

Mooney Vs. State of Kerala

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Court : Kerala

Decided On : Jun-04-2014

Judge : Honourable Mr.Justice V.Chitambaresh

Appellant : Mooney

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE V.CHITAMBARESH WEDNESDAY, THE 4TH DAY OF JUNE 2014 14TH JYAISHTA, 1936 OP(C).No. 144 of 2014 (O) ----- EP NO.238/2011 IN LAR NO. 120/2001 ADDITIONAL SUB COURT, NORTH PARAVUR ----- NAME AND ADDRESS OF THE PETITIONERS : ----- 1. MOONEY, S/O.POONOLY MATHAI, MATTOOR, REPRESENTED BY POWER OF ATTORNEY HOLDER PAUL THOMAS, MUNDADAN HOUSE, ANGAMALY.

2. MARY, W/O.OLIAPPURAM PETER BABU, KOTHAMANGALAM VILLAGE, KOTHAMANGALAM KARA REPRESENTED BY POWER OF ATTORNEY HOLDER PAUL THOMAS, MUNDADAN HOUSE, ANGAMALY.

3. LUCY, D/O.MUNDADAN THOMAS, KOTHAKULANGARA SOUTH, ANGAMALY, REPRESENTED BY POWER OF ATTORNEY HOLDER PAUL THOMAS, MUNDADAN HOUSE, ANGAMALY. BY ADVS.SRI.PIUS

C.MUNDADAN SMT.ANJU DIVAKAR NAME AND ADDRESS OF THE RESPONDENTS: ----- 1. STATE OF KERALA REPRESENTED BY DISTRICT COLLECTOR, ERNAKULAM, CIVIL STATION, KAKKANAD.

2. KOCHI INTERNATIONAL AIRPORT SOCIETY, REPRESENTED BY ITS MANAGING DIRECTOR, NEDUMBASSERY, ERNAKULAM DISTRICT. R1 BY GOVERNMENT PLEADER SMT.K.T.LILLY R2 BY SRI.N.N.SUGUNAPALAN (SENIOR ADVOCATE) ADVS. SRI.S.SUJIN SMT.T.N.GIRIJA THIS OP (CIVIL) HAVING BEEN FINALLY HEARD ON0406-2014, ALONG WITH OP(C).NO.145 OF 2014 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
Msd. OP(C).No. 144 of 2014 (O) ----- APPENDIX
PETITIONER(S)' EXHIBITS ----- EXHIBIT P1 : TRUE COPY OF THE DECREE DATED3110-2005 IN LAR NO. 120/2001 OF THE PRINCIPAL SUB COURT, NORTH PARAVUR. EXHIBIT P2 : TRUE COPY OF THE EXECUTION PETITION EP NO. 452/2006 FILED BEFORE THE HON'BLE SUB COURT, NORTH PARAVUR. EXHIBIT P3 : TRUE COPY OF THE OBJECTION TO EXT.P2 FILED BY THE2D RESPONDENT. EXHIBIT P4 : TRUE COPY OF THE AFFIDAVIT AND THE EA NO.753/2007 IN LAR NO. 120/2001. EXHIBIT P5 : TRUE COPY OF THE COUNTER AFFIDAVIT DATED1611-2007 FILED BY THE1T PETITIONER TO EXT.P4. EXHIBIT P6 : TRUE COPY OF THE EA NO. 1192/2008 FILED BY THE2D RESPONDENT ON2209-2008 IN EP NO. 452/2006 FOR REFUND OF THE AMOUNT DEPOSITED. EXHIBIT P7 : TRUE COPY OF THE DECREE DATED2709-2008 IN LAR NO.120/2001 OF THE ADDITIONAL SUB JUDGE, NORTH PARAVUR. EXHIBIT P8 : TRUE COPY OF THE EA NO. 446/2009 IN EP NO. 452/2006 IN LAR1202001 FILED BY THE2D RESPONDENT. EXHIBIT P9 : TRUE COPY OF THE COUNTER AFFIDAVIT DATED0108-2009 FILED BY THE1T PETITIONER. EXHIBIT P10 : TRUE COPY OF THE

ORDER

DATED1311-2009 IN EA NO. 446/2009 PASSED BY THE ADDITIONAL SUB JUDGE, NORTH PARAVUR. EXHIBIT P11 : TRUE COPY OF THE DECREE DATED1102-2011 IN LAA NO. 568/2009 PASSED BY THIS HON'BLE COURT.

EXHIBIT P12 : TRUE COPY OF THE EA NO.611/2011 IN LAR NO. 120/2001 FILED BY THE2D RESPONDENT. EXHIBIT P13 : TRUE COPY OF THE OBJECTION FILED BY THE1T PETITIONER TO EXT.P12. EXHIBIT P14 : TRUE COPY OF THE STATEMENT OF CALCULATION DATED2007-2011 FILED BY THE1T PETITIONER IN EA NO. 611/2011 IN LAR1202001. EXHIBIT P15 : TRUE COPY OF THE CALCULATION STATEMENT DATED2906-2011 FILED BY THE2D RESPONDENT. EXHIBIT P16 : TRUE COPY OF THE EP NO. 238/2011 IN LAR1202001 DATED2007-2011 FILED BY THE1T PETITIONER. OP(C).NO. 144 OF2014(O) ----- EXHIBIT P17 : TRUE COPY OF THE STATEMENT OF CALCULATION AS ON2007-2011 IN EXT.P16 EP. EXHIBIT P18 : TRUE COPY OF THE STATEMENT OF CALCULATION AS ON2901-2013 IN EXT.P16 EP. EXHIBIT P19 : TRUE COPY OF THE CHRONOLOGY OF EVENTS AND POINTS FOR CONSIDERATION IN EP NO. 238/2011 IN LAR1202001. EXHIBIT P20 : TRUE COPY OF THE

ORDER

DATED1110/2013 OF THE HON'BLE ADDITIONAL SUB JUDGE, NORTH PARAVUR IN EA NO. 611/2011. EXHIBIT P21 : TRUE COPY OF THE

ORDER

DATED0510-2013 IN EP NO. 238/2011 IN LAR NO. 120/2001 OF THE HON'BLE ADDITIONAL SUB COURT, NORTH PARAVUR. RESPONDENT(S)' EXHIBITS ----- EXHIBIT R2(A): TRUE COPY OF THE APPLICATION E.A.NO.753/2007 IN LAR NO.120/2001. EXHIBIT R2(B): TRUE COPY OF THE APPLICATION E.A.NO.754/2007 IN LAR NO.119/2001. EXHIBIT R2(C): TRUE COPY OF THE MEMO FILED BY THE2D RESPONDENT IN LAR NO.118/2001. EXHIBIT R2(D): TRUE COPY OF THE MEMO FILED BY THE2D RESPONDENT IN LAR NO.119/2001. EXHIBIT R2(E): TRUE COPY OF THE MEMO FILED BY THE2D RESPONDENT IN LAR NO.120/2001. //TRUE COPY// P.A.TO JUDGE Msd. "C.R." V. CHITAMBARESH, J ----- OP(C) NOs. 144 & 145 OF2014----- Dated this the 4th day of June, 2014

JUDGMENT

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 [(2006) 8 SCC457 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." 2 OP(C) Nos. 144 & 145 of 2014 3. The above decision was quoted with approval in Bharat Heavy Electricals Ltd. Vs. R.S. Avtar Singh & Co. [2013 AIR (Civil) 11] 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 Co. Ltd. [2014(2) KLJ275 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 3 OP(C) Nos. 144 & 145 of 2014 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 scribbles 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 4 OP(C) Nos. 144 & 145 of 2014 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 5 OP(C) Nos. 144 & 145 of 2014 subsisted on the date of alleged appropriation. The orders purportedly passed in E.A. Nos. 754/2007 and 753/2007 cannot also operate as resjudicata 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 Vs. National Fertilizers Corporation of India Ltd. [(1996) 2 SCC71] 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 6 OP(C) Nos. 144 & 145 of 2014 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. V. CHITAMBARESH JUDGE
ncd

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