

Date: 23/10/2019

To,

**QUERIST**

Gujarat Metro Rail Corporation,  
Block no. 1, First Floor, Karmayogi Bhavan,  
Sector 10/A, Gandhinagar, Gujarat.

**Subject : Opinion on certain queries raised by the Querist pertaining to The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act), the rules and regulations issued by the Govt. of Gujarat.**

**FACTS AS GIVEN TO THE UNDERSIGNED**

1. Gujarat Metro Rail Corporation (GMRC) is a 50:50 joint venture of Govt. of India and Govt. of Gujarat incorporated for the purpose of implementation of metro rail project within the State of Gujarat.
2. In undertaking construction works, certain private properties are required to be acquired. GMRC is facing certain problems in interpreting the provisions of Act for determining Rehabilitation and Resettlement Award.
3. The Land to be acquired is for the Ahmedabad Metro Rail Project, and the proposed land acquisition is less than 100 hectares.

I have gone through the papers provided to me in detail and have considered all the material made available to me. My considered Opinion, on the queries raised vide letter dtd. 07.10.2019 is as under:

**QUERIES:**

- 1) Whether the Rehabilitation and Resettlement Cost as per Schedule II & III is only applicable for acquisition of properties by GMRCL?
- 2) Whether lump sum 50% Rehabilitation and Resettlement cost, i.e., 50% of value of compensation determined under section 27 is payable to PAF of Ahmedabad Metro Rail Project Phase-I in the case of Consent Award under section 31(A) of the Act, 2013?
- 3) Whether Government of Gujarat's GR dated 04.04.2018 is applicable for non-agricultural land being required by GMRC in urban areas or not? In case the reply is affirmative, then whether 25% of land cost is to be paid with or without R & R benefit as per Schedule II and III?

**ANSWER TO THE QUERIES:**

**Answer to Query No. 1 :**

In my considered opinion, the Rehabilitation and Resettlement Cost as per Schedule II & III is applicable provisions in respect of

Rehabilitation and Resettlement Cost to be paid by GMRC. Section 31-A, which is relevant for this purpose reads as under:

***“31-A. Payment of lump sum amount by State Government for its linear nature projects-***

*Notwithstanding anything contained in this Act, it shall be competent for the State Government to pay, whenever the land is to be acquired for its own use amounting to less than one hundred acres or whenever the land is to be acquired in case of projects which are linear in nature as referred to in proviso to Sub-Section (4) of Section 10, as Rehabilitation and Resettlement Cost, such lump sum amount equal to fifty percent of the amount of compensation as determined under section 27 to the affected families.”*

According to me, section 31(A) starts with a *non-obstante* clause, meaning that its Application will have an overriding effect on other provisions of the Act. The section vests the State Government (Govt. of Gujarat in the present case) with a discretionary power to declare additional compensation (amounting to 50% of the compensation calculated), which is over and above and in addition to the compensation to be paid as according to Section 27 of the Act read with Schedule I.

Section 31(A) comes into effect whenever certain conditions are fulfilled, the conditions for application of Section 31-A of the Act are as under:

- a) The land is acquired by the state govt. for its own use;
- b) The State Government makes any acquisition for its linear projects as defined in the proviso Section 10(4) of the Act or the total acquired area does not exceed 100 hectares;

My opinion on these conditions is as under:

(a)

In my considered opinion, Section 2(1) of the Act, read with Section 3(zb) provides the conditions for Application of the Act and the definitions of the authorities. Section 2(1) and 3(zb) read as under:

**“2. Application of the Act.-**(1) *The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate government acquires land for its own use, hold and control, including for ‘Public Sector Undertakings and for Public Purpose, and shall includee following purposes-...*”

**“3. Definitions.-**

(zb) *“requiring Body” means a company, a body corporate, an institution, or any other organization or person for whom land is to be acquired by the appropriate government, and includes the appropriate government, if the acquisition of land is for such Government either for its own use or for subsequent transfer of such land in for public purpose to a company, body corporate, an institution, or any other organization , as the case may be, under lease, licence or through any other mode of transfer of land;...”*

In my Opinion, harmoniously reading the referred provisions of the Act the present case can be described as an acquisition of land by the state government for its own use as the land is being purchased for a public purpose under Section 2(1), and the State Government falls within the definition of ‘Requiring Body’ under Section 3(zb), as the land is being acquired for GMRC, which is a Public Sector Undertaking being owned equally by the Govt. of India and the Govt. of Gujarat.

(b)

The description of 'linear' as per proviso to Section 10 reads as under:

*"Provided that...in the case of projects which are linear in nature such as those relating to railways, highways, major district roads, irrigation canals, power lines and the like."*

In my considered opinion, the Ahmedabad Metro Rail Project can be described as a 'linear project' under the scheme of the Act. The proposed area of the scheme is less than 100 hectares, which is within the ambit of Section 31-A of the Act.

Further, the Govt. of Gujarat has notified The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Gujarat) Rules, 2017 (Rules) on 13.10.2017 under Section 112 of the Act. In my considered opinion, Section 31-A of the Act provides that the State Govt. is competent and vests the state with a discretion, as described in the foregoing paras. This discretion seems to have been exercised by the State Government by enacting rule Rule 29, which reads as under:

***"29. The lump-sum amount paid by the Government for the long time project:-***

*Wherever the land is to be acquired for the purpose of public interest for the long time project, which is less than 100 acres, the State Government shall pay fifty percent of the amount of compensation determined under Section 27 of the Act, as lump-sum amount to the affected families as Rehabilitation and Resettlement cost. The lump-sum amount shall not be less than the amount payable according to the second schedule of the Act."*

In my opinion, this rule further imposes a mandatory duty on the acquiring body to pay 50% lump-sum amount as Rehabilitation and Resettlement Cost as per Section 31-A, which is over and above and independent of the compensation calculated under Section 27 of the Act.

Therefore, in my opinion, the 50% Rehabilitation and Resettlement Cost as per Schedule II & III is applicable for acquisition of properties by GMRCL.

**Answer to Query No. 2 :**

In my considered opinion, section 31(A) which provides for 50% of value of compensation determined under section 27 payable to the Project Affected Families as Rehabilitation and Resettlement Cost would be payable in all acquisitions carried out by the GMRCL as 50% cost prescribed under section 31(A) is not confined to or dependent upon Consent Awards, but is payable in case of linear projects of the State Government wherein award is made with the consent of those who are to lose their land. Therefore, in accordance with the provisions of the Act and the rules, the amount prescribed under section 31(A) becomes payable even in cases of Consent Award.

**Answer to Query No. 3 :**

In my considered opinion, the Government Resolution dated 04.04.2018 is applicable whenever there is a consent award passed under section 23(A) of the Act. In my opinion, no distinction has been prescribed within the Government Resolution



dated 04.04.2018 in relation to the type of land to which the circular would be applicable. The Government Resolution dated 04.04.2018 only prescribes the quantum of additional amount to be paid in case of land acquired in village areas (12.5%) and urban areas (25%). Therefore the application of Government Resolution dated 04.04.2018 is not confined or restricted to the nature of the land being agricultural or non-agricultural.

The Government Resolution dated 04.04.2018 will be applicable in all cases falling under section 23(A). I further clarify that 25% of the market value of the land given as additional bonus in Government Resolution dated 04.04.2018 is over and above and independent of the 50% Rehabilitation and Resettlement Cost as per Section 31-A, and is for encouraging people to part with possession of their land even before passing of the award so that the projects of the State Government can be carried out in a timely manner. Therefore, the additional bonus of 25% of the market value of the land provided in Government Resolution dated 04.04.2018 will be applicable in all cases where consent award is passed under section 23(A) and it will be over and above the benefit granted under sections 27, 31 and 31A.

Place : Ahmedabad

Date : 23/10/2019

*Parth Bhatt*  
(Parth H. Bhatt)  
Advocate