

CORRIGENDUM

Award No.04/LAC/N/08-09 Village Civil Station property No.15
Sham Nath Marg.

Due to sum clerical errors the interest portion of the summary of the award are mentioned in the award as follows.

<u>S.No.6.</u> Intt. On 5751346(already paid) for 10 days @ 9% u/s 34 of LA Act	14181.00
Intt. On balance i.e. Rs.32541592-5751346=26790246@ 9% per annum for first year i.e. from 15.5.06 to 14.5.07	241553.00
@ 15% from 15.5.07 to 21.4.08 for 11 months & 07 days i.e. 341 days	3754304.00
Grand Total Rs.	38774652.00


Now after rectification may be read as follows:-

<u>S.No.6.</u> Intt. on 5751345 (already paid) for 10 days @ u/s 34 of LA Act	14181.00
Intt. On Balance i.e. Rs.32590631-5751345=26839286@ 9% per annum for first year i.e. from 15.5.06 to 14.5.07	2415536.00
@ 15% from 15.5.07 to 21.4.08 for 11 months & 07 days i.e. 341 days	3761177.00
Grand Total Rs.	38781525.00

(Rupees Three Crore Eighty Seven Lakh Eighty One Thousand
Five Hundred and Twenty Five only)

This corrigendum is made u/s 13-A of the land Acquisition Act 1894.

The same will be taken as part of the above said award.


(G.R.PRASAD)
ADM/LAC(NORTH)

Award No. 04/LAC/N/08-09

299/-

Award No. 04/LAC/N/08-09

Name of Village	-	Civil Station
Area	-	Civil Lines
Nature of Award	-	Permanent
Purpose of Acquisition	-	For providing on ground services building and plants to underground structures located underneath the MRTS Projects, Delhi.

A notification for acquisition of land at Sham Nath Marg of Civil Station area was notified U/s 4 of Land Acquisition Act 1894 hereinafter referred as LA Act vide notification No. F 7(22)/2004/L&B/LA/MRTS(N)1655 dated 10.5.2006. Wide publicity of the notification was made through major daily newspapers in Hindi and English languages i.e. in Nav Bharat Times in Hindi and in Times of India in English on 11.5.2006. Similarly the notice was also got pasted and displayed in the locality. The declaration U/s 6 of the LA Act was issued vide notification No. F7(22)/2004/L&B/LA/MRTS(N)1746 dt. 11.5.06.

The specification of land notified for acquisition are as under :-

<u>Village</u>	<u>Khasra No.</u>	<u>Mpl. No.</u>	<u>Total Area</u>
Civil Station	537 Min.	15 Sham Nath Marg	798 Sq. Mtrs.

Wide publicity of the declaration was also made through Nav Bharat Times in Hindi & Times of India in English on 13.5.2006. This notification was also got pasted and displayed in the locality.

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Measurement and True Area –

According to the notification u/s 4 & declaration U/s 6 of LA Act 1894 the total area of the land under acquisition was 798 sq. Mtrs. There was no dispute between the land notified as 798 sq. mtrs. and the area as measured and available on site at the time of taking possession i.e. on 15.5.2006. The entire area was found in possession of the recorded owner of land as per revenue records.

Since, when the notification U/s 4 was issued the provisions of U/s 17(4) of LA Act, which is the emergency clause were also made applicable to the present acquisition, the provisions of Section 5(A) of LA Act for inviting objections and making report to the Govt. was dispensed with.

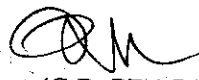
Notices u/s 9 & 10 of LA Act for inviting claims and to produce evidence in support of the claims, stating that the Govt. intends to take possession of the land were also issued to the interested persons on 12.5.2006 and served on the interested persons as per record on 15.5.2006. The notices were also got pasted and displayed in the locality.

Possession:

Possession of 798 of Mts. Of land had already been taken over on 15.5.06 and handed over to Shri Ravi Rajan Kumar, Asstt. Manager Civil, DMRC through Land & Building Deptt. of Govt. of N.C.T. of Delhi.

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Notices u/s 50(2) of LA Act were issued on 13.3.2008 to DMRC vide letter No. LAC/N/642 and served upon DMRC on 17.3.2008 whereby DMRC was afforded with opportunity to appear and adduce evidence for the purposes of determining the amount of compensation. In response to the notice Dy. Chief Engg. (G) of DMRC vide its letter DMRC/Land/15/196/336 dated 24.3.2008 submitted the comments only without any documentary evidence. In the comments the Dy. Chief Engineer stated that the Land pockets acquired from property No.13, 12, 7, 16, 18, 15, 32, 34 Sham Nath Marg vide Award No.2/1999-2000 was considered as in Residential Land use, that the land use of the property is to be decided based on Land use plan of Delhi Development Authority and that the unauthorized use of property for the commercial purpose do not entitle the Commercial rate for the property while compensation is decided. No supporting documents as Delhi Development Plan etc. has been produced by DMRC.

The claims from interested persons were received and considered while making award u/s 11 of LA Act. The details of the claims as received are discussed under the heading claims and evidences.

This acquisition involves a old structure which was got vacated by the owner from the Drugs Control Deptt. of the Govt. of NCT of Delhi. The interested persons claimed Rs.80,000/- for the old structures existed at the time of taking possession, no report regarding valuation of structures is submitted by the DMRC, the valuation report as submitted by the interested persons is allowed to the extend of 60% of the amount as estimated by approved valuer and report filed by interested persons.

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No scientific reason/analysis has been put up to support the claim but there was an structure on the site at the time of taking possession. So, it would be just and fair enough to allow 60% of the said report for a very old structure which had completed almost its entire life span.

CLAIMS & EVIDENCES:

<u>S.No.</u>	<u>Mpl. No.</u>	<u>Name of claimant</u>	<u>Details of claims & evidence</u>
1.	15, Sham Nath Marg	1. P.C. Khanna s/o Late Lala Amir Chand 2. Naveen Khanna (HUF) through its Karta Naveen Khanna S/o P.C. Khanna 3. Praveen Khanna (HUF) through its Karta Praveen Kumar S/o P.C. Khanna	1. Mkt. Value of Land a) Rs.200,000 per sq.mt. b) Rs.80,000 for structure 2. Rs.40 crore on Account of Severance Allowance 3. Other Statutory benefits 4. Copy of Broucher of Parswa Nath Developers. 5. Alternative site 6. Copy of Circle Rates 7. House Tax Receipt Showing the property as commercial property. 8. Copy of High Court Award as Commercial property in CWP No. 967 of 1987 9. Copy of Letter from All India Radio dt. 21.3.42. 10. Copy of letter from Delhi State Secretariat dt. 3.7.1954. 11. Copy of Site Plan by DMRC 12. Copy of Paper Advt. of Public Auction in the locality showing the Reserve price of Rs.1.10 Lacs per sq. yds. Approx. 13. Valuation Report of structures from a Govt. approved Valuer

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On persual of the claims filed by interested persons it is noted that they have claimed the market value of land at a Rate of 200,000/- per sq. mtr. but the claimants have not furnished any documentary evidence except that of a broucher of a colonizer and a paper cutting regarding some auction of property in the same locality but these documents could not be proved by them, except this the claimants have also not furnished any Sale deed of similar land nearer to the claimed market value. It is further observed that the claims are not only exorbitantly high but also not supported with facts, such claims are held to be unfounded hence rejected. Similarly all other claims like severance etc. are not supported by any documentary evidence hence rejected.

Compensation:


The market value of land under acquisition is to be determined with reference to the date of notification u/s 4 of LA Act 1894 which is 10.5.06 in this case. For determination of market value of land acquired its current land use, proximity of the land to the nearby developed areas, potentiality of future land use and existing facilities have been taken into consideration as required u/s 23(1) of LA Act.

Existing facilities:

At the time of acquisition the property acquired was abutted to a Petrol Pump, and exchange stores a commercial hub of Civil Lines area and was in the use for commercial purposes (Govt. Offices) since before 1957 as is clear by evidences. The property was served by well connected roads (on Sham Nath Marg).

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Proximity to nearby Developed Areas and facilities:

Land acquired under present acquisition was in the near vicinity of Oberoi Maidens Hotel which is about 100 Mts. away and was abutted to Exchange Stores & Petrol Pump & was surrounded by Sant Parmanand Hospital. All the area was fully well developed area before the date of notification u/s 4 of LA Act.

The locality has been developed and urbanized over a long period. The Delhi Vidhan Sabha is about 500 Mtrs. away. The Raj Niwas & other Govt. offices of Govt. of NCT of Delhi and Tis Hazari Court are also within a few Kilometers from the land. The area is very close to the northern part of the Ridge in Delhi which provides adequate greenery to the locality.

Current Land Use:

The land under acquisition was in use of Drugs Control Departments All India Radio of Delhi Administration since before 1957 as is clear by the evidences adduced and is also stated in letter No. Tax/CLZ/2008/2367 dt. 18.3.2008 received from Assistant Assessor & Collector (MCD) Civil Lines Zone. The land was at Main Sham Nath Marg adjacent to exchange stores and as clear by the order passed by Hon'ble High Court in CWP No.967 of 1987 on page No.11 & 12 of the order, was not used for residential purposes and was used for Commercial purposes since before 1957.

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Section (14) of Delhi Development Act comes into force provides "User of land & building in contravention of plans - After coming into operation of any of the plans in a zone no person shall use permit to be used any land or building on that zone otherwise than in conformity with such plan.


Provided that it shall be lawful to continue to use upon such terms & conditions as may be prescribed by regulation made in this behalf any land or building for the purpose and to the extent for and to which it is being used upon the date on which such plan comes into force."

This point was under consideration in award in the matter of Civil Writ Petition No. 967 of 1987 for the same property i.e. 15, Sham Nath Marg, before the Hon'ble High Court of Delhi. Hon'ble High Court considered this point vis-avis the Land use and proviso appended with Section 14 of Delhi Development Act and held vide its order in the said writ petition.

There is enough evidence produced by the petitions to prove that the very first lease of this property immediately after its construction in 1942, was taken by the Government for office purposes with effect from Sept., 1942, and that, since then, this property has been in the occupation of the Government till date. To start with, the Government acquired it on lease for use of the offices of All India Radio. Documents Ex. C1 to C10 produced by the petitioners made it clear that the letting purpose from 1942 till 1995 was always for offices of the Government, and not for residential purpose. This means that, long before the Delhi Development Act, 1957, came into force and the Master Plan thereunder was

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promulgated in 1962, this property had already been in occupation of the Government, as its lessee or requisition is under the contract of lease, or the order of requisition as the case may be; and that the purpose of letting / requisition was invariably for use as, departmental offices of the Government. That being so, nothing contained in Delhi Development Act can have any adverse effect on the right of the petitioners to lease this property for office / commercial purpose, and for a prospective lessee to take it on lease as such. No regulation etc. making such user illegal in the area seems to have so far been made under the proviso to section 14, Delhi Development Act; at least none has been brought to my notice by counsel for the respondents inspite of several opportunities afforded to her for the purpose.

I may cite here with advantage a Division Bench ruling of the High Court of Delhi reported as 18 (1980) Delhi Law Times 354, Delhi Development Act 1957, came up for interpretation. The High Court held that the proviso to that section carves out an exception to the prohibition for using or permitting to be used, any land or building in a zone after the coming into operation of any of the plans in a zone otherwise than in conformity with such plans, and that the said exception, makes it legal for a building, etc. to continue to be used for a purpose for which it was being previously used so long as regulations are not framed and promulgated by the authority competent to do so under law.

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Now, since this property was previously being used for office purposes, the Master Plan which come into force in 1962 could not any effect any such user, assuming that the said plan prescribes the land used for the area for residential purposes only. As already stated, no regulations, prohibiting user of property for commercial / office purposes, after the promulgation of the Master Plan have so far been framed for the Alipur Road Area.

I have, therefore, no hesitation in holding that damages for use and occupation of the property by the Government for its departmental office have to be determined on the basis of its market rate prevailing from time to time during the relevant period treating it as office / commercial property.

Since the land use had already been decided by the award in CWP No. 967 / 87 Shri Pratap Chand Khanna Vs. the L. G., Delhi & others Hon'ble Delhi High Court, the plea of Delhi Metro Rail Corporation does not hold water. Secondly, the Delhi Metro Rail Corporation has not provided any evidence against commercial use of this property at the time of acquisition of the property and since before 1957. Since the land use of the property had already been decided by Hon'ble High Court in respect to this property in above Civil Writ Petition. I have no hesitation to accept the judgement of the Hon'ble High Court as commercial land use of this property. This view is also confirmed by the Report of Asstt. Assessor & Collector, Civil Lines Zone, MCD vide its letter No. Tax/CLZ/2008/2367 dated 18.3.2008.

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Market Value:

For arriving at a true market value on specified date three methods of evaluation are followed. In the first method attempts are made to look for evidences of sales transaction of similar lands in the vicinity as a measure of market value. But neither the claimants have submitted any evidences of similar sales transactions, nor such comparable sales transactions could be noted and if any transaction is available is of very small parcels of land so could not be considered.

In the second method the market value arrived at by an expert body i.e. Schedule of Market Value of land notified by deptt. of Urban Development, Ministry of Urban Affairs and Employment vide Nos. J22011/4/95-LD dated 16.4.99 for different localities have been taken into consideration. The indicative market prices as provided in the schedule are Rs.14490/- per sq. mtr. for Commercial use. But the indicative market prices were effective from 1.4.98 and till 31.3.2000 only. On the other side the claimants have submitted copy of circle rates. The market value as per Circle rates is Rs.27,300/- per sq. mtr. for residential use with a multiplicative use factor of 3 for commercial use (The definition of the land use is to be taken as in Unit Area Property Tax System). The definition for commercial land use category as given in Unit area property tax system is "Business building shall mean any building or part thereof use for transaction of building or for transaction of business or for keeping of accounts and records or for similar other purposes and such building shall include (1) office, banks, professional establishments,

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court houses, libraries for the principal function of transaction of public business and keeping of books and records, (2) Office building (premises) solely or principally used as office or for office purposes and (3) one and two star hotels, restaurants, lodges and guest houses. But these Rates are effective from 11.7.2007 only. In this case we have to assess the market value as on 10.5.06 i.e. the date of notification u/s 4 of LA Act. So to arrive at the true and fair market value an escalation of 10% per annum compounded annually is allowed on 14490 per sq. mtr. from 1.4.1998 to 10.5.06 i.e. for a period of 8 years and one month app. as allowed by Supreme Court of India & High Courts in numerous cases of Land Acquisition. So the rate arrived at is Rs.31819/- per sq. mtr. which is allowed as the true and fair market value of land under present acquisition.

Other benefits:

Solatium – Besides, the compensation on market value of land the rightful claimants are also entitled to solatium @ 30% over the market value of land as required u/s 23(2) of the Act.

Additional Benefits:

The entitled persons are also given additional benefit @ 12% per annum U/s 23(1)(A) on market value of land from the date of notification u/s 4 of the Act i.e. 10.5.06 till the date of possession i.e. 15.5.06 (for a period of 6 days) for land measuring 798 sq. mtrs.

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Compensation towards trees:

Three trees were found on the acquired land. Hence Rs.1000/- per tree is allowed towards compensation for trees.

Interest U/s 34 of LA Act:

As the possession of land had been taken over on 15.5.06 and handed over to Land & Building Department of Govt. of NCT & thereby to DMRC. The interest is payable on unpaid amount @ 9% for first year and @ 15% for the rest of the term, from the date of possession till the date of Award, as per provision of section 34 of LA Act 1894. In this case a letter was issued to the rightful owner Sh. P.C. Khanna for receiving Rs.5751346/- on 24.5.06. So the interest on this amount is allowed for 10 days @ 9% per annum. On rest of the amount of compensation interest from 15.5.06 is allowed @ 9% for first year and @ 15% for 11 months ^{+ 7 days DM} i.e. till 24.4.08 i.e. the date of Award.

Apportionment:

The land acquired was in the name of Sh. P.C. Khanna s/o Late Lala Amir Chand Khanna as recorded owner in the revenue records. Although Shri P.C. Khanna together with Sh. Naveen Khanna (Karta HUF) & Parveen Khanna (Karta HUF) had claimed that they had a partition deed but the copy of partition deed was not submitted together with claims u/s 9 & 10. Hence the entire amount of compensation is allowed to Sh. P.C. Khanna s/o Late Lala Amir Chand Khanna i.e. the recorded owner. Though all of them can come to an agreement and get the amount apportioned if agreed amongst them.

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SUMMARY OF THE AWARD

ITEMS	AMOUNT in Rs.
1. Compensation towards market value of land measuring 798 sq. mtrs. Amounting Rs. 31319 sq.mtr.u/s23(1) of LA Act.	24992562.00
2. Additional Benefit @ 12% per annum for a period of 6 days over the market value of land u/s 23(1A) of the act	49300.00
3. Solatium @ 30% over the compensation for land u/s23(2) Of the Act	7497769.00
4. Compensation towards 3trees @ 1000 per tree	3000.00
5. Compensation towards structures	48000.00
Total Amount of consideration	-----
6. Intt. On 5751346(already paid) for 10 days@ 9% u/s 34 of LA Act	32590631.00
Intt. On Balance i.e. Rs.32541592- 5751346=26790246 @ 9% per annum for first year i.e. from 15.5.06 to 14.5.07	14181.00
@ 15% from 15.5.07 to 21.4.08 for 11 months & 07 days i.e.341 days	2415536.00
	3754304.00
Grand Total Rs.	-----
	<u>38774652.00</u>

(Rupees Three Crores Eighty Seven Lakhs Seventy four thousand six hundred & Fifty two only)

This Award is made u/s 11 of the Land Acquisition Act.

Award announced in open court
and filed u/s 12 of LA Act 1894.


(G.R.PRASAD)
ADM/LAC(North)

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