

Gujarat High Court

Gujarat Mineral Development ... vs Mansing Narottambhai Thr'Heirs & ... on 29 July, 2015

C/FA/739/2006

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 739 of 2006

[On note for speaking to minutes of order dated 29/06/2015 in
C/FA/739/2006]

TO

FIRST APPEAL NO. 766 of 2006

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GUJARAT MINERAL DEVELOPMENT CORPORATION LTD....Appellant(s)

Versus

MANSING NAROTTAMBHAI THR'HEIRS & 2....Defendant(s)

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Appearance:

MR.VARUN K.PATEL, ADVOCATE for the Appellant(s) No. 1

GOVERNMENT PLEADER for the Defendant(s) No. 3

MR JOY MATHEW, ADVOCATE for the Defendant(s) No. 1.1 - 1.8

RULE SERVED for the Defendant(s) No. 2

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI

and

HONOURABLE MR.JUSTICE G.B.SHAH

Date : 29/07/2015

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE KS JHAVERI) The Speaking to Minutes is allowed.
Substituted para 10 of the order dated 29.6.2015, is as under:

"10. In view of the aforesaid, both Cross First Appeals and Cross Objections of the
claimants stand dismissed."

Office to issue fresh writ accordingly.

(K.S.JHAVERI, J.)

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(G.B.SHAH, J.)

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD FIRST APPEAL NO. 739 of 2006 With FIRST APPEAL NO. 740 of 2006 TO FIRST APPEAL NO. 766 of 2006 With FIRST APPEAL NO. 2694 of 2006 TO FIRST APPEAL NO. 2721 of 2006 With FIRST APPEAL NO. 3857 of 2006 TO FIRST APPEAL NO. 3875 of 2006 With CROSS OBJECTION NO. 261 of 2009 In FIRST APPEAL NO. 3858 of 2006 TO CROSS OBJECTION NO. 273 of 2009 In FIRST APPEAL NO. 3862 of 2006

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GUJARAT MINERAL DEVELOPMENT CORPORATION LTD....Appellant(s) Versus
MANSING NAROTTAMBHAI THR'HEIRS & 2....Defendant(s)

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Appearance IN FIRST APPEAL NOS. 739 TO 766 OF 2006, FIRST APPEAL NOS. 2694 TO 2721 OF 2006 :

MR. KM PATEL, SENIOR ADVOCATE WITH MR. VARUN K.PATEL, MR. D.M. DEVNANI, AGP for the Defendant(s) No. 3 MR JOY MATHEW, ADVOCATE for the Defendant(s) No. 1.1 - 1.8 3 of 9 C/FA/739/2006 ORDER Appearance IN FIRST APPEAL NOS. 3857 TO 3875 OF 2006, CROSS OBJECTION NOS.261 TO 273 OF 2009:

MR.VARUN K.PATEL, ADVOCATE for the Appellant(s) No. 1 MR. DHAWAN JAYSWAL, AGP for the Defendant(s) No. 3 MR JOY MATHEW, ADVOCATE for the Defendant(s) No. 1.1 - 1.8

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI and HONOURABLE MR.JUSTICE G.B.SHAH Date : 29/06/2015 COMMON ORAL ORDER (PER : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of these appeals, the appellant Gujarat Mineral Development Corporation Limited has challenged the judgment and award dated 18.11.2005 passed by the Joint District Judge, Fast Track Court No.3, Bharuch, in Land Acquisition Reference Case Nos. 445 of 2003 to 459 of 2003, 463 of 2003 to 465 of 2003 and 482 of 2003 to 491 of 2003 and the judgment and award dated 03.03.2006 passed in Land Acquisition Reference No.460 of 2003 to 462 of 2002 and 466 of 2003 to 481 of 2003, whereby the Reference Court has awarded additional compensation at the rate of Rs.2000/ per Are instead of price fixed by the Land Acquisition Officer with interest at the rate of 9% for the first year from the date of taking over the possession and thereafter 15% per annum till its realization. The Reference Court awarded additional compensation at the rate of 12% on the market value under Section 23(1)(A) of the Land Acquisition Act. The Reference Court has also awarded solatium at the rate of 30% on the additional amount of compensation with interest at the rate of 9% per annum for the first year from the date of taking over the possession and thereafter 15% per annum for the subsequent period till the date of payment.

2. The facts, in brief, are that the lands of the original claimants situated at village Maljipura, Taluka Jhagadiya, District Bharuch, were acquired by the appellant Gujarat Mineral Development Corporation Limited for mining purpose and a Notification under Section 4 of the Act came to be issued on 07.12.2000. After following the due procedure of law, the Land Acquisition Officer fixed the market value of the agricultural land at Rs.382/ per Are and Rs.430/ for non Agriculture land. 2.1. Being aggrieved by the said award, the original claimants preferred References under Section 18 of the Land Acquisition Act. The Reference Court after hearing learned advocates for the parties and after perusing the record decided the References and passed the award as stated hereinabove. Feeling aggrieved by the aforesaid award, the present appeals have been preferred by the appellant on the grounds set out in the memo of appeals.

3. Learned Senior Counsel for the appellant has contended that the Reference Court has committed an error in passing the impugned judgment and award considering the consent award and the decision of this Court in the case of Mansingbhai Narottambhai Vasava vs. State of Gujarat, reported in 2003(2) GLR 1558. He further contended that the Reference Court ought to have appreciated the fact that no evidence was adduced by the original claimants to prove the market price of the lands in question. Therefore, he urged that this Court may remand the matters to the Reference Court for deciding the same afresh.

4. Mr. Seth, learned advocate for the original claimants has relied upon the decision of this Court passed in First Appeal No.2269 of 2008 and allied matters for the village Maljipur, Taluka Jhagadia, District Bharuch, wherein Section 4 Notification was published on 23.06.1988. He further submitted that this Court after considering the material on record has dismissed said appeal and confirmed the view of the Reference Court of awarding Rs.17.04 ps. per sq. meter. 4.1. It is further submitted by the learned advocate for the original claimants that the aforesaid decision is confirmed upto the Apex Court in the case of Gujarat Mineral Dev. Corporation vs. Ram Sangh Bhailalbai and Anr. reported in 2015(2) GLH 44. Relying on the aforesaid decisions, the learned advocate for the 6 of 9 C/FA/739/2006 ORDER original claimants urged that this Court may not remand the matter to the Reference Court and dismiss the present appeals.

5. Mr. Methew, learned advocate for the respondent has placed on record comparative table of four adjacent villages nearby to village Maljipura and submitted that in view of the aforesaid, the present appeals deserve to be dismissed.

6. We have heard learned Advocates for the parties. We have also gone through the impugned judgment and award passed by the Reference Court. From the record it appears that the appellant herein acquired the lands of the original claimants for the work of excavation of lignite. Thereafter, a joint meeting of land holders and Officers of the Corporation as also the Land Acquisition Officer was held in presence of District Collector. In the said meeting some of the land owners agreed for consent award. It appears that the land owners who have not agreed for consent award have filed References. In the said references, the original claimants have produced only consent award and the Index and except this they have not produced any document to prove the market price of the lands in question. However, the Reference Court relying on consent award, has passed the impugned judgement and award and fixed the market price of the lands, in question, without there being any supporting document.

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7. Considering the aforesaid facts, we are of the considered opinion that the Reference Court has committed an error in deciding the references. Therefore, the matters are required to be remanded to the Reference Court for deciding the same in accordance with law.

8. As far as the decisions relied upon by the learned advocate for the respondents are concerned, we are of the opinion that the same are not applicable inasmuch as it has a Taluka Place having commercial value whereas the lands in question are not comparable to the lands referred to in the relied on decisions.

9. For the foregoing reasons, the present appeals are partly allowed. The impugned judgment and decree dated 18.11.2005 and 03.03.2006 passed by the Joint District Judge, Fast Track Court No.3, Bharuch are hereby quashed and set aside. The matters are remanded to the concerned Reference Court for deciding the reference afresh after consideration afresh. The Reference Court is directed to decide the References within a period of six months from the date of receipt of a copy of this order. The Reference Court shall conduct the proceedings in accordance with law after following the principle of natural justice in its true spirit. Both sides will be at liberty to adduce evidence before the Reference Court. The amount lying with the Tribunal will remain as it is till the final disposal of the References.

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10. In view of the aforesaid, the Cross Objections stands dismissed.

(K.S.JHAVERI, J.) (G.B.SHAH, J.) pawan 9 of 9