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DHEERAJ SINGH

v.

GREATER NOIDA INDUSTRIAL DEVELOPMENT
AUTHORITY & ORS.

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(Civil Appeal No. 4172 of 2023)

JULY 04, 2023

[KRISHNA MURARI AND BELA M. TRIVEDI, JJ.]

- Code of Civil Procedure, 1908 – O.41, r.22 – Cross objections filed by the appellants for enhancement of compensation, not considered by High Court – Held: Cross objections, unlike a regular appeal, are filed within an already existing appeal – However, as per O.41, r.22, cross objections have all the trappings of a regular appeal and therefore, must be considered in full by the court adjudicating upon the same – Court of appeal has a duty to apply its mind to all the issues raised before it and in cases where the High Court fails to do the same, the matter must be remanded to the same court for fresh adjudication – In the present case, the issues raised by the appellants in their cross objections were not considered by the High Court – While, the High Court gave a detailed analysis of all other issues raised in the appeal and both the lower court orders, the cross objections in specific found no discussion, much less even a mention – High Court was under an obligation to consider the cross objections filed by the appellants – Since such an obligation was not discharged, matter is remanded to the High Court for fresh adjudication – Land Acquisition Act, 1894 – ss.4(1), 6, 17, 18.*

- Code of Civil Procedure, 1908 – O.41, r.22 – Held: In cases where the decree is partly in favour of the respondent, but is also partly against the respondent, two remedies within O.41, r.22 remain with the respondent, to file their cross objections and to support the decree in whole – The third remedy in law is the right to file a cross appeal within the limitation period so prescribed, which in essence is a separate appeal in itself, challenging part or whole of the original decree, independent of the appeal filed by the other party – The respondent also has the right to fully support the original decree passed by the lower court in full.*

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Santosh Hazari vs. Purushottam Tiwari (Dead) by LRs.
(2001) 2 SC 407; Madhukar and Ors. vs. Sangram and Ors. (2001) 4 SCC 756:[2001] 3 SCR 138; Jitendra Prasad Nayak vs. Anant kumar Sah and Anr. (1998) 9 SCC 383 – relied on.

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<u>Case Law Reference</u>		
(2001) 2 SC 407	relied on	Para 19
[2001] 3 SCR 138	relied on	Para 20
(1998) 9 SCC 383	relied on	Para 21

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4172 C
of 2023.

From the Judgment and Order dated 05.01.2017 of the High Court
of Judicature at Allahabad in CA No. nil/2023.

With

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Civil Appeal Nos. 4174, 4173, 4175, 4176 and 4177 of 2023.

S. K. Patri, Haraprasad Sahu, Ms. Velasree S., Mrs. Kiran Mohanto, Sanjay Kumar Mishra, Pranaya Kumar Mohapatra, Advs. for the Appellant.

Ravindra Kumar, Sr. Adv., Binay Kumar Das, Ms. Priyanka Das, E
Ms. Neha Das, Advs. for the Respondents.

The Judgment of the Court was delivered by

KRISHNA MURARI, J.

Delay condoned.

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2. Leave granted.

3. The present Appeals are directed against the impugned order
and judgment dated 05.01.2017 passed by the High Court of Allahabad
at Allahabad (hereinafter referred to as “High Court”), whereby, the
appeal preferred by the appellants herein was dismissed.

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FACTS

4. The relevant facts necessary for the adjudication of the present
appeals, for the sake of convenience, the Respondent State Government
of UP had issued a notification under Section 4(1) read with Section 17

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- A of the Land Acquisition Act, 1894 on 30.04.1993 whereby a large tract of land, including the land of the appellants herein was acquired for the purpose of Greater Noida. The declaration of the said lands under Section 6 of the Act was issued on 25.06.1993, and the possession of the aforesaid lands was taken on different dates between 13.08.1993 and 31.05.1994.
- B 5. Subsequent to the possession of the said lands being acquired, the Special Land Acquisition Officer, by order dated 27.08.1994, determined the market value of the plots at three different rates i.e., Rs.32.52/-, Rs.22.44/- and Rs. 16.46/- paisa per square yard.
 - 6. Aggrieved by the aforesaid award, the appellants herein sought reference under Section 18 of the Land Acquisition Act and claimed compensation at the rate of Rs. 350/- to Rs. 500/- per square yard on grounds of parity to other lands acquired in the vicinity. The Learned District Judge, in the aforesaid reference, vide its judgment dated 09.05.2002, determined the market value of the said lands at Rs. 400/-, but deducted 1/3rd amount for development charge, and fixed the market value at Rs. 267/- per square yard and granted Rs. 80/- as solatium per square yard with interest at the rate of 9% and 15% per annum, and an additional compensation at the rate of 12% per annum on the market value with effect from the date of transfer of possession.
 - 7. As against this, the Respondent Greater Noida filed an appeal in the High Court, to which the appellants herein filed their cross appeals seeking a further enhancement.
 - 8. Subsequently, the High Court, vide order and judgment dated 04.01.2017, confirmed the compensation determined by the Learned District Judge. It is the contention of the appellants herein that the High Court, while passing its judgment, did not consider the cross objections filed by them.
 - 9. The Appellants, aggrieved by the fact that their cross objection for enhancement was not properly considered, filed a review, however, the same was dismissed vide impugned order and judgment dated 05.01.2017. Hence, the present Special Leave Petition.
 - 10. For the sake of clarity, it is necessary to mention that the acquisition of the land itself is not being challenged by way of the present appeals, and the limited challenge is only confined to the extent of the quantum of compensation granted for the acquisition of the said lands.
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11. To appreciate the issue at hand and to come to a correct conclusion, we must analyze the impugned order passed by the High Court, to see whether there has been any application of mind by the High Court on the cross objections filed by the appellants herein, and if such consideration has not been taken into account, then to what extent can this Court grant relief.

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ANALYSIS

12. Order 41 Rule 22, which is the governing law in the present case, elaborates on the remedies available to a respondent in the court of first appeal where an original decree has been challenged. An analysis of the said provision, in our opinion, is essential to adjudicate upon the present case.

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13. In cases where the decree passed by the court of first instance is in favor of the respondent in whole, in such circumstance, no remedy exists in favour of the respondent to appeal such decree, since no right to appeal can be vested onto a party, which is successful.

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14. However, in cases where the decree given by the court of first instance, is partly in favour of the respondent, but is also partly against the respondent, two remedies within Order 41 Rule 22 remain with the respondent, which are (i) To file their cross objections and, (ii) To support the decree in whole. A third remedy in law also exists, which is the right to file a cross appeal, which will also be discussed in brief.

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15. In cases where the opposing party files a first appeal against part or whole of the original decree, and the respondent in the said first appeal, due to part or whole of the decree being in their favour, abstains from filing an appeal at the first instance, in such cases, to ensure that the respondent is also given a fair chance to be heard, he is given the right to file his cross objections within the appeal already so instituted by the other party, against not only the contentions raised by the other party, but also against part or whole of the decree passed by the court of first instance.

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16. In a similar circumstance, where the other party in the first instance has preferred an appeal, apart from the remedy of cross objections, the respondent can also file a cross appeal within the limitation

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- A period so prescribed, which in essence is a separate appeal in itself, challenging part or whole of the original decree, independent of the appeal filed by the other party. The respondent also has the right to fully support the original decree passed by the lower court in full.

17. In the present case at hand, the appellants herein, in the court of first appeal filed a cross objection. It is the claim of the appellants herein that his cross objection was not considered by the High Court while passing the impugned judgment. At this stage, it must be noted that while cross objections, unlike a regular appeal, are filed within an already existing appeal, however, as per Order 41 Rule 22 of the CPC, cross objections have all the trappings of a regular appeal, and therefore, must be considered in full by the court adjudicating upon the same.

18. A bare perusal of the impugned order would show that the issues raised by the appellants in their cross objections have not been considered by the High Court. No mention of the cross objections filed by the appellants herein have been found in the said judgment. While the High Court has given a detailed analysis of all other issues raised in the appeal and the both the lower court orders, however, the cross objections in specific, finds no discussion, much less even a mention.

19. In the case of ***Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs.***¹, this Court held that the court of appeal has a duty to apply its mind to all issues raised before it, and to discharge such duty, it must also record its findings against all such issues raised. For the sake of convenience, the relevant paragraph of the said judgment is being extracted herein:

- "The Appellate Court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law. the whole case is therein open for rehearing both on questions of fact and law. The judgment of the Appellate Court must, therefore, reflect its conscious application of mind, and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the Appellate Court.*

H ¹(2001) 2 SC 407

While reversing a finding of fact the Appellate Court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the Court hearing a further appeal that the First Appellate Court had discharged the duty expected of it."

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20. In the case of Madhukar and Ors. Vs. Sangram and Ors.², this Court, while reiterating the principles laid down in the Santosh Hazari Judgment (Supra), observed that the court of first appeal has a duty to record its findings qua all the issues raised before it, and in cases where the High Court fails to do the same, the matter must be remanded to the same court again for fresh adjudication.

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21. Further, in the case of Jitendra Prasad Nayak Vs. Anant Kumar Sah and Anr.³, this Court, in an identical circumstance wherein the cross objections filed by the appellant therein was not considered by the court of first appeal, held that remanded the case back to the High Court and observed as under:

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"....Admittedly, a cross-objection was filed by the appellant-landlord against the rejection by the first appellate court of the existence of one of the two grounds of eviction. However, while deciding the appeal of the respondent-tenant in his favour against the decision of the first appellate court on the other ground, the existance of the cross objection appears to have been missed by the High Court with the result that there is no decision given on the cross objection. The impugned judgment cannot, therefore, be sustained inter alia for this reason. We are also of the opinion that the question relating to existence of the ground of bona fide need which has been decided in favour of the tenant requires a fresh determination by the High Court along with the other point relating to default in payment of rent which was the subject mater of cross-objection....."

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22. The abovementioned discussions and judgments, when contextualized to the present case, would show that the High Court

²(2001) 4 SCC 756

³(1998) 9 SCC 383

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- A was under an obligation to consider the cross objections filed by the Appellants herein. Since such an obligation was not discharged while passing the judgment in appeal, we are of the considered opinion that the matter is fit for remand to the High Court for fresh adjudication on the grounds raised in the cross objections during appeal by the appellants
- B herein. Accordingly, the present appeals are therefore allowed to such an extent.

Divya Pandey
(Assisted by : Shevali Monga, LCRA)

Appeals allowed.