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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 665 of 2019

1. Mahesh Nachrani S/o Late Shri Radhakishan Nachrani Aged About 38 Years
2. Shankar Nachrani S/o Late Shri Radhakishan Nachrani Aged About 41 Years
3. Bhavika Nachrani W/o Shri Mahesh Nachrani Aged About 36 Years
4. Kashish Nachrani W/o Shri Shankar Nachrani Aged About 40 Years
5. Sarladevi Nachrani W/o Shri Radhakishan Aged About 65 Years
6. R. K. Organic Chemicals Through Its Partner Mahesh Nachrani, S/o Late Shri Radhakishan Nachrani, Aged About 38 Years,
7. M/s Sidhivinayak E. Through Mahesh Nachrani, S/o Late Shri Radhakishan Nachrani Aged About 38 Years,

All R/o Sameer Villas Panchsheel Nagar, Raipur, Tehsil and District-Raipur, Chhattisgarh.

---Petitioner(s)

Versus

1. Union of India Through Secretary Ministry of Road Transport and Highways, Transport Bhawan-1, Parliament Street New Delhi- 110001.
2. Chairman National Highways Authority of India NHAI Head Quarter, G-5 And 6, Sector 10 Dwarka, New Delhi- 110075.
3. State of Chhattisgarh Through Its Chief Secretary General Administration Department Raipur, Chhattisgarh.
4. The Collector Bilaspur, District Bilaspur Chhattisgarh.
5. The Sub Divisional Officer Bilaspur, District Bilaspur, Chhattisgarh.

---Respondents

AND

Writ Petition (C) No. 740 of 2019

1. Mahesh Nachrani S/o Late Shri Radhakishan Nachrani Aged About 38 Years
2. Shankar Nachrani S/o Late Shri Radhakishan Nachrani Aged About 41 Years
3. Bhavika Nachrani W/o Shri Mahesh Nachrani Aged About 36 Years

4. Kashish Nachrani W/o Shri Shankar Nachrani Aged About 40 Years
 5. Sarladevi Nachrani W/o Shri Radhakishan Aged About 65 Years
 6. R. K. Organic Chemicals Through Its Partner Mahesh Nachrani, S/o Late Shri Radhakishan Nachrani, Aged About 38 Years,
 7. M/s Sidhivinayak E. Through Mahesh Nachrani, S/o Late Shri Radhakishan Nachrani Aged About 38 Years,
- All R/o Sameer Villas Panchsheel Nagar, Raipur, Tehsil and District- Raipur, Chhattisgarh.

---Petitioner(s)

Versus

1. The Union of India Through Ministry of Road Transport and Highways Transport Bhawan-1 Parliament Street New Delhi.- 110001.
2. Chairman National Highways Authority of India, NHAI Head Quarter, G 5 And 6, Sector 10, Dwarka, New Delhi.- 110075.
3. State of Chhattisgarh Through Its Chief Secretary, General Administration Department, Raipur, Chhattisgarh.
4. The Collector Bilaspur, District- Bilaspur, Chhattisgarh.
5. The Sub-Divisional Officer Bilaspur, District- Bilaspur, Chhattisgarh.

---Respondents

AND

Writ Petition (C) No. 633 of 2019

Vijay Kumar Tripathi S/o Shri Vasudev Prasad Tripathi Aged About 38 Years R/o House No. 18, Shriram Residency Mangla Road, Bilaspur, District Bilaspur, Chhattisgarh.

---Petitioner(s)

Versus

1. Union of India Through Ministry of Road, Surface Transport and Highways, Through Its Secretary, Transport Bhawan, 1 Sansad Marg, New Delhi- 110001.
2. National Highway Authority Through Its Project Director National Highway Authority Bilaspur, Project Execution Unit, Abhilasha Parisar, Tifra Bilaspur, Chhattisgarh.
3. Collector Bilaspur District Bilaspur, Chhattisgarh.
4. Prescribed Officer Cum Land Acquisition Officer (SDO Revenue) Bilaspur, District Bilaspur, Chhattisgarh.

---Respondents

For Respective Petitioners	:	Shri Shashank Thakur and Shri Amit Soni, Advocates.
For Respondent-State	:	Shri Mateen Siddique, Deputy Advocate General.
For Respondent-UOI	:	Shri Himanshu Pandey, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

14.09.2020

1. Since the issue involved in the present three writ petitions are identical and similar in nature, the relief sought for and the whole of contentions also being common, this Court proceeds to decide the three writ petitions by this common judgment.
2. The brief facts common in the present writ petitions is that all the petitioners have a piece of land in village Aamsena under Patwari Halka No. 22/38 under Revenue Circle Sakri, Tehsil Takhatpur, District Bilaspur. All the three petitioners came in possession of the property by way of registered sale-deed executed duly stamped and also on payment of the stamp duty required. Subsequently, these properties of the petitioners came under acquisition under the provisions of the National Highways Act, 1956. The acquisition was done for the construction and widening of the Bilaspur-Katghora bypass situated on National Highway-130 (Old number NH-111). After the requisite formalities as laid down under the National Highways Act, 1956 the final award under Section 3(G) of the aforesaid Act was passed on 01.06.2018 (Annexure P/2) in all the three writ petitions.

3. Thereafter, after a gap of more than 4 months, the same Sub-Divisional Officer, who is also the Land Acquisition Officer and the prescribed authority under the National Highways Act, 1956 suo-moto reviewed the award (Annexure P/2) dated 01.06.2018 and an amended award was passed in the case of each of the petitioners vide amended award dated 05.10.2018 (Annexure P/1) in all the three petitions. It is this amended award dated 05.10.2018 which is under challenge in the present writ petitions.
4. The question of law involved in the present cases or the point of issue to be considered in these writ petitions is that;

“Whether the prescribed authority i.e. the Land Acquisition Officer, the concerned Sub-Divisional Officer has a power to review, amend or modify a final award passed under Section 3(G) of the National Highways Act, 1956.”

5. It was the stand and contention of the petitioners all along, that once when the prescribed authority has passed a final award and the same has been published, the prescribed authority thereafter becomes functus officio. It was further contended that once when an award has been passed, the statute does not provide for any of the aggrieved persons to prefer a review, nor does the statute confer any suo-moto powers upon the prescribed authority permitting suo-moto review of the final award. In view of this, the counsel for the petitioners stressed that the impugned amended award dated 05.10.2018 to be per-se illegal and contrary to law. Another ground raised by the petitioners while challenging the amended award was

that while registering a review the authority concerned did not issue any sort of notice to the petitioners nor was a fair and reasonable opportunity of hearing provided and thus the impugned order was also violative of the principles of natural justice. The further contention of the petitioner was that the plain reading and the proceedings would clearly reflect that the entire acquisition proceedings have been conducted strictly in accordance with the provisions of the Act and as such there is no procedural, technical and legal shortcoming or lacuna in the process of passing of the final award under Section 3(G) of the National Highways Act, 1956 on 01.06.2018.

6. Opposing the petition, the counsel for the Union of India took a solitary objection of the writ petitions being not maintainable for the reason that the petitioners have an alternative remedy of preferring an application under Section 34 of the Arbitration and Conciliation Act, 1996 before the concerned Court having jurisdiction. According to the Union of India, since the National Highways Act, 1956 is in itself a self contained Code and when this Code prescribes for a remedy to question the award upon being dissatisfied and the said provisions should not be permitted to be bypassed by entertaining a writ petition.
7. As regard to the counsel appearing for the State, they also had taken a plea of there being an alternative remedy under sub-clause (5) of clause (G) of Section 3, which provides for the petitioners moving an

appropriate application seeking for appointment of an Arbitrator for redressal of the grievance of the aggrieved party.

8. It was the contention of the State counsel that the Central Government as per the requirement of the National Highways Act, 1956 has already notified the Additional Commissioner, Bilaspur division to be an Arbitrator in respect of any dispute arising out of an award under the NH Act.
9. The other contention which the State Government has raised is that the sale-deed which was executed in favour of each of the petitioners was a motivated transaction with a clear and apparent intention of getting more compensation against the land, which has been acquired by the respondents. It was the further contention of the petitioner that the said transfer of the property in the name of the petitioners being with ulterior motive also stands established from the fact that the beneficiary of the said alleged sale were within the families, which establishes the clear intention of the petitioners to be that of earning more compensation.

All said and done, the question still to be considered is whether the Sub-Divisional Officer has the power to review an award, which was passed.

10. The stand of the counsel for the respondents was that the amended award was passed as a consequence of certain correction that was required to be made in the original award and according to the

counsel for the respondents, Section 33 of the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013 provides for the correction of awards by the Collector and according to the respondents, since there was an error detected in the course of quantifying the compensation the original award required correction and which the authority has corrected and the amended award has been passed.

11. At this juncture, it would be relevant to refer to Section 3G of the National Highways Act, 1956 and which for ready reference is being reproduced hereinunder:

3G. 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 3C, before the competent authority, at a time and place and to state the nature of 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 3A;

(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.”

12. And for the competent authority in the course of conducting the proceedings under the National Highways Act, 1956 they have been given certain powers which the Civil Court exercises while trying a suit under the Code of Civil Procedure, 1908.
13. The limited provisions of the Code of Civil Procedure which can be exercised by the competent authority under the NH Act is spelt out in 3(l) of the Act of 1956, which again for ready reference is reproduced herein under:

“3-l. 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:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

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

(c) reception of evidence on affidavits;

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

(e) issuing commission for examination of witnesses.”

14. In exercise of power conferred under Section 9 of the National Highways Act, 1956, the Central Government had also framed certain Rules known as “**The National Highways Rules, 1957**”. The entire provision of the Rules of 1957 does not provide for a power of review to the competent authority, so far as the award under the National Highways Act, 1956 is concerned.
15. Recently, the Bombay High Court had the occasion of dealing with a similar issue and in the said judgment of “**Bhupendrasingh v. Competent Authority**” 2019 SCC OnLine Bom 6092, the Division Bench of the Bombay High Court in paragraphs No. 25, 27 & 47 has held as under:

“25. 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.

27. 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 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.

47. 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.”

16. A similar dispute also came up before the Allahabad High Court in the case “**Ravindra Kumar Singh v. Union of India**”, 2019 SCC OnLine All 3589. The Division Bench of Allahabad also in paragraphs No. 30 to 34 held as under:

“30. We find unbroken line of authority to the effect that power of review is not an inherent power. It needs to be conferred by the statute by express or specific provision. In absence of any such power the order simply becomes without jurisdiction.

31. The legal position in this regard is much too well settled to require any reiteration. We may in this regard gainfully refer to the decision of the Supreme Court in *Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar*.

32. The Act does not empower the Collector to review an order passed by him under Section 76-A. In the absence of any power of review, the Collector could not subsequently reconsider his previous decisions and hold that there were grounds for annulling or reversing the Mahalkari's order. The subsequent order dated February 17, 1959 reopening the matter was illegal, ultra vires and without jurisdiction. The

High Court ought to have quashed the order of the Collector dated February 17, 1959 on this ground.

33. The said judgement has been consistently followed by the Supreme Court, in *Kalabharati Advertising v. Hemant Vimalnath Narichania*⁴ the Supreme Court has made the following observation:

“Review in absence of statutory provisions

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 the 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* and *Harbhajan Singh v. Karam Singh*.)

13. In *Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji, Major Chandra Bhan Singh v. Latafat Ullah Khan*⁴, *Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya, State of Orissa v. Commr. of Land Records and Settlement*⁶ and *Sunita Jain v. Pawan Kumar Jain* 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 the 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 the absence of any statutory provision for the same is a nullity, being without jurisdiction.”

34. Applying the said principle, we find that the competent authority has traveled beyond its jurisdiction to review its own order. He has ventured to sit over the order by his predecessor in reopening the Award. Hence, in the absence of any power of review, impugned order passed by the competent authority in the present case is without jurisdiction.”

17. The High Court of Karnataka also had an occasion of dealing with a similar situation in the case of “**National Highway Authority of India v. Assistant Commissioner and Competent Authority, Kolar and Another**” 2011 SCC Online KAR 115, wherein in paragraph No.13 the Division Bench has held as under:

“13. The question is whether respondent No. 1 has any such power under the provisions of the Act to pass such a second award. The answer has to be an emphatic no. There is no

provision in the Act clothing respondent No. 1 to pass a second award. Once an award is passed determining the compensation by the competent authority, then as per the provisions contained under sub-Section (5) of Section 3G of the Act, the aggrieved party who does not accept the amount has to make an application to the Arbitrator appointed by the Central Government who will determine the correct amount payable. As per sub-Section (6) of Section 3G of the Act, the provisions of the Arbitration & Conciliation Act, 1996, are made applicable to every Arbitration that takes place under the National Highways Act, 1956. As per sub-Section (7) of Section 3G of the Act, certain factors are enumerated which are required to be taken into consideration while determining the amount of compensation by the competent authority and also by the arbitrator. It is thus clear that if it is the case of the claimants-land owners that proper market value to the acquired lands payable as on the date of preliminary Notification published under Section 3A of the Act was not determined and awarded by the competent authority, the only course open for them is to move the arbitrator whereupon the arbitrator is enjoined with a duty to determine the same by following the provisions contained under sub-Section (7) of Section 3G of the Act. The aggrieved party will be further entitled to avail the provisions of the Arbitration & Conciliation Act, 1996.”

18. Recently the Hon'ble Supreme Court also in the case of **“Naresh Kumar & Others v. Government (NCT of Delhi)” 2019 (9) SCC 416** considering the issue whether a review of an award passed under the Acquisition Act was permissible or not, in paragraphs No.13 & 14 held as under:

“13. It is settled law that the power of Review can be exercised only when the statute provides for the same. In the absence of any such provision in the concerned statute, such power of Review cannot be exercised by the authority concerned. This Court in the case of Kalabharati Advertising vs. Hemant Vimalnath Narichania (2010) 9 SCC 437, has held as under:

“... 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 the 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 [AIR 1965 SC 1457] and Harbhajan Singh v. Karam Singh [AIR 1966 SC 641] .

13. In Patel Narshi Thakershi v. Pradyuman Singhji Arjunsinghji [(1971) 3 SCC 844] , Chandra Bhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321] , Kuntesh

Gupta (Dr.) v. Hindu Kanya Mahavidyalaya [(1987) 4 SCC 525] , State of Orissa v. Commr. of Land Records and Settlement [(1998) 7 SCC 162] and Sunita Jain v. Pawan Kumar Jain [(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 the 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 the absence of any statutory provision for the same is a nullity, being without jurisdiction.

14. Therefore, in view of the above, the law on the point can be summarised to the effect that in the absence of any statutory provision providing for review, entertaining an application for review or under the garb of clarification /modification/ correction is not permissible.”

14. In view of the aforesaid, we hold that the Award dated 01.10.2003 could not have been reviewed by the Collector, and thus we allow these appeals and quash the order dated 04.07.2004 passed by the Collector in Review Award No.16/03-04 as well as the order dated 04.03.2010 passed by the Delhi High Court in Naresh Kumar v. State (NCT of Delhi). The appellants shall thus be entitled to the compensation as awarded in terms of the Award of the Land Acquisition Collector dated 01.10.2003, and the Supplementary Award dated 27.10.2004. No orders as to costs.”

19. From the reading of the aforesaid judicial pronouncements of the various High Courts as also of the Hon'ble Supreme Court a fact which stands established is that unless the provision of law i.e. the statute provides for the power of review, an award once passed in itself becomes final. The position of Law also gets well settled on the basis of the aforesaid judicial pronouncements that the power of review is not an inherent power, it must be conferred by law either specifically or by necessary implication. A review is always considered to be a creature of statute and the power of review cannot be entertained in the absence of a provision thereof.
20. What is also required to be considered at this juncture is, can the amended award passed by the authorities be brought within the

ambit of Section 33 of the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** which empowers the Collector to carry out correction in so far as any clerical or arithmetic mistake and which can be done either on his own motion or on the application from an interested party. In the factual matrix of the case by way of the amended award, the prescribed authority has modified the order to the extent of changing the methodology of calculation thereby has reduced the compensation substantially from what was quantified in the original award. Thus, it is evidently clear that it was not a clerical or an arithmetic error, which the authority has carried out, rather it is a case where the prescribed authority has reviewed his own award and has modified the award detrimental to the interest of the petitioners. What has also to be seen at this juncture is that the original award was passed on 01.06.2018, however the amended award has been passed on 05.10.2018 i.e. after a period of more than 4 months.

21. As regards the objection of the respondents, so far as the right of the petitioners to challenge the award by way of an arbitration invoking Section 3G(5) of the National Highways Act, 1956 is concerned, this Court is of the opinion that, once when the challenge is made to the amended award primarily on the ground of, lack of jurisdiction and competence on the part of the prescribed authority, in reviewing his award and the ground being that of the authorities being denuded of their power of review this Court is of the opinion that under such

circumstances, this Court in exercise of its powers under Article 226 of the Constitution of India exercising the power of judicial review can entertain a writ petition in this regard, even in the case, if there is a provision of appeal provided under the statute. It is by now a well settled proposition of law that when a challenge to an order is primarily on the ground of jurisdiction and competence of the authority Writ Court can entertain a writ petition. Thus, the objection so far as the petitioners having an alliterative remedy stands rejected.

22. For all the aforesaid reasons, these three writ petitions deserve to be and are accordingly allowed and the impugned amended award (Annexure P/1) dated 05.10.2018 in all the three writ petitions are held to be bad in law, illegal and without jurisdiction and are accordingly set-aside thereby entitling the petitioners the benefit as per the original award dated 01.06.2018 in respect of the three writ petitioners.
23. The aforesaid three writ petitions thus stand allowed. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge