IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 75/2012

Goa Housing Board,
through its Managing Director,
having Office at Goa Housing Board
Building, Porvorim, Bardez, Goa. .... Appellant.

V/s.

1. Luis F. De Piedade Lobo,
2. Antonio Joao B. Lobo;
3. Fernando Jose Lobo;
4. Mario Francisco de Conceicao;

All residents of Feira, Alto,
Mapusa, Bardez, Goa, all major of age,

5. State of Goa, through the
Deputy Collector and SDO North,
Sub-Division, Panaji, Goa. ……. Respondents.

Mr. H.D. Naik, Advocate for the appellant.

Mr. A. F. Diniz, along with Mr. Rama Rivonkar, Advocates for the respondents No.1 to 4.

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

Date : - 28 October 2015.

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

Heard Mr. H. D. Naik, learned Counsel appearing for the appellant and Mr. A. F. Diniz, learned Counsel appearing for the respondents No.1 to 4.

2. The above appeal challenges the Judgment and Award dated 6th December, 2011, whereby a reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the "said Act") was partly allowed and the compensation for the land acquired was fixed at the rate of ₹ 300/- per sq. metre for an area of 30,537.29 sq. metres, besides the compensation towards trees and the value of the wells etc..

3. Briefly, the facts of the case are that a Notification under Section 4 of the said Act dated 5th August, 1982 was published in the Official Gazette and thereafter, a Notification under Section 6 of the said Act came to be published on 17th August, 1985 whereby land was acquired from the property bearing Survey No.1/1 of Village Durgawadi, Tiswadi Taluka, admeasuring an area of 30,103 sq. metres. By an Award dated 27th February, 1987 passed by the Land Acquisition Officer (LAO), under Section 11 of the said Act, the LAO offered compensation for the land acquired at the rate of ₹ 35/- per sq. metre, besides a sum of ₹ 2,95,950/- for the value of the trees, ₹ 44,173/- as value of the wood and ₹ 15,243/- as value for the three wells, along with statutory benefits. Being dissatisfied with the said amounts, the

respondents sought a reference under Section 18 of the said Act for enhancement of the compensation, *inter alia*, contending that the area of the acquired land was 30,537.29 sq. metres, by disputing the area of the acquired land and claiming compensation for the acquired acquired at the rate of ₹ 400/- per sq. metre, besides compensation of a sum of ₹50,000/- for each of the structures located in the acquired land; ₹9,98,000/- towards trees; ₹1,05,000/- for the wells and a sum of ₹31,10,800/- at the rate of ₹400/- per sq. metres as severance charges. The learned Reference Court, after recording of evidence, by the impugned Judgment and Award dated 6th December, 2011 partly allowed the said reference and awarded the compensation referred to herein above. Being aggrieved by the said Judgment and Award, the appellants have preferred the present appeal.

4. Mr. H. D. Naik, learned Counsel appearing for the appellant has pointed out that the land, which is the subject-matter of acquisition in the present case, admeasures more than 30,000 sq. metres and, as such, the learned Reference Court was not justified to fix the market value of the land at the rate of ₹ 300/- per sq. metre. The learned Counsel further points out that the subject-matter of the land under acquisition was an agricultural land, as can be seen from the

trees existing therein and, as such, the Reference Court was not justified to fix the compensation on the basis that the land had potential of being used for non-agricultural purpose. The learned Counsel further submits that the learned Reference Court has relied upon the sale instances at Exhibit AW.1/C3 and Exhibit AW.1/C4 to fix the compensation at the rate of ₹ 300/- per sq. metre, after deduction of only 25% though, according to the learned Counsel it is well settled that the deduction towards development charges would range from 25% to 75%. The learned Counsel further submits that as the land acquired was located in an undeveloped area, the question of the land having potential of being used for non-agricultural purpose would not arise. The learned Counsel further points out that the deduction of only 25% for the acquired land cannot at all be justified considering the dissimilarity with the land in the sale instances produced by the appellant. The learned Counsel further points out that in view of the Judgment of the Apex Court reported in 2015 (2) SCC 262 in the case of ***Major General Kapil Mehra and others V/s. Union of India and another,*** it is well settled that the deductions have to be effected on the basis of dissimilarity, including largeness of land, potential of being used for non-agricultural purpose, the statutory deductions to be effected as per the Statutory Regulations, proximity to the road, cost of constructing road to the acquired land, etc.. The learned Counsel has taken us through the impugned Award passed by the learned Reference Court to point out that these aspects have not at all been considered whilst making deduction. The learned Counsel has taken us through the evidence on record to point out that there is no material on record to suggest that there was any price rise in the vicinity of the acquired land at the relevant time. The learned Counsel has, thereafter, taken us through the impugned Award passed by the Reference Court to point out that the Reference Court has arbitrarily effected a deduction of 25%, without considering the dissimilarity of the acquired land with the sale instances and, as such, a substantial deduction had to be effected of at least 50% towards development charges. The learned Counsel further points out that in First Appeal No. 79/2002 dated 23/11/2010, in the case of ***The Deputy Collector & S.D.O.P. and anr. vs. Shri Antonio Orlando Lobo and another***, this Court in an appeal preferred by the appellant herein challenging the Judgment and Award passed by the Reference Court, dismissed the appeal and accepted the rate fixed by the Reference Court. The learned Counsel, as such, points out that the impugned Judgment and Award deserves to be quashed and set aside and a fair and equitable compensation is to be fixed in the facts of the present case.

The learned Counsel has also taken us through the evidence of AW.1 A. Lobo to point out that the evidence of AW.1, in fact, shows that the land itself was an agricultural land which had many fruit bearing trees then. The learned Counsel further points out that the evidence of AW.4 Sanjay Kamat discloses that the land acquired was at a distance of only 2 kms. away from Panaji City. The learned Counsel further points out that the respondents have failed to establish that the land acquired and the subject-matter of the sale instances at Exhibit AW.1/C3 and Exhibit AW.1/C4 are similar and, as such, there is a grave error committed by the Reference Court in fixing the compensation at the rate of ₹ 300/- per sq. metre. The learned Counsel has, thereafter, taken us through the impugned Judgment and Award to point out that the impugned Judgment and Award cannot be sustained and that the compensation fixed by the Reference Court at the rate of ₹ 300/- per sq. metre be quashed and set aside.

5. On the other hand, Mr. A.F. Diniz, learned Counsel appearing for the respondents has submitted that the only challenge in the present appeal based on the submissions of Mr. H.D. Naik, learned Counsel appearing for the appellants, clearly discloses that the appellants are challenging the fixation of the market value in respect of

the land acquired admeasuring 30,587.29 sq. metres only. The learned Counsel further points out that the land acquired, though was an agricultural, had potential of being used for non-agricultural purpose as it was located in a settlement zone and was very close to the City of Panaji and, as such, the contention of Mr. Naik, learned Counsel appearing for the appellant that the land was not suitable for non-agricultural purpose is totally erroneous. The learned Counsel further points out that the land itself was acquired for putting up a housing project, which clearly discloses that the land had the potential of being used for non-agricultural purpose. The learned Counsel has, thereafter, taken us through the sale instances relied upon by the Reference Court to point out that the land acquired was very proximate to the land under the sale instances and the respondents are entitled for the compensation, at least at much higher rate than ₹ 300/- per sq. metre fixed by the Reference Court. The learned Counsel further points out that as far as the Award determining the compensation for the trees, as well as the wells and the statutory benefits is concerned, the same has to be confirmed. The learned Counsel further points out that considering that the sale instances produced by the respondents are also in respect of an agricultural land, the question of any further deduction on account of development charges is totally erroneous. The learned

Counsel further points out that the sale instances produced by the respondents are very close to the land acquired and, as such, the Reference Court has rightly fixed the compensation for the acquired land at the rate of ₹ 300/- per sq. metre. The learned Counsel has, thereafter, taken us through the evidence on record and the depositions of AW.1 A. Lobo and the expert witnesses to point out that there is conclusive material on record to show that the land acquired had potential of being used for non-agricultural purpose and, as such, the Reference Court was justified to fix the compensation for the land acquired at the rate of ₹ 300/- per sq. metre. The learned Counsel further points out that the appellants themselves have disposed of plots in the acquired land for housing purpose, at a rate more than ₹ 3000/- per sq. metre which clearly shows that the land acquired was very much suitable for non-agricultural purpose and for housing project. The learned Counsel has, thereafter, taken us through the evidence on record to point out that the Reference Court has rightly fixed the compensation for the acquired land and, as such, there is no case made out by the appellant for interference in the impugned Judgment and Award.

6. Upon hearing the learned Counsel and on perusal of the

records, the only point for determination which arises in the present appeal, is as follows :

> Whether the Reference Court was justified to fix the compensation for the land acquired at the rate of ₹ 300/- per sq. metre ?

7. As pointed out by Mr. A.F. Diniz, learned Counsel appearing for the respondents, Mr. Naik, learned Counsel appearing for the appellant has restricted his submissions only to the compensation fixed for the acquired land at the rate ₹ 300/- per sq. metre in his oral submissions, as well as in the brief synopsis and written submissions. On perusal of the evidence of AW.1 A. Lobo, we find that the sale instances relied upon by the Reference Court are at Exhibit AW.1/C3 and Exhibit AW.1/C4. On going through the said sale instances, we find that the subject-matter of the land therein was an undeveloped land, admeasuring an area of 2800 sq. metres in respect of the sale instance at Exhibit AW.1/C3. The land which is subject-matter of the acquisition, as pointed out herein above, admeasures more than 30,000 sq. metres. Whilst fixing the deductions on account of development charges, no doubt, largeness of the land and comparability of the land acquired with the sale instances would be very much relevant.

8. The records reveal that AW.1 A. Lobo has stated that the land belonging to them was acquired by the Housing Board for the purpose of building houses for upper and middle income groups. He has further stated that the acquired land bearing Survey No.1/1 of Village Taleigao had a total area of 44,724 sq. metres, and an area of 30,537.29 sq. metres was acquired by the appellant. He has stated that in the unacquired portion of the land, there were seven houses of *mundkars*. He has also stated that the land is situated at Taleigao, on the outskirt of City of Panaji and at a distance of 200 to 300 metres from Batulem. He has further stated that in the zoning plan, the land acquired was marked for construction of houses and was described as a settlement zone. He has further stated that he had two different deeds dated 18th June, 1982 which are registered agreements and the rate agreed therein was ₹ 451/- and ₹ 473/- per sq. metre. He has further stated that the said plots are contiguous to one another and in the same village of Taleigao, at a distance of one kilometer away from the acquired property. The said documents are at Exhibits AW.1/C3 and AW1/C4. He has further pointed out that subsequently, a sale deed has been executed on 8th August, 1991, which is at Exhibit AW.1/C5. He has also produced one agreement which is at Exhibit AW.1/C6,

whereby an area of 250 sq. metres was agreed to be sold at the rate of ₹ 400/- per sq. metre. He has also pointed out that a Bank was available at a distance of 200 metres away from the acquired land, besides a High School at a distance of about 500 metres, market at a distance of about 200 metres and other infrastructural facilities. He has also stated in the cross examination that the two plots, which were agreed to be sold pursuant to the said two agreements, admeasured 2048 sq. metres and 2735 sq. metres, respectively. He has also stated that the sale deed land was a part of developed plots. He has further stated that the said agreement at Exhibit AW.1/C6 was in respect of the land which was a contiguous property where the purchaser therein was residing. He has further stated that the agreement could not go through because of acquisition. The said witness was, thereafter, recalled.

9. The next witness is AW.2 Prazeres A. Gonsalves, who visited the property and after inspection prepared a report which is at Exhibit AW.2/A. The said witness was examined with regard to the dispute concerning the area of the acquired land which is not relevant for deciding the compensation.

10. The next witness examined is AW.3 Rui Ribeiro Santan who has also stated that he had visited the acquired land. He has

further stated that pursuant to the agreement of sale dated 18/6/1982, a sale deed has been executed which is at Exhibit AW.1/C5 between the parties and the price is the same as in the agreements. He has further stated that the acquired land is about 2.5 kms. away from Panaji Market, and at a distance of one to one and half kms. away from Panaji City. He has stated that infrastructural facilities were available to the acquired land in the year 1976. He has considered the sale instances produced on record to fix the market value of the acquired land. He has further stated that the market value of the developed plots was ₹451/- and 473/- per sq. metre in respect of the two deeds and fixed the compensation for the acquired land at the rate of ₹ 460/- per sq. metre.

11. Another witness examined is AW.4 Sanjay Kamat. He has stated that he is a party to the agreements at Exhibit AW.1/C3 and Exhibit AW.1/C4. He has stated that they had agreed to purchase the land subject-matter of the Agreement at the rate of ₹ 390/- per sq. metre. He has also stated that he is a signatory to the said agreements. He has also stated that the said land is partly situated in Panaji City and partly in Taleigao Village and it is 2.3 kms. away from Panaji Market. He has also stated that he is not aware that a part of the land was relocated in Taleigao Village in the year 1982.

12. The next witnesses examined are AW.5 Jose Fernandes, AW.6 Tomas Moraes and AW.7 Jose Rebello. The evidence of AW.7 was recorded on commission. The said material is not relevant for the purpose of deciding the market value of the land acquired.

13. The appellants have also examined their witnesses, namely RW.1 Pratap Neurenkar, who has stated that an area of 30,103 sq. metres was acquired. He has further stated that there was no proper transport to the acquired land and there was no water and electricity in the vicinity of the acquired land. He has also produced a deed executed in the year 1980 wherein the price was shown at the rate of ₹28/- per sq. metre. In the cross examination he has stated that the land acquired was for construction of a housing project in the year 1991. The selling price of the built up area was ₹ 4700/- per sq. metre and the construction was started in the year 1991. Cost of the construction was ₹ 4000/- per sq. metre. He has further stated that tar road was at a distance of half a kilometre from the acquired land. He has further stated that the property under the sale deed produced by the appellant is at a distance of 2 to 3 Kms. away from the acquired land and far in the interior, without electricity and water supply. He has also stated that the acquired land was fully developed and total built up area

would be about 5000 sq. metres and the FAR was 0.8.

14. The next witness examined is RW.2 Prabhakar Palienkar. He has stated that he had purchased two plots. He was party to the said two plots. However, in the cross examination he has stated that he has been staying in the said property since the time of his grandfather.

15. Another witness examined by the appellant is RW.3 Vishram Gaunkar who has prepared a report.

16. On going through the evidence on record, it clearly discloses that the land acquired was, in fact, in the vicinity of Panaji City. It further shows that even in the acquired land, there were houses which were put up by the *mundkars*. The fact that the land was in the settlement zone and that infrastructural facilities were available at the site, clearly cull out from the material on record. The witnesses of the appellant have also accepted that a tar road was at a distance of half a kilometre away from the acquired land and the land was acquired for putting up a housing project, which also clearly shows that the land had potential of being used for non-agricultural purpose. Panaji City Market was at a distance of 2 Kms. away from the acquired land, besides all other infrastructural facilities for development were already

available at the site. The sale transactions at Exhibits AW1/C3 and AW.1/C4 show that the land was agreed to be sold at the rate of ₹ 451 and ₹ 473/- per sq. metre, in the vicinity of the acquired land. The sale instances produced by the appellants are at a distance of 2 to 3 kms. away from the acquired land and in the interior of Village Taleigao and to persons who were mundkars. When sale instances in respect of the land situated within the vicinity of the acquired land are available, there is no reason to proceed to fix the market value of the acquired land based on sale instance which is at distance of 2 to 3 kms. away from the acquired land in the interior and not comparable sale instance. Apart from that, the acquired land was located in the settlement zone. In such circumstances, considering the evidence on record, the Reference Court was justified to come to the conclusion that a comparable sale instance to fix the compensation for the acquired land are the sale instances at Exhibits AW.1/C3 and AW.1/ C4.

17. AW.4 Sanjay Kamat, who is one of the signatories to the said agreements, has proved the contents of such documents. As such, the authenticity of the said transactions cannot be doubted. The said sale instances are of plots located very close to the acquired land which has been corroborated by the registered valuer Shri Rui Ribeiro

Santana. The said valuer has valued the land at the rate of ₹ 460/- per sq. metre. But, however, on perusal of the sale instances, at Exhibit AW.1/C3 and Exhibit AW.1/C4, it is seen that the price disclosed therein shows that the plots were sold at the rate of about ₹ 400/- per sq. metre. The Reference Court, whilst fixing the compensation, has effected deduction of 25% on account of development charges. There is no material on record to suggest that any sub-division was, in fact, approved in respect of the said sale instances. But, however, the sale instances were naturally more suitable than the acquired land for development purposes, considering the largeness of the acquired land vis-a-vis the sale instances at Exhibit AW.1/C3 and Exhibit AW.1/C4.

18. It is now well settled that comparable sale instance is the most appropriate method for fixing the market value of the acquired land in terms of Section 23 of the said Act. No doubt, deductions have to be effected on account of development charges, besides other demerits of the acquired land vis-a-vis the sale instances.

19. The Apex Court, in the judgment in the case of ***Major General Kapil Mehra and others V/s Union of India and another*** (supra), has clearly observed that the factors, such as the existence of geographical situation of the land, use of the land, proximity to the

National or State Highways, market value of other lands in the same locality, are some of the aspects to be examined whilst fixing the market value of the land. The Apex Court has observed at paras 14, 34, 35, 36 and 37 thus :

> "**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 fulfillment 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 and Ors. v. K.S. Gangadharappa & Anr., (2009) 11 SCC 164, factors which merit consideration as comparable sales are, inter alia, laid down as under:-
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> > "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 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 Special 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."

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.

35. Reiterating the rule of one- third deduction towards development, in Sabhia Mohammed Yusuf Abdul Hamid Mulla (Dead) by Lrs. and Ors. vs. Special Land Acquisition Officer and Ors., (2012) 7 SCC 595, this Court in paragraph 19 held as under:-

> "19. In fixing the market value of the acquired land, which is undeveloped or underdeveloped, the courts have generally approved deduction of 1/3rd of the market value towards development cost except when no development is required to be made for implementation of the public purpose for which land is acquired. In Kasturi vs. State of Haryana (2003) 1 SCC 354) the Court held: (SCC pp. 359-60, para 7)
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> "7… It is well settled that in respect of agricultural land or undeveloped land which has potential value for housing or commercial purposes, normally 1/3rd amount of compensation has to be deducted out of the amount of compensation payable on the acquired land subject to certain variations depending on its nature, location, extent of expenditure involved for

development and the area required for road and other civic amenities to develop the land so as to make the plots for residential or commercial purposes. A land may be plain or uneven, the soil of the land may be soft or hard bearing on the foundation for the purpose of making construction; may be the land is situated in the midst of a developed area all around but that land may have a hillock or may be low-lying or may be having deep ditches. So the amount of expenses that may be incurred in developing the area also varies. A claimant who claims that his land is fully developed and nothing more is required to be done for developmental purposes, must show on the basis of evidence that it is such a land and it is so located. In the absence of such evidence, merely saying that the area adjoining his land is a developed area, is not enough, particularly when the extent of the acquired land is large and even if a small portion of the land is abutting the main road in the developed area, does not give the land the character or a developed area. In 84 acres of land acquired even if one portion on one sides abuts the main road, the remaining large area where planned development is required, needs laying of internal roads, drainage, sewer, water, electricity lines, providing civic amenities, etc. However, in cases of some land where there are certain advantages by virtue of the developed area around, it may help in reducing the percentage of cut to be applied, as the developmental charges required may be less on that account. There may be various factual factors which may have to be taken into consideration while applying the cut in payment of compensation towards developmental charges, may be in some cases it is more than 1/3rd and in some cases less than 1/3rd. It must be remembered that there is difference between a developed area and an area having potential value, which is yet to be developed. The fact that an area is developed or adjacent to a developed area will not ipso facto make every land situated in the area also developed to be valued as a building site or plot, particularly when vast tracts are acquired, as in this case, for development purpose." (emphasis supplied).

The rule of 1/3rd deduction was reiterated in Tejumal Bhojwani v. State of U.P. ((2003)10 SCC 525, V. Hanumantha Reddy v. Land Acquisition Officer, (2003) 12 SCC 642, H.P. Housing Board v. Bharat S. Negi (2004) 2 SCC 184 and Kiran Tandon v. Allahabad Development Authority. (2004)10 SCC 745"

36. While determining the market value of the acquired land, normally one third deduction i.e. 33 1/3% towards development charges is allowed. One third deduction towards development was allowed in Special Tehsildar, L.A. Vishakapatnam vs. Smt.A. Mangala Gowri, (1991) 4 SCC 218; Gulzara Singh & Ors. vs. State of Punjab & Ors., (1993) 4 SCC 245; Santosh Kumari & Ors. vs. State of Haryana, (1996) 10 SCC 631; Revenue Divisional Officer-cum-LAO vs. Shaik Azam Saheb etc., (2009) 4 SCC 395; A.P. Housing Board vs. K. Manohar Reddy, (2010)12 SCC 707; Ashrafi & Ors. vs. State

> of Haryana & Ors., (2013) 5 SCC 527 and Kashmir Singh vs. State of Haryana & Ors., (2014) 2 SCC 165.
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> **37**. Depending on the nature and location of the acquired land, extent of land required to be set apart and expenses involved for development, 30% to 50% deduction towards development was allowed in Haryana State Agricultural Market Board and Anr. vs. Krishan Kumar and Ors. (2011) 15 SCC 297; Deputy Director Land Acquisition vs. Malla Atchinaidua And Ors. AIR 2007 SC 740; Mummidi Apparao (Dead by LR) vs. Nagarjuna Fertilizers & Chemical Ltd., AIR 2009 SC 1506; and Lal Chand vs. Union of India and Anr. (2009) 15 SCC 769."

20. Taking note of the observations of the Apex Court herein above, we shall now proceed to examine the comparability of the sale instance at Exhibit AW.1/C3 and the land acquired. The subject-matter of the land in the sale instance was an undeveloped portion of the property, admeasuring an area of 2800 sq. metres; whereas the acquired land in the present case, as already pointed out herein above, admeasures 30,000 odd sqare metres. The contention of Mr. Naik, learned Counsel appearing for the appellant that atleast 50% would

have to be deducted on account of development charges and dissimilarity of the acquired land vis-a-vis the sale instance, relying upon the Judgment of the Apex Court in the case of ***Major General Kapil Mehra and others V/s. Union of India and another*** (supra), would have to be examined in the context of largeness of the land, as well as dissimilarities of both the properties. The sale instance at Exhibit AW.1/C3 is not a developed or a sub-divided plot, as compared to the land which is the subject-matter of the present acquisition. Thus, both the lands are undeveloped, though the possibilities of the sale instance land would be better than the acquired land looking to its smallness. In such circumstances, effecting a deduction of 50%, as pointed out by Mr. Naik, learned Counsel appearing for the appellant, is not at all justifiable. The learned Judge, whilst passing the impugned Judgment and Award has noted that the plots at Exhibit AW.1/C3 and Exhibit AW.1/C4 were undeveloped in the year 1982 and that there was no water supply to the said plots. The learned Judge has also noted that AW.4 Sanjay Kamat has stated that the land agreed to be purchased by Kamat Constructions by the Agreements at Exhibit AW.1/C3 and Exhibit AW.1/C4 was an undeveloped land and the development was carried out by the Purchasers. He has also stated that the said land which was purchased, required filling for the purpose of development as it was low lying. As opposed to this, the land which was the subject-matter of the acquisition was flat land and no filling was required for any development. The fact that the land acquired was suitable for development, located in a developed area and settlement zone has, in fact, not been disputed by RW.1.

21. Another aspect to be examined is that the sale instances were in respect of smaller plots, meant for construction of buildings, and bungalows to be constructed by the vendors. In such circumstances, internal roads would have to be constructed to serve as access to the buildings constructed therein. The land acquired, however, would need substantial development considering its area and the statutory requirements to maintain open spaces, construction of roads, gutters, etc. for sub-division. The learned Reference Court in the impugned Judgment and Award has found that a deduction of 25% on account of such demerits would be appropriate, considering the different factors between the land acquired and the sale instances. The sale instance relied upon by the appellant dated 11/12/1980 cannot be considered to be a comparable land, as such land was sold to *mundkars* who have been protected under the Mundkars Act and, as such, cannot be said to be comparable sale instance and other sale

instances are available.

22. As pointed out herein above, the learned Judge, after examining the comparability of the acquired land with the sale instances, has made a deduction of 25% towards the development charges. Besides such deduction, the learned Judge has failed to take note of the fact that the acquired land was admeasuring 30,000 and odd square metres; whereas the subject-matter of the sale instance at Exhibit AW.1/C3 was 2800 sq. metres. In terms of the Statutory Regulations as in force in the State of Goa, in cases in which the area of the land is more than 4,000 sq. metres, a sub-division has to be effected for development of such lands. In such circumstances, as far as the subject-matter of the sale instance at Exhibit AW.1/C3 is concerned, for the purpose of development no such sub-division would be required. But, however, as far as the land acquired is concerned, as the area of the land is more than 30,000 sq. metres, the statutory provisions would require keeping open spaces, constructing roads and gutters for the purpose of sub-divisions. The land acquired is closer to the public road, having a frontage and infrastructural facilities and civic amenities already in place at the time of the notification. In such circumstances, a deduction of 1/3rd towards development charges

would be just and reasonable, after taking into account the suitability of the land acquired for the purpose of development being flat land and did not require any filling, as was the case in the land of the said sale isntance.

23. Apart from that, as far as the land acquired is concerned, as already point out herein above, a further deduction would have to be effected on account of largeness of the land acquired vis-a-vis the land under sale instance at Exhibit AW.1/C3. On account of this aspect, taking note of the fact that a deduction towards development charges and other aspects, of 1/3rd has been made, we find that a further deduction of 7% on account of largeness of the land acquired, would be fair and reasonable. The total net deduction, as such, works out to 40% on account of the dissimilarity of the acquired land and the sale instance, after considering merits of the acquired land. The sale price mentioned in the sale instance is about ₹ 400/- per sq. metre and after making a deduction of 40%, the market value of the acquired land works out to ₹ 240/- per sq. metre. To that extent, the impugned Judgment and Award passed by the learned Reference Court deserves to be modified.

24. With regard to the contention of Mr. Naik, learned Counsel

appearing for the appellant, relying upon a Judgment of the Division Bench of this Court in First Appeal No. 79/2002 dated 23/11/2010 in the case of ***The Deputy Collector & S.D.O.P. and anr. vs. Shri Antonio Orlando Lobo and another***, we find that as rightly pointed out by Mr. Diniz, learned Counsel appearing for the respondents, that the material produced on record herein, was not before the learned Reference Court whilst fixing the market value of the acquired land. The land acquired also was not similar to the land which was the subject-matter of the said land acquisition. Apart from that, the parties interested therein did not challenge the Judgment and Award of the Reference Court, fixing the market value of the acquired land. As such, the question of relying upon the said Judgment for the purpose of fixing the market value of the acquired land in the present case, would not at all be justified.

25. In the facts and circumstances of the case, impugned Judgment and Award dated 6th December, 2011, to that extent, stands modified and the market value of acquired land is fixed at the rate of ₹240/- per sq. metre, instead of ₹300/- per sq. metre, as fixed therein. The remaining part of the Award stands confirmed accordingly. The point for determination is answered accordingly.

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

O R D E R

(I) The appeal is partly allowed.

(II) The impugned Judgment and Award dated 6th December, 2011, passed by the learned District Judge-1, Panaji in Land Acquisition Case No.4/1988, stands modified and the compensation for the acquired land is fixed at ₹ 240/- per sq. metre.

(III) The remaining part of the impugned Judgment and Award stands confirmed accordingly.

(IV) Needless to say that the respondents shall be entitled to the statutory benefits in terms of Section 23(1-A), 23(2) and Section 28 of the Land Acquisition Act, 1894, in accordance with law.

(V) The appeal stands disposed of accordingly, with no order as to costs.

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

ssm.