



HARYANA STATE LAW COMMISSION

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SEVENTH REPORT

Recommendation to Amend Section 77 of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Government of Haryana

HARYANA STATE LAW COMMISSION

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04 November, 2022

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Compensation and Transparency in Land Acquisition,
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There is general complaint of law professionals and land holders whose lands have been acquired by the State authorities for various public purposes, that since there is no mention of Section 73 in sub-section (1) of Section 77 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in brief, “2013 Act”), some collectors have refused payment of amount of compensation or to deposit the same in the Authority. Although such refusal on the part of the Collector, in our opinion, cannot be justified and is not tenable, this problem could be addressed by inserting ‘Section 73’ in sub-section (1) of Section 77 of the 2013 Act by simple amendment. Therefore, this Law Commission has taken up this matter to recommend a suitable

amendment to sub-section (1) of Section 77 of the 2013 Act.

2. The 2013 Act came into force w.e.f. 01.01.2014. The Land Acquisition Act, 1894 (in brief, “**1894 Act**”) was repealed by section 114 of the 2013 Act. Most of the provisions of the 1894 Act relating to determination of amount of compensation and payment of the same to the persons entitled have been retained in the 2013 Act.

3. Sub-section (1) of section 31 of the 1894 Act provided for payment of compensation as determined by the Collector to deposit the same in the Court under certain circumstances. Sub-section (1) of section 31 of the 1894 Act read as under:

“31. Payment of compensation or deposit of same in Court. - (1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.”

4. Sub-section (1) of section 31 of the 1894 Act dealt with the payment of compensation by the Collector on making an award under section 11 of the said Act, but it did not provide for payment of compensation by the Collector on making an award under section 28-A of the 1894 Act. The reason being that section 28-A was inserted in 1984 by way of amendment to the 1894 Act so as to enable the persons interested in the lands covered by the same notification under sub-section (1) of section 4, who had not made an application to the Collector under section 18, to make an application for redetermination of compensation.

5. Section 28-A of the 1894 Act, read as under:

[28A. Re-determination of the amount of compensation on the basis of the award of the Court. - (1) where in an award under this part, the court allows to the applicant any amount of compensation in excess of the amount awarded by the collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector

may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

(3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, required that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.]

6. Sub-section (1) of section 28-A of the 1894 Act provided that all those persons who because of their ignorance did not make an application under section 18 of the 1894 Act could make an application within three months from the date of passing of the award by the Court to the Collector for redetermination of the amount of compensation on the basis of the amount of compensation awarded by the Court. Sub-section (2) provided for the procedure of redetermination by the Collector. Sub-section (3) provided for making an application to the Collector in case the applicant did not accept the award redetermined by the Collector. In the 1894 Act, no procedure was provided for recovery of amount of compensation redetermined by the Collector. The 1894 Act was silent as to what had to

be done by the persons entitled to compensation as per the award in the event of non-payment of the amount of compensation as redetermined by the Collector. In fact, after insertion of section 28-A in the 1894 Act, the legislature ought to have amended sub-section (1) of section 31 to provide for payment of the amount of compensation as redetermined by the Collector. That was not done.

7. The 1894 Act stands repealed by virtue of sub-section (1) of section 114 of the 2013 Act. Sub-section (1) of section 77 of the 2013 Act is the replica of sub-section (1) of section 31 of the 1894 Act. Section 73 of the 2013 Act is the replica of section 28-A of the 1894 Act. The omission in amending section 31 of the 1894 Act, after insertion of section 28-A in the said Act, it appears, had not been taken note of while enacting section 77 of the 2013 Act. The same omission continued even in section 77 of the 2013 Act. Thus, neither section 73 nor section 77 of the 2013 Act provides for payment of amount of compensation redetermined by the Collector. The 2013 Act is also silent as to what is to be done in the event of non-payment of compensation as determined by the Collector under sub-section (2) of section 73 of the

2013, Act. Therefore, it is necessary to amend sub-section (1) of section 77 of the 2013 Act so as to prescribe procedure as to the mode of recovery of compensation as redetermined by the Collector under the provisions of sub-section (2) of section 73 of the 2013 Act. This lacuna in 2013 Act can be made good by simply inserting the words “**or under section 73**” immediately after the words “**under section 30**” in sub-section (1) of section 77 of the 2013 Act. Once it is so amended, the amended provision of sub-section (1) of section 77 will take care of payment of amount of compensation redetermined by the Collector by virtue of the power conferred on him under sub-section (2) of section 73 of the 2013 Act.

CONCLUSION

8. In the light of the discussion made above, we are of the considered opinion that there is a need to amend sub-section (1) of section 77 of the 2013 Act as suggested above, by inserting the words “**under section 73**” immediately after the words “**under section 30**” in sub-section (1) of section 77 of the 2013 Act.

RECOMMENDATION

9. The Government may take necessary steps to amend section 77 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013. Sub-section (1) of section 77 of the said Act, after the recommended amendment, would read as follows:

77. Payment of compensation or deposit of same in Authority.—(1) On making an award under section 30 or **under section 73**, the Collector shall tender payment of the compensation awarded by him to the persons

interested entitled thereto according to the award and shall pay it to them by depositing the amount in their bank accounts unless prevented by someone or more of the contingencies mentioned in sub-section (2).

NOTE:

Section 77 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been enacted under Concurrent List 3 to the Constitution of India. Therefore, Parliament as well as the State Legislature has concurrent power to enact laws to regulate Criminal Procedure. As the Parliament has already enacted The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, Article 254 of the Constitution comes into play. It provides that where the law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for consideration of the President and has received his assent shall prevail in that State. It is therefore clear that the amendments proposed above can be passed by the Legislature and reserved for consideration of the President. After receipt of the assent of the President, the amendments can come into operation in the State of Haryana.

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