IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : **08.11.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

C.R.P.(NPD)No.2168 of 2019
and
C.M.P.No.14012 of 2019

Tamil Nadu State Transport Corporation
(Villupuram – II) Limited,
Vellore Division,
Rangapuram, Vellore,
Rep. By its General Manager. : Petitioner

Vs.

1.Girijammal
2.The Revenue Divisional Officer,
Tirupathur. : Respondents

PRAYER: Civil Revision Petition is filed under Section 115 of the Code of Civil Procedure, praying to set aside the docket order dated 12.06.2019 passed by the Subordinate Court, Vellore, in E.P.No.12 of 2014 in L.A.O.P.No.4 of 1993.

For Petitioner	: Mr.K.Chellapandian, Additional Advocate General, Assisted by Mr.J.Senthil Kumaraiah
For Respondent No.1	: Mr.N.Rajasekar, For Mr.I.Abrar Md.Abdullah

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ORDER

The order under challenge in this Civil Revision Petition is the attachment ordered by the Execution Court in E.P.No.12 of 2014 in L.A.O.P.No.4 of 1993 on the file of the Sub Court, Vellore, dated 12.06.2019.

2. According to the petitioner, certain lands of the first respondent/decree holder were acquired, at the request of petitioner, by the second respondent herein and a sum of Rs.4,25,802/- was awarded. The land-losers have filed an appeal for enhancement. The L.A.O.P. Court has enhanced the compensation from Rs.4,25,802/- to Rs.1,06,96,434.80, against which, the petitioner preferred an appeal before this Court in A.S.No.629 of 2006. This Court, by its judgment dated 24.02.2012, reduced the award of compensation from Rs.1,06,96,434.80 to Rs.48,34,400/- [1,38,124.80 sq.ft. x Rs.35/- = Rs.48,34,368/- rounded of to Rs.48,34,400/-]. The reduced compensation is payable with interest at the rate of 12% additional market value from 12.02.1991 to 20.06.1991; 30% solatium, 9% interest for one year from 21.06.1991 to 20.06.1992 and subsequent interest at the rate of 15% per annum from 21.06.1992 till the date of deposit and the appeal is partly allowed.

3. Out of the total compensation, the petitioner has deposited

Rs.4,25,802/- as early as on 28.09.1992. Thereafter, the petitioner has deposited Rs.60,00,000/- on 24.05.2006, pursuant to an interim order of this Court. Therefore, the Division Bench has directed the petitioner to deposit the balance of the reduced compensation, if any, along with proportionate accrued interest, within a period of eight weeks. Accordingly, the petitioner has deposited a sum of Rs.87,49,889/- on 08.03.2013. Therefore, according to them, no amount is due to the decree holder. However, the Execution Court ordered attachment against the petitioner Corporation.

4. Now, the present dispute raised by the first respondent is that any amount deposited shall be first adjusted towards interest then towards principal. But, according to the learned counsel for the petitioner, this Court, in the judgment reported in **2003(2) MLJ 7 [Land Acquisition Officer Vs. Angeline Devadoss, Johan],** has held as follows:

> "**25. Hence, the latest ruling of the Supreme Court (the Bench consisting of three Judges) is to the effect that the amount deposited is to be first adjusted towards the amount due towards the market value, solatium and then towards the amount payable under Section 23(1-A) of the Land Acquisition Act and thereafter, the interest payable under Section 28 of**

the Land Acquisition Act. The further principle laid down is, once the amount is paid or deposited in court, the interest will stop running.

26. The above is the principle, which has to be applied while calculating if any amount is due by the Pondicherry Housing Board to the land owners in this case. As already pointed out, on 09.3.1994, and again on 17.3.1994, on each of the said occasions, respondents 1 and 2 withdrew Rs.17,50,000/-. This has to be adjusted first towards principal and then towards the interest as on that date. Even according to the judgment of the reference court, the principal amount would not exceed Rs.35,00,000/-, moreso when this Court has reduced the market value. If respondents 1 and 2 have with them any excess amount, the same shall be returned to the Pondicherry Housing Board within a period of thirty days, failing which, the same shall carry interest at the rate of 15% per annum for the defaulting period (i.e.) for the period after thirty days from to-day.

27. As far as the 3rd respondent is concerned, it

has to be calculated as to what is the principal amount and the interest due to her as on 15.09.1995, on which date a sum of Rs.12 Lakhs was deposited. First, that amount will have to be adjusted towards principal and the remaining amount towards interest. It is stated that the amount of Rs.12,00,000/- has already been invested with the bank and it is fetching interest. If, for example, what is due to the 3rd respondent is Rs.11,00,000/- (amount due under Section 23 and interest), then, out of the amount in deposit, the 3rd respondent shall be entitled for Rs.11,00,000/- with proportionate interest. The remaining sum of Rs.1,00,000/- with proportionate interest shall go to the Pondicherry Housing Board. But, on the other hand, if what the 3rd respondent is entitled to is Rs.13,00,000/- (amount due under Section 23 and interest), then the entire amount in the bank deposit (along with the interest it has fetched) shall go to the 3rd respondent and the Pondicherry Housing Board will pay the remaining sum of Rs.1,00,000/-, which is nothing but interest on the principal amount and that will not carry any interest."

5. Accordingly, following the judgment of three Judges Bench of the Hon'ble Supreme Court, this Court has held that it shall be first adjusted towards the amount due towards the market value, solatium and amount payable under Section 23(1-A) of the Land Acquisition Act and, thereafter, interest payable under Section 28 of the Land Acquisition Act.

6. In respect of appropriation of amount, the Hon'ble Supreme Court in **Gurpreet Singh v. Union of India [2006(8) SCC 457]** has held as under:

> **"51. Prem Nath Kapur (supra) 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(1-A) 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 in the scheme of the Land Acquisition Act. This part of the reasoning in Prem Nath Kapur (supra) is, of course, also based on the reasoning that there is some inconsistency in Order XXI Rule 1 of the Code and the scheme of the Act. Prem Nath Kapur (supra) 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 wording of Section 34 and Section 28 of the Act it is not possible to say that the said approach made in Prem Nath Kapur (supra) 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 (supra) 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 the 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 has 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 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."

Therefore, when the amount was deposited under the head of '**principal'** specifically and when there is no objection raised by the decree holder before withdrawing the same, it should be adjusted only towards principal and it cannot be appropriated first towards interest. In that view of the matter, the reduced compensation of Rs.48,34,400/- along with interest was already paid on 24.05.2006. Therefore, the issue shall be decided in the light of the above mentioned judgment of the Hon'ble Supreme Court. Hence, the order of attachment is not sustainable.

Accordingly, the attachment order is set aside. It is open to the petitioner to re-work the amount due, as per the above mentioned judgment of the Hon'ble Supreme Court. The Execution Court is directed to receive the calculation memo and thereafter, pass appropriate orders.

7. The Civil Revision Petition is ordered accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

08.11.2019

Index : Yes / No
Internet : Yes / No

Note to office:
Issue order copy on 12.11.2019.

SML

To

1.The Subordinate Court,
Vellore.

2.The Revenue Divisional Officer,
Tirupathur.

M.GOVINDARAJ, J.

SML

Order made in
C.R.P.(NPD)No.2168 of 2019

Dated: 08.11.2019