
(2014) 06 KL CK 0188
In the High Court Of Kerala
Case No : OP (C). No. 144 of 2014 (O)

Mooney

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 04-06-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 23, 23(1), 23(1A), 23(2)

Citation : (2014) 3 ILR 679 : (2014) 2 KHC 606 : (2014) 3 KLJ 138 : (2014) 2 KLT 961

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : Pius C. Mundadan and Smt. Anju Divakar, Advocate for the Appellant; K.T. Lilly, Government Pleader for R1, Sri. N.N. Sugunapalan, Senior Advocate for R2, Sri. S. Sujin and Smt. T.N. Girija, Advocate for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—What is the rule of appropriation in the case of short fall in deposit of the amount due under an award in Land Acquisition Reference? I heard Mr. Pius C. Mundadan, Advocate on behalf of the claimants, Mr. N.N. Sugunapalan, Senior Advocate on behalf of the requisitioning authority and the Government Pleader on behalf of the State.

2. A Constitution Bench of the Supreme Court in Gurpreet Singh Vs. Union of India (UOI), held as follows:

It is true that if the amount falls short, the decree holder may be entitled to apply the rule of appropriation by appropriating the amount first towards the interest, then towards the costs and then towards the principal amount due under the decree.

But if there is any short fall 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.

3. The above decision was quoted with approval in Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh and Company, wherein it is held as follows:

If the payment made by the judgment debtor falls short of the decreed amount, the decree holder will be entitled to apply the general rule of appropriation by appropriating the amount deposited towards the interest, then towards cost and finally towards the principal amount due under the decree.

The Supreme Court has reiterated the same principle in V. Kala Bharathi and Others Vs. The Oriental Insurance Company Ltd. Br. Chitoor, wherein it is held as follows:

If there is a short fall in deposit, the amount has to be adjusted towards interest and costs, then it has to be adjusted towards principal.

4. The awards in the Land Acquisition References (L.A.R. Nos. 119 and 120 of 2001-Sub Court, North Paravur) were originally passed on 31.10.2005. The awards were challenged in Land Acquisition Appeals by the requisitioning authority and execution proceedings were levied by the award holders simultaneously. The requisitioning authority made a partial deposit in the execution petitions and also filed execution applications to record the same. There was also a plea in the execution applications to appropriate the partial deposit towards the principal amount awarded in the Land Acquisition References. The execution applications (E.A. Nos. 754/2007 and 753/2007) in the execution petitions (E.P. Nos. 457/2006 and 452/2006) filed on 21.08.2007 came up for hearing on 14.08.2008. The parties are at variance as to whether the execution applications were allowed or not in view of the scribblings found on the original. But nothing turns out even if the execution applications for appropriation had been "allowed" on 14.08.2008. This is because the awards which were put into execution had been set aside in the Land Acquisition Appeals even before on 19.02.2008 itself. The claimants maintain that the execution applications were merely "closed" on 14.08.2008 while terminating the execution proceedings itself in view of the appellate decrees.

5. There can be no compartmentalisation of the principal amount, interest and costs when the awards were non-existent on the date of alleged appropriation. The partial deposits could only be appropriated towards interest and costs and then towards the principal amount as per the law laid down. The partial deposits cannot be appropriated towards the principal amount as sought by the requisitioning authority in the execution applications. The fact that the deposits were made when the awards were in force is of no avail since the execution applications came up for hearing after the awards were set at naught. The requisitioning authority thereafter filed another set of execution applications for refund of the partial amounts deposited. Such execution applications were obviously filed on the basis that the awards had been set aside which implies that there could be no appropriation as sought.

6. The execution applications (E.A. Nos. 1191/2008 and 446/2009) were

disposed of observing that the amount deposited would stand adjusted to the enhanced compensation. The enhanced compensation in the context can only denote the various heads under Sections 23, 23(1), 23(1A) and 23(2) of the Land Acquisition Act. Thus the requisitioning authority have by their own conduct estopped from contending that the awards subsisted on the date of alleged appropriation. The orders purportedly passed in E.A. Nos. 754/2007 and 753/2007 cannot also operate as res judicata as contended by the requisitioning authority. Such orders are merely step-in-procedure passed during the course of the recovery proceedings. The same does not finally adjudicate the amount due especially when full satisfaction had not been recorded in the execution petitions.

7. Much was argued on the basis of the decision in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, by the requisitioning authority. The plea is to the effect that the judgment debtors can indicate the specified heads at the time of deposit and that the appropriation has to follow in that order. The dictum in Prem Nath Kapur's case applies only when the entire amount awarded is deposited accompanied by a statement indicating appropriation. No such statements were filed and the prayer in the execution applications (E.A. Nos. 1191/2008 and 446/2008) was to record partial deposit only. Substantial amounts are now due to the claimants as per the revised award passed after remand in the Land Acquisition Appeals which have to be quantified.

8. The execution court has obviously not followed the rule of appropriation when there is admittedly a short fall in the deposit of the amount due. The impugned orders passed in the execution petitions and in the execution applications filed to record full satisfaction are set aside. The parties are directed to appear before the execution court on 30.06.2014 and the proceedings shall be taken to a logical end soon.

The Original Petitions are allowed. No costs.