

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

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WRIT PETITION NO. 5286 of 2018

Bhupendrasingh S/o Sardarsingh Parmar
 age 67 years occupation business
 R/o 9, Green Park Colony, near Railway Station,
 Dhule Taluka and Dist. Dhule ...Petitioner
Versus

1. The Competent Authority
 for National High way No. 6 and
 the Deputy Collector (Gen.),
 Land Acquisition (Gen.),
 Dhule Taluka and Dist. Dhule
2. The Collector,
 Dhule Tal. and Dist. Dhule
3. The National Highway Authority of India,
 Ministry of Road Transport and Highway,
 Project Implementation Unit, Dhule
 through : the Project Director,
 Dhule Tal. & Dist. Dhule ...Respondents.

*Mr. P.V. Mandlik, Senior Advocate with Mr. P.P. Mandlik,
 Advocate for petitioner*
Mr. S.B. Deshpande, Asstt. Solicitor General for Respt. No.1
Mr. S.G. Karlekar, Asstt. Govt. Pleader for Respt. No.2/State
*Mr. Mr. Dipak Manorkar, Advocate, i./by M.V. Kini and Co. &
 for Respt.No.3*

**CORAM : S.V. GANGAPURWALA &
 AVINASH G. GHAROTE, JJ.**

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Reserved on : 3rd December 2019
 Pronounced on : 20th December, 2019

J U D G M E N T : (PER : AVINASH G. GHAROTE, J.)

1. Rule. Rule made returnable forthwith. Heard learned Counsel for the respective parties finally with their consent.

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2. The petitioner claims to be the owner of land Gat No. 98/B-1 admeasuring 4470 square meters situated at village Avdhan Taluka and District Dhule. It is contended that the respondent No.1 has undertaken the construction of National Highway No. 6 for widening of existing two lane carriage way to 4/6 lane carriage way configuration for Jalgaon-Maharashtra Gujarat Border (Kms. 441/950 to Kms. 4650/794). It is further contended that a notification u/s. 3(A) of the National Highway Act, 1956 (NH Act, 1956) was issued on 16/12/2015, and notification u/s. 3(D) was published on 14/12/2016, award is declared on 14/08/2017, under which the petitioner was held entitled for compensation to the tune of Rs. 11,88,30,748/-. Payment notice is claimed to have been issued on 20/12/2017 to the petitioner, asking him to remain present on 27/12/2017 in the office of respondent No.1, on which date it is stated that possession was taken. It is further contended that instead of depositing the entire compensation amount to the tune of Rs. 11,88,30,748/-, the respondents have deposited only Rs. 9,04,56,382/- resulting in a shortfall of Rs. 2,83,74,366/-, for which a request letter dated 13/04/2018 was issued by the

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petitioner to respondent No.1.

3. It is contended that by a letter dated 23/04/2018 respondent No.1, not only turned down the request for payment of the balance amount, but stated that while acquiring the non-agricultural land of the petitioner, the G.R. dated 26/05/2015 providing multiplier factor of 2.00 was used, however, in the subsequent G.R. dated 24/11/2017 the multiplier factor has been reduced to 1.50 for lands which are for residential/commercial and industrial use, as a result of which corrigendum/clarification dated 02/01/2018 was prepared in respect of the award dated 14/08/2017, in view of which the amount the petitioner was entitled to, already stood deposited in his account.

4. It is contended that the respondents have ignored the provisions of section 26 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act of 2013). It is further contended that the procedure as laid down in Section 33 of the Act of 2013 has not been followed, as a result of which the corrigendum/clarification dated 02/01/2018 being illegal was required to be set aside, by way of a Writ of Mandamus or any other appropriate relief and the respondents be directed to deposit/transfer the balance amount of compensation to the account of the petitioner with other consequential benefits and

interest.

5. There is no dispute about the passing of the award and issuance of the corrigendum/clarification dated 02/01/2018 by the respondents. It is submitted that the Ministry of Road Transport and Highway had taken a decision to apply the First Schedule of the Act of 2013 to the awards made on or after 01/01/2016 for acquisition of lands under the National Highways Act, in light of which the compensation was worked out in accordance with the provisions of the First Schedule of the Act of 2013, while declaring the award on 14/08/2017, during which the factor to be applied for the market value as notified by the Revenue and Forest Department of the Government of Maharashtra in its notification dated 26/05/2015 was applied. It is further submitted that the notification dated 26/05/2015 was amended vide notifications dated 24/04/2017, 29/08/2017 and 24/11/2017, whereby the multiplying factor was declared as one (1) for the urban area where the development plans were prepared as per the provisions of the MRTP Act, 1966 and residential and commercial and industrial zones were proposed in such development plans. It is further submitted that the land in question is included in the draft regional plan for Dhule Region published by the Regional Planning Board on 23/02/2017. It is, thus, submitted that considering the notification dated

24/11/2017, the multiplier of 1.50 was used and the corrigendum/clarification dated 02/01/2018 was issued.

5 6. The basic question involved is whether the Competent Authority while exercising powers for acquisition of land under the NH Act, 1956, has powers to correct an award, in light of Section 33, read with section 105 and the Fourth Schedule of the Act of 2013.

10 7. Mr. P.V. Mandlik, learned Senior Counsel, submits that the provisions of section 33 of the Act of 2013 are not available to the Competent Authority exercising powers for acquisition of land under the provisions of the NH Act, 1956. He submits that Section 105 of the Act of 2013 specifically mandates that subject to sub-
15 section (3), the provisions of the Act of 2013 do not apply to the enactments relating to land acquisition specified in the Fourth Schedule. He further submits that the Fourth Schedule at serial No. 7 mentions the National Highways Act, 1956. He further submits that no notification has been placed as contemplated by sub-section
20 (3) of section 105 to show that the provisions of section 33 of the Act of 2013 have been made applicable to acquisition under the NH Act, 1956. He therefore, submits that it was not permissible for the Competent Authority to correct the award dated 14/08/2017. He submits that the corrigendum/clarification dated 02/01/2018 as

issued by the Competent Authority was in fact a correction of the award, which amounted to a review, which was impermissible in absence of any statutory powers to do so, in the Competent Authority under the provisions of the NH Act, 1956. He therefore, submits that the petition needs to be allowed.

8. Mr. S.B. Deshpande, learned A.S.G. by placing reliance upon the judgment of the Hon'ble Apex Court in **Union of India Vs. Tarsem Sing and others dated 19/09/2019 in Civil Appeal No. 7068 of 2019 and other connected appeals**, contends that the Hon'ble Apex Court has held that the provisions of the the Act of 2013 were applicable to acquisitions made under the NH Act, 1956 particularly regarding interest and solatium. He places reliance upon paras 6, 7, 9, 11 & 41 of this judgment and submits that the Competent Authority under the Act, 1956 thus had the powers to correct the award. He further relies upon the judgment of this Court in **Umesh Board Paper Mills Pvt. Ltd. Vs. UOI dated 16/03/2018** and specifically para 6 to support his above contention. He further contends that the provisions of section 23, 26, 27 & 33 of the Act of 2013 will have to be read in harmony and wherever an authority is exercising powers u/s. 33 of the Act of 2013, it is actually exercising powers u/s. 23, 26 & 27 of the said Act. He further submits that section 33 is an integral part or an

extension of the powers granted to the authority u/s. 23, 26 & 27 and therefore, it was permissible for the Competent Authority to exercise the powers u/s. 33 too. He further submits that for properly exercising powers u/s. 23, 26 & 27 of the Act of 2013 and for giving real effect to legislative intent, it will have to be held that the authority has in it, the powers u/s. 33 of the Act of 2013. He further compares the powers u/s. 152 of the Code of Civil Procedure and section 13-A of the Land Acquisition Act, 1894 and submits that they are similar to the powers u/s. 33 of the Act of 2013 and, therefore, as the Competent Authority is dealing under the provisions of the National Highways Act and one of its functions is to determine the compensation to be paid to the land owners from the public exchequer i.e. in a way, he has to act as a custodian of the public, hence, the principle, which is made applicable to section 152 of CPC is also applicable to the NH Act, 1956 and the Act of 2013. It is submitted that the Competent Authority has a duty to see that its record are true and they represent the correct state of affairs. Hence for proper discharge of his duties, Competent Authority has to exercise the powers which will enable him to keep the record whereby true state of affairs are depicted. Therefore, considering legislative history regarding such provisions, it be held that power to determine compensation, implicitly and impliedly also bestows upon the concerned Authority the power to keep the record clear so that

they represent the correct state of affairs. Any other interpretation will be against the principle of check and balance and may also result into unjust enrichment of certain persons at the cost of public exchequer. Therefore, by adopting purposive interpretation, it may be held that the Competent Authority has powers to correct errors arising therein. It is further submitted that if the Authorities are not allowed to exercise powers u/s. 33 of the Act of 2013, it will amount not only unjust enrichment but it will be detrimental for the public exchequer also. He further invites our attention to the judgment of this Court in the case of ***Yasmin Begum W/o Bakshulla Khan Vs. the State of Maharashtra, Writ Petition No. 1883/2018 and connected matters dated 08/11/2019*** in which one of us (Mr. S.V. Gangapurwala, J.) was on the Bench and contends that had the judgment in the case of ***Tarsem Singh***(supra) been brought to the notice of the Bench, perhaps the Court might have decided differently. He further contends that the provisions of section 33 of the Act of 2013 are available to the Competent Authority under the NH Act, 1956 and it be so held.

9. Mr. S.G. Karlekar, learned Asstt. Govt. Pleader has supported the stand taken by the learned ASG.

10. Mr. Dipak Manorkar, learned Counsel i./b Mr. M.V. Kini & Co. also supports the availability of the powers u/s. 33 of the Act of

2013 to the Competent Authority under the NH Act, 1956.

11. We have given our anxious consideration to the arguments advanced by the learned Counsels.

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12. The National Highways Act, 1956 as originally enacted, did not contain any provisions for acquisition of land. These were inserted by Act 16 of 1997 w.e.f. 24/01/1997 in the form of Sections 3, 3A to 3-J. The Act of 2013 was enacted on 26/09/2013 and was brought into force on 01/01/2014 vide S.O. 3729 dated 19/12/2013 issued under sub-section 3 of section 1 of the Act, of 2013.

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13. At the outset, it is necessary to deal with the contention of the learned Asstt. Solicitor General that this Court in **Umesh Board Paper Mills Pvt. Ltd.** (supra) in which one of us (Mr. S.V. Gangapurwala, J.) was on the Bench, had decided the issue and held that Section 33 of the Act of 2013, was applicable to proceedings before the Competent Authority under the NH. Act Act, 1956.

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14. A perusal of the judgment in **Umesh Board Paper Mills Pvt. Ltd.** (supra), demonstrates that it was a case in which the petitioner therein had sought directions against the respondents to pay interim compensation considering the ready reckoner rates of

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the year 2017 as market value and complete the acquisition proceedings. In that case, the Court was not called upon to test the powers of the Competent Authority to review its own order. Indeed, in para 10, the Court had observed that in case of vagueness in the notifications u/s. 3-A and 3-D of the NH Act, 1956, they may not hold good. In para 13, it was specifically held that there was no provision for amending the award with regard to the description of the property and name of the person, whose land is acquired and the notification in such a case would not be valid. The mention of section 33 of the Act of 2013 in paras 6 & 7 was only in juxtaposition to the provisions of the NH Act, 1956, to demonstrate that the NH Act 1956 did not contain provisions of a *pari materia* nature. Nowhere the Court had delved into the determination of the applicability of the provisions of section 33 of the Act of 2013 to acquisitions under the NH Act, 1956. In fact, the very same argument, as is being canvassed here, was also raised on the basis of the judgment in **Umesh Board Paper Mills** (supra) in **Yasmin Begam w/o Bakshullah Khan** (supra), in which one of us (Mr. S.V. Gangapurwala, J.) was also on the Bench, and had in para 18, categorically clarified that in **Umesh Bord Paper Mills** (supra), it was never held that section 33 of the Act of 2013 was applicable for acquisitions under the NH Act, 1956, rather, on the contrary, it was pertinently pointed out that section 33 of the Act of 2013 was only

referred to. Thus, as the said issue was neither considered nor decided in ***Umesh Board Paper Mills*** (supra), the contention of the learned A.S.G. cannot be accepted.

5 15. For determining the question in hand, it will have to be considered whether the Competent Authority under the provisions of the NH Act, 1956 has the power of review or a power of correction of the award. A faint argument was advanced that considering the provisions of Section 3-I of the NH Act, 1956 the
10 Competent Authority, being conferred with the powers to summon witnesses, etc., which were in fact available to a 'Court' and, thus, the status of the Competent Authority would be that of a 'Court' or equivalent thereto.

15 16. This has also to be looked into from the language of section 3-I of the NH Act of 1956, whereby certain powers of the Civil Court have been conferred upon the Competent Authority. Section 3-I of the NH Act, 1956 reads as under:

20 ***"3-I. Competent authority to have certain powers of Civil Court.- The Competent authority shall have, for the purposes of this Act, all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:-***
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(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

5 *(c) reception of evidence on affidavits;*

(d) requisitioning any public record from any Court or office;

(e) issuing commission for examination of witnesses."

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A plain reading of section 3-I of the NH Act, 1956 demonstrates that the Competent Authority as constituted u/s. 3(a) has neither been conferred the status of a Court nor has been equated with the Court. Very limited powers as stipulated in clause (a) to (e) of section 3-I have been conferred upon the Competent Authority, which is only with the intent of the effective and efficacious determination of the proceedings for acquisition of land and not otherwise. Thus, it can safely be said that the Competent Authority under section 3(a) of the Act of 1956 is not a "Court". This is further borne out from the language of section 3(a) whereby the Competent Authority is defined, which reads as under:

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"3(a) "Competent Authority" means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the Competent Authority for such area as may be specified in the notification."

It is, thus, axiomatic that the Parliament has not conferred the status of a Court upon the Competent Authority appointed under the NH Act, 1956 nor can it be equated with a 'Court' merely because of the powers as conferred upon it u/s. 3-I of the NH Act, 1956.

17. The question is, what is meant by review and whether review is a creature of statute or is inherent in an Authority. The term 'Review' means a judicial re-examination of the case in certain specified and prescribed circumstances.

17.1. In **Patel Narshi Thakarsi and others Vs. Shri Pradyumnasingji, (1971) 3 SCC 844**, the Hon'ble Apex Court while considering the provisions of section 63 of the Saurashtra Land Reforms Act, 1951 has held as under:

" It is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision in the Act was brought to notice from which it could be gathered that the Government had power to review its own order. If the Government has no power to review its own order, it is obvious that its delegate could not have reviewed its order."

17.2 In **Major Chandra Bhan Singh Vs. Latafat Ullah Khan, (1971) 1 SCC 321**, it has been held in para 13 as under:

"It is well settled that review is a creature of statute and cannot be entertained in the absence of a provision therefor."

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17.3 The Full Bench of the Allahabad High Court in the case of ***Shivraji and others Vs. Dy. Director of Consolidation and others, C.M.W.P. No. 4393 of 1980 decided on 28/07/1997,*** had the occasion to consider the availability of power of review vis-a-vis the conferment of authority upon the Consolidation Officer under the U.P. Consolidation of Holdings Act, 1953, of enforcing the attendance of witnesses and examining them on oath, issuance of commission to examine witness, compelling production of documents, etc., in light of which it has been held as under:

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"24. On the authoritative pronouncements made by the Supreme Court in the aforementioned decisions, the legal position which is manifest is that the Deputy Director of Consolidation while exercising the power of revision vested in him under the Consolidation Act exercises quasi judicial powers and in the absence of any provision in the Consolidation Act, which expressly or by necessary implication vests in him the power of review, he cannot exercise such power. It follows that the Deputy Director of Consolidation is not competent to revive a revision proceeding disposed of by him by a final

order on a review application filed by one of the parties."

17.4 In ***Lily Thomas Vs. Union of India, (2000) 6 SCC***
 5 **224**, in respect of the power of review conferred upon the Court it
 has been held thus:

" **52.** The dictionary meaning of the word "review" is "the act of looking, offer something again with a view to correction or improvement".
 10 It cannot be denied that the review is the creation of a statute. This Court in *Patel Narshi Thakershi v. Pradyumansinghji Arjunsinghji* [(1971) 3 SCC 844 : AIR 1970 SC 1273] held that the power of review is not an inherent
 15 power. It must be conferred by law either specifically or by necessary implication. The review is also not an appeal in disguise. It cannot be denied that justice is a virtue which transcends all barriers and the rules or
 20 procedures or technicalities of law cannot stand in the way of administration of justice. Law has to bend before justice. If the Court finds that the error pointed out in the review petition was under a mistake and the earlier judgment would not
 25 have been passed but for erroneous assumption which in fact did not exist and its perpetration shall result in a miscarriage of justice nothing would preclude the Court from rectifying the error.

56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. "

17.5 In ***Cellular Operators Association of India Vs. Union of India, (2003) 3 SCC 186***, in para 27, while considering the jurisdiction of TDSAT it has been held as under:

" The extent of jurisdiction of a Court or a Tribunal depends upon the relevant statute. TDSAT is a creature of a statute. Its jurisdiction is also conferred by a statute. The purpose of creation of TDSAT has expressly been stated by the Parliament in the Amending Act of 2000. TDSAT thus failed to take into consideration the amplitude of its jurisdiction and thus misdirected itself in law." (Emphasis supplied)

It would thus be apparent that the power of review, being a creature of a statute, has to be conferred upon the authority by the provisions of the statute. It cannot be said that the Parliament while enacting the Amending Act No. 16 of 1997, amending the

provisions of the NH Act 1956, was oblivious of the nature of rights and powers being conferred upon the Competent Authority for the purposes of acquisition of land for the National Highways. Thus, had it been the intention of the Parliament to confer a power of review upon the 'Competent Authority', as constituted u/s. 3(a) of the NH Act, 1956, it would have so done by insertion of a proper provision in that regard in the statute. The absence of such a provision, therefore, indicates the intention of the law makers, not to confer such a power upon the Competent Authority, in absence of which, such a power cannot be said to be available to the Competent Authority.

18. The scheme of acquisition of land under the NH Act, 1956 is contained within the narrow compass of the provisions of Sec. 3(a) which defines the 'Competent Authority' and Sections 3-A to 3-J. For the purposes of the present petition, the provisions of Sec. 3-A, 3-C, 3-D, 3-G, 3-H, 3-I & 3-J are material and are reproduced as under:

" Sec.3-A. Power to acquire land, etc.-

Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the Official Gazette, declare its

intention to acquire such land.

(2) Every notification under sub-section (1) shall give a brief description of the land.

(3) The competent authority shall cause the substance of the notification to be published in two local newspapers, one of which will be in a vernacular language.

3-C. Hearing of objections .—

(1) Any person interested in the land may, within twenty one days from the date of publication of the notification under sub-section (1) of section 3A, object to the use of the land for the purpose or purposes mentioned in that sub-section.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard, either in person or by a legal practitioner, and may, after hearing all such objections and after making such further enquiry, it any, as the competent authority thinks necessary, by order, either allow or disallow the objections.

Explanation.—For the purposes of this sub-section, "legal practitioner" has the same meaning as in clause (i) of sub-section (1) of section 2 of the Advocates Act, 1961 (25 of 1961).

(3) Any order made by the competent authority

under sub-section (2) shall be final.

3-G. Determination of amount payable as compensation. - (1) Where any land is acquired under this Act, there shall be paid an amount which shall be determined by an order of the competent authority.

(2) Where the right of user or any right in the nature of an easement on, any land is acquired under this Act, there shall be paid an amount to the owner and any other person whose right of enjoyment in that land has been affected in any manner whatsoever by reason of such acquisition an amount calculated at ten per cent of the amount determined under sub-section (1), for that land.

(3) Before proceeding to determine the amount under sub-section(1) or sub-section (2), the competent authority shall give a public notice published in two local newspapers, one of which will be in a vernacular language inviting claims from all persons interested in the land to be acquired.

(4) Such notice shall state the particulars of the land and shall require all persons interested in such land to appear in person or by an agent or by a legal practitioner referred to in sub-section (2) of section 3-C ,before the competent authority, at a time and place and to state the nature o their respective interest in such land.

(5) If the amount determined by the competent authority under sub-section (1) or sub-section (2) is not acceptable to either of the parties, the amount shall, on an application by either of the parties, be determined by the arbitrator to be appointed by the Central Government.

(6) Subject to the provisions of this Act, the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) shall apply to every arbitration under this Act.

(7) The competent authority or the arbitrator while determining the amount under sub-section (1) or sub-section (5), as the case may be, shall take into consideration-

(a) the market value of the land on the date of publication of the notification under section 3-A;

(b) the damage, if any, sustained by the person interested at the time of taking possession of the land, by reason of the severing of such land from other land;

(c) the damage, if any sustained by the person interested at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other immovable property in any manner, or his earnings;

(d) if, in consequences of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change.

3H. Deposit and payment of amount. —

5 (1) *The amount determined under section 3G shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority before taking possession of the land.*

(2) *As soon as may be after the amount has been deposited under sub-section*

10 (1), *the competent authority shall on behalf of the Central Government pay the amount to the person or persons entitled thereto.*

15 (3) *Where several persons claim to be interested in the amount deposited under sub-section (1), the competent authority shall determine the persons who in its opinion are entitled to receive the amount payable to each of them.*

20 (4) *If any dispute arises as to the apportionment of the amount or any part thereof or to any person to whom the same or any part thereof is payable, the competent authority shall refer the dispute to the decision of the principal civil court of original jurisdiction within the limits of whose jurisdiction the land is situated.*

25 (5) *Where the amount determined under section 3G by the arbitrator is in excess of the amount determined by the competent authority, the arbitrator may award interest at nine per cent, per annum on such excess amount from the date*

of taking possession under section 3D till the date

of the actual deposit thereof.

5 *(6) Where the amount determined by the arbitrator is in excess of the amount determined by the competent authority, the excess amount together with interest, if any, awarded under sub-section*

10 *(5) shall be deposited by the Central Government in such manner as may be laid down by rules made in this behalf by that Government, with the competent authority and the provisions of sub-sections(2) to (4) shall apply to such deposit.*

15 ***3-J. Land Acquisition Act 1 of 1894 not to apply.—***

Nothing in the Land Acquisition Act, 1894 shall apply to an acquisition under this Act. "

20 Thus, under the scheme of acquisition under the NH Act, 1956, under Section 3-A, the Central Government, for the purposes as stated therein, has the power to, by publication of notification in the Official Gazette, declare its intention to acquire such land. Under Sec. 3-B, any person authorised in this behalf, has the lawful authority to inspect, survey, measure, value, enquire, take levels, etc.. Section 3-C then authorises the Competent Authority to hear
25 objections , as may be filed by any person interested in land and after hearing him or his counsel and after making such further

enquiry, if any, as thought necessary, decide the objections, and such decisions/order has been made final. Section 3-D relates to submitting the report as to acquisition of land to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the Official Gazette, that the land should be acquired for the purpose mentioned in sub-section (1) or Section 3-A. Section 3-E prescribes for taking possession of the land acquired. Section 3-F is with regard to the right to enter into the land where land has vested in the Central Government and Section 3-G is relating to determination of compensation amount by the Competent Authority for the land acquired. This would demonstrate no power of review or for that matter a power to make any correction in the award passed, for whatsoever reason, has been conferred upon the Competent Authority. The status of the Competent Authority and the nature of the power exercised by it, are material in considering whether it would have an inherent power of review/correction as is being contended by the learned A.S.G. Shri Sanjeev Deshpande.

19. In ***Province of Bombay Vs. Khushaldas Advani, AIR 1950 SC 222***, it was observed as under:

" The question whether an act is a judicial or a quasi-judicial one or a purely executive act depends on the terms of the particular rules and

the nature, scope and effect of the particular powers in exercise of which the act may be done and would, therefore, depend on the facts and circumstances of each case. Courts of law established by the State decide cases brought before them judicially and the decisions thus recorded by them fall obviously under the category of judicial decisions. Administrative or executive bodies, on the other hand, are often called upon to reach decisions in several matters in a purely administrative or executive manner and these decisions fall clearly under the category of administrative or executive orders. Even Judges have, in certain matters, to act administratively, while administrative or executive authorities may have to act quasi-judicially in dealing with some matters entrusted to their jurisdiction. Where an authority is required to act judicially either by an express provision of the statute under which it acts or by necessary implication of the said statute, the decisions of such an authority generally amount to quasi-judicial decisions. Where, however, the executive or administrative bodies are not required to act judicially and are competent to deal with issues referred to them administratively, their conclusions cannot be treated as quasi-judicial conclusions. No doubt, even while acting administratively, the authorities must act bona fide; but that is different from

saying that they must act judicially.”

19.1. In ***Gullapalli Nageshwar Rao Vs. A.P.S.R.T.C., AIR 1959 SC 308,*** the majority view by Hon’ble Apex Court in this context has held thus:

“ 21. The aforesaid three decisions lay down whether an Administrative Tribunal has a duty to act judicially, should be gathered from the provisions of the particular statute and the Rules made thereunder and they clearly express the view that if an authority is called upon to decide respective rights of contesting parties or to put it in other words, if there is lis, ordinarily there will be a duty on a part of the said authority to act judicially.”

19.2 In ***Engineering Majdoor Sabha Vs. Hind Cycles Ltd. AIR 1963 SC 874*** while considering the distinction between a Tribunal and a Court, it has been held thus:

“ 6. Article 136(1) refers to a tribunal in contradistinction to a court. The expression “a court” in the technical sense is a Tribunal constituted by the State as a part of ordinary hierarchy of courts which are invested with the State's inherent judicial powers. The tribunal as distinguished from the court, exercises judicial powers and decides matters brought before it judicially or quasi-judicially, but it does not

constitute a court in the technical sense. The tribunal, according to the dictionary meaning, is a seat of justice; and in the discharge of its functions, it shares some of the characteristics of the court. A domestic Tribunal appointed in departmental proceedings, for instance, or instituted by an industrial employer cannot claim to be a tribunal under Article 136(1). Purely Administrative Tribunals are also outside the scope of the said Article. The Tribunals which are contemplated by Article 136(1) are clothed with some of the powers of the courts. They can compel witnesses to appear, they can administer oath, they are required to follow certain rules of procedure: the proceedings before them are required to comply with rules of natural justice, they may not be bound by the strict and technical rules of evidence, but, nevertheless, they must decide on evidence adduced before them; they may not be bound by other technical rules of law, but their decisions must, nevertheless, be consistent with the general principles of law. In other words, they have to act judicially and reach their decisions in an objective manner and they cannot proceed purely administratively or base their conclusions on subjective tests or inclinations. The procedural rules which regulate the proceedings before the tribunals and the powers conferred on them in dealing with matters brought before them, are sometimes

5 *described as the "trappings of a court" and in determining the question as to whether a particular body or authority is a tribunal or not, sometimes a rough and ready test is applied by enquiring whether the said body or authority is clothed with the trappings of a court."*

10 19.3 Further, in ***State of H.P. Vs. Raja Mahendra Pal , (1999) 4 SCC 43***, the Hon'ble Apex Court in this context has held thus:

15 *" The expression 'quasi judicial' has been termed to be one which stand midway a judicial and administrative function. If the authority has an express statutory duty to act judicially in arriving at the decision in question, it would be deemed to be quasi judicial."*

20 19.4 In ***Indian National Congress (I) Vs. Institute of Social Welfare, (2002) 5 SCC 685***, while considering the status of the Election Commission, it has been held as under:

41. *To sum up, what we have held in the foregoing paragraph is as under:*

25 *1. That there being no express provision in the Act or in the Symbols Order to cancel the registration of a political party, and as such no proceeding for deregistration can be taken by the Election Commission against a political party for having violated the terms of Section 29-A(5) of*

the Act on the complaint of the respondent.

2. The Election Commission while exercising its power to register a political party under Section 29-A of the Act, acts quasi-judicially and decision rendered by it is a quasi-judicial order and once a political party is registered, no power of review having been conferred on the Election Commission, it has no power to review the order registering a political party for having violated the provisions of the Constitution or for having committed breach of undertaking given to the Election Commission at the time of registration.

3. However, there are exceptions to the principle stated in paragraph 2 above where the Election Commission is not deprived of its power to cancel the registration. The exceptions are these:

(a) where a political party has obtained registration by practising fraud or forgery;

(b) where a registered political party amends its nomenclature of association, rules and regulations abrogating therein conforming to the provisions of Section 29-A(5) of the Act or intimating the Election Commission that it has ceased to have faith and allegiance to the Constitution of India or to the principles of socialism, secularism and democracy or it would not uphold the sovereignty, unity and integrity of India so as to comply with the provisions of Section 29-A(5) of the Act; and

(c) any like ground where no enquiry is called for on the part of the Commission.

4. The provisions of Section 21 of the General Clauses Act cannot be extended to the quasi-judicial authority. Since the Election Commission while exercising its power under Section 29-A of the Act acts quasi-judicially, the provisions of Section 21 of the General Clauses Act have no application.

Considering the fact that, the Competent Authority u/s. 3-C is empowered to hear objections, make enquiry and decide such objections, which decision has been made final u/s. 3-C(3) and for this purpose the Competent Authority has been conferred with all the powers of the Civil Court while trying a suit under the Civil Procedure Code in respect of summoning and enforcing attendance of any person and examining him on oath; requiring discovery and production of any document, reception of evidence on affidavits; requisitioning any public record from any Court or office and issuing commission for examination of witnesses, it is apparent that an express statutory duty has been cast upon the Competent Authority to act judicially in deciding the objections, which may be received u/s. 3-C(i) of the NH Act, 1956, in light of which he has to act within the parameters of the powers as conferred upon it by the statute which created it and not otherwise. It cannot be said that such an

authority would have inherent powers as are vested in a 'Court' .

20. It would further be trite to point out that the L.A. Act, 1894, as originally enacted, did not have any provision for correction of clerical error, etc. These powers were specifically conferred upon the Collector by way of section 10 of Act No. 68 of 1984, w.e.f. 24/09/1984 by introducing section 13-A. This further indicates that the powers of correction of clerical errors, etc. in the award are not inherent or automatically vested, but have to be so conferred by legislation. It is because of this situation that the Act of 2013 contains section 33 conferring powers upon the Collector to correct clerical mistakes in the award, which is identically worded to section 13-A of the L.A. Act, 1894, except for contextual changes. So also, a perusal of Section 152 of the Civil Procedure Code buttresses this opinion as it specifically confers powers upon even the 'Court' to correct mistakes. An analogous provision is absent in the NH Act, 1956, conferring powers upon the Competent Authority for correcting any award, after it has been passed, for any reason whatsoever, in light of which the argument advanced by the learned A.S.G. in this regard, does not hold water.

21. In the above background, the argument as advanced that the provisions of section 33 of the Act of 2013 are applicable to acquisition proceedings under the NH Act, 1956, need to be

considered. Reliance is placed by the learned A.S.G. upon the provisions of section 105 and the Fourth Schedule of the Act of 2013. Section 105 and the Fourth Schedule of the Act of 2013 read as under:

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" 105. Provisions of this Act not to apply in certain cases or to apply with certain modifications. –

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(1) Subject to sub-section (3), the provisions of this Act shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule.

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(2) Subject to sub-section (2) of section 106, the Central Government may, by notification, omit or add to any of the enactments specified in the Fourth Schedule.

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(3) The Central Government shall, by notification, within one year from the date of commencement of this Act, direct that any of the provisions of this Act relating to the determination of compensation in accordance with the First Schedule and rehabilitation and resettlement specified in the Second and Third Schedules, being beneficial to the affected families, shall apply to the cases of land acquisition under the enactments specified in the Fourth Schedule or shall apply with such exceptions or modifications that do not

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reduce the compensation or dilute the provisions of this Act relating to compensation or rehabilitation and resettlement as may be specified in the notification, as the case may be.

(4) A copy of every notification proposed to be issued under sub-section (3), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses of Parliament."

" THE FOURTH SCHEDULE

(See section 105)

LIST OF ENACTMENTS REGULATING LAND ACQUISITION AND REHABILITATION AND RESETTLEMENT

- 1. The Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958).*
- 2. The Atomic Energy Act, 1962 (33 of 1962).*
- 3. The Damodar Valley Corporation Act, 1948 (14 of 1948).*

4. *The Indian Tramways Act, 1886 (11 of 1886)*
5. *The Land Acquisition (Mines) Act, 1885 (18 of 1885).*
6. *The Metro Railways (Construction of Works) Act, 1978 (33 of 1978).*
7. ***The National Highways Act, 1956 (48 of 1956).***
8. *The Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962).*
9. *The Requisitioning and Acquisition of Immovable Property Act, 1952 (30 of 1952).*
10. *The Resettlement of Displaced Persons (Land Acquisition) Act, 1948 (60 of 1948).*
11. *The Coal Bearing Areas Acquisition and Development Act, 1957 (20 of 1957).*
12. *The Electricity Act, 2003 (36 of 2003).*
13. *The Railways Act, 1989 (24 of 1989)."*

The plain reading of section 105 (1) of the Act of 2013 clearly mandates that the provisions of the Act of 2013 do not apply to the acquisitions under the NH Act, 1956. To make the provisions applicable, it is necessary for the Central Government to issue a notification , as contemplated by the provisions of sub-section (3) of section 105 of the Act of 2013.

22. It is material to note that an Amendment Ordinance No. 9 of 2014 was promulgated amending the Act of 2013 w.e.f.

01.01.2015, section 10 of which being material is quoted as under:

" 10. In the principal Act, in section 105, -
(i) for sub-section (3), the following sub-section
shall be substituted, namely:-

5 "(3) **The provisions of this Act relating to the
determination of compensation in
accordance with the First Schedule,
rehabilitation and resettlement in
10 accordance with the Second Schedule and
infrastructure amenities in accordance with
the Third Schedule shall apply to the
enactments relating to land acquisition
specified in the Fourth Schedule with effect
from 1st January 2015.**

15 (ii) Sub-section (4) shall be omitted."

23. When this Ordinance lapsed, by virtue of the power
vested in the Central Government under section 113(1) of the Act of
2013, the Right to Fair Compensation and Transparency in Land
20 Acquisition, Rehabilitation and Resettlement (Removal of Difficulties)
Order, 2015 was promulgated, by a notification dated 28th August
2015, vide S.No. 2368(E), dated 28/08/2015, which was published in
the Gazette of India, Ext. Part I on 28/08/2015 itself, the relevant
portion of which reads as under:

25 " NOW, THEREFORE, in exercise of the powers
conferred by sub-section (1) of section 113 of the
Right to Fair Compensation and Transparency in

Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulties, namely:-

5 1. (1) *This Order may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015.*

10 (2) *It shall come into force with effect from the 1st day of September, 2015.*

15 2. ***The provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, relating to the determination of compensation in accordance with the First Schedule, rehabilitation and resettlement in accordance with the Second Schedule and infrastructure amenities in accordance with the Third Schedule shall apply to all cases of land acquisition under the enactments specified in the Fourth Schedule to the said Act."***

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24. The contention of the learned A.S.G. that the provisions
25 of section 33 of the Act of 2015 are applicable to the acquisition proceedings under the NH Act, 1956, has thus to be tested on the language of the above Amendment Ordinance No. 9 of 2014 and the Right to Fair Compensation and Transparency in Land Acquisition,

Rehabilitation and Resettlement (Removal of Difficulties) Order, 2015. A perusal of the above notifications would demonstrate that only the provisions of the Act of 2013 relating to :

- (a) *the determination of compensation in accordance with the First Schedule,*
- (b) *rehabilitation and resettlement in accordance with the Second Schedule and*
- (c) *infrastructure amenities in accordance with the Third Schedule,*

have been made applicable to the acquisition proceedings under the NH Act 1956. Does this mean that the provisions of section 33 of the Act of 2013 have also been made applicable to the acquisition proceedings under the NH Act, 1956 ? In this context, the First, Second and Third Schedules under the Act of 2013, need consideration. The First Schedule relates to compensation for land owners, delineating the components which shall constitute the minimum compensation package to be given to those whose land is acquired and to tenants, referred to in clause (c) of section 3 in a proportion to be decided by the appropriate Government. The First Schedule relates to the provisions of section 30(2) of the Act of 2013. Section 30 of the Act of 2013 reads as under:

"30. Award of solatium.—(1) *The Collector having determined the total compensation to be paid, shall, to arrive at the final award, impose a*

"Solatium" amount equivalent to one hundred per cent of the compensation amount.

Explanation.—For the removal of doubts it is hereby declared that solatium amount shall be in addition to the compensation payable to any person whose land has been acquired.

(2) The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

(3) In addition to the market value of the land provided under Section 26, the Collector shall, in every case, award an amount calculated at the rate of twelve per cent per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub-section (2) of Section 4, in respect of such land, till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier."

A careful perusal of the First Schedule, reveals that the market value of the land has to be determined as provided u/s. 26 of the Act of 2013. A perusal of Section 26, further demonstrates that it has to be read in conjunction with, and not de hors of the provisions of Sections 27 to 29 of the Act of 2013. Thus, the net effect is that for the purpose of determining the market value of the land under

the First Schedule, the powers, as conferred in Sections 26 to 29 of the Act of 2013, will be available and can be exercised by the Competent Authority for acquisition under the NH Act, 1956.

5 25. The Second Schedule provides for elements of rehabilitation and resettlement entitlements for the affected families (both land owners and the families whose livelihood is primarily dependent upon land acquired) in addition to those provided in the First Schedule and relates to section 31(1) and 38(1) of the Act of
10 2013, which read as under:

 " 31. Rehabilitation and Resettlement award for affected families by Collector.—(1) *The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule.*
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38. Power to take possession of land to be acquired.—(1) *The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under Section 30:*
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Provided that the components of the Rehabilitation and Resettlement Package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award:

Provided further that in case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands acquired."

26. The Third Schedule provides for provision of infrastructural amenities and relates to section 32 and 38(1) of the Act of 2013, which read as under:

"32. Provision of infrastructural amenities in resettlement area.—*In every resettlement area as defined under this Act, the Collector shall ensure the provision of all infrastructural facilities and basic minimum amenities specified in the Third Schedule."*

None of the First, Second and Third Schedules to the Act of 2013 contemplate or take into its compass or relate to, the provisions of Section 33 of the Act of 2013. It would, thus, be apparent that neither the Amendment Ordinance No. 9 of 2014 nor the notification dated 28/08/2015 make the provisions of section 33 of the Act of 2013, applicable to acquisition proceedings under the NH Act, 1956,

in absence of which, it cannot be held that the Competent Authority under the NH Act, 1956, would have any power or authority to either correct the award for any reason whatsoever or for that matter, to pass an additional award or to review the same.

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27. The learned A.S.G. further places reliance upon the judgment of the Hon'ble Apex Court in the case of **Union of India Vs. Tarsem Singh in Civil Appeal No. 7064 of 2019, decided on 19/09/2019**, and specifically para 41 thereof, to contend that due to the provisions of section 31-J of the NH Act 1956 being declared as violative of Article 14 of the Constitution, the provisions of section 33 of the Act of 2013, have become applicable to acquisition proceedings under the NH Act, 1956. In our humble opinion, the argument is misconceived. The Hon'ble Apex Court in **Tarsem Singh** (supra), has held as under:

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" 41.----- . We therefore declare that the provisions of the Land Acquisition Act relating to solatium and interest contained in Section 23(1A) and (2) and interest payable in terms of section 28 proviso will apply to acquisitions made under the National Highways Act. Consequently, the provision of Section 3J is, to this extent, violative of Article 14 of the Constitution of India and, therefore, declared to be unconstitutional."

It is axiomatic that the Hon'ble Apex Court in **Tarsem Singh**

(supra), was not considering the question of applicability of section 33 of the Act of 2013, to the acquisition proceedings under the NH Act, 1956. The declaration of section 3-J of the NH Act, 1956 as unconstitutional, to the extent, as indicated therein, cannot be construed or held to mean that the provisions of section 33 of the Act of 2013 are held to be applicable to the acquisition proceedings under the NH Act, 1956. The argument in this regard by the learned A.S.G. is totally out of context and misconceived and is, therefore, rejected.

28. The net result of the discussion, as made above, is that the provisions of section 33 of the Act of 2013, are not available to the Competent Authority constituted u/s. 3(a) of the NH Act, 1956, in the process of acquisition of land under the NH Act, 1956 and thus, it is impermissible for the Competent Authority to make any correction or for that matter to pass any order in the nature of correction of an award or for that matter an amended award. Once the award has been passed by the Competent Authority, the Competent Authority loses any authority to tinker with it in any manner whatsoever.

29. Further question is, once the award was declared on 14/08/2011, was it permissible for the Competent Authority to reopen the same, on the ground that there was a subsequent

notification dated 24/11/2017, providing a lesser multiplying factor. In our opinion, this was impermissible for two reasons. The first is that a notification/Govt. Resolution would always operate prospectively, unless by express language or necessary implication, as indicated therein. This is enunciated by the Hon'ble Apex Court in the case of **MRF Ltd., Kottayam Vs. Asstt. Commissioner (Assessment) Sales Tax and others**, (2006) 8 SCC 702, in the following words :

" 27. The provisions of the Act or notification are always prospective in operation unless the express language renders it otherwise making it effective with retrospective effect. This Court in S.L. Srinivasa Jute Twine Mills (P) Ltd. Vs. Union of India, (2006) 2 SCC 740, has held that it is a settled principle of interpretation that (SCC p.747,para 18) ".....retrospective operation is not taken to be intended unless that intention is manifested by express words or necessary implication, there is a subordinate rule to the effect that a statute or a section in it is not to be construed so as to have larger retrospective operation than its language renders necessary." "

A perusal of the Govt. Resolution dated 24/11/2017 does not indicate any such express language, implication or indication. It plainly and simply only notifies the factor by which the market value

is to be multiplied in respect of areas other than residential, commercial and industrial area of Special Planning Authorities, etc. in the matter of determining compensation under the Act of 2013. This Govt. Resolution dated 24/11/2017 has to operate
5 prospectively and not retrospectively, in light of which there was no reason or cause whatsoever for the Competent Authority to issue the corrigendum/clarification dated 02/01/2018, which clearly is not only illegal but also is without any authority too. The right to have use of the higher multiplier of 2.00, which was extant, as on the
10 date of the award, can be said to be a vested right in the land owner, which could not have been taken away by way of amendment to the existing notification, subsequent in point of time to the award. The second is that, once the award was declared on 14/08/2017, the matter went out of the domain of the Competent
15 Authority and was only susceptible to a challenge before the Arbitrator, as provided in Section 3-G(5) of the NH Act 1956. The Competent Authority, therefore, once having declared the award on 14/08/2017, was rendered bereft of any powers either to recall the award or reconsider the same, on any count whatsoever. Even
20 assuming that the Competent Authority under the NH Act, 1956 had any inherent power to correct an error of clerical or arithmetical nature, the same should have been so obvious, apparent or patent as not to admit of any debate or discussion. On the factuality of the

matter, it is pertinent to note that the purported correction dated 02/01/2018 was passed not because there was any clerical error or mistake in the award dated 14/08/2017 but for the reason that subsequent to the declaration of the award on 14/08/2017, the Government had issued a Govt. Resolution on 24/11/2017, providing for a multiplier factor, which in the opinion of the Competent Authority, if applied, would reduce the compensation granted to the petitioner in the award dated 14/08/2017. Such a course of action was not only impermissible but also is clearly without any authority in the Competent Authority in law. The Competent Authority appointed under a statute is supposed to be an independent person and has to dispassionately use and apply the powers as vested in it, for the purpose of implementing the provisions of the statute, which has to be done without fear or favour from any quarter. However, in the instant matter, the Competent Authority, instead of doing so, clearly appears to have digressed from its powers and duties, in order to favour the acquiring body, which clearly it ought not to have done. The correction dated 21/01/2018 by whatever name called, is therefore, illegal and unsustainable in law on the above counts too.

30. The net result of the above is that it is held as under:

- (a) The 'Competent Authority' as appointed under Sec. 3(a) of the NH Act, 1956, has no power to review its award or

correct any clerical or arithmetical mistake therein under the provisions of the NH Act, 1956.

(b) The powers u/s. 33 of the Act of 2013, are not available to the 'Competent Authority' appointed under the NH Act, 1956 for making any corrections of clerical or arithmetical nature in the award as passed by it.

(c) The 'Competent Authority' is not a 'Court', but is a quasi-judicial authority for the purpose of Sec. 3-C of the NH Act, 1956, in the matter of hearing and deciding the objections as received u/s. 3-C(1).

31. In light of above discussion and findings, we hold that the Competent Authority was not empowered to pass the corrigendum/clarification dated 02/01/2018 and the same being without any authority, is hereby quashed and set aside. The Competent Authority, therefore, is liable to deposit/transfer the balance amount of compensation to the petitioner.

32. Rule is made absolute in the above terms.

(**AVINASH G. GHAROTE**)
JUDGE

(**S.V. GANGAPURWALA**)
JUDGE