

**IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE PURUSHAINDRA KUMAR KAURAV**

**WRIT PETITION No.18207 of 2017**

**Between:-**

1. **DINENDRA PARASHAR S/O LATE SHRI BANSHIDHAR PARASHAR, AGED ABOUT 60 YEARS, OCCUPATION : SELF EMPLOYED.**
2. **SURENDRA PARASHAR S/O LATE SHRI BANSHIDHAR PARASHAR, AGED ABUT 58 YEARS, OCCUPATION : SELF EMPLOYED.**
3. **NARENDRA PARASHAR S/O LATE SHRI BANSHIDHAR PARASHAR, AGED ABOUT 50 YEARS, OCCUPATION : SELF EMPLOYED.**
4. **NIRMALA D/O BANSHIDHAR PARASHAR, W/O ASHOK SALALYA, AGED ABOUT 62 YEARS, OCCUPATION : HOUSE WIFE.**

**ALL R/O E-5/135, ARERA COLONY,  
BHOPAL (M.P.).**

**....PETITIONERS**

***(BY SHRI JAIDEEP SIRPURKAR - ADVOCATE)***

**AND**

1. **THE STATE OF MADHYA PRADESH THROUGH THE SECRETARY, REVENUE DEPARTMENT, VALLABH BHAVAN, BHOPAL (M.P.).**
2. **THE SUB DIVISIONAL OFFICER, CUM LAND ACQUISITION OFFICER, NASRULLAGANJ, DISTRICT : SEHORE (M.P.).**
3. **RAMESHCHANDRA PARASHAR, S/O MURLIDHAR PARASHAR, AGED ABOUT : MAJOR.**
4. **MAHESH PARASHAR S/O MURLIDHAR PARASHAR, AGED ABOUT : MAJOR.**

**3 & 4 R/O E-5/135, ARERA COLONY,  
BHOPAL (M.P).**

**...RESPONDENTS**

***(BY SHRI ANSHUMAN SWAMI – PANEL LAWYER FOR  
RESPONDENTS NO.1 AND 2 AND SHRI ANKIT SAXENA –  
ADVOCATE FOR RESPONDENT NO.3)***

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Reserved on : 16.02.2022  
Delivered on : 23 .02.2022  
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**ORDER**

The petitioners have filed the instant petition under Article 226 of the Constitution challenging the order dated 27.09.2017 (Annexure P/6) passed by the Sub Divisional Officer, Nasrullaganj, District Sehore.

2. The case of the petitioners is that they are owners of certain land which was acquired under the provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as the “Act of 2013”) for the purpose of construction of canal. The notification under section 11 and 19 of the Act of 2013 was issued on 20.08.2015 and 25.01.2016 respectively. The award was passed on 04.07.2016 (Annexure P/1), whereby, compensation was awarded to the petitioners and other land owners on account of acquisition of lands owned by them.

3. Learned counsel for the petitioners submits that one of the beneficiary of the award, namely, Shivnarayan had made an application to the same authority seeking disbursement of the amount of compensation to him. Thereupon, Case No.23/B 121/2016-2017 (Annexure P/3) dated 17.11.2016 was registered and vide impugned order dated 27.09.2017 (Annexure P/6), the earlier entitlement of the parties of their share as per original award dated 04.07.2016 (Annexure P/1) was modified and the quantum of compensation awarded to the petitioners has been reduced to the extent of two-third of the amount and direction has been issued to disburse the balance one-third amount in favour of respondents No.3 and 4. He further submits that once the award was passed on 04.07.2016, the Land Acquisition Officer becomes *funtus officio* and he cannot modify the original award so as to incorporate certain new conditions. More so, such an order is in ignorance of the fact that a Writ Petition No.167724/2016 is already pending before this court wherein the ownership of respondents No.3 and 4 is under dispute and the question of title of the parties is also pending before the Civil Court at Bhopal. He further contends that any party aggrieved with the award dated 04.07.2016 could have taken recourse to Section 64 of the Act of 2013, however, , the same authority cannot exercise any power which has the effect of modifying the original award.

4. Learned counsel appearing for respondents No.3 and 4 opposed the petition and submit that the Land Acquisition Officer has not committed any mistake while taking into consideration the application filed by Shivnarayan. He submits that the impugned order dated 27.09.2017 is not review of the original award and the same has been passed in separate proceedings distributing the share of compensation to the parties in accordance with law, therefore, no interference is called for.

5. I have heard learned counsel for the parties, perused the record and the provisions of the Act of 2013.

6. A perusal of the original award dated 04.07.2016 (Annexure P/1) shows that the same has been passed in exercise of the power vested under Section 31 of the Act of 2013 and the impugned order dated 27.09.2017 has an effect of modifying the original award dated 04.07.2016.

7. For proper appreciation of the submissions made by the parties, it would be appropriate to reproduce Section 33 and 64 of the Act of 2013. The same reproduced as under :-

**“33. Corrections to awards by Collector.–(1)** The Collector may at any time, but not later than six months from the date of award or where he has been required under the provisions of this Act to make a reference to the Authority under section 64, before the making of such reference, by order, correct any

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clerical or arithmetical mistakes in either of the awards or errors arising therein either on his own motion or on the application of any person interested or local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award so corrected to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refunded and in the case of any default or refusal to pay, the same may be recovered, as prescribed by the appropriate Government.

**64. Reference to Authority.-** (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Authority, as the case may be, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons interested:

Provided that the Collector shall, within a period of thirty days from the date of receipt of application, make a reference to the appropriate Authority:

Provided further that where the Collector fails to make such reference within the period so specified, the applicant may apply to the Authority, as the case may be, requesting it to direct the Collector to make the reference to it within a period of thirty days.

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(2) The application shall state the grounds on which objection to the award is taken: Provided that every such application shall be made—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector's award, whichever period shall first expire:

Provided further that the Collector may entertain an application after the expiry of the said period, within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified in the first proviso.”

8. On consideration, I find that there is no power to the Land Acquisition Officer to review the original award. The Hon'ble Supreme Court in the matter of *Naresh Kumar and others Vs. Government (NCT of Delhi)*<sup>1</sup> had an occasion to consider the powers of the Land Acquisition Officer to review the award after it attained finality in the context of Land Acquisition Act of 1894. It is settled law that the power of review can be exercised only when statute provides for the same expressly/ specifically or by necessary implication. In absence of any such provision in statute, such power of review cannot be exercised by the authority concerned. {See : *Naresh Kumar*<sup>1</sup> }.

9. Section 33 of the Act of 2013 only empowers the Collector to correct any clerical or arithmetical mistakes in either the award or

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<sup>1</sup> (2019) 9 SCC 416.

errors arising therein, either on his own motion or on the application of any person interested or local authority subject to compliance of other conditions of Section 33 of the said Act. The proportion of the share which was determined in the original award cannot be corrected in exercise of the power under Section 33 of the Act of 2013, as the same is not a clerical or arithmetical mistake.

10. If determination of entitlement of compensation is not acceptable to any person interested, the remedy for such person is to take recourse of Section 64 of the Act of 2013 wherein determination can be made with respect to measurement of the land, the amount of compensation, the person to whom compensation is payable, the rights of Rehabilitation and Resettlement under Chapters V and VI or the apportionment of the compensation among the persons concerned.

11. In view of aforesaid, the impugned order dated 27.09.2017 (Annexure P/6) is set aside. The parties aggrieved to the original award dated 04.07.2016 (Annexure P/1) are, however, at liberty to take appropriate recourse in accordance with law. The Petition is allowed.

**(PURUSHAINDR KUMAR KAURAV)**  
**JUDGE**

MKL.

W.P. No.18207 of 2017

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