

**RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)**

**RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013**

**RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013**

FAO No.6315 of 2013

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

**1. RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)**

Union of India and another ... Appellants

Versus

Tarlochan Singh and another ... Respondents

**2. RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013**

Union of India and another ... Appellants

Versus

Tarlochan Singh and another ... Respondents

**3. RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013**

Union of India and another ... Appellants

Versus

Tarlochan Singh and another ... Respondents

4. FAO No.6315 of 2013

Tarlochan Singh ... Appellant

Versus

Union of India and others ... Respondents

**RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)**

**RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013**

**RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013**

FAO No.6315 of 2013

-2-

Date of Decision: 14.03.2016

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rajiv Kapoor, Advocate,
Mr. Gunjan Rishi, Advocate,
Ms. Sonia Madan, Advocate,
Mr. Raghujeet Singh Madan, Advocate,
for the applicant-appellants.

Mr. Puneet Jindal, Sr. Advocate,
with Ms. Sakshi, Advocate,
for the respondents in review applications and
for the appellant in FAO No.6315 of 2013.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. This order will dispose of RA-CR No.196-CII of 2014 (O&M) in/and FAO No.254 of 2014 (O&M), RA-CR No.199-CII of 2014 (O&M) in/and FAO No.6225 of 2013, RA-CR No.197-CII of 2014 (O&M) in/and FAO No.6226 of 2013 & FAO No.6315 of 2013.

2. It may be noticed at the outset that both the disputing parties had appealed to this Court under section 37 of the Arbitration & Conciliation Act, 1995 against the order passed by the learned Additional District Judge, Jalandhar on an application preferred against the awards of the Arbitrator dated June 04, 2010 and July 19, 2010. The award dated July 19, 2010 was passed by the Arbitrator [Commissioner of the Division

**RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)**

**RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013**

**RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013**

FAO No.6315 of 2013

-3-

exercising powers under the National Highways Act, 1956 as amended] by reviewing his first award dated June 04, 2010. It may also be noted that against dismissal of the appeals, SLPs No.10645 and 10646 of 2004 were filed in the Supreme Court. The appellant, National Highways Authority of India at the hearing sought leave of the Court to withdraw the Special Leave Petitions and the same was accordingly dismissed as withdrawn with liberty in case review application was filed in the High Court it would be decided in accordance with law.

3. On return from the Supreme Court, these four cases consist of three review applications filed by the Union of India through the National Highway Authority of India [NHAI] to review the order dated January 08, 2014 and February 03, 2014 passed in FAO No.6225 of 2013 and connected appeals. There has been a delay in filing of the Review Applications which have to be attended first.

CM No.20861-CII of 2014

4. The delay of 187 days in filing the review application is condoned under section 5 of the Limitation Act, 1963 for the reason stated in CM No.20861-CII of 2014. The delay was occasioned when the NHAI approached the Supreme Court against the order under review. The Supreme Court dismissed the petition on August 04, 2014 and the orders were received on August 20, 2014. As averred the certified copy of the order was

sent vide letter dated August 27, 2014 and was received by NHAI on

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-4-

September 02, 2014 and the review application was filed on September 07, 2014. This has caused the delay of 187 days but it is urged that the same is neither intentional nor deliberate and there is sufficient cause to condone the delay which has been caused by procedure followed deducting the time spent in pursuing lawful remedy against the orders appealed against. The prayer is accepted and the delay in filing the review application is condoned so also the accompanying applications.

The application/s stands disposed of.

Review Application/s

5. Notice of the review application was issued to the non-applicants vide order dated October 09, 2014. Notice re.: stay of execution proceedings was also issued and in the meanwhile it was directed that the Execution Court would adjourn the case to a date beyond the date fixed by this Court.

6. Mr. Puneet Jindal, learned senior counsel appearing for the respondent has raised a preliminary objection on the maintainability of the review application itself. In support of the objection, learned senior counsel has especially placed a strong reliance on the judgment of the Bombay High Court in Review Petition (ST) No.16618 of 2010 in Arbitration Appeal No.5 of 2008 in case titled **M/s. Madhav Structural Engineering Ltd. v.**

The Maharashtra State Road Development Corporation Limited of

which a copy is produced. The learned Single Judge of the Bombay High

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-5-

Court has held that the Arbitration & Conciliation Act, 1996 [for brevity “A&CA”] is a self-contained code and as the said Act does not provide any remedy of review, it is manifest that the review could not be made. If the right of review is not provided and is allowed to be exercised, any order passed would be ultra vires and without jurisdiction.

7. Mr. Jindal places further reliance on a string of judgments to bolster his preliminary objection. These are: (1) **Kalabharati Advertising v. Hemant Vimalnath Narichania and others**, (2010) 9 SCC 437; (2) **Kiran Rampal and others v. V.N. Ojha, Chairman and others**, 1997 (1) SimLJ 52; (3) **Hind Samachar Limited, Jalandhar v. XYZ** and connected case viz. **Smt. Sudarshan Chopra and others v. Vijay Kumar Chopra and others**, 2002 (4) Comp L.J. 1; 2003 (43) SCL 501; (4) **Superintending Engineer v. B. Subba Reddy**, (1999) 4 SCC 423; (5) **Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi**, (1980) 2 SCC 167 and (6) **Kamlesh Verma v. Mayawati and others**, (2013) 8 SCC 320.

8. In *Kalabharati Advertising* [Supra; case-1)] the Supreme Court dealt with a case arising out of an order passed by the Municipal Corporation of Greater Mumbai by which the commercial hoarding fixed by the appellant-advertising company had been removed in spite of agreements between the parties alleging breach. The Supreme Court considered the question of review in absence of statutory provisions allowing review

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-6-

against a judicial or quasi judicial order and held it was not permissible in passages 12 to 14 as follows:-

*“12. It is settled legal proposition that unless the statute/rules so permit, the review application is not maintainable in case of judicial/quasi-judicial orders. In absence of any provision in the Act granting an express power of review, it is manifest that a review could not be made and the order in review, if passed is ultra-vires, illegal and without jurisdiction. (vide: **Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar & Anr.**, AIR 1965 SC 1457; and **Harbhajan Singh v. Karam Singh & Ors.**, AIR 1966 SC 641).*

*13. In **Patel Narshi Thakershi & Ors. v. Shri Pradyuman Singhji Arjunsinghji**, AIR 1970 SC 1273; **Maj. Chandra Bhan Singh v. Latafat Ullah Khan & Ors.**, AIR 1978 SC 1814; **Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidhyalaya, Sitapur (U.P.) & Ors.**, AIR 1987 SC 2186; **State of Orissa & Ors. v. Commissioner of Land Records and Settlement, Cuttack & Ors.**, (1998) 7 SCC 162; and **Sunita Jain v. Pawan Kumar Jain & Ors.**, 2008 (1) R.C.R.(Criminal) 954 : 2008(1) R.A.J. 563 : (2008) 2 SCC 705, this Court held that the power to review is not an inherent power. It must be conferred by law either expressly/specifically or by necessary implication and in absence of any provision in the Act/Rules, review of an earlier order is impermissible as review is a creation of statute. Jurisdiction of review can be derived only from the statute and thus, any order of review in absence of any statutory provision for the same is nullity being without jurisdiction.*

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in absence of any

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-7-

statutory provision providing for review, entertaining an application for review or under the garb of clarification/modification/correction is not permissible.

9. In *Kiran Rampal* (Supra) the learned Single Judge of this Court dealt with a review application in a contempt petition. The Court applied past precedent to arrive at the conclusion after noticing the Division Bench ruling of the Allahabad High Court rendered in **State v. Baldev Raj**, 1992 Criminal Law Journal 1251 affirming it, that when a decision or order is passed under the Contempt of Courts Act, 1971 on merits, there is an implied prohibition in the Act to recall the order or decision because the punished contemnor has been given a right of appeal. However, even after a final order or decision, the High Court has inherent power only to correct clerical or typing mistake or an error apparent on the face of record. When the Act does not confer inherent power or power of recall or review and provides remedy against order or decision in matters of contempt, the power of the High Court to recall or review in matters of contempt cannot be invoked.

10. In *Hind Samachar Limited* [Supra; case-3]) the observations made by the Division Bench of this Court in para.5 are referred to, which read:-

“5. Learned counsel have, thus, in the first instance, limited their submissions to the issue of maintainability of the instant appeal and the continuation/vacation/ modification

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-8-

of the interim order dated 22.08.2001. Briefly stated, the contention of the learned counsel for the appellants is that for an answer to the issue of jurisdiction, reference must be made to the provisions of the Companies Act, 1956, whereunder a remedy of appeal against an order passed by the Company Law Board stands provided under Section 10F of the Companies Act, 1956. The contention of the learned counsel for the respondents, on the other hand, is that the answer to the controversy in respect of the issue of jurisdiction must emerge from the provisions of the Arbitration Act, 1996, which exclude the remedy of appeal from an order passed under Section 8 of the Arbitration Act, 1996. Our first endeavour, therefore, is to determine which of the two statutes is applicable to determine the maintainability of the instant appeal.”

11. This case deals directly with the A&CA by a comprehensive judgment after noticing innumerable past precedents of the Supreme Court and other Courts on a conspectus of judicial opinion expressing the view that the Arbitration Act, 1996, is an exclusive, exhaustive and comprehensive code. I do not see how this case is of any help in resolving the present review applications.

12. The next ruling cited is in *B.Subba Reddy* [Supra; case-4)] where the Supreme Court dealt with the provisions of the Arbitration Act, 1940 but is of no direct help on the issue of review and requires no detailed discussion.

13. In *Northern India Caterers (India) Ltd.* [Supra; case-5] the Supreme Court dealt with the provisions of the Arbitration Act, 1940 but it

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-9-

is also of no avail on the issue raised by Mr. Jindal as to the maintainability. In this case the Court dealt with the scope of its own power of review in the light of Article 137 and Order 47 Rule 1 of the CPC, apart from the provisions of the Supreme Court Rules, 1966 and Order 40 Rule 1 CPC observing that in a decision based on undisputed facts there cannot be said to be an error apparent on face of record and thus no review is maintainable on the grounds that certain alternative situation was not placed before the Court for its consideration. This ruling is distinguishable on facts and the principle applied is of no moment in the context of the present case as would reveal when the facts are revisited to examine if there has been a failure of justice.

14. In *Kamlesh Verma* [Supra; case-6) the Supreme Court lucidly culled out the different situations when review will be maintainable and when not. The guiding principles were summarized in para.16 of the report which reads as follows:-

“Summary of the Principles :

16. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute :

(A) When the review will be maintainable:-

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-10-

record;

(iii) Any other sufficient reason.

*The words "any other sufficient reason" has been interpreted in **Chhajju Ram v. Neki, AIR 1922 PC 112** and approved by this Court in **Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius & Ors., (1955)1 SCR 520**, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India v. Sandur Manganese & Iron Ores Ltd. & Ors., 2013(3) Recent Apex Judgments (R.A.J.) 436 : JT 2013(8) SC 275**.*

(B) When the review will not be maintainable :-

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-11-

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived.”

15. On the above premises Mr. Jindal asserts that the review applications deserve to be dismissed summarily. A review proceeding cannot be equated with the original hearing of the case.

16. On the other hand, Mr. Rajiv Kapoor, learned counsel appearing for the applicant NHA I also relies on *Kamlesh Verma* (Supra) but reads it differently in his own way as favouring his contention. The Supreme Court in para.14 & 15 of the judgment held that the review of the earlier order cannot be done unless the Court is satisfied, to quote:

*“Review of the earlier order cannot be done unless the court is satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. This Court in **Col. Avtar Singh Sekhon v. Union of India** [1980 Supp SCC 562- held as under: (SCC p. 566, para 12)*

*“12. A review is not a routine procedure. Here we resolved to hear Shri Kapil at length to remove any feeling that the party has been hurt without being heard. But we cannot review our earlier order unless satisfied that material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. In **Sow Chandra Kante v. Sk. Habib** [(1975 1 SCC 674] this Court observed: (SCC p. 675, para 1)*

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-12-

‘1. ... A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. ... The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality.’”

15. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.” [emphasis added]

17. Further in the same judgment the Supreme Court observed that error contemplated under the rule (Order 47 Rule 1 CPC) must be such which is apparent on the face of the record and not an error which has to be fished out and searched. It must be an error of inadvertence. The power of review can be exercised for correction of a manifest mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. A review is by no means an appeal in disguise whereby erroneous decision is re-heard and corrected and lies only for patent error.

In para.17 the Supreme Court observed:-

“17. In a review petition, it is not open to the Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto.

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-13-

This Court, in Kerala State Electricity Board v. Hitech Electrothermics & Hydropower Ltd. & Ors., (2005)6 SCC 651, held as under :

"10. ...In a review petition it is not open to this Court to re-appreciate the evidence and reach a different conclusion, even if that is possible. Learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

18. Mr. Kapoor relies on certain observations made in **L.Chandra Kumar v. Union of India and others**, AIR 1997 SC 1125. This ruling is relied upon not so much from the stand point of the issue of maintainability and power of review but from the point of the power of judicial review of the High Court under Article 226 of the Constitution which cannot be excluded even by a Constitutional amendment. Judicial review in India

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-14-

comprises of three aspects; judicial review of legislative action, judicial review of judicial decisions and judicial review of administrative action. What Mr. Kapoor urges is that this Court exercises power of judicial review under Article 226 and 227 of the Constitution and thus the approach has to be a judicial approach and hence its responsibility is greater being a court of record. He then refers to **M.M. Thomas v. State of Kerala**, 2000 (1) SCR 33 to support his argument.

“12. It is true that the application for review did not mention that there was any concession made by the Government counsel. Hence there is force in the contention that review could not be made on that premise. So far as Forest Tribunal is concerned its power of review can be traced to Section 8C. Unless law has conferred power of review the inferior Courts and tribunals cannot exercise any such power of review. So the Forest Tribunal can exercise power of review in conformity with Section 8C of the Act.

13. In this case we are not concerned with the power of review of the Forest Tribunal. It was High Court which reviewed its own judgment and so the question is whether the High Court has such power de hors Section 8C(2) of the Act. Power of review conferred on the Supreme Court under Article 135 of the Constitution is not specifically made applicable to the High Courts. Does it mean that the High Court has no power to correct its own orders, even if the High Court is satisfied that there is error apparent on the face of the record ?

14. High Court as a Court of Record, as envisaged in Article 215 of the Constitution, must have inherent powers

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-15-

*to correct the records. A Court of Record envelopes all such powers whose acts and proceedings are to be enrolled in a perpetual, memorial and testimony. A Court of Record is undoubtedly a superior Court which is itself competent to determine the scope of its jurisdiction. The High Court, as a Court of Record, has a duty to itself to keep all its records correctly and in accordance with law. Hence, if any apparent error is noticed by the High Court in respect of any orders passed by it the High Court has not only power, but a duty to correct it. The High Court's power in that regards is plenary. In **Naresh Sridhar v. State of Maharashtra, (1966) 3 SCR 744**, a nine Judge Bench of this Court has recognised the aforesaid superior status of the High Court as a Court of plenary jurisdiction being a Court of Record.*

15. In Halsbury's Laws of England (4th Edn. Vol. 10, para 713) it is stated thus :

"The chief distinctions between superior and inferior Courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior Court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior Court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court. An objection to the jurisdiction of one of the superior Courts of general jurisdiction must show what other Court has jurisdiction, so as to make it clear that the exercise by the superior Court of its general jurisdiction is unnecessary. The High Court, for example, is a Court of universal jurisdiction and superintendency in certain classes

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-16-

of actions, and cannot be deprived of its ascendancy by showing that some other Court could save entertained the particular action." (Though the above reference is to English Courts the principle would squarely apply to the superior Courts in India also.)

16. Referring to the said passage and relying on the decision of this Court in Naresh Shridhar Mirajkar (*supra*) a two Judge Bench of this Court in **M.V. Elisabeth v. Karwan Investment and Trading Pvt. Ltd.**, 1993 Supple. (2) SCC 433, has observed thus :

"The High Courts in India are superior Courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, or discretionary jurisdiction of the Supreme Court, the High Courts have unlimited jurisdiction. . . ."

17. If such power of correcting its own record is denied to the High Court, when it notices the apparent errors its consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of record."

19. He also brings forth the ruling of the Constitution Bench in **Shivdeo Singh and others v. State of Punjab and others**, AIR 1963 SC 1909. Para.8 of the judgment he relies on reads as follows:-

"8. The other contention of Mr. Gopal Singh pertains to the second order of Khosla, J., which in effect, reviews his prior order. Learned counsel contends that Article 226 of the

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-17-

Constitution does not confer any power on the High Court to review its own order and, therefore, the second order of Khosla, J., was without jurisdiction. It is sufficient to say that there is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Here the previous order of Khosla, J., affected the interests of persons who were not made parties to the proceeding before him. It was at their instance and for giving them a hearing that Khosla' J. entertained the second petition. In doing so, he merely did what the principles of natural justice required him to do. It is said that the respondents before us had no right to apply for review because they were not parties to the previous proceedings. As we have already pointed out, it is precisely because they were not made parties to the previous proceedings, though their interests were sought to be affected by the decision of the High Court, that the second application was e entertained by Khosla, J.”

20. He then cites the judgment in **A.R. Antulay vs. R.S. Nayak and another**, AIR 1988 SC 1531 which is a sheet anchor on powers of review holding that such power is inherent in Court untrammelled by legislation.

21. Mr. Kapoor further relies on a decision of the **Delhi High Court in National Highways Authority of India vs. ITD Cementation India Limited**, 2007 (4) Arb. LR 555 (Delhi) (DB) but this case will be examined later in the appropriate stage of judgment since it touches upon

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-18-

the merits of the case on abdication of authority and not on point of maintainability.

22. The issue of maintainability of the review application has to be examined within the parameters of the law cited by both the learned counsel. Frankly, one thing is certain there is no provision for review in the A&CA. On strength of judicial precedent [not necessarily under A&CA] it appears that to invoke jurisdiction there must either be a patent or substantial error apparent on the face of record. The decision in *Shivdeo Singh* (Supra) is an authority rendered by Constitution Bench where the power of review was brought within the principles of natural justice. *M.M. Thomas* (Supra) explains that the power of review is inherent in the Court and the High Court not only possesses power to correct its own orders but a duty to correct it. The High Court's power in that regard is plenary. To reiterate what is said in para.17 of *M.M. Thomas* is that if such power of correcting its own record is denied to the High Court, when it notices the apparent errors its consequence is that the superior status of the High Court will dwindle down. Therefore, it is only proper to think that the plenary powers of the High Court would include the power of review relating to errors apparent on the face of the record. I would tend to think that the review applications should not be thrown out on maintainability and apply the law in *M.M.Thomas* and *Antulay* cases coupled with respect of natural justice and and to tread a path which avoids miscarriage of justice if the

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-19-

grounds of review are real. In summary disposal of appeal in motion hearing there may be lack of appreciation of the total case resulting in substantial, manifest or grave error. After admission of an appeal it is a different matter because a review is not a rehearing of an appeal. I believe I passed the order in some haste without sufficient debate before me and without acquainting myself with the full picture. A decision is only as good as what is present in the mind of the court. I would also favour retracing of steps to honour what Justice Bronson said in *Pierce v. Delamater* 1 NY 3 (1847): A.M.Y. p.18 :-
“A judge ought to be wise enough to know that he is fallible and, therefore ever ready to learn: great and honest enough to discard all mere pride of opinion and follow truth wherever it may lead: and courageous enough to acknowledge his errors.” We are now left with the orders in review i.e. dated January 08, 2014 and February 03, 2014 to examine whether review is justified.

23. In quintessence and in its justification, a review petition is no more than an address to the conscience of the court, a party remaining in reasonable belief that not a mere but a substantial error was committed in the disposal of the case. It is an address essentially to what may not have been present in the mind of the court or brought to its notice which could potentially alter the fabric of the decision. While hearing a review application the reaction of the court should, I think, be first to invite an argument to reveal fault, if there is one, and then to work carefully

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-20-

backwards to reach a conclusion whether review is called for or not. Here is where the legal principles attaching to review jurisdiction would come into play. A review, without quarrel, can be both on error of law or a substantial error committed on core facts resulting in a miscarriage of justice, the motion being addressed internally to the conscience of the court, more confessional than reactionary.

24. With a view to understand the orders I passed in the appeals brought for review, the brief but vital facts of the case need to be noticed [without intending to express any opinion on them] which exercise, quite honestly speaking, was not done when the appeal/s were heard in summary and decided in motion hearing, while the respondent was on caveat.

The Facts

25. Land measuring 13 Marlas belonging to the respondents instituted in Village Bhogpur was acquired vide notification dated December 24, 2004 by the National Highway Authority of India for expansion of the Highway. The quality of land was Chahi. The rate assessed was @ Rs.10,00,000/- per acre. Accordingly an amount of Rs.1,23,050/- was paid with interest. The Arbitrator was the Commissioner, Jalandhar Division. Two awards were passed on remand.

26. The acquired land was notified for acquisition under section 3-A of the National Highways Act which was published on December 24,

2004. The SDM, Jalandhar-cum-competent authority under the Act

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-21-

determined compensation to be paid to land owners for the acquired land at market rates prevalent on the date of the notification published on December 24, 2004 after getting approval of the Commissioner, Jalandhar Division. The land was classified as Chahi and was assessed as Rs.10 lacs per acre. There neither was nor exists a boundary wall standing on the acquired land of respondent No.1-Tarlochan Singh. Accordingly, an amount of Rs.1,23,050/- was paid to Tarlochan Singh for land measuring 13 Marlas falling in village Bhogpur, acquired for expansion of the Highway.

27. Aggrieved by compensation awarded, respondent No.1 filed a petition for enhancement of compensation before the Arbitrator who under the NH Act was the Commissioner, Jalandhar Division, Jalandhar. Compensation was enhanced to Rs.41 lacs vide award dated April 04, 2009.

28. Feeling dissatisfied with the enhancement in compensation NHAI presented an application under section 34 of the A&CA before the learned Additional District Judge, Jalandhar who vide orders dated March 09, 2010 remanded the award back to the Arbitrator to make a fresh award after taking into account all the aspects stipulated under sections 3(G) (7) (a) to (d) of the NH Act. The learned ADJ while remanding the case terminated the proceedings in first appeal under section 34 of the A&CA. The operative part of the order reads as follows:-

*“Since merely setting aside of the award would not meet
ends of justice as application of the petitioner against*

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-22-

inadequacy of the compensation etceteras is to be decided by the Arbitrator, lawfully, the Arbitrator is asked, to make a fresh award after taking into consideration all of the aspects stipulated by Section 3(G) (7) (a) to (d) of the National Highways Act 1956.

As the matter in hand relates to the year 2004 and the landlords deprived of their lands are yet to be lawfully compensated, the Arbitrator is expected to resume his proceedings from 20/04/2010 and to make the award within 3 months thereafter/ Both of the parties to this list are directed to appear before the Arbitrator on the date fixed. Record of Arbitrator be returned to concerned quarters.”

29. The Arbitrator conducted remand proceedings afresh and passed the award dated June 04, 2010. The parties were allowed to lead fresh evidence. Additional evidence was also allowed to be adduced on an application filed by Tarlochan Singh. These were copies of Jamabandi, sale deed and the copy of the Collector rate. The land owner claimed compensation enhanced to Rs.2.5 lacs per Marla being the amount of compensation granted to M/s D.K. Petrol Pump which was 50 yards away from National Highway. He claimed interest on enhanced amount; compensation for boundary wall and severance charges. The Arbitrator took into consideration the arbitration file in the case of M/s D.K. Petrol Pump and copy of registered sale deed Exbs.P-16 & P-17. The Arbitrator referred to the provision of Section 3G (7) of the National Highways Act, 1956 and without any discussion on the points raised proceeded to allow the prayers

**RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)**

**RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013**

**RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013**

FAO No.6315 of 2013

-23-

of Tarlochan Singh. So far as the boundary wall was concerned it was compensated at Rs.200 per ft. length-wise. The direction was made subject to verification by the Revenue Authority if the wall existed as claimed by the land owner. Interest @9% was awarded on the enhanced amount from the date of notification if paid within 60 days from the announcement of the remand award and 15% interest to be charged in case, paid after 60 days, it would increase to 18% interest from the date of notification of 2004 if enhanced amount was not paid within six months from the award dated June 04, 2010 made in remand proceedings. The enhancement was based on price of land given to M/s D.K. Petrol Pump. A cut from the compensation awarded to the aforesaid Petrol Pump was made keeping in view the fact that the Petrol Pump was of high commercial nature than the suit land. The Arbitrator entertained the review petition filed by the land owner seeking clarification of the award urging that the boundary wall and flooring may be compensated separately. The land acquired was not 13 Marlas but 20 Marlas. Land owner claimed business loss to be compensated adequately. It was recorded in the review order that both the learned counsel argue that the Review Petition may be looked into. It is not disputed that a hotel was built on the site in issue. The Arbitrator amended the award dated June 04, 2010 and granted compensation for flooring of the land @ Rs.150 per sq. ft. subject to verification by the Revenue Authority, if it existed as claimed by the land owner. The size of land was increased to 20 Marlas subject to

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-24-

verification of ownership as well as share status of the shareholders, if any, and disbursed the award accordingly. The Arbitrator went on to award compensation of Rs.5 lacs on account of shrinking of front portion of land area on the assumption that business was affected. This review award was made on July 19, 2010. Both the awards dated June 04, 2010 and July 19, 2010 were challenged by both the parties in petition presented under section 34 of the A&CA under which proceedings have culminated in the impugned judgment dated July 06, 2013 without discussion or any justification. NHAI disputed the size of the acquired land and insisted it was 13 Marlas of agricultural *chahi* land which is not commercial in nature and urged on a point of fact that no boundary wall surrounded the land.

30. Against the order of the learned Additional District Judge, Jalandhar arising out of remand proceedings, NHAI preferred the present appeals under section 37 of the A&CA which was dismissed by this Court on January 08, 2014. This Court took the view that no sufficient or satisfactory explanation for the delay in filing the appeal under section 37 of the A&CA was forthcoming except the delay occasioned in the office of the counsel in the presentation of the appeal. The appeal was dismissed on grounds of delay and bar of limitation. On merits, after hearing the learned counsel for the caveator Mr. Puneet Jindal and learned counsel for the appellants, Mr. Rajiv Kapoor, I took the view that when the adjoining land

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-25-

was acquired for Rs.2.5 lacs per Marla in the earlier award (M/s D.K. Petrol Pump), there would be no justification in granting Rs.2.15 lacs per Marla in the present case by applying the principles of parity. On point of law pressed by NHAI, this Court took the view that the Arbitrator cannot exercise review power, and on due reflection, does not appear to be a correct statement of the law while reading section 33 (4) which permits Arbitrator to make an additional arbitral award based on the original claims presented in the arbitral proceedings but which have not found way through adjudication in the arbitral award. As far as the argument raised by NHAI that the award does not quantify specifically the claims in terms of rupees and paisa or that certain matters have been left to be determined by the revenue authority was viewed as not detaining the Court as such matters could be sorted out in execution proceedings and the correctness of the findings of the revenue authorities can be tested after hearing both sides meaning thereby whenever the revenue authorities make an assessment. For these reasons, the appeals were dismissed.

31. Aggrieved by the orders in appeal, NHAI preferred SLP Nos.10645-10646 of 2014 arising out of the appeals filed by NHAI. The Supreme Court passed the following order on August 14, 2014:-

“Delay condoned.

*Petitioner seeks leave of this Court to withdraw the
Special leave petition. It is accordingly as withdraw with
liberty to the petitioner to approach the High Court for*

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-26-

*review. If the review petition is filed, the same may be
disposed of by the High Court in accordance with law.”*

32. It is in this background the NHAI has approached this Court for review of the orders.

33. Mr. Rajiv Kapoor, learned counsel appearing for NHAI has raised several arguments to submit that the review applications deserve to be allowed. He asserts that the Arbitrator to start with had no jurisdiction to review its own order/award under the garb of section 33 of the A&CA. It is urged that this Court in dismissing the appeals concluded that the Arbitrator can make additional award under section 33 (4) of the A&CA. The legal point in issue really was that the Arbitrator had reviewed its own award which it had no jurisdiction to do, except when the mechanism provided in section 33 was satisfied. The enhancement made by the Arbitrator were manifold and the compensation awarded by the Land Acquisition Collector, who was the competent authority in the present matter was not properly quantified. The Arbitrator could not have relied on the award of M/s D.K. Petrol Pump for claiming enhanced compensation since the award in that case was challenged by NHAI and the same was set aside by the Appellate Court at Jalandhar and the case remanded to the Arbitrator to decide afresh the compensation. Those proceedings are pending adjudication before the same Arbitrator and the award has not been announced so far.

34. Mr. Kapoor submits that there should be no scope of conflict

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-27-

between the two proceedings and nothing can be said till those proceedings culminate in a final orders/awards. It is asserted that the Arbitrator reviewed his own award during the pendency of the matter in M/s D.K. Petrol Pump matter. These were the grounds projected by NHAI before the Supreme Court wherein the above reproduced order was passed leaving NHAI to apply for review of the order in appeals by this Court. It is not disputed by both sides that the proceedings in M/s D.K. Petrol Pump are pending even today and since the present remand/review awards are based on the compensation model in M/s D.K. Petrol Pump is pending adjudication, therefore, it is premature to say anything on the merits. Hence this is another ground sufficient to review the orders to avoid conflict of awards of two parcels of land in the same vicinity. In the impugned order dated July 06, 2013 passed by the learned ADJ, Jalandhar a direction has been issued for deletion of severance charges but the remaining amounts have been upheld.

35. It is not the case that only NHAI is aggrieved by the orders passed in appeal under section 37 of the A&CA under review. The ex land owner Tarlochan Singh is himself aggrieved and had presented the 4th appeal i.e. FAO No.6315 of 2013 claiming further reliefs.

36. Aggrieved by the order of the learned Additional District Judge, Jalandhar, in his appeal he has challenged the deletion of severance charges @ Rs.2 lacs awarded and claims compensation @ Rs.200/- per ft.

length-wise for the boundary wall. He is aggrieved that the Arbitrator did

**RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)**

**RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013**

**RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013**

FAO No.6315 of 2013

-28-

not take into consideration the enhanced price awarded in the case of Sukhjinder Kaur and Manpreet Singh of Tehsil Mukerian, District Hoshiarpur wherein the land rate was enhanced @ Rs.3.5 lacs per Marla. He is aggrieved by Arbitrator award dated June 04, 2010 in ignoring the report of the Patwari endorsed by Naib Tehsildar Bhogpur in which it was specifically mentioned that the acquired land was instituted within the limits of the Municipal Council, Bhogpur which have become a commercial locality. He is aggrieved by inadequate compensation awarded for loss of business. He submits in his appeal that the District Collector had revised the rate of land @Rs.4.40 lacs per Marla in 2009-10 and both the Arbitrator and learned ADJ, Jalandhar have overlooked this evidence. He is aggrieved by the finding of the Arbitrator that M/s D.K. Petrol Pump has better commercial potential than the acquired land of the appellant whereas the fact is that Bhogpur is better located than Tanda/Dasuya. He submits that the Arbitrator overlooked the fact that the acquired land falls on the Grand Trunk Road and is located at a prime location. Tarlochan Singh acquired land is claimed to be the front of the hotel/marriage palace built by him which had once served as a parking area of vehicles. Parking space is essential to run a marriage palace-cum-hotel. Meaning thereby, the land in front of the hotel abutting the Highway is the land which has been acquired for the expansion. The ex-land owner was unable to construct on the land

due to restrictions imposed by the Punjab Scheduled Roads and Controlled

**RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)**

**RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013**

**RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013**

FAO No.6315 of 2013

-29-

Areas (Restriction of Unregulated Development) Act, 1963. In this manner, his business has suffered and he claims he has not been adequately compensated for loss of business. During the operations involved in widening the Highway on his site, his business was badly affected as the work was forced to remain suspended by the contractor in 2008-09 on account of digging the pits by NHAI in the acquired land which ruined his business. As a result, Tarlochan Singh was unable to repay his loan to the Bank which started threatening him of action under The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. These facts have also been overlooked while awarding compensation to him and meagre compensation has been awarded by both the Arbitrator and the learned Additional District Judge, Jalandhar.

37. It may be reiterated that both the disputing parties had appealed to this Court under section 37 of the Arbitration & Conciliation Act, 1995 against the order passed by the learned Additional District Judge, Jalandhar on an application preferred against the awards of the Arbitrator dated June 04, 2010 and July 19, 2010. The award dated July 19, 2010 was passed by the Arbitrator by reviewing his earlier award dated June 04, 2010. This, it is urged was impermissible in law. It may be noted at the outset against the order SLPs No.10645 and 10646 of 2004 were filed in the Supreme Court.

The appellant, National Highways Authority of India sought leave of the Court to withdraw the Special Leave Petition and the same was accordingly

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-30-

dismissed as withdrawn.

38. In these circumstances, both the acquiring authority and the land loser are aggrieved parties.

39. To summarize Mr. Kapoor's arguments of which the star contention raised by NHAI is that the award in M/s D.K. Petrol Pump is in remand proceedings. In Arbitration Case No.47/2010 instituted on April 28, 2010, *Anand Swaroop Mittal vs. Union of India and others*, the learned ADJ, Jalandhar in his order (Annex A-6) decided on September 04, 2013 in paras 16, 18 and 24 has observed and held thus:-

“16. Perusal of the record of arbitral proceedings shows that the learned Arbitrator has enhanced the market rate keeping in view the potential of land along the National Highway and proximity of site to Pathankot town. The land between Jalandhar and Pathankot along the National Highway have high commercial potential. He had seen the land personally many times during his visit to Pathankot for various purposes. Neither any evidence nor any counter affidavit has been submitted by the NHAI and similar order of Arbitration dated 28.1.2009 passed on the remand order of Hon'ble Supreme Court was taken into consideration. However, no copy of any such order or document of market rate prevailing in 2004-2005 has been taken on record. There is nothing on record to show as to how he has exorbitantly increased the price of the acquired land to Rs.2.25 lacs per marla. The Arbitrator had relied upon the affidavit of Anand Swaroop Mittal filed in support of his claim but this witness was never allowed to be cross-examined by the Union of India and Project Director.

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-31-

Therefore, his statement cannot be safely relied upon. No proper procedure was followed for recording evidence of the witnesses.

18. Keeping in view the above said facts, the award passed by the Arbitrator is not justified being without basis and is to be considered as against the Public Policy of India. This issue is decided in favour of petitioners Union of India and Project Director.

24. In view of my findings on above issues, both the objection petitions are allowed and the impugned award dated 27.1.2010 is set aside and case is remanded back to the Arbitrator. The Arbitrator is directed to decide the case as fresh after giving opportunity to lead evidence, if any, and of being heard and dispose of the same, as per law. As the Arbitrator has already assessed the fee in earlier award, therefore, he will not take the fee again from the parties. Copy of this judgment be placed in Arbitration Case No. Arb/0200089/2010 titled 'Union of India & Anr. vs Anand Swaroop Mittal and Others'. File be consigned to the Record Room."

40. It may be recorded for the sake of clarity that M/s D.K. Petrol Pump belongs to aforementioned Anand Swaroop Mittal.

41. The other stellar contention is that the impugned award itself is not final. It has been made subject to verification by Revenue Authorities and this was improper exercise of jurisdiction. Meaning thereby, there was no evidence before the Arbitrator at the time of making of the award and this is a patent error and mistake which makes the award illegal and unacceptable. The approach of the Arbitrator has not been a judicious one.

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-32-

Besides, the alleged 23 pieces of evidence mentioned in the cryptic award have not been dealt with and the award contains no justification to enhance compensation while assessing the market value of the land. The sale deeds referred to or considered are not even referred at the time of assessing the compensation. The award is against public policy.

42. It is the summing up submission of Mr. Kapoor which are based on the above reasoning that this is a fit case for review of the orders passed by this Court in the appeals and the matter be remanded to the Arbitrator to eliminate/remove the grounds of challenge not only of the review applicant but of the grouse of the appellant/respondent Tarlochan Singh. Besides, on the merits of the case, the important issue raised by Mr. Kapoor is regarding section 33 (4) of the A&CA and if at all the provisions applied to the case in hand in the manner provided. Section 33 including sub-section (4) in its full setting reads as follows:-

“33. Correction and interpretation of award; additional award.

1. Within thirty days from the receipt of the arbitral award, unless another period of time has been agreed upon by the parties-

(a) a party, with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award;

(b) if go agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-33-

interpretation of a specific point or part of the award.

2. If the arbitral tribunal considers the request made under sub-section (1) to be justified, it shall make the correction or give the interpretation within thirty days from the receipt of the request and the interpretation shall form part of the arbitral award.

3. The arbitral tribunal may correct any error of the type referred to in clause (a) of sub-section (1), on its own initiative, within thirty days from the date of the arbitral award.

4. Unless otherwise agreed by the parties, a party with notice to the other party may request, within thirty days from the receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

5. If the arbitral tribunal considers the request made under sub-section (4) to be justified, it shall make the additional arbitral award within sixty days from the receipt of such request.

6. The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, give an interpretation or make an additional arbitral award under sub-section (2) or sub-section (5).

7. Section 31 shall apply to a correction or interpretation of the arbitral award or to an additional arbitral award made under this section.”

43. The question arising presently is that whether the basis of quantification could be left to the revenue authorities by the Arbitrator on the claims which have been left open for determination of facts by an authority other than the Arbitrator which vitiates the award. This amounts to

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-34-

delegation of quasi judicial function and abdication of authority which could not be sub-delegated. Here Mr. Kapoor places his reliance on *ITD Cementation* case (supra) para. 13:-

“No payment on account of the revised fee could be claimed by the respondent on the basis of an assumption that the same had been paid. The argument based on an assumed payment of the revised fee was clearly turned down by the arbitrators thereby obliging the claimant to establish by reference to evidence that the amount claimed by way of reimbursement had actually gone into the coffers of the State. This was a controversial area and did not involve a simple multiplication of a rate or application of a principle to admitted figures. It depended upon whether the material had been provided from legitimate sources and whether payment of the Seigniorage fee had been made by the respondent while obtaining the said material. Determination of these disputed questions of fact was absolutely essential for quantification of the amount and its reimbursement. That determination was permissible only at the hands of the arbitrators. The same could not be delegated to any other person or authority. Inasmuch as the arbitrators not only left the issues regarding quantification of the amount open but required the same to be decided by the appellant who was a party to dispute, they committed a mistake. To make the payment of the amount to the claimant by the respondent dependent upon the satisfaction of the appellant who has to make such a payment was not a workable solution. We say so because the award does not provide for any remedy to the claimant in case the appellant were to reject the claim in toto or accept the same only in part.” (emphasized)

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-35-

44. The judgment of the DB of the Delhi Court in *ITD Cementation* has been affirmed by the Supreme Court in Civil Appeal No 9799 of 2010 when the appeal filed by the Authority failed on April 24, 2015 decided together with connected appeals.

45. He submits that this Court erred in its initial thinking that the residual exercise could be sorted out in execution proceedings and those findings were open to be tested after hearing both sides. This was an error of judgment which should have been avoided. It is a trite law that a decree should be specific and well defined with sufficient precision to be executable since an award becomes a decree in arbitration law. Section 33 (4) is a request jurisdiction to cure a material thing which has been left out or omitted by the Arbitrator in the award and the jurisdiction conferred by section 33 is to be exercised in the manner provided and is not plenary to the disputes referred to arbitration. In the present case, the original award was reviewed by the Arbitrator which was improper exercise of jurisdiction. Section 33(4) of the A&CA makes provisions for re-visiting the award by the Arbitrator if there is no agreement to the contrary, then an aggrieved party with notice to the opposite party may request, within 30 days from the receipt of the award to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. The arbitral tribunal would examine such a request under section 33 (5) of the A&CA and if it is found justified it may proceed to make an additional award within 60 days

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-36-

of such request. Whereas the object of section 34 (4) is to eliminate the grounds for setting aside the arbitral award. Section 34 (4) provided:-

“On receipt of an application under sub-section (1), the Court may, where it is 16 appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.”

46. There is substance in the submissions of Mr. Kapoor that the present matter should be remitted to the Arbitrator who is seized of the remand proceedings in the case of M/s D.K. Petrol Pump so that both the cases are decided together to avoid conflict and bring about uniformity and unity in the awards with respect to lands acquired falling near each other for purposes of quantification of just and adequate compensation in accordance with law. I also do not think the ends of justice were served in summary dismissal of the appeals on grounds of delay, laches and limitation. This foreclosed the consideration of all the four appeals on their merits and due regard should have been had for an effective consideration of the issues involved after hearing counsel at length by noticing and deciding the issues raised by both the parties. Hence the order/s, in the opinion of the court, on careful reconsideration deserves to be reviewed. The reason assigned by me; that examination of the question of delay would lead to re-opening of the decrees which have become enforceable is after due reflection a hasty view

RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)

RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013

RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013

FAO No.6315 of 2013

-37-

taken of the law and the parties have been prejudiced by the summary dismissal of the appeals, that is, not only NHAI but Tarlochan Singh himself, both feeling aggrieved by the same awards in their different ways.

47. Consequently, the review applications are allowed, the appeals are taken on board by consent; and it is ordered that the cases stand remitted to the Arbitrator for eliminating the grounds of challenge as per mandate of section 34 (4) of the A&CA, 1995. The orders dated January 08, 2014 and February 03, 2014 are recalled. A direction is issued to the Arbitrator to decide the present and the arbitration case in M/s D.K. Petrol Pump together within a period of five months from the date of appearance before the Arbitrator. Parties are directed to appear before the Arbitrator on April 04, 2016.

48. However, in view of the legal position as per mandate of section 34 (4) of the A&CA, the appeals are adjourned to October 5, 2016 to await the result of elimination of grounds of challenge at the hands of the Arbitrator. Issues raised by the respective parties on all disputed aspects presented in review application/s are open to be decided by Arbitrator without leaving matters to the revenue authorities to determine, as any delegation of authority will not be in proper exercise of jurisdiction. However, nothing said in this order on the merits of the disputes will influence the mind of the Arbitrator as this Court has not expressed any opinion thereon as they were examined only to form an opinion whether

**RA-CR No.196-CII of 2014 (O&M) in/and
FAO No.254 of 2014 (O&M)**

**RA-CR No.199-CII of 2014 (O&M) in/and
FAO No.6225 of 2013**

**RA-CR No.197-CII of 2014 (O&M) in/and
FAO No.6226 of 2013**

FAO No.6315 of 2013

-38-

review was justified.

49. Since the connected appeals have been remanded, FAO No.6315 of 2013 is also governed by the same order. Accordingly, office to list the cases again on October 5, 2016 for further proceedings, if any are required.

14.03.2016
manju

(RAJIV NARAIN RAINA)
JUDGE