

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).8408/2003

(From the judgement and order dated 10/04/2003 in CR No.773/2003

of The HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH)

GURPREET SINGH

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

(With prayer for interim relief)

(For Final Disposal)

With S.L.P. (C) No.12306 of 2004

(With appln(s) for c/delay in filing SLP and office report)

(For Final Disposal)

S.L.P. (C) No.19525 of 2003

(With prayer for interim relief)

(For Final Disposal)

S.L.P. (C) No.3429 of 2004

(With prayer for interim relief)

(For Final Disposal)

S.L.P. (C) No.5609 of 2004

(With prayer for interim relief)

(For Final Disposal)

Date: 21/07/2005 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s) Mr. Dipankar Gupta, Sr. Adv.

In SLP 8408/2003: Mr. P.S. Narasimha, Adv.

Mr. Sridhar Potaraju, Adv.

Mr. Ananga Bhattacharyya, Adv.

Mr. Avijeet Lala, Adv.

for M/s. P.S.N. & Co., Adv.

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In SLP 19525/2003: Mr. S.M. Sarin, Adv.

Mr. P.N. Puri, Adv.

In SLP 12306/2004: Mr. N.N. Goswami, Sr. Adv.

Ms. V. Mohana, Adv.

Ms. Anil Katiyar, Adv.

for Ms. Sushma Suri, Adv.

In SLP 3429/2004 & Mr. P.S. Narasimha, Adv.

5609/2004: Mr. Sridhar Potaraju, Adv.

Mr. Rohit Rao N., Adv.

Mr. John Mathew, Adv.

For Respondent(s) Mr. N.N. Goswami, Sr. Adv.

Ms. V. Mohana, Adv.

Ms. Anil Katiyar, Adv.

Ms. Sushma Suri, Adv.

Mr. Harish Chandra, Sr. Adv.

Mr. Goodwill Indeevar, Adv.

UPON hearing counsel the Court made the following

O R D E R

S.L.P. (C) Nos.8408/2003,19525/2003,3429/2004 and
5609/2004:

The High Court, by the impugned judgement, has held that the amount of compensation deposited by the Union of India is required to be appropriated first towards the principal amount, then towards interest and costs and thereafter towards the solatium, by relying upon a three-Judge Bench decision of this Court in Prem Nath Kapur & Anr. vs. Fertilizers Corporation of India Limited and Others (1996 (2) S.C.C.71).

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In Prem Nath Kapur & Anr. (supra), observations have been

made to the effect that 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. Further, it has been held that the ratio in

Meghraj vs. Bayabai (1969 (2) S.C.C.274) is inapplicable to appropriation of debt under the Land Acquisition Act,

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1894 [for short, "the Act"]. According to Prem Nath Kapur & Anr. (supra), by operation of Section 53 of the Act, Order XXI Rule 1 of the Code of Civil Procedure, 1908 [for short, "the Code"] will not be applicable, being inconsistent with the express provisions contained in Sections 34 and 28 of the Act. The earlier decision in Mathunni Mathai vs. Hindustan Organic Chemicals Limited (1995 (4) S.C.C.26 has been overruled by Prem Nath Kapur & Anr. (supra).

Having heard the learned counsel for the parties and having

perused the aforesaid decisions, we are of the view that the normal rule that in case of a debt due with interest, any payment made by the debtor, in the first instance, is to be appropriated towards the satisfaction of interest and thereafter towards principal, subject to a contract to the contrary, is not excluded by the provisions of the Act. The normal principle is embedded on the basis of Section 60 of the Indian Contract Act, 1872. It is also indicated in Order XXI Rule 1(3)(c) of the Code. We may note that the decision in Prem Nath Kapur & Anr. (supra) though has been over-ruled by the Constitution Bench in Sunder vs. Union of India (2001 (7) S.C.C.211) but the Constitution Bench has not gone into the question of appropriation. The question of appropriation, in the decision in Prem Nath Kapur & Anr. (supra), requires to be re-considered.

In view of the aforesaid, we are of the view that it is necessary to refer the question of appropriation, as afore-noticed, for decision by a larger Bench, subject to the orders of Hon'ble the Chief Justice.

We need not express any opinion, at this stage, on other questions. To decide other questions, the special leave petitions would be placed for hearing after the referred question is decided by the larger Bench.

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It seems that a large number of cases are pending before the Executing Court and other courts. The question referred may be decided at an early date.

Pending decision by the larger Bench, the admitted amount shall be paid by the Union of India to the claimants within a period of four weeks.

S.L.P. (C) No.12306 of 2004:

Delay condoned.

The Additional District Judge as also the High Court, in the Civil Revision Petition, by the impugned order, have held that the contention of the petitioner-Union of India that already excess amount has been paid, after contest, was rejected on merits on terms of order dated

26th February, 1998 passed by Additional District Judge, Bhatinda and that order has attained finality. There is nothing on record to show that the order dated 26th February, 1998 was varied by any Court.

In this view, the special leave petition is dismissed.

[T.I. Rajput] [N. Annapurna] [V.P. Tyagi]
Court Master Court Master Court Master