

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 4521 of 2021

1. Bhakku S/o Thuru, Aged About 65 Years, R/o Village Barhaguda, Tehsil Dabhra, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
2. Bandhan S/o Ronsay, Aged About 49 Years, R/o Village Barhaguda, Tehsil Dabhra, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh, Through Secretary, Department of Revenue and Disaster Management, Mantralaya, Mahanadi Bhawan Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State of Chhattisgarh, Through Secretary, Department of Water Resource, Mantralaya, Mahanadi Bhawan Raipur, District Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Collector Janjgir-Champa, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
4. Sub Divisional Officer (Revenue) Dabhra, District Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Respondents

WPC No. 4590 of 2021

1. Jagatram S/o Bodhram, Aged About 61 Years, Resident of Village Bilaigadh, Tehsil Dabhra, District Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
2. Bhuru S/o Nanhuram Kewat, Aged About 61 Years, Resident of Village Bilaigadh, Tehsil Dabhra, District Janjgir-Champa, Chhattisgarh.
3. Bihari S/o Puniram Kewat, Aged About 51 Years, Resident of Village Bilaigadh, Tehsil Dabhra, District Janjgir-Champa Chhattisgarh.
4. Ramshila Wd/o Ramgopal, Aged About 48 Years, Resident of Village Bilaigadh, Tehsil Dabhra, District Janjgir-Champa, Chhattisgarh.
5. Jhanakram S/o Bodhram Kewat, Aged About 51 Years, Resident of Village Bilaigadh, Tehsil Dabhra, District Janjgir-Champa Chhattisgarh.
6. Nirsundar S/o Bhagatram, Aged About 65 Years, Resident of Village Bilaigadh, Tehsil Dabhra, District Janjgir-Champa Chhattisgarh.

---- Petitioners

Versus

1. State Of Chhattisgarh, Through Secretary, Department of Revenue and Disaster Management, Mantralaya Mahanadi Bhawan Raipur, District Raipur Chhattisgarh., District : Raipur, Chhattisgarh
2. State of Chhattisgarh, Through Secretary, Department of Water Resource, Mantralaya Mahanadi Bhawan Raipur, District Raipur Chhattisgarh.
3. Collector Janjgir-Champa, District Janjgir-Champa Chhattisgarh.
4. Sub Divisional Officer (Revenue) Dabhra, District Janjgir-Champa

Chhattisgarh.

5. Executive Engineer, Water Resource Division Raigarh, District Raigarh Chhattisgarh.

---- Respondents

For Petitioners – Mr. Surfaraj Khan and Mr. Kamal Kishore Patel, Advocates (in WPC No.4590 of 2021), Mr. T.K. Jha, Advocate (in WPC No.4521 of 2021).
For State-respondents – Mr. S.C. Verma, Advocate General, Mr. Chandresh Shrivastava, Deputy Advocate General and Ms. Sameeksha Gupta, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15-11-2021

1. It is submitted that the petitioners in both the cases are recorded owners of the land which was acquired by the respondents for construction of Kalma Barrage. The compensation has been determined by respondent No.4 and awards have been passed by order dated 02-06-2021 and by order dated 28-01-2021. The petitioners in both the cases have grievance that in the passing the impugned awards respondent No.4 has committed mistake which is in the matter of error in calculation of compensation. Section 33 of the Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013 (in short 'the Act, 2013') empowers the respondent No.4 to correct any clerical or arithmetical mistake. The petitioners filed representations praying to amend the award which are pending without any decision. In similar cases the Land Acquisition Officers of other districts have passed the amended award and granted relief to the persons affected. Reliance has been placed on the judgment of Gujarat High Court in the matter of **Rajput Chhagguji Modiaji Vs. Special Land Acquisition Officer** [in R/First Appeal No.2123 of 2018, decided on 13/08/2018] and also on the judgment of Delhi High Court in the case of **Union of India Vs Om Prakash and others** [in CM(M) 1139/2016 & CM Nos.41958-41959/2016 and batch of other petitions, decided on 11-11-2016]. It is submitted that although the provision under Section 64 of the Act, 2013 provides for making reference to

the Collector, but in the provision under Section 63 of the Act, 2013 it is clearly provided that in the matter of dispute relating to land acquisition the High Court shall have jurisdiction under Article 226 and 227 of the Constitution of India or the Supreme Court shall have jurisdiction to entertain the dispute. Therefore, present petitions have been preferred before this Court.

2. It is submitted that there is requirement of strict compliance of Section 31 of the Act, 2013 which has not been made by respondent No.4 in the impugned award. Hence, the petitions be disposed off with direction.

3. The State counsel appearing for the respondents opposes the submission and submits that once the award has been passed by the Land Acquisition Officer a notice is given to the person interested and the award of compensation is uploaded in the website, the award becomes final. Therefore, that cannot be amended. It is submitted that the representations filed by the petitioners in both the cases are in fact for seeking recall of the earlier award granting compensation. Section 33 of the Act, 2013 can be invoked only for a limited purpose to correct any clerical or arithmetical mistake. This provision does not empower review of the earlier order. It is submitted that in such a case the petitioner have remedy available to file application under Section 64(2) of the Act, 2013. It is further submitted that in the case of **Rajput Chhagguji Modiaji Vs. Special Land Acquisition Officer** (supra) the High Court of Gujarat has referred to the provisions of Land Acquisition Act, 1894 (in short 'the Act, 1894'), in which Section 13A is now Section 33 of the new Act and Section 18 of the Act, 1894 is now Section 64 of the Act, 2013 which provides for reference to Collector. The High Court of Gujarat has clearly expressed that Section 13A of the Act, 1894 provides only for correction of clerical or arithmetical mistake and does not empower to modify the award. Therefore, the petitions are not maintainable.

4. In reply it is submitted by learned counsel for the petitioners that prayer

of the petitioners is only for direction to the concerned to decide their representations which may be decided in accordance with law.

5. Heard learned counsel for the parties and perused the documents.

6. Considered on the submissions. In the case of **Union of India Vs. Om Prakash and others** (supra), Delhi High Court has observed in paragraph 10 as follows:-

10. The other contention raised by the petitioner is that the Reference Court cannot direct the petitioner to modify the award and correct the statement under Section 19 of the Acquisition Act contrary to the Award. In this context reference may be had to the judgment of the Supreme Court in the case of **Chimanlal Hargovinddas vs. Special Land Acquisition Officer, AIR 1988 SC 1652** wherein the Supreme Court held as follows:-

“4. The following factors must be etched on the mental screen:

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of

the Land Acquisition Act (dates of Notifications under Sections. 6 and 9 are irrelevant).

.....”

7. Under Section 18 of the Act, 1894 the reference was to be made to the Principal Court of civil jurisdiction in which objections on decision were regarding measurement of land, the amount of the compensation or the apportionment of the compensation, which now has been replaced by Section 64 of the Act, 2013 and now the authority to decide the reference is Collector. The objections for decision in the reference under Section 64 of the Act, 2013 are similar.

Copy of representations made by the petitioners have been filed in both the cases and on perusal of the same, it is found that the petitioners have pointed out the mistakes that the calculation of compensation has not been made in accordance with the Chhattisgarh Rajya ki Aadarsh Punarwas Neeti 2007, but decision on this objection of the petitioners cannot be taken by respondent No.4 within the limitation of Section 33 of the Act, 2013 as the representations simply makes a prayer for recall and review of the order passed by respondent No.4. Hence, on the basis of this discussion both the petitions are disposed off at motion stage. The petitioners in both the cases are granted liberty to file reference under Section 64(2) of the Act, 2013. As there is limitation provided for filing such reference, therefore, the petitioners are also granted liberty to file application for condonation of delay in filing the reference. Respondent No.3 is directed to consider on the reference application and on the application for condonation of delay filed in accordance with law and also for taking into consideration the Chhattisgarh Rajya ki Aadarsh Punarwas Neeti 2007 and pass appropriate orders in accordance with law. With these observations, both the petitions are disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge