

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

**APPEAL NO.63 OF 2016 (WZ)
WITH
I.A. NO.51 OF 2023
IN
APPEAL NO.63 OF 2016 (WZ)**

M/s Shree Par Fragrance

.... Appellant/
Applicant

Versus

GCZMA & Anr.

....Respondents

Date of hearing : 14.03.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Appellant/Applicant : Mr. Satyen Vaishnav, Advocate with Mr. Gaurish N.Agni,
Advocate along with Mr. S. Swaminathan, Advocate

Respondents : Ms. Supriya Dangare, Advocate for R-1

ORDER

I.A. NO.51/2023 :

1. The learned counsel for the appellant/applicant is present before us and has pressed Interlocutory Application (IA.) No. 51/2023 whereby he has prayed for grant of amendment in the memo of the Appeal to be carried out as per the schedule annexed thereto. The learned counsel for the applicant states that copy of this amendment application has been served upon respondent Nos.1 and 2 by registered post A.D. on 11.02.2023 and he would be filing an affidavit to that effect within a week.

2. None has appeared from the side of respondent No.2 – Mr. Floriano Lobo to oppose this application.

3. From the side of respondent No.1 – GCZMA, learned counsel Ms. Supriya Dangare has appeared. She has not filed any objection against this application and seeks further time to file reply-affidavit.

4. By our order dated 13.02.2023, we had allowed two weeks' time to respondent No.1 – GCZMA to file the reply-affidavit subject to payment of cost of Rs.5000/- and a clear direction was given that copy of the said reply-affidavit shall be served on the appellant, who was, within two weeks thereafter, to file rejoinder. It has been apprised by the learned counsel for the appellant that the cost, as directed, has not been paid and if the cost has not been paid, the learned counsel for respondent No.1 may not file reply-affidavit as the cost has been imposed in respect of filing of the reply-affidavit, but she is ready to oppose the present appeal orally. Since we have already imposed cost with regard to filing of the reply-affidavit, which has not been paid, we do not deem it appropriate to grant further time to respondent No.1 to file reply-affidavit against the amendment application as the same could have been filed today itself.

5. We have heard the learned counsel for the appellant on the above mentioned amendment application. It is argued by him that the demolition order, which was passed with respect to conference hall (property at serial No.ii), stands regularized in view of respondent No.1 passing subsequent order dated 13.12.2021 granting permission to construct three temporary structures, a copy of which is annexed at pages 276 to 279. It is apprised by him that this has been permitted due to change in law. However, no document in support thereof has been filed. We, therefore, direct the learned counsel for the applicant to file the relevant document in that regard by the next date positively.

6. With regard to demolition order as regards the properties at serial nos. (i) and (v), the same has already been complied with. The learned

counsel for the appellant, therefore, submits that the appeal has become infructuours to the extent of these properties.

7. The learned counsel for the appellant has further urged that with respect to structure at serial no.(iv) related to “tiled pathway”, there is no tile in the pathway. We, therefore, find that he is trying to contest the impugned order with respect to demolition of this portion of the property. We, therefore, hold that the appeal to the extent of structure at serial no. (iv) shall be decided on merits.

8. As far as demolition order relating to the property at serial no. (vi) is concerned, it is submitted that it is not a garden, but it is naturally grown lawn. Hence, according to the learned counsel, he wants to contest the appeal related to this property at serial no.(vi). In view thereof, we have to decide the appeal to the extent of serial no. (vi) on merits.

9. The learned counsel for the appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Harcharan Vs. State of Haryana; (1982) 3 SCC 408**, wherein paragraph No.5 is relied upon, which is as follows:-

“Appellant contends that his land is acquired; that it has the potentiality of a building site which can be used for industrial or commercial purposes; and that Faridabad Ballabgarh Complex is primarily an industrial complex and, therefore, he must be awarded compensation on the footing that the land has the potentiality of a building site and not as has been done by the Land Acquisition Collector and the District Judge on the footing that it is agricultural land. Now, the principal and primary question while ascertaining compensation for land acquired under the Act is the market value of the land on the date of the notification under [Section 4](#). The determination of this question depends upon the nature and potentiality of the land. It is the real question in controversy between the parties. To effectively and finally adjudicate this controversy necessary pleadings ought to be available. To highlight this real controversy it may become necessary to amend the pleadings. When an appeal is preferred the memorandum of appeal has the same position like the plaint in a suit because plaintiff is held to the case pleaded in the plaint. In the case of memorandum of appeal same situation obtains in view of Order XLI, Rule 3. The appellant is confined to and also would be held to the memorandum of appeal. To overcome any contention that such is not the pleading the appellant sought the amendment. It was declined

on the sole ground that it was delayed by six years because the High Court does not refer to any other ground for rejecting this application. The High Court has not held the averments in the application about the various decisions rendered by the same High Court as being untrue or otherwise. Therefore, the foundation for the amendment is neither shaken nor knocked out. We are, therefore, left to the only question whether the appellant should be denied an opportunity to agitate what is the market value of the land and what would be justly due to him on the ground of delay in moving the application for amendment of pleadings. We need not dilate on this question in view of the decision of this Court in [Ganesh Trading Co. v. Moji Ram](#) wherein it has been observed as under:

Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleading in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable Courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take.”

10. We find that in view of the above position of law, the present amendment in the appeal memo deserves to be allowed despite it being of subsequent period. Accordingly, we allow this amendment application and direct the appellant to incorporate the same in the memo of appeal within seven days. A copy of the amended memo of appeal shall be served on respondent Nos. 1 and 2 within a week thereafter. Thereafter, the respondents may also file reply thereto if they wish to. We make it clear that if respondent Nos.1 and 2 want to file the reply-affidavit, it shall be filed to the amended part of memo of appeal and not to the original appeal, as the cost has not been paid as directed earlier.

11. The amendment application (I.A. No.51/2023) is disposed of.

12. Put up the appeal for final hearing on 01.05.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

March 14, 2023
APPEAL NO.63 OF 2016 (WZ)
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