

**HIGH COURT OF MADHYA PRADESH, JABALPUR**

**W.P. No.8178/2020**

Smt.Indrakala Agrawal and others

**-Versus-**

State of Madhya Pradesh and others

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**CORAM:-**

Hon'ble Shri Justice Mohammad Rafiq, Chief Justice.

Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

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Whether approved for reporting ? Yes/No.

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Shri Avinash Zargar, learned counsel for the petitioners.

Shri Ankit Agrawal, Government Advocate for the respondent nos. 1 and 2.

Shri Mohan Sausarkar, learned counsel for the respondent no.3.

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**ORDER**  
**(Jabalpur: 23-04-2021)**

**Per: V.K.Shukla, J.**

The present petition has been filed under Article 226 of the Constitution of India for quashing and setting aside of the award dated 01-06-2020 and for restoration of the original award dated 07-03-2019.

2. The facts of the case are that the industrial lands belonging to the petitioners and the industrial unit appurtenant thereto have been acquired by the respondents and an award granting compensation was passed on 07-03-2019. It is submitted that the compensation for the land has been assessed @ Rs.2700/- per square meter. This rate was based on relevant market value guidelines. After more than one year from the date of passing of the award, the respondent no.2 issued a notice to the

petitioners on 18-03-2020. By the said notice, three days time was granted to the petitioners to submit their reply with regard to review of the award. The petitioners filed a detailed reply inter alia pointing out that there is no error in the award and that the respondent no.2 has become *functus officio* and thus he has no jurisdiction to review the award that too after lapse of more than a year. The respondent no.2 has reviewed the award and passed the impugned award and reduced the amount of compensation awarded to the petitioners by applying rate on the basis of measurement of lands acquired as per hectare basis, whereas initially the compensation was computed at per square meter.

3. Learned counsel for the petitioners submitted that admittedly the lands of the petitioners are industrial and thus in the original award compensation was rightly computed on the basis of per square meter. It is submitted that the impugned award passed in exercise of the review jurisdiction is without jurisdiction. In absence of the statutory power of review, the respondent no.2 could not have reviewed the award. The correction which has been sought by the respondent no.2 would not fall within the ambit of correction of clerical error under Section 33 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter referred to as 'Act,2013'). It is submitted that the aforesaid provision permits correction of award of clerical error within a period of six months and not beyond that. The sole question which crops up for consideration is as follows :-

“Whether the SDO cum Land Acquisition Officer cum

Competent Authority ( who after passing of award becomes *functus officio*) can review the award passed by it in absence of statutory powers of review under the National Highways Act, 1956 that too after a lapse of more than one year.”

4. The learned counsel for the petitioners cited a Division Bench Judgment of Bombay High Court in the case of *Bhupendra Singh Vs. Competent Authority, 2019 SCC On line Bom 6092*, Single Bench judgment of High Court of Calcutta in *WPA 142 of 2019, 2019 SCC Online Cal 6122 (Md. Asaduzzaman and another Vs. State of West Bengal and others* and also a Single Bench decision of High Court of Chattishgarh at Bilaspur passed in *Writ Petition (C) No.665/2019 (Mahesh Nachrani & Ors. Vs. Union of India & Ors.) and connected writ petitions* on 14-09-2020 to argue that once the competent authority has passed the award as to the quantum of compensation payable in lieu of acquisition of the land under the National Highways Act, he cannot review the order, therefore, the amended award dated 01-06-2020 is wholly illegal and incompetent.

5. The respondents filed reply and raised preliminary objection regarding the maintainability of the instant petition on the ground of availability of statutory remedy as provided under Section 64 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation Act, 2013. It is submitted that without availing the said alternative remedy, the instant petition is liable to be dismissed. It is further submitted that the impugned award do not fall within the purview of review, it is only a correction which is done by the answering respondents to rectify the error occurred in the earlier award. It is

submitted that the lands of the petitioners were acquired for the four lane road for National Highway from Indore to Aadlabad. The Acquisition Officer earlier passed the award on 07-03-2019 and computed the amount of compensation of Rs.94793367/- in respect of total acquired area of village Dehagavon i.e. 13.493 hectare. On 13-03-2020, the Project Director submitted an application for correction of the award on the ground that the rates which have been applied by the authority in respect of the plot area (residential purpose) of Village Dehagavon i.e. Rs.2700 per sq. meter is not correct and it shall be as per market value of the land in the year 2017-2018 and for the land having area more than 0.03 hectare, rates applicable for valuation will be 1.5 times of the rates of agricultural irrigated land, therefore, the corrected rates will be Rs.4054500/- per hectare in place of 27000 per sq. meter. The authority after taking into consideration the market value of the property, reviewed the award on 01-06-2020. The notices were given to the petitioners. As per the amended award, the compensation amount of the land of the petitioners was determined at Rs.42014928/-. It is submitted that the petitioners have raised the ground that the authority cannot review the award as he became *functus officio* and thus he has no jurisdiction to review the award after lapse of a year. It is submitted that the original award was passed on 07-03-2019 as per relevant provision of the Act, 2013, but in original award, the authority has determined the value of the land (residential plot) i.e. Rs.2700 per sq. meter for diverted land whereas as per the market value and Collector guideline 2017-2018, the diverted land (residential, industrial and any

other use) more than 0.03 hectare, the rates applicable for valuation is 1.5 times the rate of agricultural irrigated land. The impugned award has been passed under Section 33(1) & 64 of the Act, 2013 and if the petitioners are aggrieved by the aforesaid award, then they have alternative remedy to challenge the impugned award under the Act. It is submitted that the petitioners have alternative remedy under section 3G(5) of the National Highway Act to approach the Arbitrator.

6. The respondent no.3 filed an affidavit in compliance to the order dated 03-09-2020 passed by this court and submitted that the award dated 07-03-2019 in which for Khasra nos.1140/1, 1140/2, 1140/3 and 1140/4 Rs.40,01,208/-, Rs.3,57,85,995/-, Rs.34,29,607/- and Rs.1,82,91,235/- (cumulatively amounting to Rs.6,15,08,045/-) has been awarded respectively. Admittedly, the rate which has been applied by the respondent no.2 is of Rs.2700/- per sq.meter (rate applicable for diverted land) whereas as per the Collector Guidelines 2017-18 क्रमांक 2 के अनुसार "कण्डिका क्रमांक 4 में उल्लेखित क्षेत्रों/ग्रामों को छोड़कर शेष ग्रामीण क्षेत्रों में 0.03 हेक्टेयर से अधिक व्यपवर्तित भूमि (आवास, उद्योग, व्यवसाय एवं अन्य उपयोग हेतु) का मुल्यांकन सिंचित कृषि भूमि के मूल्य के डेढ़ गुना मान्य किया जाएगा"।

7. It is further submitted that as per subsequent amended award dated 01-06-2020 (amounting to Rs.1,00,16,884/- cumulatively for Khasra Nos. 1140/1, 1140/2, 1140/3 and 1140/40) in which the rates are applicable as per Collector Guidelines 2017-2018 क्रमांक 2 के अनुसार कण्डिका क्रमांक 4 में उल्लेखित क्षेत्रों/ग्रामों को छोड़कर शेष ग्रामीण क्षेत्रों में 0.03

हेक्टेयर से अधिक व्यपवर्तित भूमि (आवास, उद्योग, व्यवसाय एवं अन्य उपयोग हेतु) का मुल्यांकन सिंचित कृषि भूमि के मूल्य के डेढ़ गुना मान्य किया जाएगा”।

On the basis of the aforesaid submissions, it is contended that the subsequent impugned award passed by the respondent no.2 is proper and legal. They also raised preliminary objection regarding availability of alternative remedy to approach the Arbitrator as per the provision of Section 3G(5) of the National Highway Act. Now he adverted to the question which has cropped up for consideration in the present case is “Whether the SDO cum Land Acquisition Officer cum Competent Authority ( who after passing of award becomes *functus officio*) can review the award passed by it in absence of statutory powers of review under the National Highways Act, 1956 that too after a lapse of more than one year ?”

8. 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 01.06.2020 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 petitioners 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.

9. As regard to the counsel appearing for the respondents, have 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.

10. 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 subsection (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.”

11. 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.

12. 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(I) of the Act of 1956, which again for ready reference is reproduced herein under:

“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:—

- (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.”

13. 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.

14. 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.”

15. 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*<sup>4</sup> 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/quasijudicial 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<sup>4</sup>, Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya, State of Orissa v. Commr. of Land Records and Settlement 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.”

16. 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.”

17. The same view has been reiterated by *High Court of Chhatisgarh at Bilaspur in the case of Mahesh Nachrani and others Vs. Union of India and others passed in Writ Petition ( C) No.665/2019*, and *High Court of Calcutta in WPA 142 of 2019, 2019 SCC Online Cal 6122 (Md. Asaduzzaman and another Vs. State of West Bengal and others*.

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. 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.

21. For all the aforesaid reasons, the writ petition deserve to be and are accordingly allowed and the impugned amended award (Annexure P/1) dated 01.06.2020 is 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 07.03.2019.

22. In view of the aforesaid, the writ petition stands allowed. No order as to costs.

**( MOHAMMAD RAFIQ )  
CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)  
JUDGE**