

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

WEDNESDAY, THE 12TH DAY OF AUGUST 2015/21ST SRAVANA, 1937

OP(C).No. 593 of 2012 (O)

LAR 113/2002 IN EP 221/2008 of SUB COURT, CHERTHALA

PETITIONER :

**MEENAKSHIAMMA CHELLAMMA,
LEKSHMI NIVAS, PALLIPPURAM P.O., CHERTHALA.**

**BY ADVS.SRI.G.D.PANICKER
SMT.JEENA JOSEPH**

RESPONDENTS :

- 1. SATE OF KERALA
REPRESENTED BY THE SPECIAL TAHSILDAR,
(LA) INDUSTRIALGROWTH CENTRE
CHERTHALA, PIN - 688 524.**
- 2. THE MANAGING DIRECTOR
KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION(KSIDC)
THIRUVANANTHAPURAM PIN - 695 004.**

**R1 BY STATE ATTORNEY SRI. VIJAYARAGHAVAN
R2 BY ADV. SRI.JOBY CYRIAC, SC, KSIDC**

**THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON 10-08-2-15,
THE COURT ON 12-08-2015 DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER'S EXHIBITS :

- P1: COPY OF THE JUDGMENT IN LAR NO. 113/2002 OF THE SUBORDINATE JUDGE CHETHALA.**
- P2: COPY OF THE EP NO. 221/2008 IN LAR NO. 113/2002 OF THE SUBORDINATE JUDGE CHERTHALA.**
- P3: COPY OF THE BALANCE STATEMENT FILED BY THE CLAIMANTS.**
- P4: COPY OF THE CALCULATION DONE BY THE HONOURABLE SUB COURT.**
- P5: COPY OF THE ORDER IN LAR NO. 113/2002 IN E NO. 221/2008 DT 2/9/2011.**

RESPONDENT'S EXHIBITS : NIL.

//TRUE COPY//

P.A. TO JUDGE

bp

[CR]

B. KEMAL PASHA, J.

.....
O.P.(C) No. 593 of 2012
.....

Dated this the 12th day of August, 2015

J U D G M E N T

The mode of appropriation of payment made towards a Land Acquisition Award in execution, is in question. In the Land Acquisition Award, the mode of appropriation has not been mentioned. In case of shortfall in deposit of the award amount, how the amount deposited has to be appropriated, is the short question to be decided here.

2. The learned counsel for the petitioner has invited the attention of this Court to the decision in ***Gurupreet Singh v. Union of India***[(2006) 8 SCC 457] which was rendered in a land acquisition matter. It was held that, if at a particular award stage there is a shortfall in the deposit

made by the State against the award decreed at that stage, the decree-holder can seek to apply the rule of appropriation in respect of that amount as per the general principles of appropriation, first towards interest, then towards costs and then towards the principal, unless the decree otherwise directs.

3. The learned counsel for the 2nd respondent has pointed out that the decision rendered by a three Judges' Bench of the Hon'ble Supreme Court in ***Prem Nath Kapur & Anr. v. National Fertilizers Corporation of India Ltd. & Ors.***[(1996) 2 SCC 71] has not been overruled by the Constitution Bench of the Supreme Court in ***Gurupreet Singh***(*supra*), whereas the same was only clarified and slight modifications were made. In ***Gurupreet Singh***(*supra*) it was held that when a payment was appropriated towards part of the principal, the interest would cease from the date on which such amount received by the decree-holder towards the principal amount. It was also held that by way

of an interim order, the court could indicate as to how the deposited amount has to be appropriated. In case of any such direction, that direction would prevail and appropriation could only be made on the basis of that direction. Here, in this case, the respondents have no case that there was any such direction passed by the court with regard to the mode of appropriation. Further, in **Gurupreet Singh**(*supra*), it was held in paragraph 53:

“Thus, on the whole, we are satisfied that the essential ratio in the Prem Nath Kapur(supra) on appropriation being at different stages is justified though if at a particular stage there is a shortfall, the awardee decree holder would be entitled to appropriate the same on the general principle of appropriation, first towards interest, then towards costs and then towards the principal, unless, of course, the deposit is indicated to be towards specified heads by the judgment debtor while making the

deposit intimating the decree-holder of his intention. We, thus, approve the ratio of Prem Nath Kapur(supra) on the aspect of appropriation.”

4. It seems that the judgment debtors can also specify at the time of deposit with regard to the mode of appropriation and they can inform the decree holder as to the manner in which the amount deposited has to be appropriated. In this particular case, there is nothing to show that any such indication was given by the judgment debtors with regard to the mode of appropriation at the time of making the deposit. If the judgment debtors have a case that such indication was given to the decree holder, the burden is on the judgment debtors to show that they had indicated with regard to such mode of appropriation. In case of such indication, of course, going by **Gurupreet Singh (supra)**, the appropriation would be governed by such indication.

5. In this particular case any specific mode of appropriation has not been mentioned in the award. Therefore, the law is governed by the decision in **Gurupreet Singh's case**(*supra*). The amount deposited has to be appropriated first towards interest, then towards costs, and then towards the principal amount. Matters being so, Ext.P5 order passed by the court below is liable to be set aside.

In the result, this Original Petition is allowed and Ext.P5 order is set aside.

Sd/- B.KEMAL PASHA, JUDGE

ul/-

[True copy]

P.S. to Judge