

IN THE HIGH COURT OF BOMBAY AT GOA**FIRST APPEAL NO.47 of 2014**

The Executive Engineer,
Work Division VII,
Panaji Goa (on behalf of the
Chief Engineer (II) PWD,
Altinho, Panaji, Goa.

....Appellant

V/s

Shri Joaquim D'costa,
R/o. H.No.231, Muxer
Panchhawadi, Ponda Goa.

.... Respondent

Ms. Priyanka Kamat, Additional Government Advocate for the
Appellant.

Shri P.A. Kholkar, Advocate for the Respondent.

Coram:- NUTAN D. SARDESSAI, J.

Reserved on : 20th JUNE, 2017

Pronounced on : 10th AUGUST, 2017

JUDGMENT :

This is a State appeal challenging the judgment and award passed by the learned Reference Court dated 9/12/2013 pursuant to which the learned Reference Court enhanced the compensation to ₹222/- per sq. mt. in respect of the survey holdings 308/11, 308/28, 308/45, 308/62 and ₹189/- per sq. mt. in respect of the survey holdings 308/3 and 308/72 which were acquired for the purpose of laying a road from Codli to Panchawadi and loading bunder at Panchawadi, Ponda Goa. The respondent is the original applicant before the Reference Court and the parties

would be referred to as the appellants and the respondent for brevity's sake hereinafter.

2. The Government had acquired the land of the respondent admeasuring 6500 sq. mts. from the different survey holdings for the stated purpose pursuant to the Notification under Section 4 of the Land Acquisition Act, 1894 ('the Act' for short hereinafter) published in the Gazette dated 18/09/2006. The Land Acquisition Officer ('LAO' for short) had awarded the compensation at ₹5/- per sq. mt. and being aggrieved, the respondent made an application under Section 18 of the Act claiming the enhanced compensation of ₹150/- per sq. mt. The learned Reference Court by the impugned judgment and award enhanced the compensation to ₹222/- per sq. mt. in respect of some survey holdings and ₹189/- per sq. mt. in respect of the two survey holdings with consequential benefit in favour of the respondent giving rise to the appeal at the instance of the State. The appellants questioned the validity of the impugned judgment and award as being illegal, bad in law and passed without consideration of the evidence on record. The learned Reference Court had wrongly construed the compensation awarded by the Land Acquisition Officer and enhanced the compensation in respect of some survey holdings to ₹222/- per sq. mt. and in respect of two others to ₹189/- per sq.

mt. from that awarded by the LAO at ₹5/- per sq. mt. without considering the fact that there was no sufficient evidence produced on record.

3. The learned Reference Court erred in relying in **Ambya Kalya Mhatre (dead) through LR's and Ors. V/s. State of Maharashtra [2011 (9) SCC 325]** and awarded much more compensation as claimed by the respondent which was impermissible in law. The learned Reference Court fell in error in not considering that there was no similarity between the acquired land and the Sale Deed land and no material evidence was produced by the respondent to demonstrate the similarity between the two lands. The learned Reference Court fell in error in not considering the fact that the Sale Deed land was a non-tenanted land and small in size and there was no comparison with the acquired land. The learned Reference Court also erred in relying in **Vishnu Narayan Naik (deceased) Rep. By LR's V/s. Deputy Collector (Revenue) and Land Acquisition Officer & Ors. [2008 (2) Goa L.R. 11]** since it pertained to a matter regarding the land acquisition for the construction of a housing society unlike the present acquisition which related to the construction of a road from Codli to Panchwadi forming a part of the mining corridor meant for public purpose and would benefit the public at large.

4. The learned Reference Court fell in error to consider the judgment of the Apex Court in **Smt. Kausalya Devi Bogra & Ors. V/s. Land Acquisition Officer & Anr. [AIR 1984 SC 892]** where it had observed that when the large tracts of the land are acquired, the transaction in respect of small properties did not offer a proper guideline. The Reference Court erred in relying upon the evidence of Shri M. Kakule and ignored that it bore various errors. The learned Reference Court erred in awarding higher compensation even though the land under acquisition was agricultural and no evidence was led to prove its agricultural income. The impugned judgment and award of the Reference Court was against the well settled principles of law and was liable to be quashed and set aside.

5. Ms. Priyanka Kamat, learned Additional Government Advocate for the appellants submitted at the outset that the impugned award was unjustified on the basis of the evidence on record and besides the respondent had failed to prove the agricultural income. She distinguished the judgment in **Ambya Kalya Mhatre** (supra) and submitted that the judgment did not apply to the case at hand since the respondent was an agricultural tenant unlike that case where the party was the owner. The Reference Court had relied on the two Sale instances dated 28/03/2008 and 12/05/2008 which were not comparable Sale

instances as they related to smaller plots unlike the acquired area which was much larger in area. She relied in **Smt. Kausalya Devi Bogra** (supra), **Land Acquisition Officer & Sub-Collector V/s. Sreelatha Bhoopal & Anr. [(1997) 9 SCC 628]** and submitted that there were errors in the assessment by the expert despite the admission in the cross-examination. His testimony did not inspire confidence as it was unreliable and therefore on all these counts it was not a fit case to grant the enhanced compensation and the impugned judgment and award had to be interfered with and set aside.

6. Shri P.A. Kholkar, learned Advocate for the respondent submitted that the Reference Court had considered the two Sale instances as the basis in view of the law laid down by the Apex Court and this Court and enhanced the compensation to ₹222/- per sq. mt. in respect of the four survey holdings. The Reference Court had considered 15% deduction in respect of the two survey holdings which comprised of larger areas. There were ample powers in this Court to award compensation higher than that claimed and in that context he relied in **Ambya Kalya Mhatre** (supra). He negated the submission of Ms. P. Kamat, learned Additional Government Advocate for the appellants that it applied to a owner and not a tenant on the premise that Section 18 of the

Act made no distinction between an owner or a tenant and was restricted to "any person interested".

7. Shri Kholkar, learned Advocate for the respondent further relied in **Goa Housing Board V/s. Rameshchandra Govind Pawaskar & Anr. [(2011) 10 SCC 371]** and the impugned judgment to substantiate his case. There was no basis in the contention on behalf of the appellants that the testimony of the expert witness was unbelievable and which was amply borne out from his cross-examination. He further placed reliance in **Mahesh Dattatray Thirthkar V/s. State of Maharashtra [2009 (6) BCR 354]**, **Executive Engineer (C) V/s. Uttamrao Bapurao Raut [2010 (2) Bom.C.R. 204]**, **Deputy Collector (DEV) & Land Acquisition Officer & Anr. V/s. Zaivonta Vitola Camotim Mamai (since dec.) through LR's & Ors. [2014 (6) Mh.L.J. 231]**, **Special Land Acquisition Officer V/s. Rameshchandra Govind Pawaskar [2008 (2) GLT 279]**, **Chaturbhuja Modi & Ors. V/s. State of Orissa & Anr. [(2010) 12 SCC 234]** and **Satyapal Singh V/s. Union of India & Anr. [(2010) 12 SCC 70]**. Ms. P. Kamat, learned Additional Government Advocate for the appellants contended further in reply that the Sale Deed relied upon by the respondent was post Notification and therefore could not be used to show similarity or comparability with the acquired land. Once again she reiterated

that the judgment in **Ambya Kalya Mhatre** (supra) was clearly distinguishable and that the evidence of the valuer could not be looked into while driving home her point that the appeal had to be allowed and the award had to be quashed and set aside. Shri P.A. Kholkar, learned Advocate for the respondent relied in **Chandrashekar (dead) by LR's & Ors. V/s. Land Acquisition Officer & Anr. [(2012) 1 SCC 390]** and **Union of India V/s. Raj Kumar Baghal Singh (dead) through LR's & Ors. [(2014) 10 SCC 422]** to buttress his submission that the post Section 4 Notification Sale Deed could be relied upon as comparable instance.

8. The respondent had examined himself reiterating on oath his case and set out that the acquired land had commercial amenities available at Curchorem town and having access to all the recreational facilities including medical, educational and religious available at a short distance of less than 2 kms. in the Panchawadi Village itself. The report drawn by the valuer had valued the acquired land at ₹525/- per sq. mt. in the region while he had claimed ₹150/- per sq. mt. The acquired land was very close to the river Zuari and there was a cross at a distance of 350 mts. and so too the Panchayat office within 300 mts. from the acquired land. Public transport was available at a distance of 1 km. from the acquired land and there was frequent public transport available

from Shiroda Village to Sanvordem and vice versa. The acquired lands were not only paddy fields but coconut garden with Shri Datta Mandir Temple at a short distance of about 600 mts. He was therefore entitled to the enhanced compensation since that awarded in his favour was meagre. He had produced the Survey Records, the Sale Deed and the Valuation Report apart from the judgment and decree in the Regular Civil Suit No.46/1999 passed by the Civil Judge Junior Division, Ponda dated 31/12/2005 while praying for the enhanced compensation.

9. The respondent revealed during his cross-examination that he had contacted the expert Mahendra Kakule in 2009 who visited the land in the same year but he did not remember the date or the month when he had carried out the site inspection. He categorically denied the suggestion that the expert had not inspected the land or that it did not possess building potential. The respondent admitted that the subject matter of the Sale Deed Exhibit 14 colly. was not a sub-divided plot and denied the suggestion that there was no comparability with the lands under acquisition. The Sale Deed Exhibit 14 dated 12/05/2008 was in respect of an area of 294 sq. mts. of a larger property bearing survey no.16/2 admeasuring 5,225 sq. mts. sold for the total consideration of ₹1,40,000/- working out to ₹476/- per sq. mt. The

other Sale instance was dated 28/03/2008 pursuant to which the owners had sold an area of 1950 sq. mts. of the larger property situated at Panchawadi for ₹10,72,500/- working out to ₹550/- per sq. mt.

10. The respondent had examined the expert M. Kakule who had inspected the lands at his instance and prepared the valuation report on 4/01/2009. He admitted that the respondent was a tenant of all the properties as per the survey records Form I & XIV which was stated to be of rice cultivation and coconut garden. The Sale instance of 28/03/2008 was in respect of the land of rice cultivation and similar to the properties valued by him. He could not recollect whether the second Sale instance dated 12/05/2008 was in respect of the plot earmarked as plot no.11, but he had not considered the said Deed while preparing his valuation report. He also admitted that whenever the property was of rice cultivation or of coconut garden, conversion was required for the purpose of any construction. It is not as if the valuer had concealed any material information from the Court either regarding the status of the respondent qua the land i.e. his tenancy or on the point of conversion being required for carrying out any construction activity in respect of the land under rice cultivation or coconut garden.

11. In **Ambya Kalya Mhatre** (supra), the lands belonging to the appellant with a large number of fruit bearing trees and a well, were acquired for the New Bombay Project in view of the preliminary Notification dated 3/02/1970 and the final Notification dated 29/07/1979. The Special LAO awarded the compensation in respect of the land, trees and well. Not being satisfied with the compensation so awarded, A.K. Mhatre made an application under Section 18 of the Act to the Special LAO seeking a reference to the District Court for enhancement of the compensation and a reference was made accordingly. During the pendency of the reference, he died and his legal representatives came on record who made an application before the Reference Court seeking amendment in respect of the compensation towards the land, trees and a well and also paid the additional court fees for the increase in the claim and which was allowed by the Reference Court. The Reference Court determined the compensation for the land, trees and a well with the statutory benefits but as both the sides were aggrieved, appeals were preferred seeking further increase and the State filed an appeal challenging the enhanced amounts.

12. In **Ambya Kalya Mhatre** (supra), the appellants' appeal was allowed in part and the compensation in regard to the

land was increased to ₹10/- per sq. mt. while the claim for increase in regard to the trees and the well was rejected. The State's appeal came up for hearing later before another Bench and was allowed holding that the claim for the enhanced compensation in regard to the trees and the well made by amending the application for reference under Section 18 of the Act was barred by limitation as he had sought increase only in regard to the land and not with regard to the trees and the well. In the appeal by special leave, questions arose for consideration as below:

- (i) Whether in a reference made to the Reference Court under Section 18 of the Act, the landowner was barred from amending the amount claimed in the reference application and seeking higher compensation; and even if he could seek amendment, whether such an application should be made within the period of limitation mentioned under Section 18 of the Act?
- (ii) Where the landowner had sought increase in the compensation for only the land in the application under Section 18 of the Act, whether he could seek increase in compensation for the trees or structures also before the Reference Court?
- (iii) Where compensation was awarded for the land, whether no compensation could be awarded for trees or well separately?

13. In **Ambya Kalya Mhatre** (supra), the High Court held that the amendment was barred by limitation on the premise that

the award of the Collector was made on 4/07/1986, the possession of the acquired land was taken on 9/09/1986, the payment of the compensation was made on 29/09/1986 and the reference came to be filed within the prescribed period of limitation. However, four years later i.e. on 19/09/1990, the reference was amended for enhancing the claim of compensation for trees and the well situated on the land. If the date of the amendment of the reference was to be taken into consideration, the claim for further enhancement was clearly barred by limitation. The issue whether the Reference Court could permit the claimant to amend his claim so as to increase the compensation came up for consideration before a Full Court of the Bombay High Court in **State of Maharashtra V/s. Sitaram Narayan Patil [(2010) 2 Mah.L.J. 387]** and during the pendency of the Special Leave Petition, the Full Bench overruled the judgment dated 11/11/2008 and held that the claimant whose land was acquired could be allowed to amend his claim application so as to enhance the compensation claimed in an application for reference under Section 18 of the Act and that such an application could be allowed before the Reference Court as well as at the stage of an appeal in the High Court arising out of the decision of the Reference Court.

14. In **Ambya Kalya Mhatre** (supra), the Hon'ble Apex Court observed at paragraphs 26, 27 & 28 as follows:

“26. When the reference is received, the court causes notice specifying the date of hearing for determining the objection of the land owner/person aggrieved (section 20 of the Act). The Reference Court has to call upon the claimants to file their statement of claim and call upon the Collector to file his objections to the claim statement and then proceed with the matter. Where the application under section 18 contains the necessary particulars, the Reference Court may treat the application for reference under section 18 and the Collector's statement under section 19 of the Act as the pleadings. The land owner is entitled to specify the amounts claimed by him as compensation and the heads of compensation for the first time in such claim statement before the Reference Court. He can also file an application amending the claim. What is not permitted after the expiry of the period of limitation specified in section 18 of the Act, is changing the nature of objections from one category to another. If the reference had been sought with reference to objection to amount of compensation, the land owner cannot after the period of limitation, seek amendment to change the claim as objection to measurement or objection to apportionment.

27. A landowner, particularly a rural agriculturist, when he loses the land may not know the exact value of his land as on the date of the notification under section 4(1) of the Act. When he seeks reference he may be dissatisfied with the quantum of compensation but may not really know the actual market value. Many a times there may not be comparable sales, and even the courts face difficulty in assessing the compensation. There is no reason why a land owner who has lost his land, should not get the real market value of the land and should be restricted by technicalities to some provisional amount he had indicated while seeking the reference. As noticed above, the Act does not require him to specify the quantum and all that he is required to say is that he is not satisfied with the compensation awarded and specify generally the grounds of

objection to the award. Under the scheme of the Act, it is for the court to determine the market value.

28. The compensation depends upon the market value established by evidence and does not depend upon what the land owner thinks is the value of his land. If he has an exaggerated notion of the value of the land, he is not going to get such amount, but is going to get the actual market value. Similarly if the land owner is under an erroneous low opinion about the market value of his land and out of ignorance claims lesser amount, that can not be held against him to award an amount which is lesser than the market value. When the Act does not require the land owner to specify the amount of compensation, but he voluntarily mentions some amounts, and subsequently, if the market value is found to be more than what was claimed, the land owner should get the actual market value. We fail to see why the land owner should get an amount less than the market value, as compensation. Consequently, it follows that if the land owner seeks amendment of his claim, he should be permitted to amend the claim as and when he comes to know about the true market value. When the Act is silent in regard to these matters, to impose any condition to the detriment of an innocent and ignorant land owner who has lost his land, would be wholly unjust."

The Apex Court while answering the questions no.1 & 2 arising for consideration held at para 33 as below:

"33. We therefore hold that the time limit under section 18 of the Act is only for seeking the reference by raising the objection to the amount of compensation or any of the other three objections. The land owner or persons aggrieved will have to give only the nature of objection to the award, i.e. whether it is with reference to measurement or compensation or person to whom it is payable or apportionment, and briefly mention the grounds in support of it. Though the land owner can give the

details of his claim and quantum, he is not bound to do so. When the reference is made, he can give the particulars of the claim for compensation or additional particulars or even increase the claim."

15. In **Ambya Kalya Mhatre** (supra), the Apex Court considered Section 18 of the Act, made no distinction between an owner or a tenant and that it applied to any person interested. Hence, the contention of Ms. P. Kamat, learned Advocate for the appellants that the judgment in **Ambya Kalya Mhatre** (supra), is not applicable to the case of the respondent being an agricultural tenant cannot be entertained.

16. In **Kaushalya Devi Bogra** (supra), a three Judge Bench of the Hon'ble High Court held at para 13 as under:

"13. Two principles relating to the matter of fixation of compensation relevant for the present purpose may be kept in view. When larger tracts are acquired, the transaction in respect of small properties do not offer a proper guideline. Therefore, the valuation in transactions in regard to smaller property is not taken as a real basis for determining the compensation for larger tracts of property."

In **Sreelatha Bhoopal** (supra), the Apex Court held that in determination of the market value of the large extent of land by relying on a Sale Deed relating to a small piece of land is improper. The burden is on the claimant to prove by adducing acceptable evidence for higher compensation. **Mahesh Dattatray**

Thirthkar (supra), was an appeal challenging the judgment of the High Court of Judicature at Bombay, Aurangabad Bench reversing the order of the Reference Court under Section 18 of the Act whereby the High Court had reduced the compensation as enhanced by the Reference Court from ₹83,000/- to ₹40,226/-. The reason why the High Court reduced the compensation was because it was of the opinion that the evidence produced by the appellants for proving their claim of inadequacy of the compensation awarded was insufficient. The High Court also held that the witnesses produced for examination by the appellants were inconsistent in their testimony, especially the father and an engineer as also the valuer in respect of the market value of the acquired property. The High Court held that the evidence adduced by the appellant was unsatisfactory, on which the Reference Court ought not to have placed reliance and on that basis set aside the order of the Reference Court and held that the order of the LAO valuing the acquired property at ₹40,226/- was just, reasonable, proper and adequate giving rise to an appeal before the Apex Court. The questions which fell for consideration before the Apex Court were whether the High Court was justified in reversing the finding of fact arrived at by the Reference Court on a re-appreciation of the evidence under Article 136 of the Constitution of India and if the question was answered in the affirmative, the

next issue was with respect to the sufficiency and reliability of the evidence adduced by the appellant to discharge his burden of proving that the compensation awarded by the LAO was inadequate, thus justifying enhancement as ordered by the Reference Court.

17. In **Mahesh Dattatraya Tirthkar** (supra), whilst considering the inconsistency in the testimony of the expert valuer as pointed out, the Hon'ble Apex Court found that the statements made by him were not contradictory. While it may be necessary for the valuer to consider the above mentioned factors in the process of his valuation, it was not necessary for him to rely on the report of another person with regard to the same. He being an expert in his field, could rely on his own knowledge, experience and judgment to come to conclusions regarding these aspects of the acquired property. Thus, the testimony of the expert valuer was not rendered discredited on this ground.

18. In **Uttamrao Bapurao Raut** (supra), the State was in appeal against the enhancement of compensation by the Reference Court to ₹10/- per sq. ft. It was contended on behalf of the appellant/State that the land of the claimant could not be considered as a non-agricultural land, since no development was

done by him in the land acquired and further that at the time of the inspection of the property, the LAO did not find any development having been made by the claimant in the said land and therefore the Reference Court was in error to rely on the Sale Deed in respect of a portion of the same land acquired. Besides, as no development was made by the claimant, the permission for non-agricultural use of the land obtained by him had lapsed and consequently no benefit could have been taken by the claimant on that count and hence the impugned judgment was to be quashed and set aside. These contents were disputed on behalf of the claimant on the premise that there was no question of concluding that the Sale Deed was not genuine as it was preceded with an agreement for sale. The Division Bench of this Court framed two points for determination namely; (i) Whether the Reference Court was justified in determining the compensation on the basis that the land of the claimant was non-agricultural land? and (ii) Whether the Reference Court was justified in determining the compensation for the land acquired at the rate of ₹10/- per sq. ft. only for the plotable area, apart from the deduction to the tune of ₹5,00,000/- on account of the expenditure? Their Lordships found on perusal of the records that there was no dispute that the claimant had made an application to the Sub-Divisional Officer subject to the condition and other obligations as stipulated in the permission.

Their Lordships found on an examination of the evidence that no evidence was produced to show that the permission for non-agricultural use was withdrawn and therefore the land of the claimant was to be valued on the basis of its non-agricultural status.

19. In **Uttamrao Bapurao Raut** (supra), their Lordships also did not find favour with the contention on behalf of the appellant that the Sale Deed was prepared only to inflate the market value since it was preceded by an Agreement for Sale and therefore the genuineness of the sale could not be doubted in view of the evidence on record. Their Lordships also referred to the judgment in **Mahesh Dattatray Thirthkar** (supra), which held that the burden of proving the true market value of the acquired property was on the State that had acquired it for a particular purpose. When the land owner had been able to show by the testimony and valuation report of the expert valuer that the amount of compensation awarded by the LAO was inadequate, the onus shifted on the State to adduce sufficient evidence to sustain the award. Their Lordships found that the claimant had adduced evidence to establish that the acquired land was a non-agricultural land, produced the sale Deed of a developed plot and on that basis and after considering the judgments of the Apex Court reduced the market value of the land determined by the Reference Court at

₹10/- per square metre to ₹8/- per square mt. and partly allowed the appeals.

20. In **Zaivonta Vitola Camotim Mamai** (supra), a learned Single Judge of this Court while dealing with the State appeal challenging the award of the Reference Court held that the Reference Court had taken due care of all the dissimilarities between the acquired land and the Sale instance land and fixed the market value which was just, fair and reasonable and therefore found that no case was made out for interference. In **Chaturbhuja** (supra), the Apex Court set out the duty of the Court in determining the market value of the acquired land on the basis of the comparable Sale instances. It held that the sale in question (i) must be within a reasonable time of the date of Notification under Section 4(1) of the Act, (ii) it should be a bonafide transaction, (iii) it should be a sale of the land acquired or of the land adjacent to the one acquired, and (iv) it should possess similar advantage. It further held that where large portion of land was acquired, valuation of the smaller plot need not be taken as a real basis for determination of the market value of the acquired land. Necessary deductions had to be taken into consideration when determining the market value of a large tract of land on the basis of the value of a small piece of land. While determining the compensation, some conjecture was unavoidable as it was

generally not possible to have any documentary evidence of sale of land of similar nature and in the near vicinity of the acquired land. Where large tracts of land were required to be valued, valuation in transactions with regard to small plots was not to be taken as the real basis for determining the compensation of large tracts of land. It followed that where the market-value of large block of land was determined on the basis of sale transactions for smaller property, appropriate deduction had to be made for making allowance for the loss of the acquired land required to be used for internal development such as construction of roads, drains, sewers, open spaces and the expenditure involved in providing other amenities like water, electricity, etc. The extent of area required to be set apart had to be assessed by the Court having regard to the shape, size and situation of the concerned block of land.

21. In **Chandrashekar (dead) by LR's** (supra), the Hon'ble Apex Court found that the exemplar Sale Deed dated 30/12/1983 was executed 1 year 7 months and 17 days after the publication of the preliminary Notification on 13/05/1982 and yet considered the same for determining the market value of the acquired land. It was held that a deduction could be made keeping in mind the waiting period required to raise infrastructure, as also, the waiting period for the sale of developed plots and/or built-up areas. This nature of deduction may be placed under the head

“waiting period”. Illustratively again, deductions could also be made in cases where the exemplar sale transaction is of a date subsequent to the publication of the preliminary Notification and this nature of deduction may be placed under the head “de-escalation”. In **Raj Kumar** (supra), the Hon'ble Supreme Court held that in determining compensation for the acquired land, price paid in a bonafide transaction of sale by a willing seller to a willing buyer was adopted subject to such transaction being for land adjacent to the acquired land, proximate to the date of acquisition and possessing similar advantages. There were other well-known methods of valuation like opinion of experts and yield method. In the absence of any evidence of a similar transaction, it is permissible to take into account transaction of nearest land around the date of Notification under Section 4 of the Act by making a suitable allowance. There could be no fixed criteria as to what would be the suitable addition or subtraction from the value of the relied upon transaction. The Apex Court held at para 10 as below:

“10. It is well settled in determining compensation for acquired land, price paid in a bonafide transaction of sale by a willing seller to a willing buyer is adopted subject to such transaction being adjacent to acquired land, proximate to the date of acquisition and possessing similar advantages. Of course, there are other well known methods of valuation like opinion of experts and yield method. In absence of any evidence of a similar transaction, it is permissible to take into account transaction of nearest land around the date of notification under Section 4 of the Act by making a suitable allowance. There can be no fixed criteria as to what would be the suitable addition or subtraction from

the value of the relied upon transaction.”

It referred to the judgment in **Chimanlala Hargovinddas V/s. Land Acquisition Officer [(988) 3 SCC 751]** where the Apex Court had summed up the principle at para 4 and one of them being that even post-Notification instances could be taken into account (1) if they were very proximate, (2) genuine, and (3) the acquisition itself had not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

22. The learned Reference Court assessed the evidence of the respondent applicant, the material brought on record by him vis-a-vis the various facilities and amenities available to it and last but not the least the Sale Deed in support of his case. Besides, the Reference Court also assessed the evidence of the valuer who had examined the Sale Deeds and on a consideration of the judgment in **Ambya Kalya Mhatre** (supra), rightly came to a conclusion that the Reference Court could grant a higher compensation if the Court finds that the higher amount is the actual market value of the acquired land. The Reference Court for that matter considered the Sale instances dated 2/05/2008 and 12/05/2008 though in respect of small developed plots and that there was no evidence in rebuttal led by the respondents and on consideration of the fact that there was an escalation in the land prices by 10% each year held that the

market value of the acquired land as on the date of Section 4 Notification was ₹222/- per sq. mt. in respect of some survey holdings and ₹189/- per sq. mt. in respect of the two survey holdings. The learned Reference Court for that matter had also considered the plea raised on behalf of the appellant that the lands were agricultural tenanted lands and being hit by Section 2 of the Goa Land Use (Regulation) Act, 1991. However, the Reference Court considered the judgment of the Apex Court in **Goa Housing Board** (supra), and made an appropriate deduction in respect of the land qua the issue of tenancy as also that in **Vishnu Naik** (supra), and after making 50% deduction from the market value of the lands which were the subject matters of the Sale instances arrived at the market value of the lands at ₹189/- per sq. mt. and ₹222/- per sq. mt. The learned Reference Court for that matter was equally seized of the fact that the two survey holdings were the large tracts as compared to the other survey holdings and made further deduction of 15% and fixed the market value at ₹189/- per sq. mt. The findings thus rendered by the learned Reference Court therefore are not at all perverse much less illegal as to call for an interference in appeal.

23. On a consideration of these aspects of the matter and an analysis of the judgment under challenge no interference

whatsoever is called for and in view thereof, i pass the following order:

ORDER

(i) The appeal is dismissed with costs to the respondent.

NUTAN D. SARDESSAI, J.

NH