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December 28, 2013

Dear and Respected Sri Jairam Avl,

Please find attached herewith my opinion. I am returning to Delhi tomorrow morning and if any further clarifications are required, will be happy to provide the same.

With Deep Regards,

Yours sincerely,

MOHAN PARASARAN

Encl: As above

To

Hon'ble Mr. Jairam Ramesh Avl,
Hon'ble Minister for Transport,
Ministry of Transport,
New Delhi.



December 28, 2013

OPINION

Querist: Ministry of Rural Development, Government of India.

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The right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'ACT 2013') has been passed by the Parliament and has also been notified to come into force with effect from 1.1.2014.

Certain doubts have been raised in particular with regard to the scope and purport of Section 24 of the Act which contains both a non-obstante clause and a retrospective provision. Section 24 of the Act reads as follows:

"24. (1) 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 has been made, then all provisions of this Act relating to determination of compensation shall apply; or

(b) where an award under section 11 has been made, then such proceedings shall continue under the provisions of the said Land Acquisition Act, as if the said Act has not been repealed.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

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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."

The Hon'ble Minister for Rural Development, Government of India, keeping in view the very objective of drafting the law, which was to serve the interest of marginalised communities wants to issue administrative clarifications in the form of advisory to ensure that the interest of marginalized sections are secured fully and fairly. The Ministry has proposed to issue the following advisory.

"For the avoidance of doubts and to negate the abuse/misuse and also to clarify certain queries that have been raised post the passage of the Right to Fair Compensation and Transparency in land Acquisition Act 2013, on the operation and interpretation of Section 24 of the Act i.e., the 'Retrospective Operation' clause the following Advisory is issued:

Title	Clause
(1) Operability:	The retrospective operation of the Act as prescribed in Section 24 of the Act will be deemed to have come into operation on and from the date on which the new law is notified in the Official Gazette.
(2) Physical Possession:	Physical possession will be considered to have been taken when the land acquired had been physically demarcated and effective physical and absolute control taken within 5 years of the award.
(3) Interpretation of Five Year Period:	Where acquisitions have been initiated under the Land Acquisition Act 1894 and the parties under acquisition have either not accepted compensation or have not released the physical possession of the land but do not qualify for the benefits of the Act as given in sub-section 2 of section 24

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	due to the fact that they have remained pending for a period less than five years then the new law shall apply only if the situation of pendency continues unchanged for a period that equals to or exceeds five years.
(4) Limitation:	Where possession has not been taken or compensation has not been paid due to the fact that the acquisition process has been challenged in a court of law then the period spent under litigation shall also be counted for the purpose of determining whether the period of five years has been crossed or not;

Legal status of advisory or administrative instructions:

It is well settled law that administrative instructions cannot override a statute and they have to necessarily be in harmony with the statute concerned. As held in the judgment in Sanjeev Coke Mfg. Company Vs Bharath Coking Coal Limited and another (1983) 1 SCC 147 at 172 para 25, the courts are the ultimate arbiters to rule as to what the Parliament intended and is not bound by self serving affidavits of the executives. Like affidavits filed in court explainaing or interpreting a statute, administrative instructions are again issued by the executive and are inferior to statutory instruments or statutory directions of the executive made in exercise of delegated legislation. However, the courts post Sanjeev Coke, have been viewing administrative instructions/advisories/contemporary official statements made by the executive to clarify an ambiguity with greater latitude. Contemporary official statements throwing light on the construction of statutes and statutory instructions made under it have been used as *contemporanea expositio* even in recent statutes both in England and India. Useful reference may be made to CROSS: Statutory Interpretation 3rd Edition at page 148. In R Vs Wandsworth London Borough Council, Ex parte, Beckwith, (1996) 1 All ER 129 at page 132 the House of Lords held that the opinion of the department concerned expressed in a circular is entitled to respect but if it is wrong, it has to be ignored.

f.v.

The Hon'ble Supreme Court of India, in a series of cases has applied the principle of *contemporanea expositio* to instructions or circulars issued by administrative authorities as a useful and relevant guide and construction placed upon an ambiguous section by the administrators entrusted with the task of executing the statute has been held to be extremely significant. See, for instance, (1) Indian Metals and Ferror Alloys Vs Commissioner of Central Excise 1991 (Supp) 5 SCC 125 at 134 para 15, (2) Raymond Synthetics Ltd Vs Union of India AIR (1992) 2 SCC 255 at 276 at para 40. This principle has been approved in (3) S.B. Bhattacharjee Vs S.D. Majumdar AIR 2007 SC 2102 at para 24 and (4) Indore Vikas Pradhikaran Vs Pure Industrial Coke and Chemicals Ltd (2007) 8 SCC 705 at 743 at para 95.

The only exception where the principle of *contemporanea expositio* and executive instructions though relevant for solving a case of ambiguity cannot be used is for bringing an implied repeal or quasi repeal, as held in Municipal Corporation for the City of Pune Vs Bhyarat Forge Col. Ltd (1993) 3 SCC 434.

It is further relevant to point out that in terms of Section 113(1), a power is also reserved upon the Central Government in the event of any difficulty arising in giving effect to the provisions of this Part (It appears to be a typo instead of Act the word 'part' appears to have been used) the Central Government has been empowered to give directions not inconsistent with the provisions of this part as may appear it to be necessary or expedient for the removal of difficulty. However, such power has to be exercised within a period of 2 years from the commencement of the Act. Under Section 113(2) of the Act, every order made under this section has to be laid, as soon as may be after it is made, before each House of the Parliament.

Keeping this in mind, I now proceed to offer my opinion in respect of 4 proposed clarifications in respect of operability, physical possession, interpretation of five year period and limitation.

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1. Operability:

In terms of section 1, sub-section (3) of the Act, the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. The Central Government has, vide Notification No. S.O. 3729(E) published in the Official Gazette on 19.12.2013, appointed the first day of January 2014 as the date on which the said Act shall come into force. Therefore, retrospective operation of the Act, as prescribed in Section 24 of the Act is also to take effect from the date from which the said Act comes into force viz., 1.1.2014. Therefore, this appears to be in order.

2. Physical Possession:

The advisory regarding physical possession also does not militate against the spirit and intent of the Act. And therefore appears to be in order.

3. Interpretation of Five Year period:

With regard to this issue viz., interpretation of five years period, two situations have been envisaged in cases where the acquisition has been initiated under the Land Acquisition Act, 1894 viz., (1) parties whose lands have been acquired have refused to accept the compensation and (2) parties whose lands have been acquired having just parted with physical possession of the land. However, in both the above situations, as on 1.1.2014, the period of 5 years would not have ended and in such cases, the advisory seeks to clarify that the new law shall apply only if the situation of pendency continues unchanged for a period that equals to or exceeds five years. In my view, it should be further clarified that in none of the cases the period of 5 years would have elapsed pursuant to an award made under Section 11 from the date of commencement of the Act and that the benefit of Section 24(2) will be available to those cases which are pending and where during pendency, the situation has remained unchanged with physical possession not being handed over or

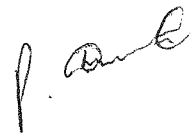
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compensation not having been accepted and the period equals to or exceeds five years.

4. Limitation:

As regards this item relating to the period spent during litigation would also be accounted for the purpose of determining whether the period of five years has to counted or not, it should be clarified that it will apply only to cases where awards were passed under Section 11 of the Land Acquisition Act, 1894, 5 years or more prior to 01.01.2014 as specified in Section 24(2) of the Act, to avoid any ambiguity. Since this legislation has been passed with the objective of benefitting the land-losers, this interpretation is consistent with that objective and also added as a matter of abundant caution that the period spent in litigation challenging an award cannot be excluded for the purpose of determining whether the period of five years has elapsed or not. If the possession has not been taken or compensation has not been paid due to the challenge to the land acquisition proceedings, the *pendente lite* period will be included to determine the five year period and including such period if the award was made five years or more prior to the commencement of the Act, then the said acquisition proceedings will be deemed to have lapsed and fresh proceedings, if so desired, will have to be initiated in accordance with the new Act.

I have nothing further to add.



(MOHAN PARASARAN)