**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CR No.2274 of 2018 (O&M)
& other connected cases
Date of Decision: 17.05.2018**

National Thermal Power Corporation Ltd.

...Petitioner

Versus

Mekh Chand and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. B.S. Rana, Sr. Advocate with
Mr. Vikas P. Singh, Advocate for the petitioner
(CR Nos.2274 to 2287, 2351 of 2018)

Mr. Rajiv Sharma, Advocate for the petitioner
(In CR No.3747 of 2013)

Mr. Satish Chaudhary, Advocate
for the respondents in all cases.

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ANIL KSHETARPAL, J.

This order of mine shall dispose of 16 revision petitions bearing CR Nos.2274 to 2287, 2351 of 2018 and RA-CR-53-CII-2017 in/and CR-3747-2013.

National Thermal Power Corporation Limited has filed these revision petitions against the order passed by the learned Executing Court dated 19.03.2018.

The law on the manner of apportionment of the part of compensation deposited for compulsorily acquisition of land has been settled by the Constitution Bench of Hon'ble the Supreme Court in

Gurpreet Singh Vs. Union of India (2006) 8 SCC 457. It has been held that wherever the payment is made in part, the decree holder shall be entitled to adjust the part payment first towards interest due, then towards costs and then towards principal.

The entire dispute in these revision petitions revolves around the aforesaid manner of apportionment. Hon'ble the Constitution Bench of the Supreme Court has carved out only one exception, i.e., if the Judgment Debtor deposits the compensation under a particular head and the landowners (Decree Holders) withdraw the aforesaid amount from that head without any objection, thereafter, the Decree Holder cannot be permitted to object and claim the apportionment of the amount under a different head. For example, if the acquiring authority/Judgment Debtor while depositing part of the amount due, deposits the amount with clear indication that amount is being deposited against principal sum due and this fact is in the knowledge of the Decree Holder and he withdraws the same as a principal amount without raising any objection then he cannot later on be permitted to turn around and seek adjustment of the aforesaid amount under a different head.

In these very cases, Hon'ble the Supreme Court vide order dated 25.10.2017, remitted the cases to the learned trial Court to find out whether Form-D had been submitted in the Executing Court and as to whether the intimation was given to the decree Holder in this regard or not.

The relevant part of the order passed by Hon'ble the Supreme Court on 25.10.2017 is extracted as under:-

> *"So far as further payments made pursuant to the interim orders of this court is concerned, there is dispute between the parties as to whether Form D had been submitted in the executing court, and as to whether the intimation that was to be given, in the light of observations made in para 52 and 53 of the decision of this Court in Gurpreet Singh (supra), had been given, and as to whether Form D was submitted alongwith the written arguments before the executing court or at the time of deposit of amounts. In the previous order that was passed by the executing court on 04.10.2010, it has been mentioned, at para 24, that NTPC had submitted Form D in the court, wherein, apart from details of the amount being deposited, it was specifically mentioned that the certain amount paid was towards the principal and particular amount, was to be adjusted towards interest and cost. It was submitted, that Form D had been filed in pursuance of the order passed by this Court at the time of deposit and not with written arguments. Obviously, the option has to be guaged, when Form D was filed, informing intention and then calculation is to be made in the light of the observations made in para 52 to 53 of the decision rendered by this court in Gurpreet Singh (supra) which explained the decision in Prem Nath Kapur & Anr. Vs. National Fertilizers Corpn. of India Ltd. & Ors. (1996)(2 SCC 71."*

On reading of the aforementioned relevant extract of the order, it is apparent that Hon'ble the Supreme Court had directed the Executing Court to re-decide the matter after determining that whether the specific intimation in this regard was available with the decree holders or not before withdrawal of the amount and at what stage Form-D was filed in the Executing Court.

Hon'ble the Constitution Bench in Gurpreet Singh's case (Supra) has laid down as under:-

> *"28. Going by this principle and for the moment keeping out the scheme of the Land Acquisition Act, it appears to us that on payment or deposit of the amount awarded by the Collector in terms of Section 11 read with Section 31 of the Act, the claimant cannot thereafter claim any interest on that part of the compensation paid to him or deposited for the payment to him once notice of deposit is given to him. Thereafter, when the reference court enhances the compensation with consequential enhancement in solatium and interest under Section 23(1-A) of the Act and further awards interest on the enhanced compensation in terms of Section 28 of the Act, the claimant/decree holder can seek an appropriation of the amounts deposited pursuant to that award decree, only towards the enhanced amount so awarded by the reference court. While making the appropriation, he can apply the amount deposited, first towards the satisfaction of his claim towards interest on the enhanced amount, the costs, if any, awarded and the balance towards the land value, solatium and the payment under Section 23(1-A) of the Act and if, there is a shortfall, claim that part of the compensation with interest thereon as provided in Section 28 of the Act and as covered by the award decree. Once the sum enhanced by the reference court, along with the interest is deposited by the State, there will be no occasion for the claimant/awardee to seek a reopening of the amount awarded by the Collector, substituted by the amount awarded by the reference court and seek to have a re- appropriation of the amount towards what is due. Same would be the position in a case where the amount awarded by the reference court, including the interest is deposited, but the amount is further enhanced in appeal by the High Court. Again, the same principle would*

apply. The principle would continue to apply when the Supreme Court awards further enhancement in a further appeal to that Court. But if after the award by the reference court the amount is not deposited by the State, interest would run on the compensation in terms of Section 28 of the Act on that amount as provided in Section 28. The same would be the position regarding the enhancement given in appeal by the High Court and in the enhancement given in appeal by the Supreme Court. The mandate of Section 34 and Section 28 that interest would run from the date the Collector takes possession till the particular amount is deposited as provided in those sections ensures that the claimant is recompensed adequately. Section 28 ensures such recompense at each stage of enhancement of compensation.

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51. Prem Nath Kapur also indicates that when an award-decree is passed specifying the amounts under different heads like the amount under Section 23(1), the amount under Section 23(2), the amount under Section 23 (1A) and the interest under Section 28 and the judgment debtor makes a deposit of specified sums under these different heads, it will amount to the judgment debtor intimating the decree holder as to how the sum deposited is to be applied in discharge of the obligation of the judgment debtor. Once a decree holder receives the payment of the sums thus deposited, he would be accepting the appropriation made by the judgment debtor under the award decree on the scheme of the Land Acquisition Act. This part of the reasoning in Prem Nath Kapur is, of course, also based on the reasoning that there is some inconsistency in Order 21 Rule 1 of the Code and the scheme of the Act. Prem Nath Kapur also indicates that when the decree itself specifies the amount payable under *different heads (the decree has to do so under Section 26 of the Act) and amounts are deposited towards those different heads, the appropriation would be on the basis of the direction under the decree which must be taken to be one for crediting the various sums paid under particular heads. On the scheme of the Act, especially the wordings of Section 34 and Section 28 if the Act, it is not possible to say that the said approach made in Prem Nath Kapur is erroneous or is unreasonable or is not (sic) a line of approach that is not warranted. Therefore, when the judgment debtor State makes a deposit along with the calculation appropriating distinct sums towards various heads of compensation as awarded by the reference court or by the appellate court in the appellate decree, and the amount is received by the decree holder, the decree holder must be taken to be not entitled to seek an appropriation as if the judgment debtor has not made any intimation and that he is entitled to appropriate at his volition. Considering the scheme of compensation under the Act in the context of the specific nature of the items specifically referred to in Section 23 of the Act, we are of the view that the approach adopted in Prem Nath Kapur is justified. A reappropriation by seeking to reopen the satisfaction already rendered might result in interest being made payable even on that part of the principal amount that had already been deposited and received by the decree holder and that would be in the realm of unjust enrichment.*

52. What is to happen when a part of the amount awarded by the reference court or by the appellate court is deposited pursuant to an interim order of the appellate court or of the further appellate court and the awardee is given the liberty to withdraw that amount? In such a case, the amount would be received by the decree holder on the strength of the *interim order and the appropriation will be subject to the decision in the appeal or the further appeal and the direction, if any, contained therein. In such a case, if the appeal is disposed of in his favour, the decree holder would be entitled to appropriate the amount already received by him pursuant to the interim order first towards interest then towards costs and the balance towards principal as on date of the withdrawal of the amount and claim interest on the balance amount of enhanced compensation by levying execution. But on that part appropriated towards the principal, the interest would cease from the date on which the amount is received by the awardee. Of course, if while passing the interim order, the court had indicated as to how the deposited amount is to be appropriated, that direction will prevail and the appropriation could only be done on the basis of that direction.*

53. Thus, on the whole, we are satisfied that the essential ratio in the Prem Nath Kapur 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 on the aspect of appropriation."

In the present case, the award was announced on 18.06.1996. Learned Reference Court while deciding the reference under Section 18 of the Land Acquisition Act, determined the market value at ₹306/-(enhanced amount) per square yard vide judgment dated 21.02.2000. In the first appeal, no interim protection was granted. Hence, National Thermal Power

Corporation filed Special Leave Petition. Hon'ble the Supreme Court passed the order on 27.09.2000 which is extracted as under:-

> *"Issue notice. In the meanwhile we suspend the operation of the impugned order (passed by the learned Single Judge of the High Court) on one specific condition that the petitioner-Corporation shall deposit 25% of the award amount with the Reference Court."*

First appeal filed by the petitioner-Corporation was dismissed on 29.05.2004 maintaining the market value awarded by the Reference Court at ₹306/- per square yard. Once again Special Leave Petitions were filed and Hon'ble the Supreme Court on 13.12.2004 passed an order, which is extracted as under:-

> *"Issue notice. Interim stay of execution on depositing of 25% of the enhanced compensation on or before a month from today. On deposit of such amount, the respondent would be at liberty to get refund of the amount on furnishing security to the satisfaction of the execution court."*

Vide judgment dated 05.02.2009, Hon'ble the Supreme Court accepted the appeal in part and finally determined the market value of the acquired land at ₹289/- per square yard.

As per the order passed by the Executing Court, first payment of ₹5,08,685/- was made and after deducting tax deducted at source payment of ₹4,87,961/- was released. Copy of Form-D was only furnished at the time of the arguments. Second Form-D dated 24.12.2004 was handed over to the Court on 24.12.2004. Thereafter another copy of the same was furnished in the year 2009. Now the Judgment Debtor claims that since in the Form-D, they had expressed their intentions by specifying the different amounts to be adjusted towards the principal due and interest payable, therefore, the Decree Holder is not entitled to adjust the payment deposited first towards interest and then towards costs and then towards principal. It is not even the case of the National Thermal Corporation Ltd. or the finding of the learned trial Court that the copy of the Form-D was ever supplied to the decree holders enabling them to know under what head different amount was being deposited before the amount was withdrawn by them. In para 51 of the judgment extracted above, Hon'ble the Supreme Court has only carved out one exception i.e., when the Decree Holder has accepted the payment as apportioned by the Judgment Debtor without any objection and withdraw the amount as such, thereafter he cannot be permitted to raise an objection.

From the reading of the impugned order passed by the learned Executing Court, it is not clear whether the copy of Form-D wherein the Judgment Debtor had specified the amount of compensation to be appropriated under different heads had been supplied to the Decrees Holder or not before the amount was withdrawn by them. They can only be debarred if the Decree Holders were supplied the copy of the Form-D specifying the different amounts to be appropriated under different heads and the Decree Holders did not object thereto while receiving the amount.

In view of the above, these revision petitions are disposed of with the direction to the Executing Court to examine whether the copy of the Form-D was supplied to the landowners/Decree Holders before withdrawal of the amount and if yes, further examine whether the Decree Holders received the payment in the manner appropriation was made by the Judgment Debtor without any objection. If the Executing Court comes to a conclusion that Form-D was not supplied to the Decree holders before the withdrawal of the amount by them, the learned Executing Court would proceed with the execution as it is. This exercise be carried out by the learned Executing Court within a period of 8 weeks from the date of receipt of certified copy of the order.

RA-CR-53-CII-2017 (O&M) in CR No.3747 of 2013

This order will also dispose of review application bearing No.53-CII of 2017.

CM No.8793-CII of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 139 days in refiling the application is condoned.

Application is disposed of.

CM No.8794-CII of 2017

For the reasons stated in the application, which is duly supported by an affidavit, delay of 511 days in filing the application is condoned.

Application is disposed of.

Main Review Application

Grievance of the petitioners is that there were large number of revisions filed against the similar orders passed by the Executing Court. The number of revisions were allowed whereas the revision petition filed by the petitioner was dismissed by the impugned order.

Now Hon'ble Supreme Court in the similar cases have remitted the matter to the Executing Court and once again the matter has come up in revisions which are being decided with this order. The only issue involved is how the decree holder is entitled to be appropriate the amount of compensation if only part the compensation due is deposited.

In view of the aforesaid, the review application is allowed.

The revision petition bearing CR No.3747 of 2013 is restored to its original number. Revision petition is disposed of in terms of this judgment. The Executing Court in this case also would carry out the exercise as directed above.

All the revision petitions are disposed of in the manner indicated above.

17.05.2018 **(ANIL KSHETARPAL)**
pawan **JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No