

NARESH KUMAR & ORS.

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v.

GOVT. OF NCT OF DELHI

(Civil Appeal No.6638 of 2010)

OCTOBER 17, 2019

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**[ARUN MISHRA, VINEET SARAN AND
S. RAVINDRA BHAT, JJ.]**

Land Acquisition Act, 1894 – ss. 11 and 13A – Review of award – Land of appellants was acquired – An award dated 01.10.2003 was passed by the Land Acquisition Collector awarding compensation of Rs.1,97,08,397/- in favour of the appellants – Then on dated 14.07.2004, a review award was passed by the Land Acquisition Collector, reducing the amount of compensation by Rs.49,39,195/- on the ground that the compensation ought not to have been awarded in respect of alleged illegal structures on the land, which had wrongly been awarded by the award dated 01.10.2003 – Propriety of – Held: Not proper – There is no provision under the L.A. Act for review of the award once passed u/s.11 of the Act and had attained finality – The only provision is for correction of clerical errors in the award, provided u/s.13A – In the instant case, the compensation for structure on the land was deducted from the award dated 01.10.2003 by the review award dated 14.07.2004 on the ground of the same being illegal structure, which actually amounted to review of the award and cannot be said to be a correction of any clerical or arithmetical mistake – The question whether the structure on the land of the appellants was legal or illegal could only be decided after parties were given opportunity to adduce evidence, which correction cannot be termed as correction of any clerical or arithmetical mistake – Thus, review of the award cannot be justified in law.

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Review – Express power of – Held: 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.

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A **Allowing the appeals, the Court**

HELD: 1. The Review Award could not have been passed under Section 13A of the Land Acquisition Act, 1894, which is meant only for correction of any clerical or arithmetical mistake. There is no other provision in the Act under which the said order dated 14.07.2004 could have been passed. [Para 9] [1048-C]

2. In the present case, the compensation for the structure on the land has been deducted from the Award dated 01.10.2003 by the Review Award dated 14.07.2004 on the ground of the same being illegal structure, which actually amounts to Review of the Award and cannot be said to be a correction of any clerical or arithmetical mistake. The question whether the structure on the land of the appellants was legal or illegal could only be decided after the parties were given opportunity to adduce evidence, which correction cannot be termed as correction of any clerical or arithmetical mistake. There being no provision under the Land Acquisition Act, 1894 for review of the Award, the passing of the order dated 14.07.2004 in Review Award no.16/03-04 cannot be justified in law. [Para 10] [1048-D-E]

3. Section 12 of the Act clearly provides that the Award of the Collector shall become final on the same being filed in the Collector's office, of which the Collector shall give immediate notice to the persons interested. From the facts of this case, it is clear that the Award dated 01.10.2003, of which due notice had been given to the appellants and part compensation had also been paid to the appellants in pursuance thereto, had become final and the same could not have been reviewed, and that too beyond a period of six months, within which period only clerical or arithmetical mistakes could have been corrected. [Para 11] [1048-F-G]

***Kalabharati Advertising v. Hemant Vimalnath Narichania* (2010) 9 SCC 437 : [2010] 10 SCR 971 – relied on.**

Case Law Reference

[2010] 10 SCR 971 relied on Para 12

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CIVIL APPELLATE JURISDICTION: Civil Appeal No.6638 of 2010 A

From the Judgment and Order dated 04.03.2010 of the High Court of Delhi at New Delhi in W.P. (C) No. 381 of 2009

With

Civil Appeal No. 6637 of 2010. B

Purushaindra Kaurav, Sr. Adv., K.K. Tyagi, P. Narasimhan, Advs. for the Appellants.

S.W.A. Qadri, Sr. Adv., Ms. Manjula Gupta, Ms. Sunita Sharma, Ms. Seema Bengani, Anas Zaid, B.V. Balram Das, Advs. for the Respondent. C

The Judgment of the Court was delivered by

VINEET SARAN, J.

1. The short question involved in these appeals are, as to whether under the Land Acquisition Act, 1894 (for short 'the Act'), after the passing of the Award under Section 11 of the Act, the Award could be reviewed under any of the provisions of the Act, specially under Section 13A of the Act. D

2. Brief facts of this case, relevant for the purpose of the present appeals are, that land of the appellants was sought to be acquired by a notification dated 23.05.2002 issued under Section 4 of the Act, followed by a declaration under Section 6 of the Act issued on 17.12.2002. An Award bearing no.16/03-04 dated 01.10.2003 was passed by the Land Acquisition Collector awarding compensation of Rs.1,97,08,397/- in favour of the appellants, out of which, an amount of Rs.1,87,10,194/- was paid to the appellants and the balance amount of Rs.9,98,203/-, along with interest, still remains to be paid. E F

3. Then on 14.07.2004, a Review Award was passed by the Land Acquisition Collector, reducing the amount of compensation by Rs.49,39,195/- on the ground that the compensation ought not to have been awarded in respect of alleged illegal structures on the land, which had wrongly been awarded by the Award dated 01.10.2003. Such amount was thus deducted by the Review Award. The appellants were unaware of the said Review Award having been passed and, in the meantime, a G H

- A Supplementary Award dated 27.10.2004 was passed in favour of the appellants for an amount of Rs.45,36,781.64 paise towards compensation for the trees on the land which was acquired.

4. The appellants then filed Writ Petition (C) No.2185 of 2008 praying for release of the compensation in respect of the Supplementary Award dated 27.10.2004. On having been informed of the passing of the Review Award No.16/03-04 on 14.07.2004, which information was furnished to the appellants in response to an RTI application dated 18.12.2007, the appellants then filed Writ Petition (C) No.381 of 2009 challenging the Review Award dated 14.07.2004. Both the Writ Petitions were heard together and dismissed by a common judgment dated 04.03.2010 passed by the Division Bench of the Delhi High Court, which is under challenge in the present appeals.

5. The contention of the learned Counsel for the appellants is that after the Award had been passed on 01.10.2003 under Section 11 of the Act, the same had become final as per Section 12 of the Act, and the same could not have been reviewed under any provision of the Act. It has been contended that the only provision is for correction of clerical errors etc. under Section 13A of the Act, which only permits the Collector to correct any clerical or arithmetical mistake in the Award, and that too within a period of six months and not beyond. It is thus contended that Award dated 01.10.2003 had attained finality, and could not have been reviewed under any of the provisions of the Act. It is lastly contended that the Supplementary Award dated 27.10.2004 was passed for compensation of the trees on the land of appellants, which amount ought to have been paid and the High Court has wrongly denied the same.

6. Per contra, learned Counsel for the respondent submitted that a mistake committed by the Land Acquisition Collector, while passing the Award dated 01.10.2003, could be corrected at any time, and in the present case, the Award included the compensation for the illegal structure, which ought not to have been paid to the petitioner as the same would not be payable under the 8th Clause of Section 24 of the Act. It has been contended that a mistake which had occurred in the Award could be corrected by the Land Acquisition Collector at any time, and in the present case, the same was done on the instruction of the Secretary, Land and Building, which was duly approved by the Lieutenant

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Governor. Though it is submitted that notice of the proceedings in the Review Award was sent to the appellants, but the same is denied by the appellants, who have thus contended that they had no knowledge of the proceedings of the Review Award. A

7. We have heard learned Counsel for the parties at length and have perused the material on record. B

8. There is no provision under the Land Acquisition Act, 1894 for review of the Award once passed under Section 11 of the Act and had attained finality. The only provision is for correction of clerical errors in the Award which is provided for under Section 13A of the Act, which was inserted with effect from 24.09.1984. The relevant Section 13A of the Act reads as under: C

13A. Correction of clerical errors, etc. – (1) *The Collector may, at any time but not later than six months from the date of the award, or where he has been required under section 18 to make a reference to the Court, before the making of such reference, by order, correct any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:* D

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 a representation in the matter. E

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

(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 an arrear of land revenue.* G

(emphasis supplied)

A bare reading of the said Section 13A would make it clear that the same is not a provision for Review of the Award but only for correction

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- A of clerical or arithmetical mistakes in the Award. It is further provided in the sub-Section (1) of Section 13A that the said correction can be made at any time, but not later than six months from the date of award. In the present case, the Land Acquisition Collector has actually not made any correction of clerical or arithmetical mistake, but has in fact reviewed the Award dated 01.10.2003 by its Review Award no.16/03-04 dated 14.07.2004, which was also clearly passed beyond such period of six months.
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9. In our considered view, the Review Award could not have been passed under Section 13A of the Act, which is meant only for correction of any clerical or arithmetical mistake. There is no other provision in the Act under which the said order dated 14.07.2004 could have been passed.
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10. In the present case, the compensation for the structure on the land has been deducted from the Award dated 01.10.2003 by the Review Award dated 14.07.2004 on the ground of the same being illegal structure, which actually amounts to Review of the Award and cannot be said to be a correction of any clerical or arithmetical mistake. The question whether the structure on the land of the appellants was legal or illegal could only be decided after the parties were given opportunity to adduce evidence, which correction cannot be termed as correction of any clerical or arithmetical mistake. There being no provision under the Land Acquisition Act, 1894 for review of the Award, the passing of the order dated 14.07.2004 in Review Award no.16/03-04 cannot be justified in law.
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11. Section 12 of the Act clearly provides that the Award of the Collector shall become final on the same being filed in the Collector's office, of which the Collector shall give immediate notice to the persons interested. From the facts of this case, it is clear that the Award dated 01.10.2003, of which due notice had been given to the appellants and part compensation had also been paid to the appellants in pursuance thereto, had become final and the same could not have been reviewed, and that too beyond a period of six months, within which period only clerical or arithmetical mistakes could have been corrected.
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12. 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

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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:

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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 : AIR 1970 SC 1273] , Major Chandra Bhan Singh v. Latafat Ullah Khan [(1979) 1 SCC 321] , Kuntesh Gupta (Dr.) v. Hindu Kanya Mahavidyalaya [(1987) 4 SCC 525 : 1987 SCC (L&S) 491 : AIR 1987 SC 2186] , 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 : (2008) 1 SCC (Cri) 537] 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.”*

13. 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

- A 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 Writ Petition (C) No.2185 of 2008 and Writ Petition (C) No.381 of 2009. 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.
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No orders as to costs.

Ankit Gyan

Appeals allowed.