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

**Civil Revision No.7158 of 2012**
**and other connected revisions.**
**Date of Order: 19.01.2018**

**State of Haryana and another** **..Petitioners**

**Versus**

**Amrit Pal** **..Respondent**

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. Pritam Saini, Addl. Advocate General, Haryana &
Mr. Saurabh Girdhar, Asstt. Advocate General, Haryana

Mr. Ajay Jain, Advocate,
for the respondent.

**ANIL KSHETARPAL, J (Oral)**

By this order, I shall be disposing of Civil Revision Nos.7158, 7159, 7163, 7170, 7171, 7172, 7640, 7665, 7686, 7750, 7751 and 7850 of 2012, as common issue arises for determination and order passed by the learned Executing Court with similar reasons have been impugned in all these cases.

The question which needs determination is “how partial payment made at various stages is to be adjusted in case of compensation payable for compulsorily acquisition of the land”

In the present case, acquisition was initiated on 14.04.1976 by issuing notification under Section 4 of the Land Acquisition Act, 1894. The award came to be passed on 15.09.1978 (Note:- it appears that on the date of award, payment was not released to the land owners as per the calculation sheet submitted by the Deputy Commissioner on 16.01.2014).

The land owners sought reference under Section 18 of the

Land Acquisition Act, 1894, which was referred and adjudicated upon by the learned Additional District Judge vide judgment dated 22.03.1983. The compensation was enhanced. However, since, on that day the amendment of 1984 had not come into force, therefore, the learned Additional District Judge directed payment of the enhanced compensation along with solatium @ 15% and interest @ 6%.

The land owners filed the first appeals, which were allowed on 17.10.1984. The compensation was once again enhanced. Learned Single Judge directed payment of the enhanced compensation along with statutory benefits as per the unamended act.

The latter patent appeals were preferred by the land owners which came to be decided on 30.05.1997. The Division Bench dismissed the appeals qua further enhancement of the compensation, however, directed that the land owners shall be entitled to the statutory benefits under Section 23(2) and 28 of the Land Acquisition Act, 1894 as amended. It is not in dispute that the aforesaid judgment passed by the Division Bench has become final between the parties.

In execution petition, the Executing Court directed that interest i.e., 9% for the period of first year and 15% thereafter shall be payable to the land owners only from the date of amendment in the Act. In Civil Revision No.641 of 2009, the aforesaid order was set aside and this Court directed that interest shall be payable as ordered by the Division Bench.

The execution petitions filed by the land owners are still pending. There was some dispute with regard to the calculations made by the parties and the Executing Court passed an order, which reads as under:-

" *8. After given due deliberations to the contentions of* *the learned counsel for the parties and calculation made by JDs first of all do not incorporate excess amount to be paid to the DH in compliance of the order of the Hon'ble High Court after holding that Decree holder is entitled to the benefit of amended section 28 and secondly JD has claimed that payment made by them on 16.2.1984 and 7.11.1998 ought to be adjusted against the principle due whereas the law on this point is quite clear and the Hon'ble Supreme Court time and again held that the appropriation of the amount paid by JDs is to be done first towards interest due on the principal and then the principal in this regard reliance placed on* ***M/s industrial Credit and Development Syndicate now called LCDs Ltd. vs. Smt. Smithaben H. Patel and others, AIR 1999 Supreme Court page 1036*** *wherein it was held that*

> *The general Rule on appropriation of payments towards a decreetal amount is that such an amount is to be adjusted firstly strictly in accordance with the directions contained in the decree and in the absence of such directions, adjustments be made firstly in payment of interest and costs and thereafter in payment of the principal amount.*

further in **Leela Hotels Limited vs. Housing and Urban Development Corporation Limited. (2012) 1**

**Sec 302** it has been held that:-

> In such cases as the present case creditor is entitled to appropriate such payment first against interest payable."

During the pendency of these revision petitions, State of Haryana was permitted to file fresh calculations, which were filed on 16.01.2014. The calculations now submitted by the State are not in consonance with the principle of law laid down in the case of ***Gurpreet Singh* v. *Union of India, (2006) 8 Supreme Court Cases 457.*** The Hon'ble Supreme Court has held as under:-

> *36. Can a claimant or decree holder who has received the entire amount awarded by the reference court or who had notice of the deposit of the entire amount so awarded, claim interest on the amount he has already received merely because the appellate court has enhanced the compensation and has made payable additional compensation? We have already referred to Order XXI and Order XXIV of the Code to point out that such a blanket re-opening of the transaction is not warranted even in respect of a money decree. Section 28 of the Act indicates that the award of interest is confined to the excess compensation awarded and it is to be paid from the date of dispossession. This is in consonance with the position that a fresh re-appropriation is not contemplated or warranted by the scheme of the Act. But if there is any shortfall at any stage, the claimant or*

*decree holder can seek to apply the rule of appropriation in respect of that amount, first towards interest and costs and then towards the principal, unless the decree otherwise directs.*

*XX XX XX XX*

*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 view of what has been held by the Hon'ble Supreme Court in the case of ***Gurpreet Singh*** *(supra),* calculations have to be made stage wise. It has been held by the Hon'ble Supreme Court that once the payment at first stage i.e. on announcement of the award is paid entirely then that stage is over and it shall not be re-opened while calculating enhancement of the compensation. It has further been held by the Hon'ble Supreme Court that in the absence of any specific directions of the Court, the land owners are entitled to appropriate the partial amount deposited first towards interest and than towards costs and thereafter towards principals.

This Court has already noticed that the calculations even now made by the State of Haryana are not in consonance with the principle of law interpreted by the Hon'ble Supreme Court in the case of ***Gurpreet Singh*** *(supra).*

By way of impugned order, the Executing Court has rejected the calculations submitted by the JDs on two grounds:-

(i) The JDs does not incorporate the interest as ordered by the High Court while deciding the latter patent appeals and thereafter civil revision petitions;

(ii) The JDs cannot insist the adjustment of the partial payment against principal unless there is specific directions of the Court to that effect.

In these circumstances, this Court does not find any good ground to interfere with the impugned order passed.

However, since the dispute is with regard to calculations, the State of Haryana is granted another opportunity to submit calculations strictly in consonance with the principle of law interpreted by the Hon'ble Supreme Court in the case of ***Gurpreet Singh*** *(supra).*

Execution petitions are pending for so long. The Executing Court is directed to finally decide the execution petitions within a period of three months from today.

All the civil revision petitions are disposed of accordingly.

**January 19, 2018** **(ANIL KSHETARPAL)**
**nt** **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No