiving a valid objection under Section 3C. The possibilities of certain entries in the Land Revenue Records, which formed the basis for notification published under Section 3A, having not been updated, cannot be ruled out. Hence, in cases, where a landowner points out any such inconsistency with regard to the entry recorded in Section 3A Notification, along with conclusive supporting documents in his/ her objection filed under Section 3C, the same should be given due credence by the concerned officers/ CALA, provided such claimed change had taken place before issue of Section 3A Notification. To illustrate, in case a particular landowner may have got his land use converted from "agriculture" to "non-agriculture" with the approval of competent authority, and he/she adduces evidence of having obtained such approval and also made payment of the fee prescribed for the purpose before issue of Section 3A notification, his claim would prima facie be eligible for admittance. However, such changes have to be accepted with a lot of care and caution/ due diligence because of the scope of inherent mischief in such-like cases.

#### **3.4 Notification under Section 3D of the NH Act, 1956 - Declaration.**

*"3D. Declaration of acquisition. - (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified*

*therein or where the competent authority has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose or purposes mentioned in sub-section (1) of section 3A.*

*(2) On the publication of the declaration under sub-section (1), the land shall vest absolutely in the Central Government free from all encumbrances.*

*(3) Where in respect of any land, a notification has been published under sub-section (1) of section 3A for its acquisition but no declaration under sub-section (1) has been published within a period of one year from the date of publication of that notification, the said notification shall cease to have any effect.*

*Provided that in computing the said period of one year, the period or periods during which any action or proceedings to be taken in pursuance of the notification issued under sub-section (1) of section 3 A is stayed by an order of court shall be excluded.*

*(4) A declaration made by the Central Government under sub-section (1) shall not be called in question in any court or by any other authority."*

- (i) It may be noted that while the Notification under Section 3A of the NH Act reflects the intent of the Government to acquire land, the Notification under Section 3D is the declaration by the Government that such land is required. As such, there is every possibility that certain land parcels, which may have been included in the Notification issued under Section 3A, are excluded from the Notification under Section 3D.
- (ii) Once the CALA has settled the objections received by him under Section 3C, for which he must pass orders with regard to each objection or the categories of objections, it is time to issue the Notification under Section 3D of the NH Act, 1956.
- (iii) The draft Notification under Section 3D should duly take into account the corrections that may have been pointed out to the CALA in due course or accepted/ allowed by him in the process of settlement of objections filed under Section 3C.
- (iv) It may be noted that the CALA is fully competent to correct such of the mistakes identified in the Section 3A Notification as are clearly of typographical nature or inadvertent calculation mistakes. The CALA may pass an order in this behalf at the time of preparation of Notification under Section 3D. Similarly, it may come to notice that a particular field number included in Section 3A Notification has been actually partitioned/ divided into smaller parts/ numbers, which had not been updated in the revenue records relied upon at the time of issue of Notification under Section 3A. In such a situation, the law permits inclusion of a smaller part/ parcel of such field number to be mentioned in the Notification under Section 3D. Conversely, if a particular survey number is not at all mentioned in the Notification under Section 3A, it cannot be included in Section 3D Notification. Such a survey number must pass through the stage of Section 3A.



- (v) Further, it has also been observed that the nature of land (agricultural/ non-agricultural) might have been changed in the revenue records inadvertently in a few cases, say from agricultural to non-agricultural or vice-versa, when examined in relation to the corresponding particulars in the notifications published under Sections 3A or 3D. Such inadvertent mistakes/ situations can be remedied by issuing a corrigendum by MoRTH. Therefore, any such inconsistencies need to be urgently brought to the notice of the Ministry by CALA through the concerned officers of implementing agencies for issuing the required corrigendum in time but certainly before the CALA determines at the market value.
- (vi) Once the CALA has done due diligence about the contents of draft Notification under Section 3D, it has to be uploaded on the *Bhoomi Rashi* portal, whereupon, after approval of the competent authority in the Ministry, it is electronically transmitted to the Government Press for publication of the Notification in the Government Gazette. Accordingly, the notification under Section 3D is published in the Gazette.
- (vii) Though the Award in respect of the land acquisition under NH Act, 1956 is announced under Section 3G, it is important to comply with the process stipulated under sub-section (3) of Section 3G before determination of the amount of Award. The said sub-section (3) of Section 3G is reproduced below:

*"(3) Before proceeding to determine the amount under sub-section (1) or sub-section (2) [of Section 3G], the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired."*

- (viii) It is at this stage that the Notification under Section 3D is also published in two newspapers circulating in the local area, one of which has to be in vernacular, for information of the landowners and for inviting claims from such landowners or persons interested in such land which is included in the Notification published under Section 3D. The CALA has to ensure that the said Notification is published immediately in the same set of locally circulated newspapers in which the Notification under Section 3A was published. Standard template of Notification in terms of sub-section (3) of Section 3G is enclosed as [Annexure- 3.2](#).

### **3.5 Determination of the amount of Compensation in respect of land by the CALA**

#### **3.5.1 Determination of market value of land:**

A number of issues have come to notice regarding the acquisition of land, especially those relating to determination of the market value of land, treatment of the nature of land and its impact on the market value of land and the total compensation amount awarded in respect of land acquisition for the National Highways. These are discussed and elaborated in the following sub-paras:

- (i) It is re-iterated in the first instance that the CALAs, though officers from the State Governments, are appointed as such by the Central Government under the NH Act,

1956 and, accordingly, the CALAs are obliged to act in accordance with the provisions contained in the NH Act, 1956 and the guidelines issued by this Ministry in furtherance thereof in discharge of their quasi-judicial functions.

- (ii) Further, it has been observed that the officers-in-charge of the Project Implementing Agencies (e.g. NHAI, NHIDCL, State PWDs and BRO) of the Central Government do not undertake any due diligence qua the amount of Award and leave it entirely to the CALAs on the ground that it is not their domain to question the CALAs in this behalf. This has been the practice followed so far. It may be noted that, as representatives of the land acquiring agency (i.e. the Central Government), they cannot entirely distance themselves in this process. They have to watch the financial interests of the Central Government as representatives of the land acquiring agency. As such, the concerned field officers of MoRTH/ NHAI/ NHIDCL/ State PWDs, executing NH Projects on behalf of MoRTH, may request the concerned CALA to share the Draft Award with them for furnishing their comments, if any. They would generally oversee that the compensation being awarded and paid for land acquisition is in accordance with the law and that any extraneous factors or considerations are not built therein. Any such inconsistencies, timely rectification of which is necessary in the interests of the landowners as well as the Central Government, must be pointed out to the CALA immediately in writing for reconciliation and correction.
- (iii) Provisions of RFCTLARR Act, 2013 relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules are applicable to the land acquisition under the National Highways Act, 1956. Determination of compensation, as prescribed under the First Schedule, is governed under Sections 26 to Section 30 of the RFCTLARR Act, 2013. Total compensation amount includes various components in the following order:

Step 1:	Determination of market value of land in accordance with Sub-section (1) of Section 26, read with sub-section (3) of Section 26 of the RFCTLARR Act, 2013;
Step 2:	Apply the Multiplication Factor to the amount determined in accordance with step 1 above in terms of sub-section (2) of Section 26 of the RFCTLARR Act, 2013;
Step 3:	Calculate the value of assets (buildings, trees etc.) attached to the land under acquisition in terms of Section 29 of the RFCTLARR Act, 2013;
Step 4:	Add the amount determined under Step 2 and Step 3 and then provide for 100% solatium on the amount so arrived;
Step 5:	Calculate the amount @ 12% per annum on the market value determined under Step 1 in terms of Section 30(3) of the Act;
Step 6:	Total Compensation amount = Step 4 + Step 5.

### 3.5.2 Factors in determination of market value of land:

The exercise for working out the total Compensation amount starts with the determination of market value of land (under acquisition) following the process laid down

and further explained under Section 26 of the RFCTLARR Act, 2013. This issue has been dealt with under the following sub-paras:

- (i) Determination of "basic market value of land" is a highly challenging and contentious subject. The basic market value of land refers to the price at which a landowner is willing to sell and a purchaser is willing to buy the land property. It is extremely challenging to arrive at such a value in each and every case. The RFCTLARR Act relies upon such value either captured through: "(a) the market value, if any, specified in the Indian Stamp Act for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or (b) 'the average sale price for similar type of land situated in the nearest village or nearest vicinity area' which is further qualified through Explanations 1 and 2 under Section 26 stating that: *Explanation 1* - The average sale price referred to in clause (b) shall be determined by taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity during immediately preceding three years of the year in which such acquisition of land is proposed to be made; and *Explanation 2* - stating that 'for determining the average sale price referred to in Explanation 1, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account'. It is not necessary that both these references may also represent a true and fair market value.
- (ii) A reference to the provision under Section 26(1) (a) of the RFCTLARR Act, 2013, i.e. "*the market value, if any, specified in the Indian Stamp Act for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated*", would be in order. It is observed that the reference here is to the market value that may have been specified/ determined under the Indian Stamp Act, 1899 for the purposes of registration of property transactions. As a matter of fact, it refers to the value of land that the competent authority in a state may notify as a "guideline" rate for different jurisdictions from time to time for the purpose of registration of property transactions and the value of stamp duty payable thereon. This is a measure primarily resorted to with a view to controlling the practice of under-pricing the transaction value for avoidance of payment of stamp duty in property transactions. It is in very few cases that such rates have been notified in the states in exercise of powers vesting in the Collector under the Indian Stamp Act. This value is known by different connotations from state to state, such as "Collector Rate", or "Circle Rate" or "Guideline Rate" or "Benchmark Rate" as the case may be. The expression "Collector Rate" has been used in these guidelines for reference purposes, wherever required.
- (iii) While examining the awards announced by the CALA in respect of certain LA proposals, it has been observed that there are significant differences between the average of sale deeds as applicable in the area in terms of Section 26 of the RFCTLARR Act, 2013 and the Collector/ Circle rates notified for such areas. As a principle, as stated above, the market value of the land is the value at which the owner is willing to sell and the buyer is willing to buy. However, it is very difficult to notify the Collector Rates based on such exact values. Therefore, the Collector

Rates must have the best possible proximate values for the purpose.

- (iv) As such, it is imperative that the Collector/ Circle rates are notified by the respective District Collectors/ Competent Authorities in the States, which has some proximate linkage/ relationship with the average rates collated from the sale deeds. While a deviation up to 10 to 15% of the average rate of sale deeds could be understandable, the Collector/ Circle rates cannot be and should not be with a high degree of variance in comparison to the average of sale deeds, especially when seen in relation to the sale deeds executed even during the year immediately preceding the issue of Notification under Section 3A of the NH Act, 1956.
- (v) It has also been observed in certain cases that the Collector/ Circle Rates are pegged at levels much higher than the value/ price commanded by such land in the market, perhaps in some overzealousness to augment the state income from stamp duty. For instance, if the average of sale deed rates in an area works out to about Rs. 30.00 lakh per acre, the Collector/ Circle rates could vary between Rs. 25 lakh to Rs. 35 lakh per acre, but it certainly calls for a deeper examination and, perhaps correction, if the Collector Rate notified for such area is Rs. 40/ 50 lakh or even higher per acre. Such a practice is bound to result in major distortions in determining the market value of land being acquired for the National Highways. As such, it is important that wherever the Collector Rate, which is being adopted as the reference point for determination of market value, is more than 10 to 15% of the average of Sale Deeds executed during the previous year, such abnormality/ deviation is pointed out to the District Collector for rectification. The period of one year is being taken here because the Collectors/ Competent Authorities are generally guided by the market values captured through the Sale Deeds executed in the previous year. Needless to say, the reference point in time for any such rates is the date of Notification under Section 3A of the NH Act, 1956. It is, therefore, the duty of the concerned officers of the Project Implementing Agencies, following the principles of prudent financial management, to examine such variations and appropriately raise issues with the CALA/ District Collectors where such deviations do not establish a reasonable relationship with the average of sale deeds.
- (vi) In order to maintain greater objectivity in the matter, it would be useful to compile the details in this behalf in the following two tables in order to arrive at a correct appreciation. The historical data in respect of the Collector/ Circle Rates for a period of previous 4-5 years in Table-1 would indicate if there is a sudden increase therein, and if so, as to whether there is any well founded reason for the same. Similarly, the information in Table-2 would be helpful in establishing a relationship between the two sets of market values:

Table: 1						
Sr. No.	Name of the Village/ Area	(Benchmark Rates/ Collector Rates) per Hac./ Acre				
		2010-11	2011-12	2012-13	2014-15	2015-16
1						
2						
3						

Table: 2							
Sr. No.	Name of Village	Area under Acquisition (in Hac.)	Market Value derived from Sale Deeds (50% of the higher ones) for three years preceding the Notification under Section 3A	Market Value as captured from the Sale Deeds executed during one year preceding the Year of Section 3A Notification	Applicable Benchmark Rates/ Collector Rates	Difference between Col. 5 & 6	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1							
2							
3							
4							
5							
6							

### 3.5.3 Nature/ Category of Land:

The next important factor, which plays an important role in determination of market value of land, pertains to the "nature/ category of land" i.e. agricultural/ residential/ commercial/ industrial etc. These aspects are discussed in the following sub-paras:

- (i) The nature/category of land (i.e. Agricultural/ Residential/ Industrial/ Commercial) is regulated under various statutes applicable from State to State. For instance, in the states of Haryana, it is regulated under the Punjab Scheduled Roads and Controlled Areas (Restrictions of Unregulated Development) Act, 1963, while in the state of Punjab, it is regulated under The Punjab Regional and Town Planning and Development Act, 1995 including related statutory mechanism covered under Punjab Urban Development laws. In case of Bihar, it is regulated under "The Bihar Agricultural Land (Conversion for Non-agricultural Purposes) Act, 2010". In case of Karnataka state, it is the "Karnataka Land Revenue Act, 1964" and, so on and so forth in all other states. This issue has been examined in a note on the basis of rulings of the Hon'ble Supreme Court on the subject. This note is enclosed separately as [Annexure-3.3](#).
- (ii) It has to be noted that certain states are following a practice of constitution of Committees of Officers to determination the category of land [agricultural/ non-agricultural (residential/ industrial/ commercial)]. Any such mechanism may not be sustainable if it is not in accordance with the law applicable in the concerned state. For example, the subject matter in Bihar is regulated as per the "*The Bihar Agricultural Land (Conversion for Non-agricultural Purposes) Act, 2010*" and a Committee of officers would have no place for the purpose in the scheme of the said Act.
- (iii) The issue of determination of basic market price of land has to be dealt with at two/ three levels. First, with regard to the category of land (agricultural/ residential/ industrial/ commercial), second, in the case of agricultural land, it is with reference to the value of land from agricultural production/ point of view -

irrigated by canal system, irrigated by tube-well, rain-fed etc. which is defined in terms of its fertility and water availability, leading to three crops/ two crops or a single crop in a year.

- (iv) A deeper examination of the subject and the rulings by Courts on the subject shows that the nature of land does not necessarily change from "agricultural" to 'non-agricultural' only because the landowner has put his land to such "non-agricultural" use, unless he has got the land use changed with the approval of the competent authority and paid the prescribed charges for the same as per the statute or rules applicable in the state. Where a person has constructed a shop on his land, it does not render the nature of said land to "commercial" until such landowner has got such a land use changed with the approval of the competent authority on payment of such CLU charges as may be applicable. In such a case, where the landowner has not got his land use converted from "agricultural" to any other conforming use (residential/ industrial/ commercial), the nature or category of land shall remain as "agricultural" and the landowner would only be entitled to compensation for the structure raised on such land in addition to the market value of land treating the nature of such land as "agricultural".
- (v) It has also been observed in certain cases that landowners got the Change in Land Use (CLU) approval after the issue of preliminary notification. In some cases, it is done on the date of application, in certain others these have also been ante-dated. Wherever any such Conversion/ Change in Land Use has been done/ allowed after the issue of Preliminary Notification under Section 3A, the same cannot be entertained and considered under law for determination of basic market value and has to be ignored. As such, it is important that any such claim would be admissible only if the CLU has been obtained on payment of the prescribed fee before the date of publication of Preliminary Notification under Section 3A in Official Gazette. CALAs have to ensure compliance in this behalf.
- (vi) There are instances where the authorities competent to allow or permit or grant any such conversion of land have granted such permissions even after publication of notifications under Sections 3A or 3D. When confronted, they either take the plea that they were not aware that the subject land was acquisition under the NH Act, 1956 or that they did so in discharge of their statutory duties or as per state policies. Therefore, it is important that, henceforth, the concerned CALA and the officer-in-charge of the land acquiring agency make it a point to endorse copies of these Notifications to the authorities concerned with the subject of "Change of Land Use/ Conversion of land" in the state under acknowledgement.
- (vii) It is also important to note that there may be some isolated transactions of very small area at very high rates, which do not represent the average price of land in that area. The value of any such transaction has to be discounted/ ignored as specified under *Explanation 4* under Section 26 of the RFCTLARR Act, 2013. As a matter of fact, the guiding principles laid down in Section 23 and Section 24 of the Land Acquisition Act, 1894 regarding what has to be taken into account and what has to be ignored still hold good. As a matter of fact, the Hon'ble Supreme Court

has held in the matter of "*Hookiyar Singh v. Special Land Acquisition Officer, Moradabad AIR 1996 SUPREME COURT 3207*" that:

"It is settled law that the burden of proof of market value prevailing as on the date of publication of Section 4(1) notification is always on the claimants. Though this Court has time and again pointed out the apathy and blatant lapse on the part of the acquiring officer to adduce evidence and also improper or ineffective or lack of interest on the part of the counsel for the State to cross-examine the witnesses on material facts, it is the duty of the Court to carefully scrutinise the evidence and determine just and adequate compensation. If the sale deeds are found to be genuine, the market value mentioned therein must be presumed to be correct. If the genuineness is doubted, it cannot be relied upon, Proper tests and principles laid down by this Court must be applied to determine compensation".

- (viii) There is yet another related issue qua the determination of basic market value of land in the case of land situated in a "planned and developed area" and the land situated in an unplanned undeveloped area. Both are not at all comparable even if the land is situated in close vicinity. *For example*, there may be a planned urban colony with plotted area and development of all infrastructure facilities. The basic market value of such plotted area is bound to be higher as any such planned and developed area involves not only the area utilised under common facilities e.g. roads, parks etc. (which gets loaded on to the net plotted area) but also the expenditure incurred on provision of internal infrastructure (construction of roads, water supply systems, drainage, electrical systems etc.), whereas it is not so in the case of unplanned and undeveloped land. Hence, if any parcel of land is proposed to be acquired in an area situated in close vicinity of the developed plotted area, the rates of such developed plotted area cannot be used as a reference point for determination of the basic market value of undeveloped area.
- (ix) Similarly, the market value of land is determined on the basis of its existing use as on the date of preliminary notification and not on the basis of its future potential.
- (x) Further, it has to be noted that the preliminary notification for land acquisition is always prepared on the basis of entries in revenue records. It is also a common knowledge that revenue records may not be updated at all times. It is for this reason that a landowner gets an opportunity under Section 3C of the NH Act to file his objections, including qua the nature of land shown in the preliminary notification under Section 3A. Upon production of satisfactory evidence through such objection, the CALA is competent to allow such change to be reflected in the Notification under Section 3D. Once the stage of Section 3D has been crossed, the CALA would not have the liberty to allow such change in the nature/ category of land, unless so directed by a Court of Law.

#### **3.5.4 Determination of Compensation for the Structures and other assets**

- (i) Apart from determination of the basic market value of the land under acquisition, the CALA has to take into account the value of assets attached to such land. These assets may be in the form of built-up structures, fruit trees, normal trees, any other

such assets. Generally, the CALA is required to get the valuation of such assets carried out from the respective competent authorities e.g. from the PWD or approved valuers in respect of structures, from an Horticulture Officer in respect of fruit trees, from the Forest Officer in respect of general trees etc.

- (ii) As regards the valuation of structures, the principle generally followed is that in the first instance, a view is formed regarding the quality of construction i.e. A/ B or C category. The value is then worked out on the basis of applicable Schedule of Rates (SOR), which is then depreciated based on the age of the structure. It has come to notice that the Collectors notify the rates for structures from time to time in certain states. In one state the rates so notified have been reported as Rs. 41,000/- per sq mtr, which translates to about Rs. 3800/- per sq ft. It is a common knowledge that the cost of new construction of an "A" class structure (unless it is a star hotel) varies between Rs. 15,00 to Rs. 2,000 per sft. Any distortion in the valuation of a structure has a multiplier effect as it also counts for 100% solatium on such assessed value. As such, the CALAs are expected to undertake due diligence in assessing the values of assets attached to the land being acquired.

### **3.5.5 Compensation for structures on Government Land/ Public Assets:**

- (i) Once MoRTH has notified any land for acquisition for a road project or associated facilities, the CALA is duty-bound under law to determine the compensation for the subject land and the structures, trees or any other assets attached to such lands or standing thereon as on the date of issue of notification under Section 3A of the NH Act, 1956. However, creation of any such asset or change in the nature of any such asset including value addition therein on or after the issue of Section 3A Notification is not taken into account for payment of any compensation. As such, it is in the interest of the acquiring agency that the status of any such assets is captured, as early as possible, upon issue of the Notification, through photographs/ videography so as to ensure the genuineness of determination of compensation.
- (ii) Exceptions to the legal position, as highlighted under para (i) above, are required in cases where the land-owning entity is agreeable to transfer the land without any cost to the Central Government. These land owning entities and the structures thereon may belong to different categories for which the method and process of payment of compensation for the structures is given in the following paragraphs:
- (iii) **Payment of compensation for the Government structures on Government land falling within the project RoW:**
  - (a) **'Government Land'** include land vesting in the Central/ State Government, but does not include the land vesting in the Central/ State owned undertakings and institutions; Local bodies like Municipal Corporations, Municipalities, Gram Panchayats etc., Public Sector Undertakings and Autonomous bodies of the Central/ State Government.
  - (b) Government structures include structures owned by the Central/ State Government, but does not include the structures standing on the land vesting



in the Central/ State owned undertakings and institutions; Local bodies like Municipal Corporations, Municipalities, Gram Panchayats etc., Public Sector Undertakings and Autonomous bodies of the Central / State Government.

- (c) The land vesting in the Central/ State Government is transferred to Central Government/ MoRTH free of cost. In cases where ownership of acquired land is vested with the Urban Local Bodies/ Gram Panchayats/ PSUs/ Autonomous Bodies, compensation for the land is payable as per law.
  - (d) As for the payment of compensation for the structures, there could be two options. One option is to pay the compensation for the cost of structures as per the valuation by the Competent Authority of the Government or the valuation done by the approved agency of the project executing agency and vetted by the competent authority of Government, duly recommended by the CALA/ concerned Government. Second option is to pay the estimated/ approved cost of reconstruction of the said facility, net of salvage value of the structure to be demolished, on an alternate piece of land (to be arranged by the State Government at its own cost).
  - (e) In case of reconstruction of such facility at an alternate location, either the work could be executed by the concerned Government agency or it could be got executed by the project implementing agency of MoRTH through its Concessionaire/ Contractor at the approved cost estimates as mentioned above, on the specific request received from the Government Agencies. In all such cases, reconstruction of such structures should be done over the land provided by Government agency. No cost of land for relocation would be paid.
- (iv) **Payment of compensation for the Common Property Resources (CPRs) on Government land.**

All such facilities which are meant for the common use of the public (like religious structures (e.g. temples, mosques/ churches), Cremation facilities, Schools etc. may be considered as Common Property Resources (CPRs). Considering the sensitivity involving public sentiments, compensation may be paid for such structures following either of the options mentioned in para (iii) (d) above. In such cases where the option of replacement/ relocation is considered expedient, cost estimates should be restricted only to the essential minimum structure required for such purpose and no enhancement or addition would be made. However, the preferred option should be recommended by the CALA/ in consultation with the stakeholders.

- (v) **Payment of compensation for private structures like houses & other buildings on Government land:**
- (a) There are instances where people are granted patta/ ownership rights on the land under any law of the State including abadi/ assigned land. In such cases compensation would be paid for the structures only on the recommendation

of the CALA/ State Government. The procedure for valuation of such structures will be followed as mentioned in above paragraphs.

- (b) There may be cases where people have been living on the government land for a long period and State Government determine such persons as bona-fide & genuine users of the said land. Such a right must have been created by the Government through an instrument/ GO of the government. Other civic facilities like water supply, roads, electricity etc. are also provided to them by the Government but no ownership document is available with them. In such cases ex-gratia may be paid for the structures based on the valuation done by following the procedures mentioned in the above paras, provided the proposal is received through CALA/ Government.

**(vi) General Principles:**

- (a) It should be ensured that no amount of compensation is paid for the government land and also for the land where relocation of structures is proposed.
- (b) The valuation of the structures should be done either by the appropriate State Government Agency or vetted by them in case valuation is done by NHA through the private certified approved agency.
- (c) The proposal should have been received from the CALA/ concerned Government agency.

**3.5.6 Other factors**

- (i) Another issue has cropped up regarding the change of ownership of land during the process of acquisition. Though Section 11(4) of the RFCTLARR Act places a restriction on any transaction of the land subsequent to the Preliminary Notification, it is not applicable to the NH Act, 1956. Further, since the proceedings of land Acquisition continue for some time, the possibility of a landowner deciding to sell or transfer his/ her land during these proceedings cannot be ruled out. It is on this account that the law recognises the landowner or the person interested therein. As such, the successor-in-interest, whether by way of inheritance or by way of sale/ purchase of the subject land, remains entitled to receive the compensation in respect of such land subject to such person being a bona-fide successor-in-interest.
- (ii) Notwithstanding the above scenarios, it is important to note that any improvement done in or over the subject land after issue of Notification under Section 3A has to be ignored. Conversely, any damage done to the land has to be duly factored while determining the compensation amount. It is in this context that the DPR consultants are expected to capture the status of land at the time of survey using the appropriate technology (e.g. LiDAR/ Drone-imaging/ Videography). *To illustrate*, in one case, a landowner may undertake construction of some building over the subject land to get undue benefit in determination of compensation amount (in the

form of 100% solatium) or take up plantation of trees on the land under acquisition after publication of Section 3A Notification. Such developments have to be ignored while determining the compensation amount. It is precisely for this reason that the landowner is paid an additional amount calculated @ 12% from the date of Preliminary Notification till the announcement of Award under sub-section (3) of Section 30 of the RFCTLARR Act, 2013. To illustrate another situation, a landowner may decide to sell the "ordinary earth" from his field to a third party after the publication of Preliminary Notification in the Official Gazette, with the intention of making extra money from such sale. In the process, the landowner ends up creating a negative value to the land under acquisition. Any such occurrence has to be duly factored by the CALA while determining the compensation amount.

- (iii) Another issue pertains to the **Unit of measurement** of the land. The standard unit used for acquisition of land for the National Highways is "Hectare". It has been observed that the CALAs announce the Award using different standard Units e.g. Marlas/ Sq. Meter/ Sq. Yard. It is in sync with the process that the same Standard Unit of measurement of land is used in the Awards i.e. "Hectare" rather than using any other units of measurement of land.
- (iv) Read with sub-para (iii) of para 3.5.1, the method of calculation of the Compensation amount is given below with the help of an illustration:

Illustration		
Step	Action in Sequence	Illustrative Amount (per ha.)
1	Determination of <u>basic market value</u> of land in accordance with Sub-section (1) of Section 26, read with sub-section (3) of Section 26 and Section 28 of the RFCTLARR Act, 2013, say:	40,00,000/-
2	Apply the Multiplication Factor to the amount determined in accordance with step 1 above in terms of sub-section (2) of Section 26 of the RFCTLARR Act, 2013	Say, MF is 1.25 = 50,00,000/-
3	Calculate the value of assets (buildings, trees etc.) attached to the land under acquisition in terms of Section 29 of the RFCTLARR Act, 2013, say:	5,00,000/-
4	Add the amount determined under Step 2 and Step 3 and then provide for 100% solatium on the amount so arrived:	50,00,000/- + 5,00,000/- = 55,00,000 x 2 = 1,10,00,000/-
5	Calculate the amount of interest on <u>basic market value</u> @ 12% in terms of Section 30(3) of the Act, Say:	4,00,000.00
6	Total Compensation amount	1,14,00,000/-

### 3.6 Announcement of the Award under Section 3G by the CALA:

- (i) The Competent Authority for Land Acquisition (CALA) is required to announce the Award under Section 3G. The CALA has to carefully apply himself to the issues and guidelines enunciated in the fore-going paragraphs while finalising his Award. A perusal of certain awards announced by the CALAs shows that there is need to standardise the same to some extent. Accordingly, the indicative template for

essential components of an Award order has been prepared and is enclosed as [Annexure - 3.4](#). CALAs are advised to follow the standard template with such changes or variations, as may be found necessary on case-to-case basis.

- (ii) The CALA, while announcing the Award under Section 3G, shall append a certificate at the end of his Award that he/ she has strictly followed the legal provisions and the Ministry guidelines in determination of the compensation amount.

### **3.7 Disbursement of Compensation amount:**

- (i) It has been observed that the process of disbursement of compensation amount to the landowners or the persons interested therein goes on for a long period for a variety of reasons, which leads to delays in taking possession of the land acquired and required for construction of the Highway. Some of the most common reasons could be stated as under:

- (a) A number of landowners do not come to know about the Award having been announced by the CALA;
- (b) The landowners do not furnish the details of their Bank Accounts to the CALA in time, for whatsoever reasons. As a result, the compensation amount cannot be deposited in the accounts of the concerned landowners using the PFMS and the RTGS system of Banking;
- (c) There are certain landowners who do not maintain their usual residence where the land is situated and can be called as absentee landowners. These absentee landowners visit the CALA offices for collection of compensation amount as per their convenience;
- (d) The land records are not updated and the successors-in-interest are not clearly identified with their respective shares.

### **3.8 Public Notices for expediting Disbursement of Compensation amount:**

It is, therefore, important that the CALAs adopt the following procedure in order to ensure timely disbursement of the amount of compensation to the landowners/ persons interested therein, and possession of the acquired land is not delayed for non-payment of the compensation amount:

- (i) Apart from issue of notice to the landowner/ person interested therein in terms of sub-section (1) of Section 3E of the NH Act, 1956, a **public notice** may also be published in the same set of two newspapers in which the Notification under Section 3A (3) was published informing the landowners/ persons interested in the acquired land about the announcement of the Award by the CALA in respect of subject land, calling upon them to collect the compensation amount from the office of CALA within a period of 60 days.

(ii) Typical sample/ template of this Public Notice is as follows:

Format of the **First Public Notice** to be issued by the CALA upon announcement of Award under Section 3G of the NH Act, 1956.

### Public Notice

#### Announcement of Award for acquisition of land for construction of National Highway for Land owners/ persons interested therein and payment of Compensation Amount

Kind attention of all landowners/ interested persons is invited to the Notification dated \_\_\_\_\_ issued under Section 3A of the NH Act, 1956 for acquisition of land for the building/ construction of a National Highway and the Notification dated \_\_\_\_\_ issued under Section 3 D of the NH Act, 1956 and published in the following newspapers:

Sr. No.	Notification	Names of Newspapers in which published	Date of Newspaper
1	Section 3 A		
2	Section 3 D		

It is informed that the undersigned has announced the Award in respect of the said land under Section 3G of the NH Act, 1956 vide order dated \_\_\_\_\_.

The land acquiring agency (MoRTH/ NHAI/ NHIDCL) has placed the requisite amount of compensation at the disposal of the undersigned. Notices have also been issued to the concerned landowners/ interested persons as required under Section 3 E of the NH Act, 1956.

Accordingly, all the concerned landowners/ interested persons are hereby informed/ notified through this additional **Public Notice** that the Compensation amount is hereby offered to all the landowners. Further, it may be noted that:

- ❖ The compensation amount in respect of all such landowners, who have already submitted their Bank account details, is being credited to their respective bank Accounts through RTGS;
- ❖ The landowners, who have not submitted their Bank Accounts details, may do so immediately in the office of the undersigned and the amount shall be credited to their accounts within one week of the receipt of such Bank Account details;
- ❖ All other claimants entitled to receive the compensation amount may collect their amount of compensation from the office of the undersigned on any working day between \_\_\_\_\_ am to \_\_\_\_\_ pm within a period of 60 days.

It may further be noted that since the amount of Compensation has been determined and tendered to the concerned landowners/ persons interested therein through this additional public notice, any failure to collect the compensation amount would be to their account and the amount shall be deemed to have been paid on expiry of this period of sixty days from the date of publication of this notice.

The landowners/ persons interested therein are further called upon to surrender or deliver the possession of the subject land to the undersigned, failing which the possession of subject land will be taken with police assistance on expiry of the period of 60 days.

(\_\_\_\_\_)   
Competent Authority for Land Acquisition, and

(name of the regular office and address)

Dated: \_\_\_\_\_

- (ii) As soon as the period of 60 days is over, another public notice may be caused to be published in the same set of newspapers, calling upon such landowners to surrender their acquired land or deliver possession thereof to the competent authority forthwith, failing which the possession shall be taken with the assistance of the local police in accordance with sub-section (2) of Section 3E of the NH Act, 1956.

Sample of the Second Public Notice to be issued by the CALA upon announcement of Award under Section 3 G of the NH Act, 1956.

## Public Notice

for Land owners/ persons interested therein for

### Payment of Compensation amount and Delivery of possession of land acquired for construction of a National Highway

Kind attention of all landowners/ interested persons is invited to the Public Notice published in the following newspapers informing them regarding:

- ❖ Announcement of award;
- ❖ Calling upon them to collect the compensation amount within a period of 60 days; and
- ❖ Requesting the landowners to handover the possession of the subject land to the undersigned.

Sr. No.	Names of Newspapers in which published	Date of Newspaper
1		
2		

The prescribed time of 60 days has expired on \_\_\_\_\_.

The compensation amount in respect of Landowners who had furnished their Bank Account details has been credited to their respective accounts. Further, cheque payments have also been made to those who approached this office during this period. As regards the payment of the compensation amount to the balance landowners, they are again advised to approach this office for getting their payments at the earliest as the amount already stands tendered vide Public Notice dated \_\_\_\_\_;

Accordingly, all the landowners/ interested persons are hereby called upon to hand over the possession of the acquired land to the undersigned immediately, failing which the same shall be taken with the police assistance in accordance with sub-section (2) of Section 3 E of the NH Act, 1956.

( \_\_\_\_\_ )

Competent Authority for Land Acquisition, and

\_\_\_\_\_  
(name of the regular office and address)

Dated: \_\_\_\_\_

### **3.9 Interest on delayed payment of Compensation:**

- (i) Formerly, the Land Acquisition Act, 1894 and presently the RFCTLARR Act, 2013 contains provisions for payment of interest on the amount of enhanced compensation to the landowners. Such provisions existed under Section 28(1) of the 1894 Act and Section 72 of the RFCTLARR Act, 2013. As per the provisions in the National Highways Act, 1956, the acquiring agency is required to place the amount at the disposal of CALA for announcement of the award and the CALA, in turn, is required to tender such amount to the landowners or the persons interested in such land as per *"The National Highways (Manner of Depositing the Amount by the Central Government with the Competent Authority for Acquisition of Land) Rules, 1998"* (as amended from time to time). Once the amount of Award has been placed at the disposal of CALA by the Acquiring Agency and the CALA has notified the landowners/ persons interested therein to receive/ collect such amount, there is no provision for payment of any such interest on account of delayed disbursement of compensation because such delayed disbursement is on account of delay on the part of the landowners in receiving the compensation amount.
- (ii) It is for this reason that it has been decided to issue additional Public Notices calling upon the landowners to collect the compensation amount as explained under para 3.8 above. Non-payment of interest has also been made a part of these Public Notices. Therefore, it may be noted that no such amount of interest is payable in respect of any delays in disbursement of compensation amount after having issued the said Public Notices.
- (iii) The landowners may raise an issue of delayed payment and claim interest thereon in matters of disputes where they make an application for reference to the Principal Court of Civil Jurisdiction for resolution of such disputes. It is for this reason that it is advised that in all such matters, the concerned CALA, while making a reference to the Civil Court, may also seek the leave of the Court to deposit such amount with the Court so that the amount stands paid as far as the Acquiring Agency and the CALA are concerned.
- (iv) The Project executing agencies of MoRTH should consider setting-up a mechanism for audit of each award to ensure that: (a) the government money, meant for the purpose, has been disbursed to the rightful landowners/ interested persons, (b) that there are no double payments for the same land. CALA shall ensure that amount placed at his disposal for land acquisition under an Award has been fully, timely and correctly disbursed.

### **3.10 Possession of Land for the Highway Project**

- (i) It has been observed in a number of cases that the CALAs give paper possession of the acquired land to the officers of the Authority, with or without payment of compensation to the landowners. Once the amount determined by CALA u/s 3G has been deposited by the acquiring agency as per Section 3H(1), the CALA has to issue the Public Notices, as provided under para 3.8 above in addition to individual notices to the landowners, calling upon them to surrender land or deliver

possession within 60 days of service of such notice, as prescribed under Section 3E(1) of the National Highways Act, 1956.

- (ii) As per the laid down procedure, the DPR consultant undertakes the job of installation of boundary pillars of the acquired land. It has been observed that the landowners, more so in respect of agricultural land, remove the boundary pillars and sow the next crop in the acquired land as they are tempted to use the land since the actual construction/ development of land has not taken off in such areas. Therefore, the Project Implementing Agencies should immediately upon announcement of the Award proceed to take physical possession of land, followed by clearing & grubbing of such acquired land including trenching at the edges of RoW, by mechanical means using the graders, dozers, excavators, etc. The landowners are expected to recognize that such lands no longer belongs to them and do not undertake to cultivate such area for the next crop. This practice has to be adopted and put in place without exception forthwith.
- (iii) The DPR consultants, as a part of their obligations prescribed in the RFPs, are required to undertake DRONE/ LiDAR survey in the process of determination of alignment/ preparation of details for Section 3A notification. As such, the photographs/ maps from such DRONE/ LiDAR survey have to be taken and archived as part of the records as an evidence of the land use/ any structure existing on such land on the date of preliminary notification, i.e. under Section 3A of the National Highway Act, 1956. This is important because any change in the land use/ improvement on nature of land made by the landowner after the issue of preliminary notification under Section 3A, does not qualify to be taken into account for determination of compensation for the land.

### **3.11 Missing Plots and acquisition of land:**

- (i) Missing out certain plots/ parcels of land in the process of land acquisition for road projects, being linear in nature, cannot be ruled out and could be acceptable to a certain limit as prescribed in the RFPs for Consultants. However, the experience shows that adequate and timely attention is not being paid to the acquisition of land in respect of such missing plots, resulting in hindrances in smooth execution of the project at the implementation stage.
- (ii) It is also a fact that the Appointed Date is declared based on a joint memorandum, containing an inventory of the site, prepared after a joint site inspection by the representatives of the Contractor/ Concessionaire, the Consultant and the Project Implementing Agency. As such, a joint memorandum reflects the status of land acquisition at the time of declaration of the Appointed Date for any project. It also implies that the details of missing plots are duly recognized and such missing plots are identified at the time of this joint survey. It is important that the representatives of the Contractor/ Concessionaire, the Consultant and the Project Implementing Agency take due cognizance of such missing survey numbers/ plots / land parcels at the time of joint inspection and make a specific mention of such missing plots in the joint memorandum.



- (iii) The Project Implementing Agency has to ensure that such missing plots are acquired within a maximum period of six months of the declaration of the Appointed Date. Based on the facts mentioned in the joint inspection report/ memorandum or if otherwise noticed, the officer concerned shall immediately draw up a proposal for acquisition of such missing survey numbers/plots within 15 days of the declaration of the Appointed Date and send his proposal to the Ministry through the concerned authorities for issue of notifications under Section 3A of the National Highways Act, 1956. Any efforts towards direct purchase of land under such missing plots should be initiated and taken up only after issue of notification under Section 3A. In case the officer finds that the owners of such missing plots are not agreeable or willing to enter into negotiated purchase of such land at the rates of compensation already announced in respect of adjoining lands, the CALA concerned shall settle the objections filed under Section 3C in respect of the new Notification issued under Section 3A, and move a proposal for acquisition of the land under missing plots under Section 3D within a maximum period of three months of the issue of notification under Section 3A and complete the process of completion of LA proceedings with announcement of award under Section 3G in respect of such missing survey numbers. In no case, the acquisition of such missing plots/ survey numbers shall go beyond the first bill payment in the case of EPC contract or six months of the declaration of the Appointed Date in other cases, whichever is earlier.
- (iv) The Regional Officer concerned in the case of projects being executed through the State PWDs, the Project Director concerned in the case of NHAI and the NHIDCL shall submit a certificate of having completed the land acquisition of missing numbers 15 days before the completion of six months from the Appointed Date in respect of the project in execution under his control/ jurisdiction, failing which it will be treated as a case of laxity in the performance of official duties by the concerned officer.

### **3.12 Mutations/ Sale Deeds of the land acquired/ procured for National Highways:**

- (i) All National Highways vest in the Union as per Section 4 of the National Highways Act, 1956. MoRTH and its agencies, entrusted with the NH Projects for development and maintenance thereof, are required to maintain an inventory of all assets created in the process, including the land acquired under the Act and the land procured or purchased through negotiations, (more relevant to procurement of land under the missing plots).
- (ii) The process requires sanction of mutations in respect of the land acquired under law, and execution of sale deeds in respect of land purchased/ procured through negotiations. It is extremely important to ensure that the mutations for the land acquired are got sanctioned from the revenue authorities in the name of "President of India through the Ministry of Road Transport & Highways" simultaneously with the possession thereof.
- (iii) Similarly, as regards the land procured/ purchased through negotiations, sale-

purchase deeds are to be got executed in favour of "President of India through the Ministry of Road Transport & Highways" simultaneously with the payment of consideration amount.

Earlier, there were problems at places regarding the 'authorised person' to remain present before the competent authorities on behalf of the President of India. Now, this issue has been resolved with requisite delegations by the Ministry of Home Affairs vide their order dated 3rd August 2018, enclosed as Annexure 2.6 in this Manual. Accordingly, it is directed that the concerned officers-in-charge of the projects shall ensure that the needful is done in this behalf as mentioned above. It shall be the responsibility of the Project Implementation Agencies (MoRTH through the State PWDs/ NHAI/ NHIDCL/ BRO) to create a system at their headquarters for proper inventory management and system of monitoring for all assets and compliance on the subject.

### **3.13 Role and responsibilities of DPR Consultants, the officer of the Project Executing Agency and the CALAs at different stages of Land Acquisition**

The roles and responsibilities of the three main stakeholders, namely, (i) the DPR Consultants, (ii) the officers-in-charge of the project executing agencies (i.e. NHAI, NHIDCL, State PWDs and the BRO), and (iii) the Competent Authorities for Land Acquisition (CALAs), and have been discussed at different places in this Manual. However, it is deemed necessary to give a consolidated position of their roles and responsibilities at one place. An attempt is made to sum-up the same broadly in the following paragraphs:

#### **3.13.1 Role and responsibility of DPR Consultants**

The DPR Consultants, in the process of their deliverables, discharge a pro-active role in providing support system and assistance to the CALA for acquisition of land for the highway project. Broadly stating, the DPR Consultants are expected to:

- (i) To delineate and propose the most optimal alignment and take care of geometrics of the road to meet safety parameters while finalizing the DPR;
- (ii) Identify and avoid (to the extent feasible) all such structures (religious structures, public utilities, cremation grounds, private structures) in the RoW of the road project that could become major hindrances at the time of project execution;
- (iii) Procure or create digitized, geo-referenced cadastral/ land revenue maps for the purposes of land acquisition activities. Where state governments or local agencies have already digitized cadastral maps, the consultant shall arrange to procure such maps. The digitized map should exactly match the original map so that the dimensions and area of plots can be extracted from the map itself.
- (iv) Co-ordinate collection of all relevant land revenue records (including Khasra maps, Khatiyan, Jamabandi etc.) from the local land revenue administration office required for preparation of Draft notification under Section 3A of the NH Act.

- (v) Identify and list all land parcels that need to be acquired as part of project road. Conduct Joint measurement survey in conjunction with CALA, the Executing Agency and the Land Revenue Department to verify land records.
- (vi) Assist the CALA and the Project Executing agency in: preparation of statutory notification under Sections 3A, the CALA during hearing of objections received under Section 3C, recording of hearings and completion of this process, preparation of draft notification under Section 3D and completion of the LA process at every stage, timely publication of notifications and public notices in newspapers at every stage;
- (vii) Clear identification and preparation of an inventory of the assets attached to the land under acquisition (e.g. structures, trees, crops or any such assets which should be valued for payment of compensation);
- (viii) Co-ordination with offices of various departments like Land Revenue Office (or Tehsil), Registrar office and other State departments (public works department, horticulture department, forest department etc.) for valuation of assets (Structures, trees, crops etc.) attached to the land and liaison with respective State authority for authentication of the valuation.
- (ix) Prepare an inventory of all the utilities (electrical/ water supply lines/ gas pipelines etc. - both linear and cross-overs) and all such structures (religious structure, public utilities, cremation grounds, private structures) in the RoW of the road project that could become major hindrances at the time of project execution;
- (x) Carefully avoid location of any Flyover/ VUP/ elevated structure where a high tension electricity line (66/132/220/400 KV etc.) is crossing over so as to avoid raising of such line at such point, while designing the road projects;
- (xi) Assist in demarcation of the acquired land and installation of the boundary stones/ pillars/ peg-markings along the RoW of the alignment;
- (xii) Identification of land parcels missed out from acquisition in the first round and assist the Authority and the CALA in preparation of Draft Notifications for acquisition of the land under missing plots.

### **3.13.2 Role and responsibility of the officer-in-charge of the Project Executing Agency**

The officer-in-charge of the project executing agency is expected to discharge his role as the owner of the project at every stage of completion of the LA process and establish his project ownership by taking the lead at every stage. Briefly stating, his role and responsibilities include the following:

- (i) Active coordination and collaboration with the DPR Consultants regarding all aspects of land acquisition right from the stage of preparation of DPR/ Feasibility Report;

- (ii) At the first level, call on the concerned Deputy Commissioner/ District Collector and the CALA to brief them about the road project and the need for timely acquisition of land for the said project. Keep this contact on a continuing basis;
- (iii) At the next level, coordinate with and liaise with the concerned field officers from the Departments of PWD, Forest, Horticulture, Electricity and other Utility owning departments and brief them about the importance of the project and their support;
- (iv) Request the Deputy Commissioner/ District Collector to convene periodical review meetings of all concerned with refreshments/ lunch/ dinner hosted by the officer-in-charge of the project executing agency.
- (v) Ensure timely issue of Notifications under Sections 3(a), 3(A) & 3(D) of the National Highways Act, 1956;
- (vi) Ensuring timely conduct of Joint measurement survey, wherever required;
- (vii) Coordination with the CALA and officers of other concerned departments, i.e. Forest, Horticulture, PWD for valuation of assets attached to the land and for seeking pre-project statutory clearances;
- (viii) To assist the CALA in determination of market value of land as per the provisions of the Act, while observing the guidelines issued by the Ministry of Road Transport & Highways in furtherance of the Act in this behalf;
- (ix) To bring any deviation from legal provisions/ guidelines to the Notice of the CALA for necessary correction at the draft stage of the Award, correct positioning of the nature/ category of land in the Award, assist the CALA in correctness of mathematical calculations, and to ensure that compensation for Government land is not included in the Award;
- (x) Expeditious settlement of compensation claims/ declaration of award;
- (xi) Identification of missing plots and expediting the LA process for the same;
- (xii) Expediting appointment of Arbitrators, as and when required;
- (xiii) Challenging Arbitral Awards, in event of their being unreasonable;
- (xiv) Mutation of acquired land in favour of Central Government in the Record of Rights;
- (xv) To ensure strict compliance of Guidelines issued by MoRT&H from time to time.

### **3.13.3 Role and responsibility of the Competent Authority (Land Acquisition)**

- (i) To devise an action plan for completion of the land acquisition proceedings in a time-bound manner;
- (ii) To ensure that the land acquisition proceedings are undertaken in accordance with the provisions of the NH Act, 1956 read with the applicable provisions of RFCTLARR Act, 2013, and the guidelines issued by the Ministry in furtherance thereof;
- (iii) To check that the nature of land reflected in the 3A notification is as per Revenue Records;

- (iv) To get the joint measurement survey conducted, if required;
- (v) To hear and settle the objections received from the landowners/ persons interested in the land under Section 3C of the NH Act;
- (vi) Critical examination of documents submitted by landowners regarding their claims for change in nature/ category of land;
- (vii) Make all efforts to collect the details of Bank Accounts of landowners/ persons interested therein while inviting claims, using the formats given in this Manual for the purpose so as to ensure that the compensation amount is immediately credited to the accounts of the landowners;
- (viii) Publication of the two Public Notices in newspapers for speedy disbursement of compensation amount to the landowners, crediting the compensation amount to the bank accounts of the landowners and taking possession of land/ its handing over to the executing agency;
- (ix) If any dispute arises as to the apportionment of the amount for any part thereof or to any person to whom the same or any part thereof is payable, the case shall be referred to the Principal Civil Court of original jurisdiction for its decision in the matter;
- (iv) To facilitate the mutation of land in the name of Central Government.

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## **Annexures to Chapter-3**





## Sample of an Order under Section 3(a) of the NH Act by the State Government



**HARYANA GOVERNMENT**  
**REVENUE AND DISASTER MANAGEMENT DEPARTMENT**

ORDER

The Government of Haryana nominates the concerned District Revenue Officer of a District and in his absence the link officer concerned, for appointment as the Competent Authority for Land Acquisition for acquisition of Land within his jurisdiction under the National Highway Act, 1956 to expedite the Land Acquisition activities.

**KESHNI ANAND ARORA**

Chandigarh, dated  
December 04, 2018

Addl. Chief Secretary & Financial Commissioner to Govt.,  
Haryana, Revenue & Disaster Management Department.

Endst. No.5954- E-2-2017/ 161

Chandigarh, date the 09/01/18

A copy is forwarded to the following for information and necessary action :-

1. The Principal Accountant General (A&E), Haryana, Chandigarh.
2. All the Divisional Commissioners in the State.
3. All the Deputy Commissioners, in the State.
4. All the District Revenue Officers in the State.

*Sandeep*  
Superintendent Estt;

A for Addl. Chief Secretary & Financial Commissioner to Govt;  
Haryana, Revenue & Disaster Management Department

Endst. No.5954- E-2-2017/ 162

Chandigarh, date the 09/01/18

A copy is forwarded to the Secretary to Ministry of Road Transport & Highways, Government of India w.r.t. their D.O. No. NH-11011/224/2017-LA, dated December 14, 2017 for information and necessary action.

*Sandeep*  
Superintendent Estt;

A for Addl. Chief Secretary & Financial Commissioner to Govt;  
Haryana, Revenue & Disaster Management Department

A copy is forwarded to the Additional Chief Secretary to Govt, Haryana, PWD (B&R) for information and necessary action.

*Sandeep*  
Superintendent Estt;

A for Addl. Chief Secretary & Financial Commissioner to Govt;  
Haryana, Revenue & Disaster Management Department

To

The Additional Chief Secretary to Govt; Haryana  
PWD (B&R)

*P*  
09/01/18

U.O No. 5954-E-2-2017/ 37

Chandigarh, dated the 09/01/18



Template for Notification under Section 3 (D) read with sub-section (3) of Section 3G

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**Ministry of Road Transport and Highways**

**Notification**

<New Delhi>, the \_\_\_\_\_, 20\_\_\_\_\_

S. O. \_\_\_\_\_. Whereas the Central Government, in the Ministry of Road Transport and Highways, declared its intention to acquire the land specified in the Schedule annexed to the Notification bearing No. \_\_\_\_\_ dated \_\_\_\_\_ published in the Gazette of India, Extraordinary, Part II, Section 3, issued under sub-section (1) of Section 3 A of the National Highways Act, 1956 (48 of 1956) (hereinafter referred to as the said Act) for building (widening/ four-laning, etc), maintenance, management and operation of NH No. \_\_\_\_\_ on the stretch of land from km \_\_\_\_\_ to Km \_\_\_\_\_ in the district of \_\_\_\_\_ in the state of \_\_\_\_\_;

And whereas, the substance of the said notification was published in “ <name of the newspaper > ” dated \_\_\_\_\_ and the “ <name of the Newspaper > ” dated \_\_\_\_\_, under sub-section (3) of section 3A of the said Act.

And whereas the Competent Authority has received objections filed under Section 3-C, considered and settled the same appropriately;

And whereas, in pursuance of sub-section (1) of section 3D of the said Act, the Competent Authority has submitted its report to the Central Government;

And whereas, upon receipt of the said report of the competent authority and in exercise of the powers conferred by sub-section (1) of section 3D of the said Act, the Central Government has declared that the land specified in the said Schedule should be acquired for the aforesaid purpose;

And whereas, the said declaration has been published in the Gazette of India, Extraordinary, Part II, bearing No. \_\_\_\_\_ dated \_\_\_\_\_ as required under Section 3D of the said Act;

And further, in pursuance to sub-section (2) of section 3D of the said Act, the Central Government hereby declares that on publication of this notification in the Official Gazette, the land specified in the said **Schedule** shall vest absolutely in the Central Government, free from all encumbrances.

Now, therefore, in compliance of sub-section (3) of Section 3G, the Competent Authority hereby invites all the landowners or persons interested in the land being acquired under these proceedings to submit their claims in respect of the land mentioned in the **Schedule** given here-in-below within a period of 15 days (by \_\_\_\_\_ <mention date & time>) from the date of publication of this Public Notice in the office of the Competent Authority i.e. <give the address of the office>.

All the persons interested [owner of the lands and other interested person(s)] in the lands specified in the **Schedule** given below are hereby called upon to **submit their claims in the said land** (their share, area of land, any assets attached thereto e.g. structures/ trees etc. and state the nature of the respective interest in such lands along with relevant records. The said landowners or persons interested therein shall **also furnish the particulars of their Bank Accounts to which they would like their compensation amount to be credited.** The claims may be submitted in the following indicative format:

Name of village/ Town	Name of the Landowner/ interested person	Field Survey No.	Area of land in his share	Any structures/ trees/ tube-well attached to the land	Name of the Bank & Branch in which he/ she holds the Account	Particulars of the Bank Account No. _____, IFSC Code of the Bank Branch

### SCHEDULE

Brief Description of the land to be acquired, with or without structures, falling within \_\_\_\_\_ in the district of \_\_\_\_\_ in the state of \_\_\_\_\_:

Sr. No.	Survey No. / Plot No.	Type of Land	Nature of Land	Area in Hectares	Names of Landowners/ Interested person
1		Private	Irrigated		
2		Government	Barani/ Dry		
3					

### Note on land use pattern change and compensation payable

Set out below is a note on whether land use pattern may be changed on the owner or occupier's own accord or if it would necessarily require the competent authority's permission. Further, a related question that arises is whether such a change would make a difference in the compensation payable for the acquisition of such land by the Government.

#### Change in land use pattern

Based on a preliminary review, it appears that change in land use pattern or conversion falls under the state legislature's law-making powers<sup>1</sup> and consequently any case laws on this issue are limited and pegged to the relevant state statute. For instance in Bihar, under Section 3 of the Bihar Agriculture Land (Conversion For Non-Agriculture Purposes) Act, 2010 (Conversion Act), the conversion of an agricultural land for non-agricultural purposes requires an application to be filed before the competent authority in the form prescribed along with the applicable conversion fee.<sup>2</sup> Section 6, Conversion Act also states that in case the competent authority believes that an agricultural land has been put to non-agricultural use without the requisite permission, then such agricultural land would be deemed to have been converted into non-agriculture purpose (in an unauthorized manner). Further, such non-authorized conversion would be penalized with 50% of the conversion fee over and above the conversion fee payable. Thereafter, as per Section 5(4), Conversion Act, the land-owner or occupier would be directed to use the land for its original purpose within 6 months of the service of the notice by the competent authority, or to take such other steps as may be required such that the land may be used for its original purpose, failing which action will be initiated against such owner or occupier.<sup>3</sup>

A question may arise as to whether an agricultural land may be deemed to be converted from agricultural to non-agricultural purpose through sustained use for non-agricultural purposes. This was answered in the negative by the Supreme Court of India in State of Karnataka and Ors. v. Shankara Textiles Mills Ltd<sup>4</sup>. The Court, referring to the Karnataka Land Reforms Act, 1961 and the Karnataka Land Revenue Act, 1964 held the following:

*"The obvious purpose of this Section is to prevent indiscriminate conversion of agricultural land for non-agricultural use and to regulate and control the conversion of agricultural land into non-agricultural land. Section 83 of that Act provides for different rates of assessment for agricultural and non-agricultural land. That provision strengthens the presumption that agricultural land is not to be used, as per the holder's sweet will, for non-*

<sup>1</sup> Entry 18, List II, Schedule VII, The Constitution of India.

<sup>2</sup> Also reiterated in Bipin Tiwari and Ors. v. The State of Bihar and Ors, 2015(3) PLJR 387 (Patna HC).

<sup>3</sup> In cases where the conversion of land had taken place before the commencement of the Conversion Act, but after the coming into force of the Bihar Tenancy (Amendment) Act, 1993, the person who is responsible for conversion would still be required to inform the competent authority of such conversion along with the relevant fee prescribed, as per Rule 5, The Bihar Agriculture Land (Conversion for Non Agriculture Purposes) Rules, 2011.

<sup>4</sup> (1995) 1 SCC 295.

*agricultural purposes. This is also clear from the absence of any provision under that Act requiring permission to convert non-agricultural land into agricultural land. In a country like ours, where the source of livelihood of more than 70 per cent of the population, is agriculture, the restriction placed by the Revenue Act is quite understandable. Such provision and restriction are found in the Revenue Acts of all the States in the country. The provision has, therefore, to be construed as mandatory and given effect to as such.*

*The mere fact that at the relevant time, the land was not used for agricultural purpose or purposes subservient thereto as mentioned in Section 2(18) of the Act or that it was used for non-agricultural purpose, assuming it to be so, would not convert the agricultural land into a non-agricultural land for the purposes either of the Revenue Act or of the Act, viz., Karnataka Land Reforms Act. To hold otherwise would defeat the object of both the Acts and would, in particular, render the provisions of Section 95(2) of the Revenue Act, nugatory.”*

Section 95(2) of the Karnataka Land Revenue Act, 1964, which the court refers to, states that to divert a land assessed or held for agriculture to any other purpose, the occupant needs to take permission from the relevant authority. Further, Section 96 of the said Act states that in case such land has already been diverted for another purpose, without taking permission, the competent authority may evict the occupant from such land and impose a penalty on the person responsible for such diversion. These provisions are substantially similar to Sections 3 and 6 of the (Bihar) Conversion Act, which require permission for diverting an agricultural land for uses which are non-agricultural and impose a penalty for undertaking such a conversion/diversion without permission. Therefore, it may be argued that the principle carved out by the Supreme Court of India as to the mandatory nature of the permission for conversion may be applicable to Bihar as well.

Basis the above case laws and statutes, it appears that unless permission has been granted by the relevant authorities to convert land from its original purpose of agricultural use to non-agricultural use, the land use pattern would not be changed. If however, the owner or occupier of land has put the relevant land to non-agricultural usage (without the requisite permission), a penalty would be imposed and the said owner or occupier would be directed to use the land for its original purpose. Further, the landowner or occupier may not be allowed to claim that the sustained use of the land for non-agricultural purposes alone would change the nature of the land.

### **Compensation for acquisition of agricultural land**

The second issue to be dealt with is the compensation payable when the Government acquires land which is agricultural in nature. Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Land Acquisition Act 2013)<sup>5</sup>, such compensation depends on the market value of the land.<sup>6</sup> The computation of such market value would hinge on factors such as whether or not the land has been converted for non-agricultural purposes, the potential for which the land was reasonably capable of being used, the existence of structures on the land, the proximity to

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<sup>5</sup> Previously, Land Acquisition Act, 1894.

<sup>6</sup> Section 27, Land Acquisition Act 2013.

highways and so on.<sup>7</sup>

Given that the market values of lands used for agricultural and non-agricultural purposes (specifically industrial purposes) differ significantly, it becomes important to ascertain the law on how compensation is to be paid for lands which have either not been converted or have been illegally converted from agricultural to non-agricultural purposes.

The Supreme Court of India in *Sharadamma v. Special Land Acquisition Officer and Ors.*<sup>8</sup> held that in case land has not actually been converted from agricultural to non-agricultural use, compensation cannot be paid at the rate prescribed for non-agricultural land.<sup>9</sup>

In *Goa Housing Board v. Rameshchandra Govind Pawaskar and Anr.*,<sup>10</sup> the Supreme Court of India held that even though the Government may choose to use the relevant piece of land for commercial or industrial purposes, it does not give the owner of the land the right to get the market value of the land as one with non-agricultural potential. If the land has not been converted for non-agricultural use by taking permission under the relevant statute, then the land would be treated as agricultural land when calculating the market value for compensation purposes.

Therefore, in conclusion, it may be understood that unless a piece of land which was originally agricultural is converted with permission from the relevant authorities after paying the required conversion charges, the land would not be treated as non-agricultural when computing the market value for compensation. This position seems to hold good even when such agricultural land has been used by the owner or occupier for non-agricultural purposes without taking the aforesaid permission. However, it is to be noted that the compensation payable would also vary depending on the location of the land, its proximity to industries and roads, and so on.

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<sup>7</sup> *Bilkis v. State of Maharashtra*, (2011) 12 SCC 646.

<sup>8</sup> (2007)11 SCC 347.

<sup>9</sup> In the instant case, the compensation amount was reduced by the conversion charge.

<sup>10</sup> AIR 2012 SC 193.





**Essential components of the Award to be announced by the Competent Authority under  
Section 3G**

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**Office of Competent Authority for Land Acquisition  
under National Highways Act, 1956**

Dated: \_\_\_/ \_\_\_/ 201\_\_

**In the matter of Award of Compensation u/s 3G & 3H of the National Highways Act  
1956, in respect of acquisition of land for development of National Highway No. \_\_\_\_;  
Stretch \_\_\_\_\_; Village: \_\_\_\_\_; Tehsil \_\_\_\_\_ District  
\_\_\_\_\_; State: \_\_\_\_\_**

**Order**

Whereas the Ministry of Road Transport and Highways, Government of India, has decided to undertake development of a National Highway (bearing No. \_\_\_\_ ) in the State of \_\_\_\_\_, which requires acquisition of land for the said National Highway infrastructure project, and the undersigned was appointed as the Competent Authority for Land Acquisition u/s 3a of the National Highways Act, 1956, vide Gazette of India Notification S.O. No. \_\_\_\_\_ dated \_\_\_\_\_;

2. Whereas the Central Government, after being satisfied that land was required for a public purpose i.e. the building, maintenance, management or operation of the National Highway No. \_\_\_\_\_, Stretch from \_\_\_\_\_ to \_\_\_\_\_, declared its intention to acquire such land measuring \_\_\_\_\_ Hectares u/s 3A(1) of the NHs Act, 1956, vide Gazette of India Notification S.O. No. \_\_\_\_\_ dated \_\_\_\_\_. The said notification was also published in the newspapers, namely, \_\_\_\_\_ and \_\_\_\_\_ dated \_\_\_\_\_ and \_\_\_\_\_ respectively, whereby an opportunity was afforded to the landowners to file their objections under Section 3 (C) , if any .

3. Whereas a total of \_\_\_\_ objections were received in the office of the undersigned by the due date and time. The said objections were duly heard and disposed off vide a separate order dated \_\_\_\_\_ .

4. Whereas, on receipt of the report from the Competent Authority, the Central Government declared that the subject land, as specified in the Schedule, should be acquired in terms of Section 3D, vide Gazette Notification bearing No. \_\_\_\_\_ dated \_\_\_\_\_. On the publication of the said declaration under Section 3D, the land described in the Schedule attached thereto vested absolutely in the Central Government free from all encumbrances;

5. Whereas, consequent upon publication of the Notification under Section 3D in the Government Gazette as aforesaid, the said Notification was also published in two newspapers, namely " < name of the newspaper> dated \_\_\_\_\_, and <name of the newspaper> dated \_\_\_\_\_, as required under sub-section (3) of Section 3G, inviting claims from the landowners/ persons interested therein by or before \_\_\_\_\_ ;

6. Whereas, having received the claims from the landowners and having examined the

same, the undersigned has applied his mind and considered the various factors for determining the basic market value of land in respect of land is as under:

**6.1 Village/ Town: \_\_\_\_\_**

- (i) Details of Sale-deeds registered in respect of the land for similar type of area in the village or nearby vicinity area during immediately preceding three years of the year in which such acquisition of land is being made are given in **Appendix-1**.
- (ii) Details of One-half of the total number of higher sale deeds or the agreements to sell in which the highest sale price has been mentioned out of those mentioned in Appendix -1 [in terms of Explanation 2 under Section 26] are given in **Appendix-2**.
- (iii) The average basic market value of land, based on the above, works out to Rs. \_\_\_\_\_ per Hectare.
- (iv) The Collector Rate notified in respect of the land/ area vide Order bearing No. \_\_\_\_\_ dated \_\_\_\_\_ is Rs. \_\_\_\_\_/ Hectare.
- (v) The Collector Rate/ Average Sale Price as deduced from **Appendix-2**, being the higher value, the basic market value of land is determined as Rs. \_\_\_\_\_/- per Hectare.

**Notes:**

- (i) Having given the above essential particulars, the CALA shall proceed to complete the balance part of the Award before its declaration.
- (ii) At the end, the CALA shall also adduce a Certificate to the effect that the Compensation amount has been determined in accordance with law, read with the guidelines issued by the Ministry of Road Transport & Highways in furtherance thereof.

## Chapter - 4

### Arbitration under the NH Act, 1956

- 4.1 While the Land Acquisition Act of 1894 Act contained provision for reference to the Court under Section 18 of the Act *ibid*, the RFCTLARR Act, 2013 provides for establishment of an Authority for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement etc. The National Highways Act, 1956 contains provisions of appointment of an Arbitrator, as also reference to the Principal Civil Court of original jurisdiction for the disposal of any such disputes.
- 4.2 The related provisions under the NH Act, 1956 are reproduced below:

#### ***“Section 3G***

*(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.*

*(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.*

*(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-*

*(e) the market value of the land on the date of publication of the notification under section 3A;*

*(f) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;*

*(g) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;*

*(h) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.*

#### ***3H. Deposit and payment of amount. -***

*(4) If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.*

(5) Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent per annum on such excess amount from the date of taking possession under section 3D till the date of the actual deposit thereof.

(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section (5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections (2) to (4) shall apply to such deposit.”

4.3 It is clear from the above provisions that the jurisdictions of the Arbitrator and the Principal Civil Court of original jurisdiction are clearly demarcated and divided as under:

Arbitrator		Principal Civil Court of Original Jurisdiction	
(i)	Determination of the Compensation amount if the amount determined by the Competent Authority is not acceptable to either of the parties;	(i)	If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.
(ii)	Arbitrator is to be appointed by the Central Government;		
(iii)	Subject to the provisions of this Act, provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.		

4.4 **Procedural issues:**

- (i) As per the legal provisions, the aggrieved party must file an application in writing with the Arbitrator, spelling out its grievance qua the compensation amount which it seeks to challenge. In case of any other disputes [Section 3H(4)], the aggrieved party has to make an application in writing to the Competent Authority (CALA), who shall in turn refer the same to the Principal Civil Court of jurisdiction for resolution of the said dispute.
- (ii) The situation mentioned under sub-para (i) above would require that the Arbitrator is appointed by the Central Government almost simultaneously with the announcement of Award by the CALA. As such, the acquiring agencies shall follow the process for appointment of Arbitrators as given under the related paras in this chapter.
- (iii) Arbitral proceedings are to be completed within a period of one year as per Section 29A of The Arbitration and Conciliation Act, 1996. However, completion of Arbitral proceedings or resolution of disputes referred to the Arbitrator or a Civil Court may

take even a bit longer time (about a year or so) due to the processes involved therein. The landowners or the persons interested therein cannot use this as an *alibi* for not handing over the possession of the acquired land which stands vested in the Central Government with the publication of Notification under Section 3D for carrying forward the execution of the NH project. As such, the landowners may receive/ accept the compensation amount awarded and tendered by the Competent Authority under protest (if they so decide) reserving the right to prefer recourse to arbitral proceedings, failing which the tendered amount shall be deemed to have been paid to them and possession of the acquired land taken and handed over to the acquiring agency.

Conversely, where the acquiring agency decides to challenge the Award of the Competent Authority, for whatsoever reasons, it may make a reference to the Arbitrator appointed for the purpose. In such an event, the Acquiring agency may, wherever required, offer to deposit the amount of undisbursed compensation with the Arbitrator as per the Award and proceed further.

- (iv) As stated earlier, the Arbitrator appointed to decide the references made to him is expected to do so within a period of one year. It is not only important to adhere to these timelines for timely disposal of any such issues but also because any delayed arbitral awards, if awarded with higher compensation amount, entails payment of interest on such incremental amount. As such, these have inherent financial implications for the acquiring agency.
- (v) A perusal of the provisions contained in the related Sections of NH Act, as reproduced under para 4.2 above, would show that the NH Act does not prescribe any time-lines within which the aggrieved parties should file their application before the Arbitrator. Needless to say, any such application must be filed within a reasonable period. Since the NH Act has no specific provision in this behalf, the provisions of Limitation Act, 1963, which provide for a limitation period of 3 years, would be applicable in such cases till any specific provision is made under the NH Act, 1956 in this behalf.

#### **4.5 Having explained the legal position, it is important to discuss the substance and the process of arbitration as explained in the following paragraphs:**

##### **4.5.1 Appointment of Arbitrators**

- (i) As mentioned in Chapter 2, the Hon'ble Supreme Court has held in Civil Appeal No. 5250 of 2018 (arising out of S.L.P. (C) No. 20049 of 2017) vide its order dated May 16, 2018 that the Central Government alone is competent to appoint the Arbitrator under Section 3 (G) (5) of the NH Act, 1956. A copy of the Order is attached as [Annexure 2.10](#).
- (ii) MoRTH and its project executing agencies have been generally comfortable with the appointment of Divisional Commissioners/ Deputy Commissioners/ Additional Deputy Commissioners/ Additional District Magistrates as Arbitrators on the recommendations of the respective State Governments, little realising that these

officers have their hands full with their regular work and are generally short of time to attend to the arbitration proceedings, which is perceived as additional workload. There are officers, who may have hundreds of arbitration cases pending at their level and it might take a few years before these are decided/ settled. As a matter of fact, in one typical case, decided after a gap of 10 years, the NHAI had to pay a huge amount on account of enhanced compensation along with interest thereon for all these years.

- (iii) Keeping in view the problems faced in speedy disposal of arbitral references in matters of Land Acquisition under the provisions of National Highways Act, it has been decided that in order to strengthen and institutionalise the system, henceforth, wherever required, retired officers, with adequate knowledge and experience of revenue and land administration, be also appointed as the Arbitrators in addition to the existing arrangements. The Ministry of Road Transport & Highways (in the Land Acquisition Division) shall empanel retired officers from all the states for appointment as Arbitrators. The qualifications for empanelment of retired officers as Arbitrators would be as under:
- (a) Should have retired as a member of the IAS/ Provincial or State Civil Service/ Any other service dealing with the subject of Land and Revenue Administration;
  - (b) The Candidate should have retired at least two levels above the level of the Competent Authority in the given state hierarchy.
  - (c) The Officer should be recommended for empanelment as Arbitrator by the Chief Secretary of the State concerned on the basis of his competence in the subject and integrity for appointment as Arbitrator;
  - (d) The Upper age limit for appointment as Arbitrator should not be more than 70 years.

#### **4.5.2 Terms and Conditions of Appointment of Arbitrators:**

- (i) A retired officer shall be appointed as Arbitrator for a defined jurisdiction, which could be co-terminus with that of a Divisional Commissioner in the State;
- (ii) He shall be paid a consolidated monthly remuneration of Rs. 1,50,000/- per month (or the last pay drawn minus pension if the officer retired at the level of a Secretary to the State Government/ Joint Secretary to the Govt of India, if the same is higher than Rs. 1,50,000/-);
- (iii) In addition to the above remuneration, the appointee shall also be paid a fixed amount of Rs. 20,000/- per month towards meeting his transportation needs;

- (iv) Further, the officer would also be entitled to engage one secretarial staff (retired government servant or from the open market) for an amount not exceeding Rs. 30,000 per month, and one Multi-tasking staff (MTS) for an amount not exceeding Rs. 12,000 per month.

#### **4.5.3 Office/ Working-space:**

- (i) The retired Officer appointed as an Arbitrator, depending upon the volume of work, may either make arrangement for the place/ office he would like to hold his hearings, preferably in consultation with the concerned Divisional Commissioners/ District Magistrates to use their Court Rooms/ Office space once a week or so, subject to availability;
- (ii) In the alternative, the RO/ PD concerned of the NHAI/ RO of the Ministry shall make arrangements for office accommodation in their offices for holding hearings in the arbitral proceedings.

#### **4.6 Expenditure-sharing**

Though the appointment of the Arbitrator is made by the Central Government under Section 3G (5) of the NH Act, 1956, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act. Accordingly, the expenditure incurred on the apportionment of costs of Arbitration shall be decided by the Arbitrator in terms of Section 31A of The Arbitration and Conciliation Act, 1996.

#### **4.7 Follow-up Action on the Arbitral Awards:**

- (i) In case the Arbitral Award is acceptable to the authorised Project Executing Agency, the amount shall be deposited with the Competent Authority, along with interest thereon, as per law within 07 working days of the receipt of Arbitral Award for further payment to the concerned landowners/ persons interested therein.
- (ii) Wherever, either party finds that the Arbitral Award requires correction and interpretation, it may file an application under Section 33 of the Arbitration and Conciliation Act, 1996 within 30 days for the said purpose.
- (iii) In case either of the parties is aggrieved with the Arbitrator's Award, it may take recourse to a Court under Section 34 of The Arbitration and Conciliation Act, 1996, (Chapter VII of the Arbitration and Conciliation Act, 1996) strictly within a period of 3 months, reckoned from the date of receipt of signed copy of the Arbitral Award (ref. Section 31(5) of the Act *ibid*).

#### **4.8 Reference to the Principal Civil Court of original jurisdiction:**

- (i) In matters where any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof

is payable, upon an application made in writing by the landowner or the person interested therein in this behalf, the competent authority shall refer the dispute to the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated for its decision. The CALA shall also submit a list of the claimants along the details of their land and the amount payable as per his Award to such claimants.

- (ii) In matters where a reference is made to the principal civil court of original jurisdiction for resolution of a dispute as mentioned above, the Competent Authority may also seek the leave of the Court to deposit the amount of compensation with the court for its apportionment and disbursement among the entitled persons after resolution of the dispute. Upon depositing the amount with the Civil Court, the compensation amount shall be deemed to have been paid to the landowners or the persons interested therein, with no further claims on this account.

**4.9 Record-keeping about the cases referred for Arbitration and the Civil Court of jurisdiction:**

- (i) The project implementing agencies of MoRTH shall ensure putting in a place a robust system of maintaining the database of: (a) the references made to the Arbitrators, (b) the matters pending with the Arbitrators, and (c) the matters decided by the Arbitrators. These agencies shall also create an equally efficient system for defending its interests before the Arbitrators and challenging the same, wherever required.
- (ii) Similar arrangements would be made in respect of references made to the Principal Courts of Civil Jurisdiction for resolution of other disputes.

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## Chapter - 5

### Second and Third Schedules of the RFCTLARR Act, 2013

5.1 The Department of Land Resources, Ministry of Rural Development, Government of India, issued The RFCTLARR (Removal of Difficulties) Order, 2015 vide Notification dated 28<sup>th</sup> August, 2015. The said Order is reproduced below:

- “(1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.
- (2) It shall come into force with effect from the 1<sup>st</sup> day of September, 2015.
- (3) The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.”

5.2 The Second Schedule and the Third Schedule to the RFCTLARR Act, 2013 have been reproduced as [Annexure- 5.1](#) and [Annexure-5.2](#) respectively along with comments in respect of each of the points. It is highly relevant to go through the "Statement of Objects and Reasons" accompanying the Bill when presented before both houses of Parliament to understand the context where the statutes may be silent. Some of the paragraphs from this Statement are extracted below with added emphasis:

"6. Provision of public facilities or infrastructure often requires the exercise of powers by the State for acquisition of private property leading to displacement of people, depriving them of their land, livelihood and shelter, restricting their access to traditional resource base and uprooting them from their socio-cultural environment. These have traumatic, psychological and socio-cultural consequences on the affected population which call for protecting their rights, particularly in case of the weaker sections of the society including members of the Scheduled Castes (SCs), the Scheduled Tribes (STs), marginal farmers and their families.

7. There is an imperative need to recognise rehabilitation and resettlement issues as intrinsic to the development process formulated with the active participation of affected persons and families. Additional benefits beyond monetary compensation have to be provided to families affected adversely by involuntary displacement. The plight of those who do not have rights over the land on which they are critically dependent for their subsistence is even worse. This calls for a broader concerted effort on the part of the planners to include in the displacement, rehabilitation and resettlement process framework, not only for those who directly lose their land and other assets but also for all those who are affected by such acquisition. The displacement process often poses problems that make it difficult for the affected persons to continue their traditional livelihood activities after resettlement. This requires a careful assessment of the economic

disadvantages and the social impact arising out of displacement. There must also be holistic effort aimed at improving the all-round living standards of the affected persons and families.

10. The law would apply when Government acquires land for its own use, hold and control, or with the ultimate purpose to transfer it for the use of private companies for stated public purpose or for immediate and declared use by private companies for public purpose. Only rehabilitation and resettlement provisions will apply when private companies buy land for a project, more than 100 acres in rural areas, or more than 50 acres in urban areas. The land acquisition provisions would apply to the area to be acquired but the rehabilitation and resettlement provisions will apply to the entire project area even when private company approaches Government for partial acquisition for public purpose.

23. The Bill also provides for the basic minimum requirements that all projects leading to displacement must address. It contains a saving clause to enable the State Governments, to continue to provide or put in place greater benefit levels than those prescribed under the Bill.

24. The Bill would provide for the basic minimum that all projects leading to displacement must address. A Social Impact Assessment (SIA) of proposals leading to displacement of people through a participatory, informed and transparent process involving all stake-holders, including the affected persons will be necessary before these are acted upon. The rehabilitation process would augment income levels and enrich quality of life of the displaced persons, covering rebuilding socio-cultural relationships, capacity building and provision of public health and community services. Adequate safeguards have been proposed for protecting rights of vulnerable sections of the displaced persons.

5.3 It is also relevant to reproduce the definitions of following words/ expressions to complete the context:

Section 3(k) - **“displaced family”** means any family, who on account of acquisition of land has to be relocated and resettled from the affected area to the resettlement area;

Section 3(zc)- **“Resettlement Area”** means an area where the affected families who have been displaced as a result of land acquisition are resettled by the appropriate Government.

5.4 A cumulative reading the above shows that the fundamental guiding principle to the applicability of the Second and Third Schedule in respect of any land acquisition appears to be that the measures and reliefs secured under these Schedules accrue to the persons who are displaced or rendered unsettled due to involuntary acquisition of their land as these Schedules relate to the Rehabilitation and Resettlement of the affected families, displaced or rendered unsettled due to such land acquisition.

5.5 It would be equally relevant to mention that the Road Infrastructure is an out and out public purpose and development of this infrastructure is taken up for the public use and overall economic progress of the country. It is linear in nature and the affected area is limited to the Right of Way acquired for expansion of an existing road or construction/

development of an altogether green-field road. Depending upon the configuration of a road as per the National Highway Standards, the Right of Way varies between 15 mtrs (for a two-lane Configuration) to about 100 mtrs (for an Expressway) at the maximum. In case of 4/6/8 lane National Highways, the limits of RoW have been prescribed between 45 mtrs to 70 mtrs.

5.6 Acquisition of land for the required RoW of a National Highway, as explained above, causes minimal displacement and dislocation of the affected persons. It would be more of an exception if the entire land-holding of a person/ family gets acquired in the process. As such, the number of "Displaced families" requiring "Resettlement and Rehabilitation" is almost unknown. To conclude, the provisions of Second and Third Schedule of the RFCTLARR Act, 2013 in respect of acquisition of land for the construction/ expansion/ development of National Highways are attracted only where it leads to dislocation and displacement of an affected family from the affected area. As a matter of fact, while acquisition of land for a National Highway may still attract certain provisions of the Second Schedule to a very limited extent, the provisions of the Third Schedule are not at all attracted in these cases.

5.7 Accordingly, comments have been made against the related point in a few cases where provisions of the Second Schedule may be attracted (Please see **Annexure 5.1**). Before considering grant of any relief in terms of the Second Schedule, the CALA has to unequivocally certify that the affected family has been displaced and dislocated to another area.

5.8 As regards the Third Schedule to the RFCTLARR Act, 2013, it may be noted that it is applicable only where large scale displacement or dislocation and resettlement of the affected families is involved (i.e. projects involving acquisition of large blocks of land e.g. Hydel Project, an Industrial Township, an Urbanisation Project etc.). This kind of a situation never occurs in the case of linear projects like the National Highways. As such, the provisions of the Third Schedule are not attracted in the case of land Acquisition for the NH Projects.

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## **Annexures to Chapter-5**



## Comments on the Second Schedule

[See Sections 31(1), 38(1), and 105(3)]

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHA's responsibility
(1)	(2)	(3)	(4)
1.	Provision of housing units in case of displacement	<p>(1) If a house is lost in rural areas, a constructed house shall be provided as per the Indira Awas Yojana specifications. If a house is lost in urban areas, a constructed house shall be provided, which will be not less than 50 sq mts in plinth area.</p> <p>(2) The benefits listed above shall also be extended to any affected family which is without homestead land and which has been residing in the area continuously for a period of not less than three years preceding the date of notification of the affected area and which has been involuntarily displaced from such area:</p> <p style="padding-left: 40px;">Provided that any such family in urban areas which opts not to take the house offered, shall get a one-time financial assistance for house construction, <b>which shall not be less than one lakh fifty thousand rupees:</b></p> <p style="padding-left: 40px;">Provided further that if any affected family in rural areas so prefers, the equivalent cost of the house may be offered in lieu of the constructed house:</p> <p style="padding-left: 40px;">Provided also that no family affected by acquisition shall be given more than one house under the provisions of this Act.</p> <p><i>Explanation.</i> – The houses in urban area may, if necessary, be provided in multi-storied building complexes.</p>	<p>(i) This benefit is envisaged for the "affected family" in case of displacement.</p> <p>(ii) It is an admitted position that certain residential units may come within the RoW or extended RoW in the process of Land Acquisition for a road project. The owners of such dwelling units are in any case entitled to the price of land situated under such dwelling units, as also the assessed value of the structure. In addition to the above, such land-owners would also be entitled to a constructed house in terms of para (1) under Column (3) above, if the affected family is displaced and dislocated from the area.</p> <p>(iii) The "Indira Awas Yojana", as referred to in the Second Schedule, has been revamped as "<b>Pradhan Mantri Gramin Awaas Yojana</b>" now for the Rural areas.</p> <p>(iv) Similarly, the Ministry of Housing and Urban Affairs is implementing a scheme known as "<b>Pradhan Mantri Awas Yojana- Housing for All (Urban)</b>" for the Urban areas.</p> <p>(v) Both the above Ministries have specified the size of the dwelling units being provided to the beneficiaries and the financial</p>

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHAI's responsibility
(1)	(2)	(3)	(4)
			<p>limits for construction/ provision of such units under the above schemes. It is natural that the costing of such units would also get suitably adjusted from time to time.</p> <p>(vi) It is, therefore, in order that a family, whose dwelling unit is lost in the process of acquisition of land for a NH Project <u>and is displaced and dislocate from the affected area</u> is also paid the amount prescribed under the two schemes at such time, subject to a minimum of Rs. 1.50 Lakh, in addition to the compensation amount for the land and the structure paid to them.</p> <p>(vii) The possibility of an affected family being in unauthorised occupation of such land cannot be ruled out. In such cases, while the affected persons/ family would not be entitled to any compensation for the land and the assessed value of the structure (being in unauthorised occupation by way of encroachment on public land), however, the affected family, if displaced and dislocated, would still be entitled to the benefits as per para (vi) above under the Second Schedule if it has been in occupation of such place for a period of three years or more.</p>
2.	Land for Land	<u>In the case of irrigation project</u> , as far as possible and in lieu of compensation to be paid for land acquired, each affected family owning agricultural land in the	Not attracted in the case of NH Projects



Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHA's responsibility
(1)	(2)	(3)	(4)
		<p>affected area and whose land has been acquired or lost, or who has, as a consequence of the acquisition or loss of land, been reduced to the status of a marginal farmer or landless, shall be allotted, in the name of each person included in the records of rights with regard to the affected family, a minimum of one acre of land in the command area of the project for which the land is acquired: Provided that in every project those persons losing land and belonging to the Scheduled Castes or the Scheduled Tribes will be provided land equivalent to land acquired or two and a one-half acres, whichever is lower.</p>	
3.	Offer for Developed Land	<p><u>In case the land is acquired for urbanization purposes</u>, twenty per cent of the developed land will be reserved and offered to land owning project affected families, in proportion to the area of their land acquired and at a price equal to the cost of acquisition and the cost of development: Provided that in case the land owning project affected family wishes to avail of this offer, an equivalent amount will be deducted from the land acquisition compensation package payable to it.</p>	Not attracted in the case of NH Projects
4.	Choice of Annuity or Employment	<p>(a) The appropriate Government shall ensure that the <b>affected families</b> are provided with the following options:</p> <p>(b) where jobs are created through the project, after providing suitable training and skill development in the required field, make provision for employment at a rate not lower than the minimum wages provided for in any other law for the time</p>	The scheme of "Rehabilitation and Resettlement" is applicable in cases where the landowner, whose land is acquired, and the landless family whose source of livelihood is dependent upon such landowner, is dislocated and compelled to change his place of residence or business due to such acquisition. This situation normally does not occur in the case of

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHAI's responsibility
(1)	(2)	(3)	(4)
		<p>being in force, to at least one member per affected family in the project or arrange for a job in such other project as may be required; or</p> <p>(c) <b>one time payment of five lakhs rupees per affected family;</b> or</p> <p>(d) annuity policies that shall pay not less than two thousand rupees per month per family for twenty years, with appropriate indexation to the Consumer Price Index for Agricultural Labourers.</p>	<p>acquisition of land for linear projects like National Highways, unless a person's entire land-holding is acquired. The Second Schedule refers to Sections 31(1), 38(1), and 105(3) of the RFCTLARR Act and these sections do not contain any provision in respect of this component of "Choice of Annuity or Employment".</p> <p>Secondly, even if it is assumed that these provisions have a correlation with the overall scheme of RFCTLARR Act, 2013, this component has multiple options, which have to be specified by the appropriate government. It is beyond the Competent Authority or the Collector to make an Award in this behalf in the absence of any provision by the Appropriate Government.</p>
5.	Subsistence grant for displaced families for a period of one year	Each affected family which is displaced from the land acquired shall be given a monthly subsistence allowance equivalent to three thousand rupees per month for a period of one year from the date of award. In addition to this amount, the Scheduled Castes and the Scheduled Tribes displaced from Scheduled Areas shall receive an amount equivalent to fifty thousand rupees. In case of displacement from the Scheduled Areas, as far as possible, the affected families shall be relocated in a similar ecological zone, so as to preserve the economic opportunities, language, culture and community life of the tribal communities	This provision is attracted in the case of <u>displaced families</u> . This would be applicable in cases where the family whose land is acquired, or the landless family whose source of livelihood is dependent on such landowning displaced family. In each such case, an amount of Rs. 36,000 would be payable. Further, if such displacement of any family from the Scheduled Castes and the Scheduled Tribes takes place in the Scheduled Areas, an additional amount of Rs. 50,000/- would be payable.

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHA's responsibility
(1)	(2)	(3)	(4)
6.	Transportation cost for displaced families	Each affected family which is displaced shall get a onetime financial assistance of fifty thousand rupees as transportation cost for shifting of the family, building materials, belongings and cattle.	Again, this would be applicable in cases <u>where a family is displaced and is compelled to change its place of residence to any other location.</u> This would not apply if the displaced family does not have to change its place of residence or business to any other village/ town.
7.	Cattle shed/ Petty shops cost	Each affected family having cattle or having a petty shop shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty five thousand rupees for construction of cattle shed or petty shop as the case may be.	The one-time financial assistance of Rs. 25,000/- or the amount as may be prescribed by the appropriate government, would be payable to an affected family if the land where its source of livelihood was existing (petty shop/ cattle), comes under acquisition.
8.	One-time grant to artisan, small traders and certain others	Each affected family of an artisan, small trader or self-employed person or an affected family which owned non agricultural land or commercial, industrial or institutional structure in the affected area, and which has been involuntarily displaced from the affected area due to land acquisition, shall get one-time financial assistance of such amount as the appropriate Government may, by notification, specify subject to a minimum of twenty-five thousand rupees	Applicable only in cases of involuntary displacement of the affected family from the affected area due to land acquisition.
9.	Fishing rights	In cases of irrigation or hydel projects, the affected families may be allowed fishing rights in the reservoirs, in such manner as may be prescribed by the appropriate Government	Not attracted in the case of NH Projects
10.	One-time Resettlement Allowance	Each affected family shall be given a one-time Resettlement Allowance of fifty thousand rupees only.	This provision would apply only where <u>an affected family is displaced and has to re-settle</u>

Sr. No.	Elements of Rehabilitation and Resettlement Entitlements	Entitlement/ provision	Comments on MoRTH/ NHAI's responsibility
(1)	(2)	(3)	(4)
			<u>somewhere else due to acquisition of his land.</u>
11.	Stamp duty and registration fee	<p>(1) The stamp duty and other fees payable for registration of the land or house allotted to the affected families shall be borne by the Requiring Body.</p> <p>(2) The land for house allotted to the affected families shall be free from all encumbrances.</p> <p>(3) The land or house allotted may be in the joint names of wife and husband of the affected family.</p>	This provision would be applicable only in rare cases where an alternate residence or land is <u>allotted</u> to the affected family. The amount of Stamp Duty would be paid only upon submission of documentary evidence to that effect.

(Refer to para 5.9 of Chapter- 5)

**The Third Schedule**  
[See sections 32, 38(1) and 105(3)]

Sr. No.	Component of infrastructure amenities provided/ proposed to be provided by the acquirer of land	Details of infrastructure amenities provided by the acquirer of land
1	Roads within the resettled villages and an all-weather road link to the nearest pucca road, passages and easement rights for all the resettled families be adequately arranged.	
2	Proper drainage as well as sanitation plans executed before physical resettlement.	
3	One or more assured sources of safe drinking water for each family as per the norms prescribed by the Government of India.	
4	Provision of drinking water for cattle.	
5	Grazing land as per proportion acceptable in the State	
6	A reasonable number of Fair Price Shops	
7	Panchayat Ghars, as appropriate	
8	Village level Post Offices, as appropriate, with facilities for opening saving accounts.	
9	Appropriate seed-cum-fertilizer storage facility if needed	
10	Efforts must be made to provide basic irrigation facilities to the agricultural land allocated to the resettled families if not from the irrigation project, then by developing a cooperative or under some Government scheme or special assistance	
11	All new villages established for resettlement of the displaced persons shall be provided with suitable transport facility which must include public transport facilities through local bus services with the nearby growth centres/ urban localities.	
12	Burial or cremation ground depending on the caste communities at the site and their practices.	
13	Facilities for sanitation, including individual toilet points.	
14	Individual single electric connections (or connection through non-conventional sources of energy like solar energy), for each household and for public lighting	
15	Anganwadis providing child and mother supplemental nutritional services	
16	School as per the provisions of the Right of Children to Free and Compulsory Education Act,2009 (35 of2009)	
17	Sub-health centre within two kilometres range	
18	Primary Health Centre as prescribed by the Government of India	

Sr. No.	Component of infrastructure amenities provided/ proposed to be provided by the acquirer of land	Details of infrastructure amenities provided by the acquirer of land
19	Playground for children	
20	One community centre for every hundred families	
21	Places of worship and chowpal/ tree platform for every fifty families for community assembly, of numbers and dimensions consonant with the affected area	
22	Separate land must be ear marked for traditional tribal institutions	
23	The forest dweller families must be provided, where possible, with their forest rights on non-timber forest produce and common property resources, if available close to the new place of settlement and. in case any such family can continue their access or entry to such forest or common property in the area close to the place of eviction, they must continue to enjoy their earlier rights to the aforesaid sources of livelihood.	
24	Appropriate security arrangements must be provided for the settlement, if needed.	
25	Veterinary service centre as per norms.	

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## Chapter - 6

### Bhoomi Rashi -

#### Ministry's e-initiative to fast track the Land Acquisition Process

##### Introduction:

Given the time taken in completion of various processes involved in Land Acquisition for the National Highways, the Ministry has taken an e-initiative known as *Bhoomi Rashi*, with the help of NIC, for transforming the complete landscape in this behalf. The portal has been developed and successfully implemented. The internal movement of files for issuance various Notifications under different Sections of the NH Act, 1956 used to take anywhere between three to six months earlier. Now, it happens within a maximum of 15 days. A total of 1792 notifications have been issued through the portal during the current financial year so far since its roll-out and one payment has been successfully tested through PFMS by CE-RO Rajasthan. The *Bhoomi Rashi* portal comprises details of 724 districts, 6494 sub-districts (tehsil/taluka) and 6,57,424 villages of the country. Credit goes to Ms. Leena Nandan, the Additional Secretary in the Ministry and her team, together with the NIC team, for full-scale implementation of this initiative. The note below details various features of this initiative, which can be adopted and adapted by other Ministries and even the States with a little bit of customization of the software.

6.1 The vision of the Ministry of Road Transport & Highways is to fast-track economic growth, for which improved road connectivity, specifically expansion and up-gradation of the National Highways network, is of vital importance. In pursuance of this Vision, the Ministry's objective, inter-alia, is to transform systems and structures by re-engineering current processes and procedures.

6.2 It was observed that the process of issuing various Notifications for Land Acquisition was beset with delays. Hence, it was decided to develop a Land Acquisition (LA) system which would provide linkage across authorities, eliminate the need of physical copy, reduce the formatting errors/ clerical mistakes and enable easy tracking of the draft notifications. The concept, once decided, was then given shape by the Ministry's Land Acquisition Wing, and NIC was mandated in November 2016 to design a complete web utility that would bring in required efficiencies.

6.3 The LA process involves several stakeholders, right from the State PWDs who prepare the DPRs on the basis of which the land is acquired, state revenue officials who carry out the actual land acquisition, to the Project zones of the Ministry/ NHAI/ NHIDCL which obtain approval of the Minister (competent authority) to the Land Acquisition notifications. Hence, there were extensive stakeholder consultations over a period of six months, culminating in the final design of the utility, titled '*Bhoomi Rashi*'. A total of 36 Training/orientation sessions were organized over a period of six months in each state with the officers who would actually be using the portal for submitting the draft notifications

and their suggestions were also incorporated in the software.

6.4 *Bhoomi Rashi* portal was tested between December 2017 and March 2018 to iron out glitches and make the processing hassle-free. It has been made mandatory for all implementing agencies since April 1, 2018, and has replaced the manual system of issuance of draft notifications.

6.5 This chapter attempts to capture the entire exercise, right from defining the problem, to the process involved in designing the web portal for bringing in efficiency and transparency through e-governance, and finally, the implementation of the portal '*Bhoomi Rashi*'.

6.6 Close analysis of the LA notification process showed that the delays were on account of the following major issues:

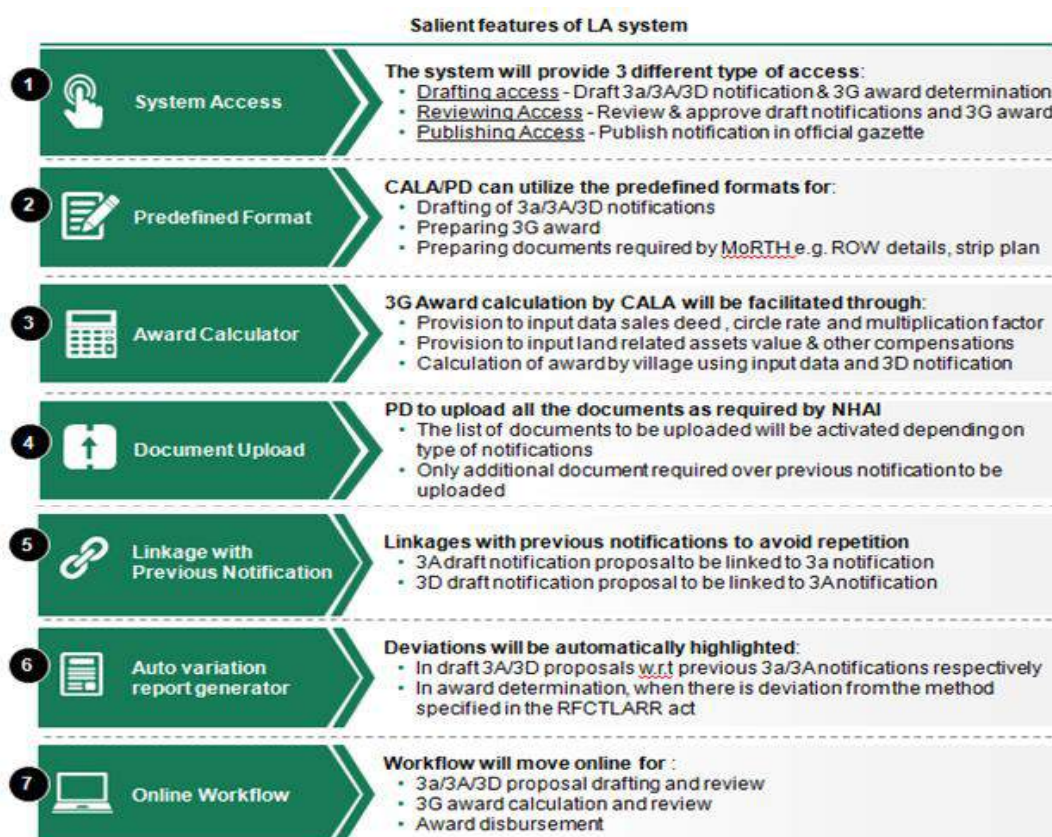
- (i) **Incorrect draft notification preparation by CALA:** Preparation of draft notification at CALA office was a manual process and frequently there was no linkage between draft notifications viz. 3a vs. 3A vs. 3D and finally to the award calculation (3G). This led to errors in draft preparation and award calculation. Typical errors included change in land area, change in nature of land, missing beneficiary names, spelling errors etc.
- (ii) There was **no standardized format**, being used by CALAs for preparation of draft notifications, which rendered legal vetting of draft notification even more challenging. Once an error was made by CALA in the draft notification, he alone could rectify it. Hence, a fresh rectified draft notification needed to be submitted by CALA to the PIU for consideration of gazette publication.
- (iii) **Errors in draft notification preparation by project team:** NHAI has mandated preparation of fresh draft preparation by PIUs based on the draft notification submitted by CALA. This task was again conducted manually by PIUs with no linkage with corresponding previous notifications. This led to errors during the draft preparation. Typical errors included missing land plots, change in land area, change in nature of land, missing beneficiary names, spelling errors etc.
- (iv) **Incomplete documentation:** Though efforts were made by MoRTH and NHAI to reduce errors e.g. standardized format and checklist provided to PIUs for sending draft notifications, adherence to the guidelines remained low. Multiple cases were observed with missing checklist documents and submission in incorrect/incomplete format. It was noticed that 75% of draft 3A notifications and 90% of draft 3D notifications had one or more observations.
- (v) **Physical movement of draft notifications:** The draft preparation and review process involved physical copy. Movement of physical draft files between different agencies viz. CALA, project team, RO office, NHAI HQ/ MoRTH was a time-consuming exercise. Moreover, there were frequent observations on the draft notifications and hence a physical copy needed to be re-sent by the project team (albeit in some minor observations or special cases emails were also accepted),



hence increasing the response time of project team.

- (vi) **Routing of draft notification through RO:** Draft notifications are currently routed through RO office. Though it is imperative for the RO to be aware of the draft notification status, nevertheless, the routing of files increases the time taken for review process. For NHAI, it was observed that on an average about 4 weeks' time was lost because of movement of 3A and 3D draft notification through RO office.
- (vii) **Tracking of Draft Notification:** Currently tracking of draft notification only starts after receipt of draft notification at NHAI HQ/ MoRTH. But tracking of file is equally important, right from the point when CALA prepares the draft notification. Since LA is a critical element of the project and changes in alignment result in the need for additional notifications of the new land area, it is imperative to keep track of the status of draft land acquisition notifications so that the points, where the delays have been taking place, can be identified and corrective action taken right away.

## 6.7 Land Acquisition System



6.8 As mentioned earlier, the current draft notification review process involved multiple delays. It was, therefore, decided to develop an integrated Land Acquisition System with 7 major features:

- (i) **System Access:** There are 3 different type of access viz. Drafting access, Reviewing access, and the Publishing access. Drafting access is provided to CALA office for

preparing the draft notification on the system and for award calculation; reviewing access is provided to the corresponding authority to review the draft notification and publishing access has been provided to the official printing press for publication in the Official Gazette.

- (ii) **Pre-defined Format:** The new system provides a pre-defined format for preparation of 3a, 3A and 3D draft notifications to be utilized by CALA. Apart from this, the Land Acquisition system can also provide a pre-defined format for preparation of award (3G). The Land Acquisition system also provides pre-defined format for submission of documents like ROW details, strip-plan required for legal vetting of the draft notification.
- (iii) **Award Calculator:** Greater transparency to the current award calculation method and facilitation of award calculation by CALA through linkage to the 3D notification is another outcome. CALA can input additional data like sale deeds, circle rates, structure valuation etc. and the final award can be calculated based on the pre-defined formula specified under RFCTLARR ACT, 2013.
- (iv) **Document Upload:** The Land Acquisition system has provision for upload of documents. The documents to be uploaded would depend on the type of notification and only additional document would be required to be uploaded.
- (v) **Linkage with previous notification:** The new structure provides linkage between draft notification and previous Gazette notification. 3A draft notification would be linked to 3a notification and 3D notification would be linked to previous 3a and 3A notification. However, the system would also allow the user with drafting access to modify the information linked from previous notification for selected field including nature of Land, area of land and the beneficiary.
- (vi) **Auto variation report generator:** The system enables highlighting of variations between the draft notification and previous gazette notification i.e. variation between draft 3A notification and 3a notification or 3D draft notification and 3a/3A notification. The system also has provision to highlight variations in method of Award calculation against the one prescribed under RFCTLARR Act, 2013.
- (vii) **Complete online workflow:** All the draft notification review process is now online. This has ensured that there is no physical movement of draft notifications. The online workflow also allows for a transparent tracking of the draft notifications.

## **6.9 Bhoomi Rashi (Land Acquisition Automation System)**

### **6.9.1 Overview**

- (i) The funds out of which Compensation is to be paid in lieu of land acquired under the National Highways (NHs) Act, 1956, are placed solely at the disposal of the Competent Authority for Land Acquisition (CALA). In the case of the National Highways Authority of India (NHAI) projects and the National Highways Interconnectivity Improvement Projects (NHIIP), these funds are placed in a joint

account held in the name of CALA and Project Director (PD). Funds are disbursed by CALA after declaration and finalization of land acquisition awards. Since Land Acquisition involves huge amounts of Compensation and the whole process takes place over a prolonged period, therefore, these funds are unnecessarily parked in CALA's account for a long time, thereby, resulting in blocking of funds. Also, the need of the hour is to move towards e-transfer of benefits directly to the accounts of the beneficiaries.

(ii) It stands to reason that a workflow-based automation of the extant Land Acquisition process for NH projects through development and operationalization of a comprehensive web-based portal would enhance efficiency of the entire process. The benefits of such a portal would be faster process completion, transparent fund transfer to the land owners/ beneficiaries and reduction of procedural errors. Integration of the portal with e-Gazette (Ministry of Urban development) is essential.

(iii) A comparison between the existing procedure and the new procedure is as under:

Procedure existing before Bhoomi Rashi	New Procedure under Bhoomi Rashi
<ul style="list-style-type: none"> <li>❖ Opening of CALA account in bank after determination of amount payable as compensation by CALA (Section 3G)</li> <li>❖ Bill Preparation by State PWD/RO and payment by RPAO</li> <li>❖ Transfer of money to CALA Account (Section 3H1)</li> <li>❖ Disbursement of Compensation to Beneficiaries (Section 3H)</li> </ul>	<ul style="list-style-type: none"> <li>❖ All CALAs be registered on PFMS &amp; will be mapped under respective RO</li> <li>❖ The CALA (through PFMS) will prepare a Digital Payment Advice (Using Dig Sign) with all requisite payment details of beneficiary.</li> <li>❖ On the basis of DPA prepared by CALA(s), PFMS will consolidate the amount State/ RO wise.</li> <li>❖ The RO will prepare sanction along with bill on PFMS for RPAO (Already doing in 6 RPAOs)</li> <li>❖ The RPAO will make payment &amp; issue DPA (on PFMS) for transferring of funds from CFI to the CALA A/c. (PFMS already implemented for 6 RPAOs)</li> <li>❖ Accounting entries will be made on PFMS</li> <li>❖ Funds shall be released to the designated CALA Accounts through Accredited Bank.</li> <li>❖ Reverse Payment Scroll from Bank to complete Accounting entries (already being done)</li> <li>❖ As soon as the funds reach CALA A/c, the PFMS will give instructions electronically to sponsor bank of CALA to transfer money from CALA A/c to the end beneficiary. (PFMS is integrated with more than 100 Banks through server to server CBS)</li> <li>❖ Reverse scroll from sponsor bank to intimate settlement/ success to CALA on PFMS</li> </ul>

### 6.9.2 Broad Features of the developed system:

The broad features of the system are as follows:

#### (i) Project Scope

- ❖ The application is bilingual i.e. English & Hindi
- ❖ Preparation of interface for adding project basic details including LA sanction details.
- ❖ Preparation of interface for Land Acquisition locations i.e. villages
- ❖ Preparation of Interface for CALA details
- ❖ Interface for generating LA notification
- ❖ Interface for Land Details
- ❖ Interface for generation of 3a, 3A & 3D notification: organizational email IDS for all those involved in the process flow to ensure smooth e-office management
- ❖ Interface for Objections and processing
- ❖ Interface for compensation determination and finalization
- ❖ Interface for Arbitrator
- ❖ Interface for generation of pay order for PFMS
- ❖ Generation of web service for getting payment status and beneficiary validation from PFMS
- ❖ Interface for Land owners and affected parties
- ❖ Interface for grievance submission

#### (ii) Master Data

The following data has been incorporated and would be updated from time to time by the administration:

- ❖ **States:** All states of India (E Gov Standards Master Data)
- ❖ **Districts:** Under each state, details of districts of India (E Gov Standards Master Data)
- ❖ **Sub Districts / Tehsil/ Taluka:** Under each district, details of sub districts (E Gov Standards Master Data)
- ❖ **Police Stations** (to be added by RO) under each sub district
- ❖ **Villages:** Under each Sub District→Police Station, details of villages (E Gov Standards Master Data)
- ❖ **Interest Percentage:** For payment of interest on amount decided by Arbitrator with effective date
- ❖ All Regional offices of MoRTH, NHAI & NHIDCL with login credentials for RO user with DDO Code
- ❖ Users under MoRTH
- ❖ Arbitrators with login credentials (to be added by RO)

**(iii) Security:**

- (a) The system is completely secure and OTP based security is provided at each level. At the time of login, the system would send a One Time Password on the registered mobile number of CALA, RO user through SMS. On entering the number in the web application, the system would complete the login process.
- (b) Similarly, whenever the users (CALA & RO) submit any form, the system would send the OTP and on entering the same the system would finally submit the form.

**(iv) Language**

- ❖ Data Entry in English→System would convert it in Hindi and show in a parallel text box
- ❖ For all master data, both Hindi & English would be added. While selection, English (Hindi) would be shown. On selection, selected value would be shown in parallel LABEL field.
- ❖ In reports, first data would be shown in English and after page break, report in Hindi would be shown.
- ❖ →Contact & Bank details would be optional till 3A. During 3D stage it would be mandatory.
- ❖ →Auto Create login credentials for all
- ❖ →This data can be modified at a later stage; however, the total area of the survey number cannot be increased under any circumstances.

**(v) Alerts**

- ❖ On generation of login credentials
- ❖ Finalization of survey numbers
- ❖ Finalization of compensation (by CALA, RO, MoRTH/ NHAI/NHIDCL)
- ❖ On Payment

**(vi) Options for land owners and interested parties**

After login, they can:

- ❖ View status of their survey number
- ❖ File Grievance

### 6.9.3 Grievance filing:

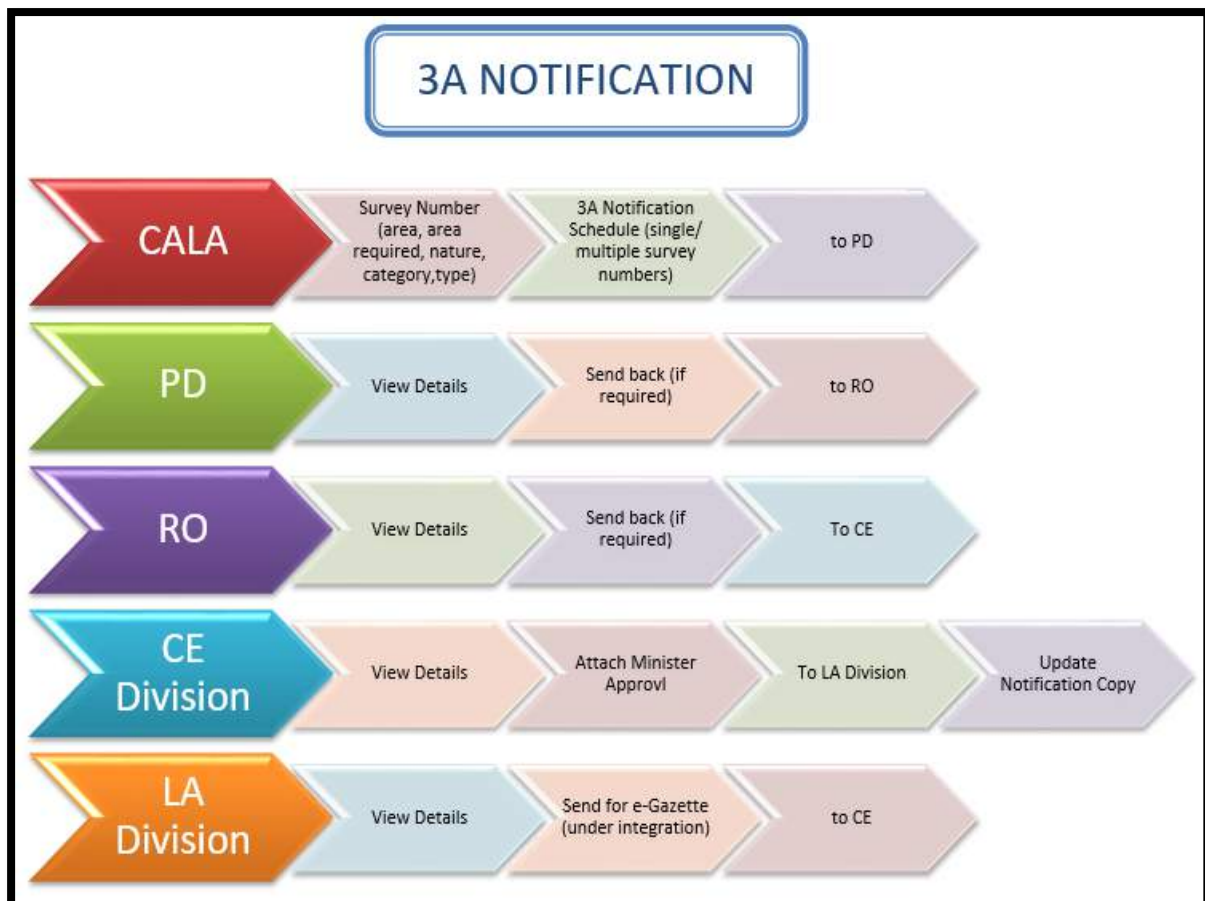
File Grievance Type	<input checked="" type="radio"/> Survey Related <input type="radio"/> Compensation Related <input type="radio"/> Payment related
Enter Grievance	<input type="text"/>
SUBMIT	

### 6.10 Land Acquisition stages captured in the system

- (i) Provision has been made for adding local unit of land measurement for each state. Along with that, the admin would also add the conversion factor in hectares. This would enable the CALA and ROs to enter the data in the units as per land records available and system would do the necessary calculation i.e. the data would be available in both local unit and hectares. The notification schedule for 3a, 3A & 3D is available in both English & Hindi and would be auto generated; however, the user would be able to make necessary changes. Data entry would be done in English and the system would transliterate the data in Hindi as well. Since this might not be 100% accurate, there is a provision to make changes in Hindi, if deemed necessary. Please refer to the diagrammatic presentation on the following page.
- (ii) In all such cases, 3a amendment would be done, and the software supports the functionality required. On final approval i.e. entry by CE, the system would send email & SMS alert to all CALAs with their username and password to login. The CALA would also receive a separate alert with login credentials of their data entry operator.

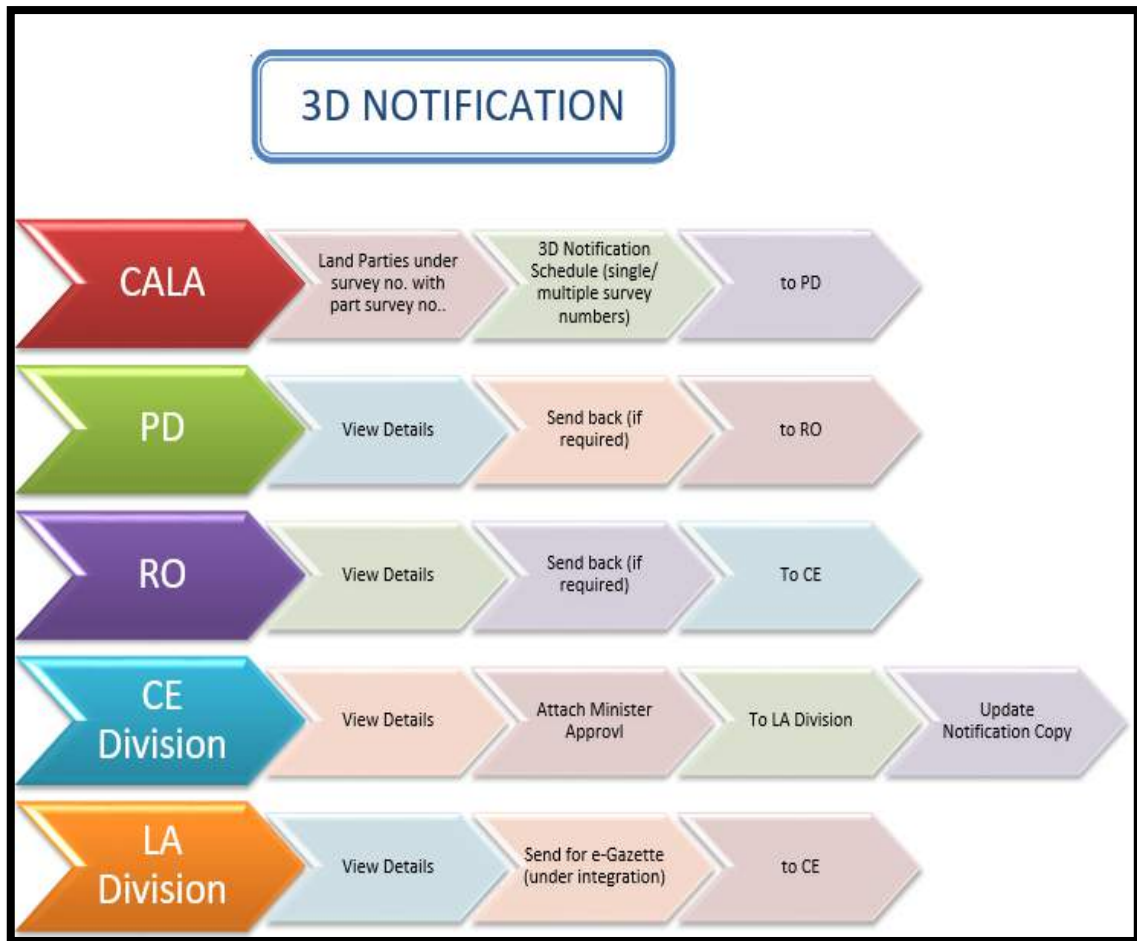


- ❖ Provision is there to remove any village (till 3A has not been done)
- ❖ Provision is there to add additional CALA
- ❖ Provision to change CALA jurisdiction



- ❖ Can add survey numbers only under 3a notified villages
- ❖ 3A amendment is possible only in case of increase in survey number area
- ❖ For minor change in notified 3A, provision is there for 3A corrigendum; however, the complete workflow/process for notification would be followed
- ❖ At 3A stage itself the CALA has the option to add details of Land Owners and affected parties
- ❖ If Land parties have been added, then on 3A notification, system would send login credentials to land parties through SMS & email.
- ❖ The Land parties would also be able to post their objections online





- ❖ Under each survey number, details of land owners and affected parties would be added along with bank details and contact details:
  - At this stage, the CALA would be able to send beneficiary (land parties) details for verification to PFMS (once integration is done)
  - 3D will be done for only those survey numbers where 3A has been notified
- ❖ There is no pending objection
- ❖ Once the CALA has decided the amount of compensation to be paid to a beneficiary or more than one beneficiary, CALA would initiate action for payment on the basis of integration with PFMS.

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## Annexure

**Copy of the Comprehensive Guidelines dated 28.12.2017  
(Without Annexures)**



No. NH -11011/ 30/ 2015 - LA  
Government of India  
**Ministry of Road Transport & Highways**  
Transport Bhawan, 1, Parliament Street, New Delhi-110001

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Dated, the 28<sup>th</sup> of December, 2017

To

1. Chief Secretaries to all State Governments/ Administrators of UTs;
2. The Additional Chief Secretary/ Principal Secretary/ Secretary, Public Works Departments of all State Governments/ Union Territories;
3. The Chairman, National Highways Authority of India, G-5&6, Sector- 10, Dwarka, New Delhi-75;
4. The Managing Director, National Highways Infrastructure Development Corporation Ltd, PTI Building, Parliament Street, New Delhi- 110001.

**Subject: Land acquisition under the National Highways Act, 1956 comprehensive guidelines thereon.**

Sir,

I am directed to say that the land required for National Highway Projects is acquired under the provisions contained in Section 3 of the National Highways (NH) Act, 1956. Pursuant to the enactment of the RFCTLARR Act of 2013 and its coming into force with effect from 01.01.2014, certain provisions of the 2013 Act became applicable to the other related Acts mentioned in the Fourth Schedule, including the NH Act, 1956 with effect from 01.01.2015 in terms of Section 105(3) of the RFCTLARR Act, 2013.

2. Accordingly, the Ministry of Road Transport & Highways (MoRTH) has issued various OMs/ Circulars on the subject from time to time, as mentioned at **Annexure-1**. Similarly, the Department of Land Resources, Ministry of Rural Development, have also issued guidelines/ orders on the subject, being the nodal Department of Government of India for the administration of RFCTLARR Act, 2013 and its application to the other related statutes mentioned in the Fourth Schedule of the Act *ibid*. These guidelines/ orders/ clarifications are mentioned in **Annexure - 2**.

3. The entire issue has been examined afresh in view of the clarifications emerging in due course of time. The Ld. Attorney General of India has also been consulted on certain issues. Accordingly, it has been decided to issue these comprehensively revised guidelines in supersession of the guidelines issued hereinbefore. These are as follows:

**4. Applicability of the 'RFCTLARR Act 2013' to the enactments mentioned in the Fourth Schedule of the Act *ibid*:**

(i) The 'RFCTLARR Act 2013' came into force with effect from 01.01.2014. Section 105 of the Act deals with the subject of applicability of provisions of the RFCTLARR Act,

2013 to the related statutes enumerated in the Fourth Schedule. Provisions of Section 105 (3) read as under:

“(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.”

- (ii) The Central Government came out with an Ordinance (No. 9 of 2014) dated 31<sup>st</sup> December, 2014, entailing an amendment to, inter-alia, Section 105 vide Clause 10 of the Ordinance, substituting sub-section (3) of Section 105 and omitted Sub-section (4) of Section 105. The substituted sub-Section (3) is reproduced below:

“(3) The provisions of this Act relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to the enactments relating to land acquisition specified in the Fourth Schedule with effect from 1<sup>st</sup> January 2015.”

- (iii) The provisions of Ordinance No. 9 of 2014 were continued further vide Ordinance No. 4 of 2015 dated 03.04.2015 and vide Second Ordinance dated 30.05.2015 (No. 5 of 2015) which was valid up to 31<sup>st</sup> August, 2015.

- 4.2 Subsequently, the Department of Land Resources, Ministry of Rural Development, Government of India, issued The RFCTLARR (Removal of Difficulties) Order, 2015 vide Notification dated 28<sup>th</sup> August, 2015. The said Order is reproduced below:

“(1) This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.

(2) It shall come into force with effect from the 1<sup>st</sup> day of September, 2015.

(3) The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act.”

- 4.3 It is clear from a reading of the above that requisite action in compliance of Section 105(3) was taken within one year's time with the promulgation of Ordinance No. 9 of 2014 dated 31.12.2014. This position continued with the issuance of two Ordinances in 2015, which was thereafter followed by the 'Removal of Difficulties

Order” without any break in time. As such, operation of the provisions of RFCTLARR Act 2013, which came into effect from 01.01.2014, has been given effect in respect of the enactments specified in the Fourth Schedule (including the NH Act, 1956) with effect from 01.01.2015, in compliance of sub-section (3) of Section 105 of the RFCTLARR Act, 2013.

4.4 Following the notification of the aforesaid Ordinances, the Ministry of Road Transport & Highways issued a letter dated 29.04.2015 whereby the select provisions of RFCTLARR Act, 2013 were made applicable to the NH Act, 1956 with effect from 01.01.2015. A conjoint reading of the aforesaid shows that the Ordinance (Amendment) remained in force till 31<sup>st</sup> August 2015. ‘*Removal of Difficulties Order*’ was issued by the Department of Land Resources on 28<sup>th</sup> August 2015, which took effect from 01.09.2015. However, since the date of application of the selected relevant provisions of the RFCTLARR Act, 2013 to the NH Act, 1956 was 01.01.2015 in terms of the Ordinance (Amendment) No. 9 of 2014, it remains an unambiguous and accepted position that the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule have been made applicable to all cases of land acquisition under the NH Act, 1956, i.e. the enactment specified at Sr. No. 7 in the Fourth Schedule to the RFCTLARR Act, **with effect from 01.01.2015.**

#### **4.5 Applicability of Section 24 of the RFCTLARR Act 2013 to the NH Act, 1956.**

(i) MoRT&H had issued instructions vide OM bearing No. 11011/30/2015-LA dated 13<sup>th</sup> January 2016 clarifying that Section 24 of the RFCTLARR Act, 2013 was applicable to the NH Act, 1956. However, the issue as to whether Section 24 of the RFCTLARR Act, 2013 is applicable to the NH Act, 1956 has been under consideration and revisited in consultation with the Ld. Attorney General, who has observed as under:

“A reading of Section 24 makes it abundantly clear that the provision is applicable only to acquisitions that have been undertaken under the Land Acquisition Act, 1894, in as much as the legislative intent can be ascertained from the specific mention of the ‘Land Acquisition Act, 1894’. Further, Section 105(1) of the RFCTLARR Act 2013 specifically excludes the application of any Section of the RFCTLARR Act 2013 to the Acts mentioned in the Fourth Schedule. The only exception to Section 105(1) is Section 105(3), which makes only the First, Second and Third Schedule applicable to the Fourth Schedule Acts.”

(ii) As such, it is now clear that Section 24 of the RFCTLARR Act, 2013 is not applicable to the acquisitions under the NH Act, 1956.

#### **4.6 Date of determination of market value of land**

(i) Another related but important question is regarding the date on which the market value of land is to be determined in cases where land acquisition proceedings had

been initiated under the NH Act, 1956 and were at different stages as on 31.12.2014. While there is no ambiguity regarding land acquisition proceedings initiated on or after 01.01.2015, this question assumes significance in view of the financial implications in respect of cases where the process of acquisition was at different stages as on 01.01.2015.

- (ii) Section 26 of the RFCTLARR Act stipulates that “*the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3 A of the NH Act)*”. Same was the position under the 1894 Act. This is further fortified from the provisions contained in Section 69(2) of the RFCTLARR Act. As such, it is clarified that the relevant date of determination of market value of land is the date on which notification under Section 3 A of the National Highways Act, 1956 is published.
- (iii) By now, it is also a settled proposition that the First, Second and Third Schedule of the RFCTLARR Act, 2013 shall be applicable to the NH Act, 1956 with effect from 01.01.2015. As such, the following is clarified:
  - (c) All cases of Land acquisition where the Awards had not been announced under Section 3G of the NH Act till 31.12.2014 or where such awards had been announced but compensation had not been paid in respect of majority of the land holdings under acquisition as on 31.12.2014, the compensation would be payable in accordance with the First Schedule of the RFCTLARR Act, 2013.
  - (d) In cases, where the land acquisition process was initiated and award of compensation under Section 3G had also been announced before 01.01.2015 but the full amount of Award had not been deposited by the acquiring agency with the CALA, the compensation amount would be liable to be determined in accordance with the First Schedule w.e.f. 01.01.2015;
  - (e) In cases, where the process of acquisition of land stood completed (i.e. Award under Section 3G announced by CALA, amount deposited by the acquiring agency with the CALA, and compensation paid to the landowners in respect of majority of the land under acquisition) as on or before 31.12.2014, the process would be deemed to have been completed and settled. Such cases would not be re-opened.

**5. Payment of additional amount calculated @ 12% on the market value in terms of sub-section (3) of Section 30 of the RFCTLARR Act, 2013**

- 5.1 Another issue that has emerged pertains to the admissibility of payment of an additional amount calculated @12% per annum on the market value of land in respect of acquisitions under the NH Act, 1956 as it is not mentioned under the First Schedule to the RFCTLARR Act, 2013. The position has been carefully examined in terms of the provisions in this behalf. Sub-section (3) of Section 30 of the RFCTLARR Act reads as under:



“In addition to the market value of the land provided under Section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve percent per annum on such market value for the period commencing on and from the date of publication of the notification of the Social Impact assessment study under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.”

5.2 Sub-section (3) of Section 105 of the RFCTLARR Act stipulates that:

“The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.”

5.3 The proviso under Section 26 of the RFCTLARR Act stipulates that *“the date for determination of market value shall be the date on which the notification has been issued under Section 11 (corresponding to Section 3 A of the NH Act)”*. Similarly, Section 69 (2) of the RFCTLARR Act, 2013 also stipulates that such additional amount is to be *“calculated @ 12% on such market value for the period commencing on and from the date of publication of the preliminary notification under section 11 in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier”*. Since the acquisition of land for the National Highways is exempted from the Social Impact Assessment, it is absolutely clear from a harmonious reading of all related provisions that the calculation of such amount shall be made with effect from the date of publication of the Notification under Section 3A of the NH Act, 1956.

5.4 The compensation amount has to be determined in accordance with the First Schedule, (which contains references to Section 26, 29 and 30(1) of the RFCTLARR Act) in its application to the NH Act. Provision for amount calculated @ 12% interest is under sub-section (3) of Section 30 of the RFCTLARR Act, to which no reference has been made in the First Schedule. Further, Section 30(3) stipulates that the additional amount calculated @ 12% is payable with effect from the date of publication of the notification of the Social Impact Assessment Study, which is not applicable to the land acquisition for National Highways. On the other hand, Section 69(2) of the RFCTLARR Act, 2013 stipulates that the additional amount calculated @12% is to be calculated from the date of publication of the preliminary notification under Section 11 (corresponding to Section 3(a) of the NH Act, 1956). Further, the Ordinances and the Removal of Difficulties Order do not include the portion *“being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not reduce the compensation or dilute the provisions of*

this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be". Hence, a strict textual reading of the relevant provisions shows that it is an arguable point if the 'amount' under Section 30(3) is payable in respect of land acquired under the NH Act, 1956 or not.

- 5.5 However, a harmonious reading of all the related provisions of the RFCTLARR Act, the pronouncements of the Courts on payment of compensation under Section 23 (1A), Section 23(2) and Section 28 of the Land Acquisition Act, 1894 in respect of land acquired under the NH Act, 1956, read with Section 105(3) of the RFCTLARR Act, 2013, especially when the market value has to be reckoned as on the date of issue of Section 3A of the NH Act, would go to show that payment of 'amount' of 12% on the market value of land from the date of publication of Section 3A of the NH Act, 1956 till the announcement of award under Section 3G or taking possession of land, whichever is earlier, is payable.
- 5.6 This issue has been examined in detail by the Ld. Attorney General who has finally opined "*that a holistic reading of the provisions of the RFCTLARR Act, 2013 would require the payment of the 'amount' mentioned under Section 30(3) of the RFCTLARR Act, 2013*". As such, in supersession of the OM bearing No. NH-11011/140/2017-P&M/LA dated 7<sup>th</sup> September 2017, vide which it was clarified that the said 'amount', not being part of the First Schedule to the Act, was not payable in respect of land acquisition under the NH Act, 1956, **it is clarified that the 'amount' calculated @ 12% per annum, as prescribed under Section 30(3) of the RFCTLARR Act, 2013, though not specifically mentioned in the First Schedule, would be payable to the landowners.**
- 5.7 Still, another set of two questions arise i.e. (i) the date from which the amount payable under Section 30(3) is to be calculated, and (ii) as to whether the 'amount' as mentioned in Section 30(3) of the RFCTLARR Act, 2013 is a **stand-alone component and paid as such** or it would get added to the market value, and then count for the purposes of Multiplication Factor and/ or Solatium also. This issue has also been examined by the Ld. Attorney General, whose opinion is reproduced below:

"There are **two other issues** that are related to payment of 'amount' under Section 30(3). **The first** is in regard to the date from which this amount has to be calculated. Section 30(3) states that this date will be the date of 'social impact assessment' under Section 4 of the RFCTLARR Act. However, Section 4 is not applicable to the national Highways Act, Therefore, as was being done earlier, this amount may be paid from the date of issuance of preliminary notification under Section 3A of the National Highways Act. **The second issue** is in regard to whether this 'amount' is a standalone component or whether the same has to be calculated after addition of the multiplication factor and solatium. The answer to this question is to be found in Section 30(3) which clearly states that the amount is payable in addition to to the market value of the land and is calculated as a percentage of 'market value'. There is a distinction between 'market value' and compensation. Market value is determined under Section 26. Section 27 provides that the Collector having determined the total market value, will proceed to determine the compensation. This compensation is determined under Section 28 of the Act. Therefore, a reading of these sections would lead to the conclusion that the

‘amount’ has to be awarded only on the ‘market value’ which in turn is determined under Section 26 of the Act.”

5.8 It may be noted that the computation of different components of the total compensation is in seriatum and sequential from Section 26 to Section 30 of the RFTCLARR Act, 2013. Keeping the aforesaid opinion of the Ld. Attorney General in view, and the fact that the payment of ‘amount’ under Section 30(3) has been prescribed as “In addition ...” after the provision for payment of solatium, **it is clarified that it would be payable as a ‘stand-alone component’ and shall not count for the purposes of Multiplication Factor and the Solatium.** Illustration given in Annexure - 4 to these guidelines may be referred for correct method of calculation of the compensation amount.

## 6. Issue of the Multiplication Factor (MF)

6.1 It is clear that the compensation of land acquired under the NH Act, 1956 with effect from 01.01.2015 is to be determined in accordance with the provisions contained in the First Schedule to the RFCTLARR Act, 2013 (in so far as it relates to the Multiplication Factor prescribed by the appropriate government).

6.2 The Department of Land Resources, Ministry of Rural Development, Government of India issued a Notification dated 9<sup>th</sup> February 2016 in this behalf, which reads as under:

“In exercise of the powers conferred by column No. 3 of serial No. \*2 of the First Schedule read with sub-section (2) of Section 30 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government, hereby, notifies that in the case of rural areas, the factor by which the market value is to be multiplied shall be 2.00 (two).”

6.3 Soon after the aforesaid Notification was issued by the Department of Land Resources, certain states like Andhra Pradesh, Maharashtra, Punjab, Jharkhand, Chhattisgarh and Bihar started using a Multiplication Factor of 2.00 in respect of land acquired/ to be acquired for the NH Projects (read Central Government Projects) on the basis of 9<sup>th</sup> February Notification of the Department of Land Resources whereas the Multiplication Factor applicable to the jurisdiction of the state was to be notified by the appropriate government. The MoRTH also issued two OMs dated 12.08.2015 and 08.08.2016 on the subject. A reference was made in this behalf by the then Chairman, NHAI to the Secretary, Department of Land Resources. Certain references were also made by the states. The reference specifically mentioned the issue of two different sets of MFs being adopted by certain states for the Central Projects and the State Projects. The State of Chhattisgarh continues with such classification even on date.

6.4 Some of these confusions have been set at rest and clarified by the DoLR vide its letter F. No. 13013/ 02/ 2016-LRD dated 8<sup>th</sup> May, 2017, more specifically the issue of differential MFs for the State and the Central Projects. The DoLR has further clarified vide its F. No. 13013/02/2016-LRD dated 14<sup>th</sup> December 2017 that the DoLR

Notification of 9<sup>th</sup> February 2016 was applicable **only** to the UTs, except Puducherry, as the DoLR is the appropriate Government **only** in respect of the UTs, except Puducherry.

6.5 The DoLR Notification of 9<sup>th</sup> February 2016 prima facie appears to be inconsistent with the provisions contained in the First Schedule, especially in respect of the following three points:

- (i) Firstly, it gave an impression (though erroneous) as if the Central Government was the ‘appropriate government’ to notify the Multiplication Factor (MF) in respect of all Central Government projects across all the states;
- (ii) Secondly, it did not clearly state that the Notification was applicable only in relation to the Union Territories, except Puducherry;
- (iii) Thirdly, the prescription of a MF of 2.00 without co-relating the distance of the project from the urban area is prima facie inconsistent with the contents of the First Schedule. The said entry reads as under:

Serial Number	Component of Compensation package in respect of land acquired under the Act	Manner of determination of value	Date of determination of value
(1)	(2)	(3)	(4)
2.	Factor by which the market value is to be multiplied in the case of rural areas	1.00 (one) to 2.00 (Two) <b>based on the distance of project from the urban area</b> , as may be notified by the appropriate Government.	

6.6 The DoLR, however, has clarified the position with regard to the points mentioned at (i) and (ii) of para 6.5 above, as mentioned under para 6.4 above. The DoLR has clarified vide its OM of 8<sup>th</sup> May 2017 that there cannot be two sets of Multiplication Factors, one for the state projects and the other for the Central projects. Since the issue regarding sub para (iii) of para 6.5 above still remained unsettled, the matter was referred to the Ld. Attorney General, who has opined as under:

“The MoRTH has sought my opinion on whether it is open to the appropriate Government to fix a uniform multiplication factor of 2 for all rural lands. The query is a result of notifications issued by the Department of Land Resources and certain states like ... which have stated a multiplication factor of 2 in respect of land acquired/ to be acquired for all National Highway Projects whereas a different multiplication factor has been prescribed for land acquired by the State Government.

In my opinion, the appropriate government must have a graded approach to fixing the multiplication factor. This is evident from the words in the schedule “1.00 (one) to 2.00 (two) based on the distance of project from the urban area”. For this purpose, the appropriate government has to apply its mind and take into consideration the distance of lands from urban areas.”

6.7 A number of states like West Bengal, Rajasthan, Maharashtra and others have already notified the graded scale of Multiplication Factor as applicable in their respective jurisdiction. The position in this behalf, as available with MoRTH on the date of issue of these guidelines, is enclosed as **Annexure - 3**. While the matter is being taken up with the DoLR again to revisit its Notification of 9<sup>th</sup> February 2017 with regard to a single Multiplication Factor of 2.00 for the rural areas *qua* the UTs (except the state of Puducherry), the concerned officers of MoRTH and NHAI/ NHIDCL are advised to take up the matter with the states where a uniform MF of 2.0 has been notified for the Rural Areas without using a scale/ graded MF linking the distance of the project area from the urban limits.

6.8 The Chief Secretaries of the concerned states like Bihar, Chhatisgarh, Gujarat, Jharkhand, Uttrakhand and Uttar Pradesh are requested to take necessary corrective measures in this matter in order to ensure that the 'multiplication factor' notified in their respective states is in conformity with the legal provisions in the First Schedule to the RFCTLARR Act, 2013, as also advised by the Attorney General of India.

**6.9 Keeping the aforesaid in view, it is clarified as under:**

- (i) The multiplication factor by which the 'market value' is to be multiplied in case of urban areas shall be 1.00 (One) as specified in the First Schedule. The 'Urban Area' shall mean the area situated within and up to the boundary of the Urban Local Body as notified by the concerned State Government (i.e. a Municipal Corporation/ Council/ Committee, by whatever name it may be called).
- (ii) The multiplication factor by which the market value is to be multiplied in case of rural areas (from the end-point of the urban limit) shall be the one as notified by the concerned State Government, being the appropriate government for such state. It may be noted that the Multiplication Factor notified by the State shall remain the same for the state government and the central government projects. There cannot be two different sets of multiplication factors in the same state, as already clarified by the Department of Land Resources, Ministry of Rural Development, vide its OM dated 8<sup>th</sup> May, 2017.
- (iii) As regards the Multiplication Factor in the case of rural areas in the Union Territories (other than Puducherry), the Multiplication Factor shall be 2 (Two) in terms of the DoLR Notification No. S.O.425 (E) dated 09.02.2016 till the same is reviewed by the Department of Land Resources.
- (iv) The Multiplication Factor by which the market value is to be multiplied in case of rural areas situated in the Union Territory of Puducherry shall be the same as notified by the Government of Union Territory of Puducherry.

**7. Bulk Acquisitions/ Purchase of Land through Consent of Landowners**

7.1 Various state governments have come out with their respective guidelines/ policies/ rules/ statutes for acquisition of land on consent basis. Proposals have been received

in MoRTH from such state governments for acquisition of land for the National Highways within their jurisdiction under their respective consent acquisition policies/ guidelines/ statutes. MoRTH has agreed to the proposals of the following states and issued OMs in this connection subject to the condition that the compensation amount paid in such cases is in consonance with the provisions of the RFCTLARR Act 2013, as applicable to the NH Act, 1956 for the purpose:

Sr. No.	Subject	Date of Issue
(i)	Kerala, Chhattisgarh	02.08.2016
(ii)	West Bengal, Uttar Pradesh, Telangana, Punjab,	03.08.2016
(iii)	Rajasthan, Goa, Odisha,	24.08.2016
(iv)	Bihar,	29.08.2016
(v)	Maharashtra, Himachal Pradesh	26.09.2016
(vi)	Karnataka	16.11.2016
(vii)	Madhya Pradesh	06.09.2017

7.2 In supersession of the above OMs, it has been decided by the Competent Authority that following guidelines shall be followed henceforth with immediate effect and until further orders regarding Bulk acquisition/ Purchase of Land through Consent of landowners:-

- (i) There is a specific Central statute for acquisition of land for the National Highways i.e. **National Highways Act, 1956**. As such, legally, the Central Government and its authorised project executing agencies are competent to acquire land for the construction/ development of National Highways under the NH Act, 1956 and the States do not have a case to insist that the land for the NHs in their jurisdiction should be acquired under the statutes/ policies framed by the State Governments/ UT Administrations.
- (ii) However, considering the urgent need for minimizing litigation and ensuring early availability of land for completion of the NH projects, land for NH projects can be procured through direct purchase with the consent of the landowners in accordance with the existing Acts/ Rules/ Policies of the concerned State Governments subject to the condition that the total amount of compensation so worked out **will be no more than what is payable when the land is acquired under the NH Act, 1956, which in any case is in conformity with the compensation payable in accordance with the provisions of RFCTLARR Act, 2013.**
- (iii) Further, MoRTH/ NHAI/ NHIDCL would also be agreeable to acquisition of land for the NH Projects in accordance with such consent mechanism of the state subject to the condition that the concerned State Government/ UT Administration agrees to bear the incremental cost, if any, from its own resources. To illustrate, if the amount of total compensation payable for one

hectare land in terms of the First Schedule to the RFCTLARR Act, 2013 [including the amount calculated @ 12% in terms of Section 30 (3) of RFCTLARR Act, 2013] is Rs. 1.50 crore/ hectare and the amount determined under the consent mechanism of the state government works out to Rs. 1.75 crore/ hectare, the State Government/ UT Administration would have to bear the differential compensation amount of Rs. 25.00 Lakh/ hectare from its own sources.

- (iv) Henceforth, with the above principles having been laid down, there will be no need to issue any state specific guidelines on the subject.

## **8. Acquisition of land for Missing Plots**

The Ministry has issued detailed guidelines vide its letter dated 15.03.2016 for acquisition of land through consent of landowners, preferably limited to 10% of total quantum of land acquisition in a construction package in the cases of (i) Missing plots which are inadvertently left out from the bulk acquisition, and/ or (ii) additional land required due to alteration of alignment at implementation stage. These guidelines shall continue to remain in force until further orders.

## **9. Notification of a stretch as a NH under Section 2 of the NH Act, 1956 before initiating the process of Land Acquisition under Section 3 of the NH Act?**

- (i) The issue as to whether it is necessary to notify a certain stretch as a National Highway under Section 2 of the NH Act before initiating the process of acquisition of land for building a National Highway under Section 3 of the NH Act has come up for consideration. The Ministry was of the view that Section 2 and Section 3 of the NH Act are independent of each other. This issue was also referred to the Ld. Attorney General for his opinion. The Attorney General has advised vide his supplementary reference dated 24.12.2017 as under:

“Section 3A deals with the power to acquire land and Section 3A(1) provides as follows:

*3A Power to acquire land, etc. - (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its intention to acquire such land.*

Under Section 3A(1), the Central Government may acquire land for the purpose of building a National Highway. The term ‘**building**’ is not defined in the National Highways Act. The New Webster’s Dictionary of the English Language (Deluxe Encyclopedic Edn) defines ‘building’ as ‘*the act of one who builds*’. The term ‘build’ is defined as ‘*to construct or erect, as a house; to form by uniting materials into a regular structure; to make; to establish by gradual means; to raise as on a support or foundation*’. When the Central Government notifies land for acquisition, the nature of these lands may be paddy fields or waste lands or vacant lands. These lands cannot be called a

Highway. What is acquired is only land without a Highway existing at the time. The very concept of a Highway is defined in common law as ‘a way over which there exists a public right or passage... at all seasons of the year freely... to pass and re-pass without let or hindrance (*Halsbury’s Laws of England, 4<sup>th</sup> Edn. Vol 21 Page 9*). Vacant lands and paddy fields can never be termed as Highways. It is only when the road is built/ constructed and established, and is able to take traffic, and when a passage comes into existence for persons to pass and re-pass, that it can be notified.

In view of the above, my answer to the query is that it is not necessary to notify a road project as a National Highway in terms of Section 2 of the National Highways Act, 1956 for initiating the process of land acquisition under Section 3A of the Act.

I advise accordingly.”

- (ii) Accordingly, it is clarified that it is not necessary that a stretch must be notified as a National Highway under Section 2 of the NH Act, 1956 before initiating the process of land acquisition under Section 3 for building a National Highway.

**10. Competent Authority for Land Acquisition (CALA) and due diligence at the time of determination of compensation amount by the Competent Authority.**

- (i) The Central Government (i.e. the Ministry of Road Transport & Highways) appoints the Competent Authority for Land Acquisition (CALA) in exercise of its powers under Section 3(a) of the NH Act, 1956. As such, the CALA appointed by the Central Government, is obliged to take all action for acquisition of land under the NH Act, 1956 and the guidelines issued by the Central Government on the subject.
- (ii) It may be noted that the provisions contained in the RFCTLARR Act, 2013 from Section 26 to Section 30 are in seriatum i.e. sequential. Para 5.8 of these guidelines may be referred in this behalf. As such, an illustration on how the total compensation amount is to be calculated is given in **Annexure-4**. This has to be strictly followed by all CALAs appointed by the Central Government.
- (iii) Certain undesirable practices have come to notice of the Central Government. These include change in the nature of land or adoption of incorrect classification of land for determination of market value of land. It may be noted that the nature of land has to be taken as recorded in the revenue records on the day of publication of Section 3A notification. For instance, if some landowner/ interested person has raised a factory building or a commercial building upon the land under acquisition without obtaining the “Change in Land Use” from the competent authority prescribed by the state government, he/ she cannot take the benefit of treatment of such land as “Industrial” or “Commercial”. Therefore, due diligence has to be exercised by the CALA while determining the land use/ nature of land and working out the market value of land.



- (iv) It may be further noted that the market value of land is to be determined as on the date of publication of the preliminary Notification under Section 3A of the NH Act, 1956. It is for this reason that in addition to the market value of land and solatium, the landowner is also paid an amount calculated @ 12% per annum from the date of initial notification under Section 3A till the announcement of Award or possession of land, whichever is earlier. Instances have come to notice where the landowners/ interested persons have undertaken certain improvements over the land notified under Section 3A after the publication of notification in order to enhance the quantum of compensation. This would include plantation of trees on such land to add value. As such, the CALAs are duty bound to ignore any improvement done over the notified land after the date of notification while determining the compensation amount and announcing the Award under Section 3G of the NH Act, 1956.
- (v) The CALA, while announcing the Award under Section 3G, shall append a certificate at the end of his Award that he/ she has strictly followed the legal provisions and these guidelines in determination of the compensation amount.

#### **11. Disbursement of Compensation amount and possession of land**

- (i) It has been observed that the process of disbursement of compensation amount to the landowners or the persons interested therein goes on for a long period for a variety of reasons, which leads to delays in taking possession of the land acquired and required for construction of the highway. Some of the most common reasons are mentioned as under:
  - (a) There are certain landowners who do not maintain their usual residence where the land is situated and can be called as absentee landowners;
  - (b) The land records are not updated and the successors-in-interest are not clearly identified with their respective shares.
- (ii) It is, therefore, important that the CALAs adopt the following procedure in order to ensure that the possession of acquired land is not delayed for any reasons:
  - (a) Apart from issue of notice to the landowner/ person interested therein in terms of sub-section (1) of Section 3E of the NH Act, 1956, a public notice may also be published in the same set of two newspapers in which the Notification under Section 3A (3) was published informing the landowners/ persons interested in the acquired land about the announcement of the Award by the CALA in respect of subject land, calling upon them to collect the compensation amount from the office of the CALA within a period of sixty days.
  - (b) As soon as the period of 60 days is over, another public notice may

be caused to be published in the same set of newspapers, calling upon such landowners to surrender or deliver possession thereof to the competent authority forthwith, failing which the possession shall be taken with the assistance of the local police in accordance with sub-section (2) of Section 3E of the NH Act, 1956.

- (iii) A typical sample/ format of the two sets of Public Notices are enclosed as **Annexure - 5**.

## **12. Appointment of Arbitrator under Section 3G(5) of the NH Act, 1956**

- (i) Reference is made to Section 3G(5) of the NH Act, 1956 which stipulates that *“If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government”*.
- (ii) Further, attention is also drawn to sub-section (4) of Section 3H of the NH Act, 1956 which stipulates that *“If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.”*
- (iii) A perusal of the above provisions makes it clear that the jurisdiction of the ‘Arbitrator’ appointed by the Central Government and that of the ‘Principal Civil Court of original jurisdiction’ have been clearly demarcated.
- (iv) The CALAs may, while making a reference to the ‘Principal Civil Court of original jurisdiction’ wherever required, may also seek leave of such Court to deposit the undisbursed amount of compensation in respect of such landowners/ interested persons with the Court so that the possession of such land is not held-up on this account, leading to delays in taking up the highway development works.

## **13. Administrative charges for Land Acquisition for NH Projects**

A total of 13 states levy administrative charges for acquisition of land for the National Highways. Demi-official communications have been sent at the level of Secretary, MoRTH to Chief Secretaries of these states in this behalf. A copy of the said letter, which is self contained, is enclosed as **Annexure-6**. Action may be taken by all concerned accordingly.

## **14. Supersession of previous guidelines:**

With the issue of these comprehensively revised guidelines, the guidelines mentioned at **Part A** of **Annexure-1** continue to remain in operation for the time being till these are also comprehensively revised, whereas those mentioned under **Part B** of

**Annexure-1** are superseded. These guidelines shall take effect from the date of issue.

**15. Savings:**

The Ministry has been issuing guidelines on the subject of Land Acquisition from time to time based on clarifications/ developments as these came along, which may have resulted in higher outgo on account of amounts of compensation paid to the landowners. Since it is practically not feasible to recover any such excess paid amount from the landowners/ interested persons, it is clarified that any compensation amount paid in the past in terms of guidelines issued by the Ministry from time to time, and which may not be payable in terms of these revised guidelines, shall be deemed to have been paid as per the extant guidelines and shall not be called into question on account of these revised guidelines.

16. These guidelines, which issue with the approval of the Hon'ble Minister, Road Transport & Highways, may be brought to the notice of all concerned for further necessary action and strict compliance.

Yours faithfully,  
sd/-  
(Amit Kumar Ghosh)  
Joint Secretary to the Government of India  
Tel No. 011-23718527

**Enclosures - As Above**

**Copy for necessary action to:-**

1. Director General (Roads Development) & Special Secretary, MoRT&H
2. All the Addl. Director Generals of MoRTH;
3. CE (P-1)/ CE (P-2)/ CE (P-3)/ CE (P-4)/ CE (P-5)/ CE (P-6)/ CE (P-7)/ CE (P-8)/ CE (LWE)/ CE (SARDP- NE)/ CE (NHDP- IVA)/ CE (Mon.)/ CE (Planning)
4. All ROs/ ELOs/ PIUs of the MoRT&H/ NHAI/ NHIDCL

**Copy for information to:**

1. PS to Minister (RTH&S)
2. PS to MoS (RTH&S)
3. Sr. PPS to Secretary (RT&H)
4. PPS to AS & FA.

Annexure- 1		
Guidelines/ Instructions issued by the Ministry of Road Transport & Highways from time to time		
Sr. No.	Subject	Date of Issue
<b>A.</b>	<b>Previous Guidelines that continue to operate</b>	
(i)	RFCTLARR (Amendment) Ordinance, 2015	03.04.2015
(ii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – First Schedule reg.	29.04.2015
(iii)	RFCTLARR (Amendment) Second Ordinance, 2015	30.05.2015
(iv)	RFCTLARR (Removal of Difficulties) Order, 2015	28.08.2015
(v)	Acquisition of missing plots through consent reg.	15.03.2016
(vi)	Guidelines for monitoring of Land Acquisition for NH Projects – engagement of consultant reg.	19.04.2016
(vii)	Facilities to CALA and TILR reg.	16.06.2016
(viii)	Guidelines for monitoring of Land Acquisition for NH Projects – appointment of additional CALA reg.	20.07.2016
(ix)	Facilities to arbitrator reg.	04.10.2016
<b>B.</b>	<b>Previous Guidelines which stand superseded</b>	
(i)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Multiplication factor reg.	12.08.2015
(ii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Second and Third Schedule reg.	11.09.2015
(iii)	Acquisition of land for NH Projects – Return of unutilized land reg.	09.12.2015
(iv)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Section 24 reg.	13.01.2016
(v)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Multiplication factor reg.	31.03.2016
(vi)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Multiplication factor reg.	08.08.2016
(vii)	Administrative charges and other charges payable to State Government reg.	17.10.2016
(viii)	Applicability of Interest in determination of amount payable as compensation	07.09.2017
<b>C.</b>	<b>Acquisition of land through consent as per concerned State Government - reg.</b>	
(a)	Kerala, Chhattisgarh	02.08.2016
(b)	West Bengal, Uttar Pradesh, Telangana, Punjab	03.08.2016
(c)	Rajasthan, Goa, Odisha	24.08.2016
(d)	Bihar	29.08.2016
(e)	Maharashtra, Himachal Pradesh	26.09.2016
(f)	Karnataka	16.11.2016
(g)	Madhya Pradesh	06.09.2017

**Guidelines/ Instructions issued by the Department of Land Resources, Ministry of Rural Development, Government of India on the subject of land acquisition from time to time**

<b>Sr. No.</b>	<b>Subject</b>	<b>Date of Issue</b>
(i)	Applicability of RFCTLARR Act 2013 to Land acquisition under the NH Act, 1956 – First Schedule - reg.	29.04.2015
(ii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – Second and Third Schedule - reg.	11.09.2015
(iii)	Applicability of RFCTLARR Act 2013 to land acquisition under the NH Act, 1956 – First Schedule - reg.	13.01.2016
(iv)	Applicability of the Multiplying factor provided in the First Schedule to the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013	F. No. 13013/02/2016- LRD dated 8 <sup>th</sup> May 2017
(v)	Notification of the multiplying factor provided in the First Schedule to the RFCTLARR Act, 2013	F. No. 13013/02/2016- LRD dated 14 <sup>th</sup> December 2017







**Government of India**  
**Ministry of Road Transport and Highways**  
**Transport Bhawan**  
**1, Parliament Street, New Delhi - 110001**  
**[www.morth.nic.in](http://www.morth.nic.in)**