

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CIVIL APPLICATION (F) NO.1715/2021 IN
FIRST APPEAL NO.492/2017

The Executive Engineer, Bembla Project Division, Yavatmal and anr.
Vs.
Manik Panjabrao Kalmegh and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri M.A.Kadu, Advocate for applicants/appellants.
Shri Kalyan Chiwarkar, Advocate with Shri Anand Parchure, Advocate for non-
applicant no.1/respondent no.1.

CORAM :- A.S.CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.
DATED :- September 07, 2021.

The question that arises for consideration in this application is whether an appeal under Section 96 of the Code of Civil Procedure, 1908 (for short, the Code) can be admitted in part by restricting the grounds of challenge as made to the entire decree ?

2. In First Appeal No.492/2017 the appellants have challenged the award passed by the Reference Court in L.A.C.No.613/2005 dated 04.04.2015 on various grounds. By the said award the Reference Court enhanced the compensation that was payable for the acquired land as well as for the trees standing therein. When the appeal came up for admission on 27.04.2017 the Court observed that with regard to the compensation awarded for the land it was not permissible for the appellants to challenge that adjudication in view of the fact that similar orders passed in favour of other claimants by the Reference Court especially in L.A.C.Nos.48/2006 and 165/2006 had not been challenged by the appellants. Thus while admitting the appeal it was observed "*hence we admit the appeal, only in respect of the challenge by the VIDC to the enhancement of compensation for the trees and the borewell*". In other words, the first appeal was admitted only on

the grounds of challenge to the enhancement of compensation for the trees and the borewell but not for the land.

3. Shri M.A.Kadu, learned counsel for the applicants/appellants submits that the reason given by the Court in the order dated 27.04.2017 for not permitting the appellants to challenge the award of the Reference Court insofar as the compensation was enhanced for the acquired land was incorrect. According to him, it was wrongly stated that the adjudication in L.A.C.Nos. 48/2006 and 165/2006 had not been challenged by the appellants. The relevant proceedings were L.A.C.No.48/2007 and not L.A.C.No.48/2006. First Appeal No.244/2017 had been filed by the appellants for challenging the award passed in L.A.C.No.48/2007. Further the land acquired in L.A.C.No.165/2006 was dry crop land and it was not similar to the land in the present appeal which was irrigated. Hence on this incorrect premise, the appellants could not be prevented from challenging the award insofar it enhanced the compensation for the land in the present proceedings. On account of such restricted admission the claimants were permitted to withdraw the amount of compensation for the land without furnishing any security. According to him, the respondents by narrating incorrect facts led the Court to pass said order, it was therefore liable to be reviewed. The learned counsel sought to place reliance on the decision in ***S.P.Chengalvaraya Naidu Vs. Jagannath 1994 AIR SC 853*** in that regard.

4. Shri Kalyan Chiwarkar, learned counsel for the non-applicant no.1/respondent no.1. on the other hand submitted that considering the reasons stated by the Court in the order dated 27.04.2017 that order did not call for any review. He however submitted that the claimants had filed Civil Application (F) No.1555/2021 for correction of the order dated 27.04.2017 as reference was wrongly made to “L.A.C.No.48/2006” instead of “L.A.C.No.48/2007”. According to him, since the enhancement granted for the land by the Reference

Court was justified, the Court while admitting the first appeal did not commit any error apparent on the face of the record by restricting the challenge only to the enhancement in the amount of compensation for the trees and borewell. The learned counsel brought to the notice of the Court the decisions in *Krishnaji Shrinivas Jalvadi and ors. Vs. Madhusa Appansa Ladaba and ors* ILR (1934) 58 Bom 406, *Vattipalle Eswariah Vs. Vattipalle Rameshwarayya and ors*, AIR 1940 Mad 483 and *P. Santharam, Advocate Vs. K. Raveendran and anr.* 2015 SCC Online Ker 34425 in that context.

5. The question therefore to be considered is whether the Court while admitting an appeal under Section 96 of the Code can restrict the grounds on which the appeal is to be heard. The Full Bench of the Bombay High Court in *Krishna Shrinivas Jalvadi and ors* (supra) considered the question as to whether an appeal under Section 96 of the Code could be admitted in part alone. It was held that if an appeal is severable, it was open for the Judge hearing the appeal under the provisions of Order XLI Rule 11 of the Code to dismiss it in part or admit in part, just as at the final hearing the Court could dismiss the appeal in part or allow it in part. It was further held in clear terms that it was not open for a Judge hearing the appeal under Section 96 of the Code to admit it and at the same time to restrict the grounds on which the appeal was to be heard. If the appeal was admitted the Court could not direct that it can be argued only on certain questions and that other points were not to be argued.

A somewhat similar question was considered by the Full Bench of the Madras High Court in *Vattipalle Eswariah* (supra). The judgment of the Full Bench in *Krishnaji Shrinivas Jalvadi and ors* (supra) was considered by the Madras High Court but it was of the view that there was nothing in Order XLI of the Code which permitted severance of the appeal so as to dismiss the appeal in part and admit it in part. It was then held that it was open for the appellant to challenge the decree on all grounds mentioned in the memorandum

of appeal.

6. The Kerala High Court in ***Santharam, Advocate Vs. K. Ravendran and anr.*** (supra) considered the question whether an appeal under Section 96 of the Code could be admitted only on certain grounds. The decisions of the Full Bench of the Bombay High Court and Madras High Court were referred to. It was held that no restrictions could be imposed by the appellate Court under the provisions of Order XLI 41 Rule 11 of the Code restricting the appeal only to some grounds raised in the appeal.

7. The precise question arising in the present proceedings has been considered by the Hon'ble Suprem Court in ***Ramji Bhagala Vs. Krishnarao Karirao Bagra 1982 Mh.L.J. 835*** . Therein, an appeal under Section 96 of the Code was admitted insofar as certain prayers were concerned and was rejected insofar as the other prayers were concerned. It was held that such course was not permissible and the appeal could be admitted either in its entirety or could be rejected in its entirety.

8. We may also refer to the Order XLI 41 Rule 2 of the Code which permit raising of grounds of objection that are not set-forth in the memorandum of appeal which could be urged after obtaining leave of the Court. Moreover, the appellate Court while deciding the appeal would not be confined to the grounds of objection set-forth in the memorandum of appeal or taken with leave of the Court under the said Rule. This indicates that besides the grounds raised, additional grounds with leave of the Court can always be permitted to be raised in support of the appeal. We thus find that there is no provision in the Code on the basis of which an appeal under Section 96 of the Code could be admitted in part by directing that the challenge would be restricted only to certain grounds and not on all grounds that are available to the appellant. It would be a different

matter if certain grounds of challenge to the decree/award are not accepted while deciding the appeal finally.

9. Admitting the appeal but restricting the challenge on behalf of the appellants only to the enhancement of compensation for the trees and borewell but not for enhancement with regard to land would be against the judgment of the Hon'ble Supreme Court in ***Ramji Bhagala*** (supra) thus constituting an error apparent on the face of record. The said error is thus liable to be rectified by invoking review jurisdiction.

10. Though it was sought to be urged by the applicants that incorrect facts were deliberately placed before the Court at the behest of the claimants when the appeal was admitted, we do not find so. Since it is found that the appeal could not have been admitted on restricted grounds, the order dated 27.04.2017 to the extent the appeal was admitted only in respect of the challenge to the enhancement of compensation for the trees and borewell is reviewed. The appeal having been admitted, it is open for the appellants to prosecute the same on all grounds raised by them in the memorandum of appeal.

11. The Civil Application is accordingly allowed in terms of prayer clause (a) and the order dated 27.04.2017 is reviewed to the aforesaid extent. The effect of withdrawing the amount of compensation pursuant to the order dated 27.04.2017 without furnishing any surety/security would be considered when the appeal is finally decided.

JUDGE

JUDGE