

Reserved on : 27.03.2019

Pronounced on :04.04.2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (NPD) No.586 of 2017 &

C.M.P.No.2981 of 2017 &

Contempt Petition No.1407 of 2015 in C.R.P.(NPD) No.2400 of 2014

The Additional Special Tahsildar,
Adi Dravidar Welfare Department,
(Land Acquisition Officer),
Harur, rep. by
The District Collector,
Dharmapuri.

.. Petitioner

Mr.R.M.Chinnaraj

.. Respondent

Vs.

PRAYER in C.R.P.No.586 of 2017 : Civil Revision Petition filed under Article 227 of the Constitution of India against the docket Order dated 22.02.2016 made in R.E.P.No.11/2008 in L.A.O.P.No.11/1998 on the file of the Subordinate Court, Harur.

Prayer in Cont.P.No.1407 of 2015 :- Contempt Petition filed under Section 11 of the Contempt of Court Act r/w. Article 215 of the Constitution of India, praying

to punish the respondent for disobedience of this Court Order dated 04.07.2014 passed in in Crl.O.P.No.2400 of 2014.

For Petitioner in CRP
and respondent in : Mr.Sricharan Rangarajan
Contempt petition : Spl. Government Pleader (CS)

For Respondent in : Mr.M.S.Krishnan (SC)
CRP & petitioner in : Assisted by Mr.Krishnaprasad
Contempt petition : for M./s,Sarvabhauman Associates

ORDER

Aggrieved over the Order of the executing Court Ordering attachment on the basis of the calculation memo filed by the decree holder, present revision has been filed.

2. The admitted facts are as follows :

Originally the land was acquired and the Collector passed an award for a sum of Rs.1,17,026/- and in a reference, the Subordinate Court awarded enhanced compensation of Rs.12,67,465.30 and also fixed a sum of Rs.2,00,016.43 as an additional market value at the rate of 12% from the date of notification under section 4(1) i.e. 17.06.1966 to the date of award. Besides a sum of Rs.3,80,239.59 has been awarded towards solatium. Accordingly, the total enhanced compensation amount was Rs.18,47,721.36. Deducting the original award amount of Rs.1,17,026/- the balance enhanced compensation to

be paid to the decree holder was a sum of Rs.17,30,695/-. These facts have not been disputed by both sides.

3. The Court also awarded interest at the rate of 9% per annum from the date of possession i.e., one year from 06.11.1997 to 05.11.1998 and also awarded interest at the rate of 15% per annum from 07.11.1998 till the amount is deposited, i.e., from 06.11.1998 to 06.09.2004. Accordingly, the amount to be deposited including interest as on 06.09.2004 is about 34,02,211.55. Thereafter, it appears that on 07.09.2004, a sum of Rs.7,11,133/- was deposited by the judgment debtor. These facts are also not in dispute. Similarly a sum of Rs.26,91,699/- has been deposited on 27.01.2010 and a sum of Rs.8,20,120/- was deposited on 20.01.2014.

4. It is the contention of the revision petitioner that the amount deposited was not to be appropriated towards the interest. Whereas, it is the contention of the judgment debtor that as per judgment in **Gurpreet Singh Vs. Union of India of the Constitution Bench of the Honourable Supreme Court** reported in **2006 (8) Supreme Court Cases 457**, payments made by them has been credited and appropriation has to be made as per the dictum of the Constitution Bench. The main issue involved in this revision is the mode of appropriation and hence, this Court requested both sides to file their calculation memo.

5. The revision petitioner has filed calculation. It is relevant to extract the same as follows :

CALCULATION MEMO

4(1) Notification - 17.06.1996
 Date of Award - 09.10.1997
 Date of possession - 06.11.1997
 Area Acquired - 1,32,858 Sq.feet

I. Award amount = Rs.1,17,026/-

II. Enhanced Compensation ordered by Hon'ble Sub-Court

1.Land Value (Acquired Land x amount fixed) = Rs.12,67,465.30/-
 (9.54 per sq.ft x 1,32,858)

2.Additional market value @ 12% PA
 from 4(1) Notification to date of award
 (ie.17.06.1966 to 09.10.1997 for 480 days) = Rs.2,00,016.43/-
 $1267465 \times 12 \times 282$

365

3.Solatum @ 30 PA on the land value = Rs.3,80,239.59/-
 1267465×30

100

3 (i) Total enhanced compensation amount = Rs.18,47,721.36/-

3 (ii) Amount already deposited = Rs.1,17,026.00/-

Balance enhanced compensation to be paid = Rs.17,30,695.00/-
 (ie. 3(i) – 3(ii))

S.No.	Description	Amount
1.	Balance enhanced compensation to be paid	Rs.17,30,695.00
2.	Interest at 9% per annum from the date of possession to 1 year (ie.06.11.1997 to 05.11.1998) $\frac{1730695 \times 9 \times 365}{100}$	Rs.1,55,762.55
3.	Interest at 15% per annum for the remaining period till the amount is deposited in court (period from 6.11.1998 to 06.09.2004) $\frac{1730695 \times 15 \times 1516}{365} = \text{Rs.}10,78,824$ $\frac{1730695 \times 15 \times 616}{366} = \text{Rs.}4,34,929.55$ Total interest Due = 155762 + 1515754	Rs.15,15,754.00 Rs.16,71,516
4.	Amount to paid as on 06.09.2004 (ie 1 + 2 + 3) 1730695 + 155762 + 1515754	Rs.34,02,211.55
5.	Amount deposited in court on 07.09.2004	Rs.7,11,133.00
6.	The eligible enhanced compensation amount due to the claimant as on 07.09.2004 (340211 – 711133)	Rs.26,91,078.00 (Principal : 17,30,695 + Balance interest 9,60,383)
7.	Interest at 15% PA for the remaining period till the amount is deposited in court i.e from 01.07.2004 to 27.01.2010 Leap year: $\frac{1730695 \times 15 \times 550}{100 \times 366}$ Non Leap year: $1730695 \times 15 \times 1487$	Rs.3,90,115

S.No.	Description	Amount
	100 x 365 Total interest owed for this period :	Rs.10,57,620 Rs.13,97,375
8.	The eligible enhanced compensation due to the claimant as on 27.01.2010 26,91,078.00 + 13,97,375	Rs.41,38,813.00
9.	Amount deposited in Court on 27.1.2010	Rs.25,19,469.00
10.	The land acquisition officer has deposited a lesser amount than the amount due to the Claimant ordered by this Hon'ble Court. The petitioner is eligible to claim the different amount at Rs. X (16 – 17) with interest 15% per annum to the period from 27.01.2010 to pending balance Rs.16,19,344	Rs.13,96,754
11.	Interst @ 15% per annum from 28.1.2010 to 31.07.2013 Leap year : $1619344 \times 15 \times 366$ $\frac{\quad}{100 \times 366}$ Non Leap year : $1619344 \times 15 \times 915$ $\frac{\quad}{100 \times 365}$ Total interest for this period:	Rs.2,09,513 Rs.5,25,217 Rs.7,34,730.00
12.	Enhanced Compensation with interest payable as on 31.07.2013 13,96,754 + 7,34, 730)	Rs.21,31,484.00
13.	Amount deposited to the Court on 20.01.2014	Rs.8,20,120.00
14.	The eligible enhanced compensation amount due to the petitioner (21,31,484 - 8,20,120.00) as on 20.01.2014	Rs.13,11,364 (new principal)
15.	The interest 15% per annum for remaining period till the amount is deposited in Court (01.08.2013 to 19.12.2013) 16,19,344 x 15 x 141	

S.No.	Description	Amount
	$\frac{100 \times 365}{100 \times 365}$	Rs.87,843
16.	Total Compensation amount due to the Petitioner as on 19.12.2013 I.e, item (13,11,364 + 87,843)	Rs.13,99,207
17.	Interest from 20.12.2013 to 01.03.2019 @ 15% per annum Leap year : $1399207 \times 15 \times 366$ $\frac{100 \times 366}{100 \times 366}$ Non Leap year : $1399207 \times 15 \times 1509$ $\frac{100 \times 365}{100 \times 365}$ Total interest:	Rs.1,96,704 Rs.10,09,929 Rs.10,09,929
18.	Balance compensation due to the Petitioner as on 01.03.2019 including earlier balance + interest from 20.01.2014 to 01.03.2019 @ 15% per annum (13,99,207 + 10,09,929)	Rs.24,09,136/-

6. The learned Senior Counsel appearing for the respondent has also filed a calculation memo, which is extracted below :

S/N o	Description	Amount
1	Area of the Land acquired in hectare 1.23.5 In Sq. Feet 132858	-
2	Area acquired x awarded Amount (Sub court judgement) 132858 x 9.54 per sq.feet	Rs.1267465.32
3	Cost of other Like Building, trees etc	Nil

S/N o	Description	Amount
4	Total compensation Amount (2+3) principal Amount	Rs.1267465.32
5	Additional Market Value @ 12% per Annum from 4(1) Notification to date of award from 17.06.1996 to 09.10.1997 for 480 days 1267465 x 12 x 282 ----- = Rs.117510 365 1267465 x 12 x 198 ----- = Rs.82281 366 But Sub – Court declared ---->	Rs.199791
6	Additional 30% solatium to be paid 1267465 x 30 ----- 100	Rs.3,80,239.60
7	Total enhanced compensation Amount (item 4+5+6) awarded by sub – court	Rs.1847721.36
8	Amount already received from Land Aquisition officer	Rs.1,17026.00
9	Balance enhanced compensation amount to be paid (7-8)	Rs.1730695.00
10	Interest at 9% per annum from the date of possession for a period of 06.11.1997 to 05.11.1998 interest 365 days 1730695 x 9 x 365 ----- 365	Rs.155762.55
11	Interest at 15% per annum for the remaining period till the amount is deposited in court (period from 06.11.1998 to 06.0.2004) 1730695 x 15 x 1516	Rs.1515754.00

S/N o	Description	Amount
	$\frac{1730695 \times 15 \times 616}{365} = \text{Rs.}1078824.67$ (Non Leaf year) $\frac{1730695 \times 15 \times 616}{366} = \text{Rs.}434929.55$	
12	Principal (Balance) and Interest (9+10+11) 1730695 + 155762.55 + 1515754.00	Rs.3402211.55
13	Amount deposited in court 07.09.2004	Rs.711133
14	The eligible enhanced compensation Amount due to the claimant as on 30.06.2004 (12-13) (principle : Rs.1019592 + Interest Rs.1671524.55)	Rs.2691086.55
15	Interest @ 15% per annum for the remaining period till the amount deposited at court from 01.07.2004 to 27.01.2010 for 15% interest Balance principle amount Rs.1019562 $\frac{1019562 \times 15 \times 366}{366} = \text{(Leaf year)} 152934$ $\frac{1019562 \times 15 \times 1597}{365} = \text{(Non Leaf year)}$ 669139	Rs.822073
16	The eligible Enhance compensation Amount due to the claimant as on 27.01.2010 (14 + 15)	Rs.3513, 159.55
17	Amount deposited in court on Enhanced compensation	Rs.2691699
18	Balance Amount (16 – 17)(Interest Amount only)	Rs.821460
19	Amount deposited on court 20.01.2014	Rs.820120
20	Still Balance	Rs.1340

7. From both the calculation memos, the enhancement amount and the

rate of interest is not in dispute. The serial No.12 of the calculation memo filed by the revision petitioner tallies with the serial No.4 of the calculation memo filed by the respondent. Thereafter, the serial No.14 in the calculation memo of the revision petitioner also tallies with the serial No.6 of the calculation memo filed by the respondent. The mode of appropriation is different in both the calculation memos. According to the revision petitioner, the amount deposited shall be appropriated only to the principal. Whereas, it is the contention of the learned counsel for the respondent, the calculation memo is prepared as per the dictum of the Constitution Bench.

8. In the light of the above, now it is relevant to refer the judgment of the Constitution Bench **Gurpreet Singh Vs. Union of India** reported in **2006 (8) Supreme Court Cases 457**, wherein the Honourable Supreme Court had approved the mode of appropriation indicated in the earlier judgment in **Prem Nath Kapur and another Vs. National Fertilizers Corpn. Of India Ltd. and others** reported in **1996 (2) Supreme Court Cases 71 (2)**, wherein the Honourable Supreme Court has held as follows :

“13. Thus we hold that the liability to pay interest on the amount of compensation determined under **Section 23 (1)** continues to subsist until it is paid to the owner or interested person or deposited into court under **Section 34** read with **Section 31**. Equally, the liability to pay interest on the excess amount of

compensation determined by the Civil Court under [Section 26](#) over and above the compensation determined by the Collector/Land Acquisition Officer under [Section 11](#) subsists until it is deposited into court. Proprio vigore in case of further enhancement of the compensation on appeal under [Section 54](#) to the extent of the said enhanced excess amount or part thereof, the liability subsists until it is deposited into court. The liability to pay interest ceases on the date on which the deposit into court is made with the amount of compensation so deposited. As held earlier, the computation of the interest should be calculated from the date of taking possession till date of payment or deposit in terms of [Section 34](#) or deposit into court in terms of [Section 28](#), as the case may be.

14. Equally, the right to make appropriation is indicated by necessary implication, by the award itself as the award or decree clearly mentions each of the items. When the deposit is made towards the specified amounts, the claimant/owner is not entitled to deduct from the amount of compensation towards costs, interest, additional amount under [Section 23](#) (1-A) with interest and then to claim the total balance amount with further interest. The ratio of [Joginder Singh & Ors. v. State of Punjab & Anr.](#) [AIR 1985 SC 382] has no application to the facts of this case. Right to

compensation and the qualification thereof are two distinct concepts. The right to compensation arises when the land vests in the State while its qualification may be concluded at a later stage through several hierarchical stages referred to hereinbefore. The question therein was whether the High Court while enhancing the compensation would direct payment of interest on enhanced amount at 4 per cent per annum. This Court held that the distinction made by the High Court in payment of interest from date of taking possession till date of its judgment was incorrect. Accordingly, it directed payment of interest @ 6 per cent per annum on the enhanced compensation from the date of taking possession of the land till date of payment.”

9. The above judgment makes it very clear that when the deposit is made towards specified amounts, the claimant is not entitled to deduct from the same towards the costs, interest etc. The above judgment has been approved by the Constitution Bench. It is useful to refer to the relevant paragraphs of the judgment of the Constitution Bench, which reads as follows :

“29. Let us now consider the scheme of the [Land Acquisition Act, 1894](#) as amended by the [Land Acquisition \(Amendment\) Act 68 of 1984](#). After the publication of the preliminary notification under [Section 4](#) of the Act and after

hearing of objections, a declaration has to be made under [Section 6](#) of the Act. The Collector is then to take the order for acquisition from the Appropriate Government or the officer authorized in that behalf by the Government. After completing the formalities contemplated and the enquiry made in terms of [Section 11](#) of the Act, the Collector has to make an award indicating the true area of the land, the compensation which in his opinion should be allowed for the land and the apportionment of the compensation among the persons known or believed to be interested in the land. In making the award, the Collector shall be guided by [Sections 23](#) and [24](#) dealing with matters to be considered in determining the compensation and matters to be excluded in determining the compensation as enjoined by [Section 15](#) of the Act. Under [Section 12](#) of the Act, the award becomes final as between the Collector and the persons interested and the Collector is to give notice of his award to persons interested. On making the award, the Collector may take possession of the land in terms of [Section 16](#) of the Act. Under [Section 31](#), on making an award under [Section 11](#), the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by the

contingencies referred to in [Section 31](#) itself. Under [Section 34](#) of the Act, when the amount of compensation awarded is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per cent per annum from the time of taking possession till it shall have been paid or deposited. But if the compensation or any part thereof is not paid within a period of one year from the date on which possession is taken, interest is payable at the rate of fifteen per cent per annum from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry. It is relevant to notice that on payment of the amounts thus due, the award made by the Collector stands satisfied.

30. A person interested, who is not satisfied with the amount of compensation awarded by the Collector is entitled to receive the amount under protest and could apply to the Collector requiring him to refer the matter to the Court in terms of [Section 18](#) of the Act. The Collector is then to make a statement to the Court and the Court is entitled to fix the compensation subject to [Section 25](#) of the Act which provides that the amount of compensation awarded by the Court shall not

be less than the amount awarded by the Collector under [Section 11](#) of the Act. In fixing the compensation, the Court shall have regard to the matters referred to in [Sections 23](#) and [24](#) of the Act. Under [Section 26](#), every award shall be deemed to be a decree within the meaning of Section 2(2) of the Code of Civil Procedure and every reasoned award shall be deemed to be a judgment as defined in Section 2(9) of the Code of Civil Procedure. Under [Section 27](#) of the Act, every award made by the Court shall also contain directions regarding the costs incurred in the proceedings in Court, the costs of the claimant found entitled to enhancement, normally to be borne by the Collector. Under [Section 28](#) of the Act, the Court which has awarded compensation in excess of the sum which the Collector did award as compensation, may direct that the Collector shall pay interest on such excess at the rate of nine per cent per annum from the date on which he took possession of the land to the date of payment of such excess into Court. The proviso enjoins the Court to direct that where such excess or any part thereof is paid into Court after the expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum, shall be payable from the date of expiry of the said period of one year on the amount of such

excess or part thereof which has not been paid into Court after the date of such expiry. Two aspects require to be noted. One is that the interest is payable only on the excess amount of compensation awarded by the reference court and the second is that interest on the enhanced amount awarded is payable from the date of taking possession at the rate of 9% per annum for the first year after taking possession and thereafter at 15% per annum till the deposit of the excess is made. This clearly indicates that there is no scope for the re-opening of the appropriation already made pursuant to the award. The other significant factor is that the award should specify the amount awarded as market value of the land separately and the other amount, if any, awarded under other heads of [Section 23\(1\)](#).

32. On the scheme of the Act, it is seen that the award of compensation is at different stages. The first stage occurs when the award is passed. Obviously, the award takes in all the amounts contemplated by [Section 23\(1\)](#) of the Act, [Section 23\(1A\)](#) of the Act, [Section 23\(2\)](#) of the Act and the interest contemplated by [Section 34](#) of the Act. The whole of that amount is paid or deposited by the Collector in terms of [Section 31](#) of the Act. At this stage, no shortfall in deposit is contemplated, since the Collector has to pay or deposit the amount awarded by him.

If a shortfall is pointed out, it may have to be made up at that stage and the principle of appropriation may apply, though it is difficult to contemplate a partial deposit at that stage. On the deposit by the Collector under [Section 31](#) of the Act, the first stage comes to an end subject to the right of the claimant to notice of the deposit and withdrawal or acceptance of the amount with or without protest.

33. The second stage occurs on a reference under [Section 18](#) of the Act. When the reference Court awards enhanced compensation, it has necessarily to take note of the enhanced amounts payable under [Section 23\(1\)](#), [Section 23\(1A\)](#), [Section 23\(2\)](#) and interest on the enhanced amount as provided in [Section 28](#) of the Act and costs in terms of [Section 27](#). The Collector has the duty to deposit these amounts pursuant to the deemed decree thus passed. This has nothing to do with the earlier deposit made or to be made under and after the award. If the deposit made, falls short of the enhancement decreed, there can arise the question of appropriation at that stage, in relation to the amount enhanced on the reference.

In paragraph no.36, the Constitution Bench has clearly held as follows :

“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.”

10. The above dictum makes it very clear that when there is a short fall at any stage, the claimant/decreed holder can seek to apply the rule of appropriation in respect of that amount, first towards interest and then towards principal, unless the decree otherwise directs. The paragraph no.50 of the above judgment

approving the reasoning adopted in **Prem Nath Kapur case**, the Honourable Supreme Court has held as follows :

“50. It is true that the understanding of the expression "compensation awarded" for the purpose of **Section 28** of the Act in Prem Nath Kapur (supra) was modified. To that extent one strand of reasoning in Prem Nath Kapur (supra) also stands discredited. But as we see it, on the question of appropriation, the decision in Sunder (supra) does not have such an impact as to compel us to jettison the reasoning adopted in Prem Nath Kapur (supra). Slightly deviating from the reasoning in Prem Nath Kapur (supra) we have indicated earlier that even going by Order XXI Rule 1 of the Code, the position would be as envisaged in Prem Nath Kapur (supra). That apart, we are inclined to respectfully agree with the reasoning in Prem Nath Kapur (supra) that on the wording of **Section 34** and **Section 28** of the Act read with and understood in the light of the stages of the award of compensation, the question of appropriation would be at different stages and a decree holder would not be entitled to reopen the entire transaction to claim a reappropriation of the amounts already received by him and appropriated at that particular stage. The reliance on the doctrine of merger does not enable the

decree-holder to get over the scheme adopted by the Act.”

and finally in para 53, the Honourable Supreme Court has held as follows:

“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.”

11. From the dictum held in the Constitution Bench judgment, it is very clear that when the deposit made fall short of the enhancement of the decree, there arise a question of appropriation at this stage. Similarly, When there is short fall in deposit, the amount paid shall be appropriated first only towards interest and cost and balance towards principal.

12. Admittedly, in this case, a sum of Rs.7,11,133/- was deposited in

Court on 07.09.2004 which is even below the interest calculated by the Subordinate Judge. Further, the amount deposited on 27.01.2010 and also 31.7.2013 as stated in the calculation memo not towards specified heads as indicated in the Constitution Bench judgment and also **Prem Nath Kapur case**. As long as the amount is not deposited towards the specified heads, now the judgment debtor cannot contend that it has to be adjusted only towards principal. Infact, in the first instance, when the amount was deposited on 07.09.2004, the amount is even below the interest rate. Even there is a short fall in interest. Similarly, in the deposits made by the judgment debtor, there is a short fall. Further, there is no indication towards the specified head under which the amount is deposited. Therefore, I am of the view that the calculation memo filed by the respondent is correct. The judgment debtor is entitled to appropriate the deposited amount first towards interest and cost and balance towards principal as held in the Constitution Bench judgment.

13. Accordingly, this revision is dismissed and the revision petitioner is directed to deposit the remaining amount of Rs.24,09,136/- as on 01.03.2019 to the respondent with further interest till date within a period of four weeks from today. Consequently, the connected miscellaneous petition is closed. No cost.

14. In view of the Order passed in Civil Revision Petition No.586 of 2017 directing the revision petitioner to pay the remaining compensation amount to the

petitioner in Contempt Petition No.1407 of 2015, the Contempt Petition is closed.
In the event of disobeying the direction, the respondent can revive the contempt
petition.

04.04.2019

vrc
To

The Subordinate Judge,
Harur.



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N.SATHISH KUMAR, J.

VRC



Order in
CRP.(NPD) No.586 of 2017 &
Contempt Petition No.1407 of 2015

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