IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 32 OF 2008

1. Jose Almeida,
2. Francisco Almeida,
3. Manuel Almeida,
4. Fatima Almeida,
5. Alister Almeida,
6. Allison Almeida,

Appellant Nos. 2 to 6 through their
constituted Attorney Appellant No.1
Marchon Building, 1st Floor,
Opp. Lohia Maidan, Margao, Goa. …...... Appellants.

V/s.

Deputy Collector and Land Acquisition
Officer, Sub-Division, Margao, Goa. ….…. Respondent.

Mr. M. B. da Costa, Senior Advocate with Ms. K. Betiquekar, Advocate for the appellants.

Mr. M. Salkar, Government Advocate for the respondent.

CORAM :- F.M. REIS &
K.L. WADANE, JJ.

Date : - 7th April, 2015.

ORAL JUDGMENT : (PER F.M. REIS, J.)

Heard Shri M. B. da Costa, learned Counsel appearing for the appellants and Shri M. Salkar, learned Government Advocate appearing for the respondent.

2. The above appeal challenges the Judgment and Award passed by the learned Adhoc District Judge-2, South Goa, Margao in Land Acquisition Case No. 77/2006, whereby the reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter, referred to as “the Act”) came to be dismissed, but, however, holding that the appellants are entitled to further compensation for an area of 303 sq. metres, but refusing to enhance the compensation awarded.

3. Briefly, the facts of the case are that, pursuant to a Notification under Section 4 of the Act dated 6th August, 2003, land belonging to the appellants was proposed to be acquired for the construction of a road in Aquem, at Margao, South Goa, admeasuring an area of 1191 sq. metres from the property surveyed under Chalta No.63 of P.T. Sheet No.245 and an area of 4630 sq. metres from the property surveyed under Chalta No.64 of P.T. Sheet No.245 of Margao City. By a subsequent Notification under Section 6 of the Act dated 14/09/2005, the area intended to be acquired was accordingly notified. The Land Acquisition Officer, by an Award dated 26/9/2005, offered compensation for the land acquired at the rate of Rs.71/- per sq.

metre.

Being dissatisfied with the said amount, the appellants preferred a reference under Section 18 of the Act and claimed compensation at the rate of Rs.2500/- per sq. metre, besides claiming that an additional area of 303 sq. metres was also the subject-matter of the acquired land. The learned Reference Court, as stated herein above, by the impugned Judgment and Award dated 14th November, 2007, partly allowed the reference to the extent of holding that an additional area of 303 sq. metres was acquired, however, refused to enhance the compensation. Being aggrieved by the impugned Judgment and Award, the appellants herein preferred the above appeal.

4. The matter was earlier heard by this Court and by an order dated 9th August, 2010, as the appellants desired to produce some agreement and other sale instances, this Court permitted the production of such documents and framed an issue as to whether the appellants prove that they are entitled to enhanced market value at the rate of Rs.2500/- per sq. metre in respect of the acquired land and remanded the matter to the Reference Court. The Reference Court, by an order dated 31/12/2010 held that the market value of the acquired land was

Rs.1,500/- per sq. metre. Thereafter, the appellants filed objections to the said findings claiming that the compensation be fixed at the rate of Rs.2500/- per sq. metre. The respondent also filed cross objections, disputing the correctness of the findings arrived at by the learned Reference Court. The matters was, thereafter, heard by this Court on merits.

5. Mr. M. B. da Costa, learned Senior Counsel appearing for the appellants has pointed out that in the present case the possession of the land was taken over much before Section 4 Notification as, according to him, there was an earlier Notification issued for acquisition of the same land, way back in the year 1984 when the possession was taken over by the Appropriate Government. The learned Senior Counsel further points out that as the respondent had encroached into the property of the appellants without due process of law, the appellants had to file a suit before the District Judge, Margao for injunction and other reliefs which, according to him, came to be decreed. The learned Senior Counsel further submits that the said acquisition proceedings lapsed as an award was not passed within the time prescribed under the Act. As such, according to the learned

Senior Counsel, a fresh Notification was issued in the year 2003, which resulted in the reference under Section 18 of the Act. The learned Senior Counsel further submits that the appellants are entitled to the compensation from the date of their dispossession upto the date when the preliminary Notification under Section 4 of the Act came to be issued. The learned Senior Counsel further submits that as the appellants were deprived of the said land much before the issuance of Section 4 Notification, they are entitled for damages and other compensation on that count.

In support of his submissions, the learned Senior Counsel has relied upon the Judgments of the Apex Court, reported in (2007) 9 SCC 650 in the case of ***Madishetti Bala Ramul (Dead) by LRs. vs. Land Acquisition Officer,*** (2013) 4 SCC 268 in the case of ***Executive Engineer, Nandur, Madhameshwar Canal vs. Vilas Eknath Jadhav and others,*** and (2004) 4 SCC 79 in the case of ***R.L. Jain (D) by LRs. vs. DDA and others.***

Shri M. B da Costa, learned Senior Counsel appearing for the appellants has further submitted that the compensation fixed by the Reference Court at the rate of Rs.1500/- per sq. metre is not the market value of the land as on the date of Section 4 Notification in the year 2003. The learned Senior Counsel has further pointed out that the appellants have produced an agreement of sale of the year 1999 wherein the land was sold at a distance of 125 metres away from the acquired land, at the rate of Rs.2000/- per sq. metre. The learned Senior Counsel further submits that the said agreement itself suggests that the land was undeveloped and as such, according to him, the said land was comparable to the land under acquisition. The learned Senior Counsel further submits that though the sale deed was executed in the year 2001, the agreement was executed in the year 1995 which, according to him, is the true market value of the land in the vicinity of the acquired land. The learned Senior Counsel further submits that considering the said sale deed, price of the land acquired is to be fixed at the rate of Rs.2500/- per sq. metre after considering that the land acquired had better potential for being used for non-agricultural purpose, besides the fact that the land was abutting two National Roads.

The learned Senior Counsel has, thereafter, taken us through the findings of the learned Reference Court whilst deciding the issue after remand, to point out that the learned Judge erroneously discarded the agreement, as well as the sale deed on untenable grounds. The learned Senior Counsel further submits that the land therein intended to be purchased by the buyer was an undeveloped land and these aspects had to be considered for the purpose of appreciating the value of the land in the agreement. The learned Senior Counsel, as such, submits that the price fixed for the land on the basis of the sale deed and the agreement of sale has to be at a minimum rate of Rs.2500/- per sq. metre.

The learned Senior Counsel has, thereafter, taken us through the Sale Deed executed in the year 2003 to point out that the price therein was a sum of Rs.14,00,000/- for an area of 600 and odd sq. metres. The learned Senior Counsel further submits that on the basis of the price mentioned therein, the market value of the land in the vicinity has to be a minimum rate of Rs.2100/- per sq. metre. The learned Senior Counsel further submits that the plot in the said sale deed was abutting the National Road; whereas the acquired land is abutting the National Road on two sides. The learned Senior Counsel further submits that the area in the sale deed is only 600 and odd square metres, nevertheless, no deductions are to be given as, according to him, the land of the appellants was at a much better location and suitable for non-agricultural purpose. The learned Senior

Counsel further submits that the learned Judge has erroneously fixed the total price of Rs.7,00,000/- as on the date of agreement of sale which is of the year 1999 when the price in the year 2003 was clearly shown to be in the sum of Rs.14,00,000/-. The learned Senior Counsel as such points out that the learned Judge erroneously fixed the market value of the land at the rate of Rs.1500/- per sq. metre when, according to him, the market value of the land is to be fixed at the rate of Rs.2500/- per sq. metre. The learned Senior Counsel, as such, submits that the appeal be allowed and the compensation be fixed at the rate of Rs.2500/- per sq. metre.

6. On the other hand, Shri M. Salkar, learned Government Advocate appearing for the respondent has pointed out that the learned Reference Court has gone beyond the remand order whilst determining the market value of the land acquired at the rate of Rs.1500/- per sq. metre. The learned Government Advocate has thereafter taken us through the order of remand to point out that the order was only to permit the appellants to produce the agreement for sale and the sale deed referred to therein and to arrive at the findings with regard to the market value of the land acquired on the basis of the

material which was already on record. The learned Government Advocate has, thereafter, taken us through the findings of the learned Judge to point out that the agreement, as well as the sale deed allowed to be produced by this Court have been discarded by the learned Judge whilst fixing the market rate and, as such, according to him, the learned Reference Court has travelled much beyond the remand order passed by this Court to fix the compensation at the rate of Rs.1500/- per sq. metre. The learned Government Advocate has, thereafter, taken us through the findings of the learned Judge, after remand, to point out that the rate fixed at Rs.1500/- per sq. metre is not borne out from the record and by non-examination of demerits vis-a-vis the sale deed referred to therein. The learned Government Advocate further submits that the land of the appellants totally admeasured 4630 sq. metres; whereas the sale deed plot is hardly 600 and odd sq. metres and, as such, considering that the sale deed plot was a developed plot, deductions had to be given for the purpose of development charges, as well as on the ground that the sale deed plot was a small plot. The learned Government Advocate further submits that the land of the appellants was already notified provisionally on the ODP Plan as a proposed road and, as such, the question of fixing the compensation on the basis that the such land could be used for non-agricultural purposes is totally erroneous. The learned Government Advocate has, thereafter, taken us through the Judgment of the Reference Court to point out that the Reference Court in an earlier Award has rightly dismissed the reference filed by the appellant. The learned Government Advocate as such, submits that the appeal be dismissed.

7. Upon hearing the learned Counsel and on perusal of the record, the following points for determination arise in the present appeal :

(1) Whether the Reference Court was justified to dismiss the reference filed by the appellants ?

(2) Whether the Reference Court was justified to fix the compensation at the rate of Rs.1500/- per sq. metre, after the remand ?

8. On going through the Judgment of the Reference Court dated 14th November, 2007, we find that the Reference Court has not at all examined the predicates required to fix the compensation for the land acquired in terms of Section 23 of the Act. The learned Judge has failed to examine the comparability of the land acquired with the sale

instances produced by the appellants while rejecting the reference filed by the appellant. Apart from that, the material on record clearly suggests that the sale instances produced by the appellants were from the vicinity of the land acquired. The land under the sale agreement was 25 metres from the acquired land; whereas the land under the sale deed was at a distance of 300 metres from the acquired land. Discarding of such sale instances to fix the compensation of the acquired land by the Reference Court whilst passing the impugned Judgment was not in accordance with law and, as such, we find that the rejection of the reference by the Reference Court is not at all justifiable.

9. This Court, by an order dated 9th August, 2010, had remanded the matter whilst framing an issue as to whether the appellants succeed in proving that the market value of the land acquired was at the rate of Rs.2500/- per sq. metre. Whilst examining the said issue, after permitting the parties to lead further evidence, the Reference Court, by a subsequent Judgment dated 31/12/2010 has rendered findings on such issue to the effect that the market value of the land acquired is to be fixed at Rs. 1500/- per sq. metre. The

Reference Court has relied upon the sale deed of the year 2003, coupled with the Agreement for Sale of the year 1999 to fix the compensation of the acquired land. No doubt, Shri Salkar, learned Govt. Advocate appearing for the respondent may be justified to contend that the Reference Court could not have travelled beyond the remand order passed by this Court, nevertheless, considering the issue which was framed by this Court whilst remanding the matter, findings have been rendered by the Reference Court on such issue. In any event, the appeal preferred by the appellants was still pending before this Court, and, as such, whilst the reference was open for consideration by this Court in the present appeal, in such circumstances, we find that the contention of Shri Salkar on that count, cannot be accepted.

10. On perusal of the evidence on record, we find that AW. 1 has stated that by publication under Section 4 of the said Act dated 26.03.1984 and the Award dated 07.06.1989, a part of the property of their property bearing chalta no. 64 of P.T. Sheet no. 245 of Margao City was acquired by the Respondent for the construction of the eastern bye pass to Margao City. He has further stated that by

Judgment dated 04.07.1995 in Writ Petition no. 258 of 1989, this Court quashed the said Award dated 07.06.1989 as far as the land of Appellants is concerned and, as such Award was not completed within the time prescribed. He has further stated that despite of the said Award, the land was not restored to the Appellants. The process was, thereafter, again initiated by the Respondents for acquisition by a Notification under Section 4 of the said Act dated 06.08.2003 and the Award was passed on 26.09.2005. The same area, which was earlier intended to be acquired, was again acquired by the Respondent and the compensation was fixed at Rs.71/- per square metre. He has further stated that the market value of the land was Rs.2500/- per square metre and all amenities for development, were available in the vicinity. He has also stated that the acquired land could be used for development and construction of bungalows. He has disclosed the public utility services available in the vicinity of the acquired land. He has also relied upon a Deed of Sale dated 30.03.2001 executed by Vital Kamat & Ors. in favour of Supreme Part Co-operative Housing Society. He has also produced the said Deed of Sale which is part of the property surveyed under chalta no. 67 of P.T. Sheet no. 245. He has also produced another Sale Deed dated 21.10.2003 executed by Asha V.

Kerkar and another in favour of Bharat Kumar B. Gosalia and Others. He has also stated that the said Deed of Sale was executed pursuant to an Agreement of Sale dated 08.05.2003. The witness was shown a letter at exhibit 24 and he has stated that the statement in the said letter that he had sought for some change in the alignment in his property and that he did not raise any objection to start the work in his property, is not correct. He has further stated that the land which is not acquired is around the building referred to in exhibit 45 and that the access was not tarred of such building. He has further stated that the access to the building was a private access of only four metres. He has also stated that the road was touching the land which was subject matter of the acquisition in the present case. He has denied the suggestion that in the ODP the land surveyed under chalta nos. 63 and 64 is eastern by-pass road. He has also stated that there is no letter written that the Government would take possession of the acquired land before the Award was passed.

Another witness examined is Yogesh Yeshwant Naik. He has stated that the eastern by-pass road was shown in the provisional ODP plan of the Margao City, but the proposal for the said eastern by-pass was confirmed for the first time on 23.09.2010. He has also confirmed the sale transaction with Supreme Park Co-operative Housing Society Limited, whereby an undivided 1987.08/3415th share in chalta no. 61 of P. T. Sheet no. 245 was agreed to be conveyed.

In the cross examination, he has stated that two plots agreed to be purchased by him are actually from two properties adjoining to each other, one belonging to Vithal Kamat and other belonging to Jagannath Srikrishna Kamat & others. It is also stated that for development purpose, he has shown area as 3500 square metres. He has also stated that he was not shown the property of the Appellants and he is not sure, whether the said road passes through their property also.

The learned Reference Court, by Judgment dated 31.12.2010 whilst re-assessing the evidence, considered the evidence of AW. 1 and AW. 3. The learned Judge has noted that AW.3 in his cross examination has stated that he does not know what was the total area of the property acquired prior to the purchase of the said plot by them. The learned Judge also noted that he has admitted that the width of 30 metres was shown in the provisional ODP for the said by-pass road and the entire said width of 30 metres from the said two roads from the said two properties was the acquired. The learned Judge also noted that exhibit 68 was the Agreement wherein he had agreed to purchase the undivided share of the vendors which was to the extent of 3500 square metres out of 4108 square metres. The learned Judge, as such, found that from the Sale Deed dated 30.10.2001 which is at exhibit 36 and the Agreement for Sale dated 31.07.1995 which is exhibit 68, it is clear that the said Sale Deeds at exhibit 36 pertain to the Supreme Park buildings 'A' and proportionate share in the land. The learned Judge, as such, found that the said Sale Deed could not form the basis to assess the compensation. The learned Judge also considered the schedule of the said Agreement to note that the same would not be material to form the basis to fix compensation. The learned Judge, as such, noted that he cannot believe that the undivided share of the property was agreed to be sold by the said Agreement dated 31.07.1995. The learned Judge, thereafter, noted that in the Award passed by the Land Acquisition Officer dated 26.09.2005, at exhibit 33, he referred to an Agreement dated 11.11.2003, by which an area of 638 square metres situated at Margao City was sold to Bharatkumar Gosalia for Rs. 7,00,000/- i.e. at the rate of Rs.1097/- per square metre. The learned Reference Court has also noted that the

Land Acquisition Officer had accepted that the said land was at a distance of 300 metres from the Davorlim junction. The said Sale Deed is at exhibit 35 produced by AW.1. The learned Judge also noted the Agreement dated 08.05.2003 which is at exhibit 46 referred to in the said Sale Deed. The said Sale Deed suggests that the property was agreed to be purchased for consideration of Rs.7,00,000/- by an Agreement for Sale by the confirming party. AW. 1 has also admitted in his cross examination that as per the original Agreement, it was agreed between the Vendors and the confirming party to transfer the property for Rs.7,00,000/- and subsequently, the confirming party had sold the property to the present purchaser for a sum of Rs. 13,00,000/-. The Agreement dated 03.10.1998 between the vendor and the confirming party of the Sale Deed dated 21.10.2003 has not been produced on record by the Appellants. The learned Judge also noted the recitals in the said Agreement with regard to the additional clauses referred to therein and ultimately noted that on account of such disputes the consideration was fixed at Rs.14,00,000/- in the Sale Deed. The learned Judge, as such, gave an appreciation of 10% from the date of the Agreement to the date of the Notification under Section 4 and arrived at the amount of Rs.1,606/- per square metre. The learned Judge also took note of the advantages of the acquired land as it was abutting all two roads, whereas the land of the Sale Deed at exhibit 35 had road only on one side. The learned Judge also noted that the Sale Deed at exhibit 35 was a subdivided property which sub-division was approved by the S.G.P.D.A. on 13.08.1990, whereas as far as acquired land is concerned, there is no such expenditure incurred for the purpose of sub-division of the property or for any type of conversion etc.. The learned Judge also noted that the acquired land admeasures 5821 square metres, whereas the Sale Deed is a small plot admeasuring 638 square metres and, consequently, the learned Judge after giving an appreciation of 20% on account of advantages noted, the development charges and on account of the largeness of the acquired land a deduction of 30 percent has to be effected and, as such, fixed the compensation at the rate of Rs.1445/-, which is rounded of to Rs.1,500/- per square metre.

11. On going through the findings of the learned Reference Court, we find that the learned Judge on the basis of cogent reasons has discarded the sale instances dated 30.03.2001 at exhibit 36 which is based on the Agreement dated 31.07.1995 at exhibit 38 though the sale

transaction therein was stated to be at a distance of 25 meres away from the acquired land. The learned judge has noted that in the cross examination of Aw.3 who has been examined to prove the contents of the said documents he has stated that he does not know as to what was the total area of the property acquired prior to purchase of the said plot by them. The learned Judge has noted that the said witness had admitted that by an Agreement at exhibit 68, they had agreed to purchase the undivided shares of the Vendors therein which was to the extent of 3500 square metres out of 4108 square metres belonging to the said Vendors. Besides, the affidavit states that the consideration of Rs.1,68,98,400/- mentioned in the Sale Deed to be paid to the First Confirming Party was towards the cost of construction, development and profits, etc. The Agreement at exhibit 68 suggests that it was agreed that an undivided share of the said Vendors to the extent of 3,500 square metres, out of 4108 square metres was agreed to be purchased. Hence, the learned Judge after considering the recitals in the said Sale Deeds, rightly came to the conclusion that from the evidence of Aw.1 and Aw.3 and from the Sale Deed at exhibit 36 and the Agreement at exhibit 68, it is clear that the said Sale Deed at exhibit 36 pertains to building 'A' and proportionate share in the land and, as such, the said sale instance cannot be taken as the basis for determining the market value of the acquired land. The subject matter of the said Sale Deed was also for putting up construction therein and the value of undivided right of the land which would include the profits of the builder for putting up the construction therein cannot be considered to be a safe sale transaction to fix the market value of the acquired land as on the date of the Notification.

12. The only other transaction, as such, relied upon by the Appellants is the Sale Deed at exhibit 35. The said Sale Deed is dated 11.11.2003 wherein land was being sold at a distance of 300 metres from the acquired land, away from Margao-Davorlim Road near the Railway over bridge. On perusal of the said sale instance, the recitals therein suggest that it was based on an Agreement for Sale which was executed on 03.10.1999, whereby the property was agreed to be sold for a sum of Rs.7,00,000/-. The Sale Deed at exhibit 35 further states that the market value of the land is Rs.14,00,000/-. Shri M. B. D'Costa, learned Senior Counsel appearing for the Appellants has relied upon the said Sale Deed to claim that the market value is to be fixed on the basis of the price of Rs.14,00,000/- stated therein. But, however, the

learned Judge has minutely examined the recitals in the said Sale Deed and noted that in the cross examination, Aw.1 had admitted that by the initial Agreement in respect of the property as mentioned in the Sale Deed dated 21.10.2003 it was agreed between the Vendors and the Confirming Party therein to transfer the property for Rs.7,00,000/- and, subsequently, the Confirming Party had sold the property to the present purchaser for a sum of Rs.14,00,000/- in the year 2003. The said Agreement dated 03.10.1999 between the Vendors and the Confirming Party of the Sale Deed is part of Exhibit 46 collectively. The learned Judge has examined the said Agreement and found that the recitals suggest that the second party therein defaulted in the payments as provided in Clause 3, 4 and 5 of the said Agreement and, therefore, became liable under the said Agreement dated 07.10.2000 to allot flats F1 and S1 to the first party. The Agreement also confirmed about the existence of some disputes and differences which arose between the parties and the resolution of such disputes. All the differences and the dispute between the parties were ultimately sought to be settled by means of the said Agreement dated 08.05.2003 and, as such, the price was fixed at Rs.14,00,000/- . The learned Judge rightly noted that the said price of Rs.14,00,000/- cannot be said to be the market value of the plot, but its increased value on account of the resolution of the disputes and differences between the parties. But, however, the learned Judge noted that the Sale Deed at exhibit 35 was pursuant to an Agreement dated 03.10.1999 wherein the price was agreed to be paid to a sum of Rs.7,00,000/-. The learned Judge as such rightly discarded the price of Rs.14,00,000/- as mentioned in the Sale Deed as exhibit 35 as being the market value of such land. We find no infirmity in the said approach of the learned Reference Court. The price of Rs.14,00,000/- stated to be the market price in the sale instance at exhibit 35 would include consideration for the settlement of the dispute between the parties, besides the fact that in one of the Agreements, there were built up flats to be allotted to the intermediaries due to default. This amount, as such, paid to the earlier developers would definitely include the commercial profits of the developers for the subject land in the said Sale Deed. Unless and until, the extent of the disputes and the other consideration which weighed the minds of the parties to fix the consideration at Rs.14,00,000/- are established, the question of contending that the market value of the land is to be assumed to be Rs.14,00,000/0 as stipulated in the said Sale Deed as submitted by Shri M. B. D' Costa, learned Senior Counsel, cannot be accepted. These recitals in the sale instance show that the transaction cannot be one wherein a willing purchaser would purchase the land in the open market. The price fixed therein would naturally be influenced by the nature of the disputes and other developmental profits of the persons who changed hands based on the Agreements referred to in the said Sale Deed. As such, the learned Judge fixed the compensation by relying upon the price mentioned in the sale instance dated 03.10.1999 which was Rs.7,00,000/- . The fact that the Sale Deed land is about 600 metres from the acquired land and in proximate thereof, cannot be disputed. The relevant date for determination of the market value of the acquired land is 06.08.2003, meaning the date of Section 4 Notification in the present case. It is also to be noted that at the time when the present land was acquired, the portions of the lands of other owners were already acquired for same purpose. The learned Judge has relied upon the Judgment of the Apex Court reported in 2008(14) SCC 745 in the case of ***The General Manager, Oil and Natural Gas Corporation Ltd. vs. Rameshbhai Jivanbhai Patel & anr.,*** wherein it has been observed at Paras 13 and 14 thus :

> "13. Primarily, the increase in land prices depends on four factors: situation of the land, nature of development in surrounding area, availability of

land for development in the area, and the demand for land in the area. In rural areas, unless there is any prospect of development in the vicinity, increase in prices would be slow, steady and gradual, without any sudden spurts or jumps. On the other hand, in urban or semi-urban areas, where the development is faster, where the demand for land is high and where there is construction activity all around, the escalation in market price is at a much higher rate, as compared to rural areas. In some pockets in big cities, due to rapid development and high demand for land, the escalations in prices have touched even 30% to 50% or more per year, during the nineties.

14. On the other extreme, in remote rural areas where there was no chance of any development and hardly any buyers, the prices stagnated for years or rose marginally at a nominal rate of 1% or 2% per annum. There is thus a significant difference in increases in market value of lands in urban/semi-urban areas and increases in market value of lands in the rural areas. Therefore, if the increase in market value in urban/semi-urban areas is about 10% to 15% per annum, the corresponding increases in rural areas would at best be only around half of it, that is, about 5% to 7.5% per

> annum. This rule of thumb refers to the general trend in the nineties, to be adopted in the absence of clear and specific evidence relating to increase in prices. Where there are special reasons for applying a higher rate of increase, or any specific evidence relating to the actual increase in prices, then the increase to be applied would depend upon the same."

13. Taking note of the said observations of the Apex Court and giving an escalation of 10 percent from the date of the Agreement to the date of Section 4 notification, the learned Judge has arrived at the consideration to be a sum of Rs.1,606/- per square metre. The Apex Court, in the Judgment reported in (2015) 2 SCC 262, in the case of ***Major General Kapil Mehra and others vs. Union of India and another,*** has observed at paras 10, 11, 14, 33 and 34 thus :

> "**10.** The first question that emerges is, what would be the reasonable market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the land acquisition officer is required to keep in mind the following factors: (*i*) existing geographical situation of the land; (*ii*) existing use of the land; (*iii*) already available advantages, like proximity to National or

State Highway or road and/or developed area; and (*iv*) market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.

11. The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation publication of notification under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value.

14. While taking comparable sales method of valuation of land for fixing the market value of the acquired land, there are certain factors which are required to be satisfied and only on fulfilment of those factors, the compensation can be awarded according to the value of the land stated in the sale deeds. In *Karnataka Urban Water Supply and Drainage Board* v. *K.S. Gangadharappa*, (2009) 11 SCC 164, factors which merit consideration as comparable sales are, inter alia, laid down as under:

(SCC p. 168, para 8)

> "*8.* '*16.* "*9.* It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:
>
> (*i*) when sale is within a reasonable time of the date of issuance of notification under Section 4(1);
>
> (*ii*) it should be a bona fide transaction;
>
> (*iii*) it should be of the land acquired or of the land adjacent to the land acquired; and
>
> (*iv*) it should possess similar advantages.
>
> *10.* It is only when these factors are present, it can merit a consideration as a comparable case (see *Land Acquisition Officer* v. *T. Adinarayan Setty* AIR 1959 SC 429.)"

These aspects have been highlighted in *Ravinder Narain* v. *Union of India* (2003) 4 SCC 481, SCC p. 484, paras 9-10.*'"

33. In *Haryana State Agricultural Market Board* v. *Krishan Kumar (2011) 15 SCC 297,* it was held as under: (SCC p. 299, para 10)

> "*10.* It is now well settled that if the value of small developed plots should be the basis, appropriate deductions will have to be made therefrom towards the area to be used for roads,

> drains and common facilities like park, open space, etc. Thereafter, further deduction will have to be made towards the cost of development, that is, the cost of levelling the land, cost of laying roads and drains, and the cost of drawing electrical, water and sewer lines."
>
> **34.** Consistent view taken by this Court is that one-third deduction is made towards the area to be used for roads, drains, and other facilities, subject to certain variations depending upon its nature, location, extent and development around the area. Further, appropriate deduction needs to be made for development cost, laying roads, erection of electricity lines depending upon the location of the acquired land and the development that has taken place around the area."

14. Based on the said observations of the Apex Court, we shall now examine the comparable merits and demerits of the acquired land vis-a-vis the land which is subject matter of the said sale instance at exhibit 35. The learned Reference Court has noted that the acquired land in the present case has advantages of a road on two sides, one on the western side and the other on the northern side. The subject matter of the land of the Sale Deed at exhibit 35 has a road only on one side

having a width of six metres. The subject matter of the land acquired is not part of any approved subdivided plots but, however, the sale instance at exhibit 35 is a sub-divided plot which was approved by the South Goa Planning and Development Authority by its Order dated 13.08.1990. On perusal of the said permission, we find that five plots were sub-divided, each admeasuring an area of 638 square metres. The expenses of sub-division, as such, would be required for the purpose of sub-dividing the land which is subject matter of the acquisition admeasuring an area of 5825 square metres approximately, whereas the Sale Deed plot admeasures an area of 638 square metres. Considering the largeness of the undeveloped land, which is subject matter of the present acquisition and the smallest of the sub-divided plot which is subject matter of the comparable sale instance at exhibit 35, the deduction of one-third on account of such development charges would be fair and reasonable. No doubt, as far as the acquired land is concerned, the property is located to closer to the Railway Station and is abutting two roads, whereas the sale instances at exhibit 35 abuts only one road. In such circumstances, an appreciation of 25% on that count for the acquired land would be fair and reasonable. The net demerit percentage as such works out to be approximately 8 percent,.

The Reference Court, as such, has rightly deducted 10 percent from the amount of Rs.1,606/- to fix the compensation for the land acquired at the rate of Rs.1500/- square metres. We find that the Reference Court has fixed the compensation based on the well settled principles of law in fixing the compensation in terms of the provisions of Section 23 of the said Act. We find no fault in the fixation of the market value of the acquired land by the learned Reference Court.

15. Apart from that, it is also noted that the land acquired was already shown in the provisional ODP plan for the construction of National Highway. In such circumstances, no willing purchaser would buy such land for putting up buildings thereon on payment of Rs.2,000/- per square metre, assuming the price of Rs.14,00,000/- mentioned in the Sale Deed at exhibit 35 is taken into consideration. Besides that, the Sale Deed plot was a developed plot, having a sub-division, whereas the acquired land was undeveloped land and considering that the land was already earmarked for a road in the ODP plan, the question of affecting any sub0division in such circumstances would not arise. Hence, even the price mentioned in the said sale deed at exhibit 35 is taken into consideration being a sum of Rs.2,150/-

per sq. metre, besides the deduction of 8 percent for the factors stated herein above, a further deduction of about 22 percent on account of the fact that such an amount would include the commercial profits of the Confirming Party and the extent of considerations to settle the disputes in lieu of delivering the two flats referred to in the agreement between the Purchaser and the Confirming Party and the factors referred to herein above, would be fair and justified. After effecting such deductions, a price of Rs.1500/- per sq. metre, fixed by the learned Reference Court is fair, reasonable and justified, in the facts and circumstances of the case. As such, the Reference Court has rightly fixed the compensation on the basis that the land was an undeveloped land having, restrictions in development potentials for the reasons stated in the impugned Award. As such, the question of making any further deductions in the compensation fixed by the Reference Court based on the contention of Mr. Salkar, learned Government Advocate appearing for the Respondent, would not arise at all.

16. Consequently, we find that the market value of land has been rightly fixed at the rate of Rs.1,500/- per square metre and no

fault can be found on that count. The point for determination is, answered, accordingly.

17. With regard to the contention of Mr. M. B. D'Costa, learned Senior Counsel appearing for the Appellants that the Appellants are entitled for damages on account of the fact that the possession of the land was taken much prior to Section 4 Notification, we find that the question of fixing such damages or granting any additional interest on that count, based on the provisions of Section 23 of the said Act, would not arise at all. Apart from that, the records reveal that the Appellants had themselves initiated proceedings in the Civil Court and obtained reliefs against the Government from interfering with the disputed property. AW.1 also admitted that there was no written communication from the respondent to take possession before the Award. In this connection, the Division Bench of this Court in a Judgment dated 16.08.2010, in the case of ***Jacinto Barreto Miranda vs. Spl. Land Acquisition Officer & Ors.,*** where one of us (Shri F. M. Reis, J.), was a party, has observed at para ~~6~~ 7 thus :

Corrected as per Order dated 20/10/2015

> ~~"6. The learned Counsel appearing for the second Respondent (the acquiring body) pointed out that none of the sale instances are in respect of any~~

~~comparable land. He invited attention of the Court to the various findings recorded by the Reference Court. He pointed out that the fact that there were mundcarial houses, tenanted houses as well as a fair price shop, a bakery and a timber depot in the remaining property of the Appellant. He pointed out that the acquired land was situated in red light area. He submitted that the acquired land was being used by people as a road for approaching the fair price shop which was existing from 1972. He pointed out that the road through the acquired land was constructed in the year 1989-90. He pointed out that considering the aforesaid aspects, no willing buyer would have purchased the acquired land. He pointed out that a part of the acquired land was in road widening area and it had no building potential. He submitted that the sale instances produced by the Appellant were in respect of the lands having building potential. He pointed out that most of the civic amenities such as Police Station, post office, municipal building, banks, schools, Government offices, petrol pumps, etc. are on the northern side of the railway line and acquired land was on the southern side of the railway line. He submitted that the sale deed lands in respect of Exhibits 18, 19 and 21 were on the northern side of the railway line and hence were not comparable. He pointed out~~

~~that the sale deed at Exhibit 20 was in respect of a developed plot admeasuring 316 square metres and therefore, the same was hardly comparable. He pointed out that the Appellant was not aware about the features of the land subject matter of the award Exhibit 41. He relied upon a decision of the Apex Court in the case of~~ ~~***P. Ram Reddy and others V/s Land Acquisition Officer, Hyderabad and others {(1995) 2 SCC 305}.***~~ ~~He submitted that the burden on the Appellant/claimant has not been discharged to prove that the market value offered by the award under Section 11 of the said Act was inadequate. He, therefore, submitted that no interference is called for. The learned Additional Government Advocate supported the impugned judgment and award."~~

7. We have given careful consideration to the submissions made by the learned Counsel appearing for the parties. We have perused the record of the case. Before dealing with the issue of market value of the acquired land on the date of the Notification under Section 4(1) of the said Act, the claim for compensation made by the Appellant on the basis of an act of taking possession of the acquired land in the year 1984 will have to be considered. The present Appeal is a continuation of a reference under Section 18 of the said Act. The factors which are

required to be considered by the Collector and the Court are set out in Section 23 of the said Act. As per the said provision, the market value of the acquired land on the date of publication of Notification under Section 4(1) has to be considered. In a case where the possession of the acquired land is taken over before the publication of the Notification under Section 4(1) of the said Act, Section 23 does not provide for grant of any compensation or interest. Apart from the compensation incorporated in Sub-section (1) of Section 23 of the said Act, the claimant is entitled to the statutory benefits of interest under Section 23(1-A) of the said Act and the solatium of 30% under Section 23(2) of the said Act on the market value of the acquired land on the date of publication of notification under Section 4(1). In a reference under Section 18 of the said Act, if a case for grant of enhancement is made out, the Reference Court has to grant interest under Section 28 under the said Act. The said interest is payable only on the compensation payable under Section 23 of the said Act. It must be stated here that under no provision of the said Act, the prayer made by the Appellant in the reference under Section 18 for grant of additional compensation and damages on account of taking possession of the land in the year 1984 can be considered. Reliance was placed by the learned Senior Counsel appearing for the Appellant on the decision of the Apex Court in the case of Madishetti Bala Ramul (supra). This was a case where the first Notification under Section 4(1) of the said Act lapsed and subsequently a second notification under the same provision was issued. The possession was taken over under the first notification. The compensation was claimed on account of the fact that the claimant was dispossessed on the basis of the first notification. The learned Senior Counsel appearing for the Appellant relied upon what is observed by the Apex court in paragraph 20 of the decision which reads thus:

> "20. In the peculiar facts and circumstances of the case, although the proper course for us would have to remand the matter back to the Collector to determine the amount of compensation to which the Appellants would be entitled for being remained out of possession since 1979, we are of the opinion that the interest of justice would be met if this appeal is disposed of with a direction that additional interest @ 15% per annum on the amount awarded in terms of award dated 2-1-1999 for the period 16-3-1979 till 22-12-1991, should be granted, which, in our opinion, would meet the ends of justice."

On a plain reading of what is held by the Apex Court in paragraph 20 of the judgment, it is apparent that the Apex Court has exercised powers under Article 142 of the Constitution of India and, therefore, the said decision will not help the Appellant. Another decision relied upon by the learned Senior Counsel appearing for the Appellant in that behalf was in the case of Special Land Acquisition Officer v. Karigowda and others ([2010] 5 SCC 708). The Apex Court has considered its earlier decisions on this aspect and followed its earlier decision of the larger Bench in the case of ***R.L. Jain v. Delhi Development Authority*** {(2004) 4 SCC 79. The Apex Court considered the remedies available in the case where the possession of the acquired land is taken over prior to issuance of Section 4 Notification. In paragraphs 100 and 101, it was held thus:

> **"100.** We are bound by the decision of the larger Bench in R. L. Jain case which had considered Satinder Singh, on which reliance has even been placed by the claimants in the present appeal. The larger Bench after detailed discussion on the subject rejected the claim for payment of interest claimed by the respondents in those cases prior to the date of issuance of the notification under Section 4 of the Act.
>
> **101.** As is evident from the above dictum of the Court, despite dispossession, the title continues to vest in the landowners and it is open for the landowners to take action in accordance with law. Once notification under Section 4(1) of the Act has been issued and the acquisition proceedings culminated into an award in terms of Section 11, then alone the land vests in the State free of any encumbrance or restriction in terms of

> provisions of Section 16 of the Act. The Court, in situations where possessions have been taken prior to issuance of notification under Section 4(1) of the Act, can direct the Collector to examine the extent of rent or damage that the owners of land would be entitled to, the provisions of Section 48 of the Act would come to aid and the Court would also be justified in issuing appropriate direction. This was the unequivocal view expressed by the Court in R. L. Jain case as well. This legal question is no more open to controversy and stands settled by this Court. We would follow the view taken and accept the contention of the appellant State that the Reference Court as well as the High Court could not have granted any interest under the provisions of the Act, for a date anterior to the issuance of notification under Section 4 of the Act. However, following the dictum of the Bench in R. L. Jain case, we direct the Collector to examine the question of payment of rent/damages to the claimants, from the period when their respective lands were submerged under the backwater of the river, till the date of issuance of the notification under Section 4(1) of the Act, from which date, they would be entitled to the statutory benefits on the enhanced compensation".

Thus, in view of what is held by the Apex Court, the Reference Court could not have granted any interest under the provisions of the said Act for a period anterior to the issuance of Notification under Section 4(1) of the said Act. However, remedy of the claimant of making a claim of payment of rent/damages as observed by the Apex Court in paragraph 101 of the

> aforesaid decision always remain open. Therefore, the said claim made in the reference by the Appellant could not have been granted by the Reference Court and to that extent, the Reference Court has correctly decided the matter."

18. Taking note of the said observations of this Court, the Appellants, if so advised, would have to make a claim for payment of such damages, based on the observations of the Apex Court in para 101 of the Judgment referred to therein.

19. Subject to the above, we find that the impugned Judgment and Award dated 14.11.2007 refusing enhancement of compensation, deserves to be quashed and set aside to that extent and the reference preferred by the Appellants is to be partly allowed by fixing the compensation of the land acquired at the rate of Rs.1,500/- per square metre as fixed by the Reference Court in terms of the order dated 31.12.2010. Needless to say, the Appellants are also entitled for a compensation for the additional area of 303 square metres as referred to in the impugned Award of the Reference Court dated 14.11.2007.

20. In view of the above, we pass the following :

<u>O R D E R</u>

(i) The Appeal is partly allowed.

(ii) The impugned Judgment and Award passed by the learned District Judge, Margao, dated 14.11.2007, to the extent it refuses enhancement of compensation is quashed and set aside.

(iii) The compensation for the total land acquired is fixed at Rs.1,500/- per square metre.

(iv) The Appellants are also entitled for compensation at the same rate for the additional area of 303 square metres.

(v) Needless to say, the Appellants are also entitled to statutory benefits in terms of Section 23(i-A), 23(ii) and Section 28 of the Act, in accordance with law.

(vi) The Appeal stands disposed of accordingly. There shall be no order as to costs.

K. L. WADANE, J. **F. M. REIS, J.**

ssm./arp/*