IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL No. 56 OF 2011

1. The Land Acquisition Officer,
   PWD (Cell), Altinho,
   Panaji, Goa.
2. The Executive Engineer
   Works Division I(Bldgs.)
   PWD, Panaji, Goa. … Appellants.

Versus

Damodar Ramnath Camotim
Bambolkar, r/o. Bambolkar Building,
Fontainhas, Panaji-Goa. … Respondent.

Ms. Amira Razaq, Government Advocate for the Appellants.
Mr. M. B. D'Costa, Senior Advocate with Mr. M. S. Joshi and Ms. Ms. Karishma Betquecar, Advocates for the Respondent.

WITH
CROSS OBJECTION No. 5 OF 2012
IN FIRST APPEAL No. 56 OF 2011

Damodar Ramnath Camotim
Bambolkar, r/o. Bambolkar Building,
Fontainhas, Panaji-Goa. … Appellant.

Versus

1. The land Acquisition Officer,
   PWD (Cell), Altinho,
   Panaji, Goa.
2. The Executive Engineer

Works Division I(Bldgs.)
PWD, Panaji, Goa. … Respondents

Mr. M. B. D'Costa, Senior Advocate with Mr. M. S. Joshi and Ms. Ms. Karishma Betquecar, Advocates for the Appellant.
Ms. Amira Razaq, Government Advocate for the Respondents.

AND
FIRST APPEAL NO. 58 OF 2011

1. The Land Acquisition Officer,
PWD (Cell), Altinho,
Panaji, Goa
2. The Executive Engineer
Works Division I(Bldgs.)
PWD, Panaji, Goa. … Appellants.

Versus

Shri Vassant Ramnath Camotim
Bambolkar, r/o. Bambolkar Building,
Fontainhas, Panaji-Goa. … Respondent.

Ms. Amira Razaq, Government Advocate for the Appellants.
Mr. M. B. D'Costa, Senior Advocate with Mr. M. S. Joshi and Ms. Karishma Betquecar, Advocates for the Respondent.

WITH
CROSS OBJECTION No. 11 OF 2011
IN
FIRST APPEAL No. 58 OF 2011

Shri Vassant Ramnath Camotim
Bambolkar, r/o. Bambolkar Building,
Fontainhas, Panaji-Goa. … Appellant.

Versus

1. The land Acquisition Officer,
   PWD (Cell), Altinho,
   Panaji, Goa

2. The Executive Engineer
   Works Division I(Bldgs.)
   PWD, Panaji, Goa. … Respondents.

Mr. M. B. D'Costa, Senior Advocate with Mr. M. S. Joshi and Ms. Karishma Betquecar, Advocates for the Appellant.
Ms. Amira Razaq, Government Advocate for the Respondents.

Coram : N. M. Jamdar,
Prithviraj K. Chavan, JJ.

Judgment Reserved on : 13 March 2018
Judgment Pronounced on: : 6 April 2018

JUDGMENT: (Per. Prithviraj K. Chavan, J.)

Feeling aggrieved with the impugned Judgments and Award dated 25.11.2010 passed by the Principal District Judge, North Goa in Land Acquisition Case no. 22 of 2001 and Land Acquisition Case no. 20 of 2001, the State has preferred these two Appeals alongwith Cross Objection by the Respondents, bearing No. 11 of 2011 in First Appeal no. 58 of 2011 and Cross Objection bearing No. 5 of 12 in First Appeal no. 56 of 2011. Since the issues raised in both these Appeals are connected, they are disposed of by this common Judgment.

2. The facts of the case can be summarised as follows:

In First Appeal No. 58 of 2011, the Respondents' land admeasuring 2663 sq.mts from P.T. Sheet Chalta no. 110/5, 110/13 and 110/8 situated at Altinho, Panaji was acquired by the Government for the purpose of beautification of open space for establishing park, recreation space and jogging track. The Notification under Section 4 came to be issued on 29 May 1996. The Land Acquisition Officer (for short, 'LAO') passed an Award on 14 January 1998 in Land Acquisition proceedings no. 10/370/96/LAO-PWD. The possession of the said land was taken on 26 November 1999 by fixing the rate @₹300/- per square metre. The Respondent had sought for enhancement to the tune of ₹5500/- per square metre before the Reference Court on the premise that the rate Awarded by the LAO was inappropriate, inadequate, insufficient and did not represent the true market value of the acquired land. It is the contention of the Respondent that the LAO had ignored the fact that the land is situated in a prime locality having building potential which is well connected with roads. There are amenities such as electricity and water supply and located close to educational institutions, hospital and other recreational centres. There are many bungalows and buildings in the vicinity.

3. In support, the Respondent examined himself and in support of his contention, tendered Sale Deeds dated 11 August 1989 at Exhibit 14, 1 November 1996 at Exhibit 15 and 7 September 1995 at Exhibit 16. He had also examined AW-2, Subhashchandra Bhobe, Registered Valuer. On the other hand, the Appellant had examined its Engineer, Shri S. S. Tirodkar.

4. The learned Principal District Judge, after evaluating the evidence of the witnesses of the respective parties and considering the ratio laid down by the Apex Court in the case of *Krishi Utpadan Mandi Samiti Sahaswan v. Bipin Kumar & Anr.,*[1]*,* passed the impugned Award by fixing the market value of the acquired land ₹1920/- per square metre as against ₹300/- per square metre fixed by the LAO alongwith interest and other ancillary benefits.

5. Learned Principal District Judge took note of the fact that this Court in *Edgar Francisco Valles v/s. Deputy Collector & Sub-Divisional Officer*[2] was seized of the fact that the property bearing P.T. Sheet no. 104/7 abutting two public roads situated at Altinho, Panaji, admeasuring 265 sq.mts. was acquired. It was situated on the plateau of the hillock of Altinho with Doordarshan

1 (2004) 2SCC 283

2 First Appeal no. 172 of 2010

Kendra, Electricity Department, bungalow of the Chief Minister, Ministers, Senior Government Servants like the Chief Secretary, Director General of Police and Secretaries, located within a radius of 500 metres. This Court was also equally seized of the fact that the Government Polytechnic, CMM Hospital, Nirmala College for B.Ed, Dempo College of Commerce and bungalows of businessmen, were all situated within a radius of 500 metres and there was availability of bus stop plied by KTC buses. This Court was also seized of the fact that the acquired land was situated in a posh and developed area with all these high profile people residing within the radius of 500 metres. This Court, therefore, awarded compensation @₹1000/- per square metre. The learned Principal District Judge also observed that evidence of PW-1, Vassant remained unshaken during the cross-examination. His evidence was duly corroborated by AW-2, Sharadchandra Bhobe, the Registered Valuer. The learned District Judge also observed that even the Appellants Witness, S.S. Tirodkar supported the Respondent's case so far as the residence of Chief Minister and other VIP bungalows located in the vicinity are concerned.

6. We have heard Ms. Amira Razaq, the learned Government Advocate for the Appellants and Shri M. B. D'Costa, the learned Senior Counsel for the Respondent.

7. The learned Government Advocate while assailing the impugned Judgment contended that the area acquired was reserved as open area where no construction was permissible. There is no material to show any development between 1992 to 1996. There is no evidence of sub-division. She further argued that Sale Deeds pressed into service by the Respondent cannot be considered as comparable instances. She further contended that the learned Principal District Judge,while placing reliance on the Judgment of this Court in the case of *Edgar Francisco Valles v/s. Deputy Collector & Sub-Divisional Officer in First Appeal no. 172 of 2010* held that the market value of the land on 16 March 1992 was ₹1000/- but further erred in increasing the price of the land on account of better amenities. This fact has already been considered by this Court in the case of Edgar Valles (supra). She further contended that learned Principal District Judge erred in holding that the land lying on the slope would fetch higher price without there being any material on record to indicate the same. Learned Counsel placed reliance in the case of *Digvijay Graharachana Mandal Solapur and another v/s. State of Maharashtra*[3].

8. On the other hand, Shri D'Costa, the learned Senior Counsel appearing for the Respondents assailed the impugned

3 2012(4) MLJ 201

Judgments and Award on various grounds. It is contended by the learned Senior Counsel that the learned District Judge ignored the two Sale Deeds dated 1 November 1996-Exhibit-15 and 7 September 1995-Exhibit-16 without assigning any reason. These two Sale Deeds are recent and the market value of the land acquired could have been properly assessed as these two Sale Deeds could have reflected most comparable instances which provides the approximate market value of the land acquired. These are genuine instances which ought to have been considered by the learned Principal District Judge.

9. It is contended by the learned Senior Counsel that the sale instance dated 1 November 1996 was executed hardly a few days after Section 4 Notification. The sale was done pursuant to an agreement dated 14 June 1995 which had already fixed the price. It is also argued that the said land is just 500mts away from the acquired land on the St. Inez junction, near TV Centre. But, unlike the acquired land, this plot has no view of Panaji city. As such, it is argued that the sale instance dated 1 November 1996 is very proximate and genuine which has not been disputed by the Government as regards its genuineness and authenticity. Learned Senior Counsel took us through the evidence of the Respondent as well as the evidence of the Appellants Witness. Learned Senior

Counsel further argued that the features of the land and the characteristics of the construction around the acquired land as deposed to by Respondents Witness-1 - Vassant Bambolkar is not only supported by an expert witness but also by Shri Tirodkar-witness of the Appellant. According to the learned Senior Counsel, the Principal District Judge failed to give due consideration to the situation of the acquired land, nature of development around and scarcity of the land in that locality. The land is situated in the capital city of the State in an area occupied by bungalows of Ministers, affluent people, industrialists, Chief Secretary, etc. As such, according to the learned Senior Counsel, the market value of the acquired land will have to be at least @₹3500/- per square metre with all consequential statutory benefits under the Act. He placed reliance on the following decisions. *Krishi Utpadan Mandi Samiti Sahaswan vs. Bipin Kumar & Anr.,*[4]*, Impulse India Private Limited v/s. Union of India And Anr.,* [5] *and Jage Ram vs. Union of India in Civil Appeals Nos. 10982-11033 of 2014* [6].

10. We shall first deal with the evidence of the parties in Appeal no. 58 of 2011 with Cross Objection no. 11 of 2011. The Respondent in this case in his affidavit has stated that the land in

4 *(2004) 2 SCC 283*

5 *(2017) 13 SCC 557*

6 *(2017) 13 SCC 563*

question is situated near the Government Polytechnic at Altinho, Panaji-Goa and is in close proximity of Polytechnic hostel, TV Centre, posh bungalows of businessmen and industrialists in Goa, Government officers' quarters, Ministers' bungalows, mental hospital, etc. According to him, among all the lands at Altinho, acquired land is of *bharad* type and is a levelled land having scenic view all around and is situated in the settlement zone. He further testified that the water, electricity and telephone lines are running close-by along the adjacent road and civic amenities such as educational institutions, religious places, hospitals, Government offices are located in close proximity. According to Respondent no. 1, the Government Lyceum buildings are situated at a distance of about 500mts to 600mts from the acquired land, the Mental Hospital is at a distance of about 100mts from the acquired land. The Polytechnic Hostel is at a distance of about 300 mts from the acquired land. There is Bishop's palace at a distance of about 400-500mts from the acquired land, All India Radio Station, Dempo's bungalow, Teachers Training College are at a distance of about 500mts. Kala Academy complex is at a distance of about 1.5kms, Mary Immaculate Church at a distance of about 1 km from the acquired land. He further testified that the land acquired is abutting the Panaji-Altinho road where city bus transport is freely available to the residents at the time of acquisition and as otherwise the locality is inhabited mostly by affluent people of Panaji city. He further deposed that the acquired land being levelled one, abutting the road and crossroads, no further development was required. No sub-division also was required to be made as the land in question was reserved for constructing the bungalows for the applicant and his brothers. It is pertinent to note that in Appeal no. 56 of 2011 Respondent-Damodar has unequivocally admitted that it is an agricultural land and that they did not apply for conversion of the same into non-agricultural one. He further admits that no agricultural activity was undertaken by him. We shall discuss his evidence in the subsequent paras of the Judgment being relevant. The topographical situation and other factors deposed to by the Respondent-Vassant Bambolkar, have not been disputed by the Appellant.

11. The evidence of Respondents Witness-2, Subhashchandra Bhobe, who is an Architect by profession is required to be taken with a pinch of salt. The Respondent has examined this witness in order to prove the valuation of the acquired land. Sum and substance of his evidence is that he is a registered valuer with the Central Board of Direct Taxes and he has been making the valuation of the immoveable properties since the year 1973. He had inspected the acquired land at the instance of the Respondent on 27 March 1998 to evaluate the fair market value of the property as on 8

October 1996. The inspection was carried out after the Section 4 Notification. He testified that though he inspected the land in question in 1998, he was fully aware of the locality as he was going for inspection of land in that area and examining the sale instances for comparison. This witness has also reiterated the proximity of the acquired land and various facilities as deposed to by the Respondent-Vassant Bambolkar. He had referred to two Sale instances viz., Kamlakant Govinda Thaly & Ramchandra Estate Development and Investment Co. Pvt. Ltd., and between Robinson Gracias while preparing his report. Admittedly, both these Sale Deeds referred to were of developed plots of land while the acquired land was an open plot of land.

12. During his cross-examination he admits that the Registration Certificate given to him by the Central Board of Direct Taxes does not permit him to do the valuation of agricultural land. The Registration is only for Wealth Tax purpose which is under the Wealth Tax act. If that being so, the evidence of this witness would hardly be of any assistance to the Respondent. His cross-examination further reveals that he was charge-sheeted by the police under Anti-Corruption Act in respect of a valuation report given by him to one Mr. Narkar. He admits that the charge against him was that he had given inflated valuation report. In view of this candid admission of

the witness coupled with the fact that he was not an authorised person to make valuation of the land, his evidence ought to have been discarded by the learned Principal District Judge. We, therefore, cannot place any reliance on such a witness.

13. The case thus revolves only around two Sale Deed pressed into service on behalf of the Respondents. The Apex Court in the case of *Chimanlal Hargovinddas vs. Spl.L.A.O*[7] has summarised the principles in respect of determination of compensation as under:

> *(1) A reference under section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.*
>
> *(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.*

7 (1993) 3 SCC 751

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under section 4 of the Land Acquisition Act (dates of Notifications under sections. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) The exercise indicated in Clauses (11) to (13) has to be undertaken in a common sense manner as a

prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors:

Plus Factors	*Minus Factors*
1. smallness of Size	*1. largeness of area*
2. proximity to a road	*2. situation in the interior at a distance from the road*
3. frontage on a road	*3. narrow strip of land with very small frontage compared to death*
4. nearness to developed area	*4. lower level requiring the depressed portion to be filled up*
5. regular shape	*5. remoteness from developed locality*
6. level vis-a-viz land	*6. some special disadvantageous under acquisition. disadvantageous factor which would deter a purchaser.*
7. special value for an owner of an adjoining property to whom it may have some very special advantage.	

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to

1000 sq. yds. cannot be compared with a large tract or block of land of say 1000 sq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be looked up, will be longer or shorter and the attendant hazards.

(16) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense."

14. Keeping the above mentioned guidelines in mind, we will now deal with the evidence in the form of sale instance brought on record by the Respondent to determine the market value of the acquired property. The Sale Deeds are dated 1 November 1996 and

7 September 1995. By Sale Deed dated 1 November 1996 one Yusuf Karim purchased land from Shri Uday Kamat with Rasiklal Mohanlal Gangani as the confirming party situated in plot chalta no. 73 of P.T. Sheet no. 74 admeasuring 610 sq.mts for a consideration of Rs.17 lakhs @ ₹2787/- per square metre. It is testified by the Respondent that this land is situated along the road from TV Centre to St. Inez junction about 500mts away from the acquired land and having a view of St. Inez, Taleigao locality. This is also a *bharad* type of land similar to that of acquired land and these plots of land are identical to the acquired land except there is a slope in this sale instance. This plot is comparably smaller in size than the acquired land as is evident from the contents of the Sale Deed. This Sale Deed came to be executed within six months of Section 4 Notification dated 29 May 1996 and, therefore, the Respondent ought to have examined executor of the Sale Deed. No reason has been assigned as to why a party to the Sale deed was not examined to prove its authenticity. From the recitals of the Sale Deed it is difficult to determine the exact location of the land as to whether it is in the vicinity or in close proximity of the acquired land. There is no evidence on record to hold that this particular Sale Deed is the most comparable instance which would provide the market value of the land. Though the Appellant has not seriously cross-examined the Respondent in that respect, except by suggesting that the Sale Deeds -Exhibit-14, 15 and

16 are not comparable to the acquired land, there is no other evidence to hold that the said transaction was genuine in the light of the fact that the Sale Deed came to be executed six months after the Section 4 Notification. Thus, the Sale instance in the form of Sale Deed dated 1 November 1996 cannot be considered as a genuine sale instance.

15. As far as the Sale Deed dated 7 September 1995 is concerned, the Respondent in his cross-examination admits that the said land is situated on the main road of Altinho, prior to All India Radio. There is one storeyed building in the said land. The said Sale Deed dated 7 September 1995 was in respect of the land with one storeyed house admeasuring 1189 sq.mts surveyed under Chalta No. 40, 40A and 40B of P.T. Sheet no. 76. According to the Respondent, its price was ₹89,00,000/-. This land was occupied by Portuguese Consulate for their edifice. The Respondent testified that even assuming that the value of the house, except the land, is taken @ ₹2,000/- per sq.mts with a plinth area of 280 sq.mts, the minimum price for the land comes to ₹5250/- per sq.mts after taking the value of the house standing thereon. According to him, the said property is also *bharad* type of land and situated at about 700mts away from the acquired land. This land is also at a slope and does not have a panaromic view enjoyed by the acquired land. As already stated

above, in the absence of evidence of any of the parties to the Sale Deed dated 1 November 1996 and 7 September 1995 it would be difficult to place implicit reliance on the recitals of these Sale Deeds keeping in mind the observations made by the Supreme Court in the case of *Chimanlal Govinddas (*supra). The law is clear as to the burden of proving inadequacy of the compensation is on the claimants.

16. The Appellant Witness, S. S. Tirodkar, in his evidence deposed about the acquired land. His evidence indicates that the acquired land is a plateau which is almost levelled and is bound on three sides by public road. As already stated above, he supported the evidence of the Respondent in material particulars so far as the situation and the surrounding area is concerned and also the amenities and facilities which are available. Further, he made it very clear that the acquired land was reserved as an open space and no construction whatsoever was permissible in the said land. Though there is no supportive document tendered by the Government, nevertheless, there is no suggestion to him in cross-examination that there is no documentary evidence to that effect. He testified that although there are some amenities, they are of no consequences as the claimants are not constructing any buildings in the said space and therefore, the same has been converted into a jogging park. He

testified that the LAO has assessed the value of the land correctly by considering all relevant factors while arriving at compensation, which is just, fair and proper. There is no reason to disbelieve this witness who is a public servant and has no reason to depose falsely.

17. This Court in *Edgar Vales* (supra) while dealing with an appeal from the Judgment of the Reference Court in respect of acquisition of the land, held that the rate of the acquired land on the date of section 4 Notification dated 6 March 1992 @ ₹1000/- per square metre. It was fixed @ ₹100 per square metre by the LAO and was enhanced by the Reference Court to @ ₹200 per square metre. The land in *Edgar Vales* (supra) was situated in P.T. Sheet no. 104/7 located at Altinho, Panaji, abutted by two roads. In the said case the land was similarly situated at the plateau of hillock of Altinho with Doordarshan Kendra, Electricity Department, bungalow of Chief Minister, Ministers, Senior Government Servants like Chief Secretary, Director General of Police and Secretaries located within a radius of 500 mtrs. This Court also took note of the fact that the Government Polytechnic College, CMM Hospital, Nirmala College of B.Ed, Dempo College of Commerce and bungalows of businessmen were all situated within a radius of 500 mts and there was availability of a bus-stop. It was also noted that the acquired land was situated in a posh and developed area and affluent people residing within 500mts

radius. This Court has also considered the Judgment in *Krishi Utpadan Mandi Samiti Sahaswan v. Bipin Kumar & Anr (2004)2SCC 283.* The learned Principal District Judge has, therefore, correctly considered the Judgment of Edgar Valles delivered by this Court as the land acquired in that case was from the same area. There is no reason to deviate from the view taken by this Court in *Edgar Valles* (supra). In view of the guidelines of the Supreme Court in the case of *Chimanlal Hargovinddas vs. Spl.L.A.O (*supra), the land which was acquired in the case of *Edgar Valles* can be said to be the most comparable instance on the basis of proximity from time angle as well as proximity from situation angle in comparison with Sale Deed dated 1 November 1996 and 7 September 1995.

18. Turning to the First Appeal no. 56 of 2011 with Cross Objection no. 5 of 2012, the facts and evidence is almost similar. In First Appeal no. 56 of 2011 the Appellant had acquired land in P.T. Sheet Chalta No. 110/9 and 110/5 admeasuring 1309sq.mts which admittedly belongs to the Respondent-Damodar Bambolkar who is the brother of Respondent-Vassant Bambolkar in First Appeal no. 58 of 2011. Even the evidence adduced in this case is similar to that of the evidence adduced by the Respondent-Vassant Bambolkar in First Appeal no. 58 of 2011. The evidence of AW-2, Subhashchandra Bhobe, the Architect and so called Valuer as well as the evidence of

S.S. Tirodkar, Assistant Engineer of PWD in this Appeal is also on the same lines and, therefore, need not be reiterated. The Appellant in First Appeal No. 56 of 2011 has similarly prayed for setting aside the impugned Judgment and Award dated 25 November 2010 passed by the learned Principal District Judge, Panaji by maintaining that an amount of ₹300/- per sq. mts awarded by the LAO was just and proper. PW-1, Damodar Bambolkar, had reiterated on oath as regards the situation, topography and the surrounding area of the acquired land as deposed to by his brother Vassant Bambolkar in First Appeal no. 58 of 2011. In short, PW-1, Damodar Bambolkar deposed that the acquired land is surrounded by and situtated near Government Polytechnic and in the close proximity of the Polytechnic hostel, TV Centre, posh and modern bungalows of big industrialists and entrepreneurs, Chief Minister's bungalow, Ministers' bungalows, mental hospital, etc.

19. It would be interesting to see the cross-examination of the Respondent wherein he has clearly admitted that the acquired land is an agricultural land which is *bharad* type of land. However, no agricultural activity was undertaken by him. He further admits that he had not undertaken any steps for conversion of agricultural land into non-agricultural one. These admissions of the Respondent gave a vital blow to their case which falsifies the contention of the

Respondents in both Appeals that the land was sub-divided for the purpose of erecting the construction for the Respondents and their brothers, which is a very important minus factor in the given set of facts and circumstances which will definitely have a bearing in assessing the market value of the acquired land on the date of publication of the Notification under Section 4 of the Land Acquisition Act. What emerged from the above is that:

a) the acquired lands are agricultural lands

b) No steps were taken for conversion into non-agricultural land, and

c) No agricultural activity was undertaken by the Respondents.

This is significant in the light of the fact and as has been candidly admitted by the Respondent in his further cross-examination that all the sale instances referred to by him are in respect of developed plots. Obviously, the market value of developed plots would be on much higher side than that of an agricultural land. The same sale instances dated 1 November 1996 and 7 September 1995 have been pressed into service by the Respondent which have already been discussed hereinabove.

20. Thus, it can be seen that the acquired land in both the Appeals differ from the sale instance relied upon by the Respondent

in as much as the size of the land of the sale instances are comparably quite smaller than the acquired land. Secondly, the sale instances are approved sub-divided plots and those plots have conversion sanad. The acquired lands admeasure 2663 sq.mts and 1330 sq.mts respectively. The acquired lands neither have conversion sanad under the Land Revenue Code nor the approved sub-division in terms of the Goa Town and Country Planning Development Act which has been admitted by the Respondent in his cross-examination. The Hon'ble Supreme Court in the case of *Krishi Utpadan Mandi Samiti Sahaswan v. Bipin Kumar &* Anr.,(supra) while discussing the aspect of market value of the land and appreciation of evidence as regards increase of 15%, observed thus:-

> *"7. It has been held by this Court in the case of Jawajee Nagnatham v. Revenue Divisional Officer that market value under Section 23 of the Land Acquisition Act, 1894 cannot be fixed on the basis of a basic valuation register maintained by the registering authority for collection of stamp duty. Therefore, the reliance by the Reference Court on the values of land fixed by the District Magistrate for stamp duty purposes is clearly erroneous. For the purposes of the Land Acquisition Act the market value must be determined on the basis of sale deeds of comparable lands. In this case the Land Acquisition Officer had taken note of one such sale deed where the price was Rs 15.37 per sq yard. The Reference Court also had before it the sale deed by which the respondent purchased a portion of the acquired land. As stated above, the sale deed was for Rs*

15.40 per sq yard. Section 92 of the Evidence Act precludes a party from leading evidence contrary to the terms of a written document. It was, therefore, not open to the respondent to urge that, even though his sale deed showed a price of Rs 15.40 per sq yard the real market value was Rs 120 per sq yard. To permit a party to so urge would be to give a premium to dishonesty. Parties who undervalue their documents, for purpose of payment of stamp duty, cannot be allowed to then claim that their own documents do not reflect the correct market value. Therefore, as per sale instances of the comparable lands, the market value, on dates of sales, were in the region of Rs 15.37 to Rs 15.40 per sq yard.

8. However, there is evidence of high potentiality. The increase of 15% given by the High Court cannot, therefore, be said to be unreasonable. Of course, the 15% increase has to be on Rs 15.40 which is the figure shown in the sale deed. It cannot be on Rs 120 as wrongly taken by the High Court. The High Court also erred in considering only three years' increase whereas in fact there is four years' difference between the respondent's sale deed and the acquisition proceedings. Thus taking an increase of 60% over the price of Rs 15.40 per sq yard, the value comes to Rs 24.64 per sq yard. We, accordingly, set aside the orders of the Reference Court and the High Court and fix the value at the rate of Rs 24.64 per sq yard. The respondent will also be entitled to solatium and other statutory benefits under the Land Acquisition Act, 1894."

This Court in *Edgar Valles* (supra), placed reliance on the Judgment of the Hon'ble Supreme Court in *Krishi Utpadan Mandi Samiti Sahaswan v. Bipin Kumar & Anr.,* while arriving at the market value of the acquired land. Considering the ratio laid down by the Supreme Court in *Krishi Utpadan Mandi Samiti Sahaswan v. Bipin Kumar & Anr.* as well as guidelines in *Chimanlal Hargovinddas vs. Spl.L.A.O.* (supra), we do not feel that any interference is required in the impugned Judgments.

21. In the case of *Impulse India Private Limited v/s. Union of India And Anr.,*(supra) which is pressed into service by the learned Counsel for the Respondent, it is observed by the Supreme Court that while awarding compensation on the basis of comparable sales method, annual escalation is also to be granted. It is observed thus:

> *Reference Court and the High Court justified in assigning valid reasons for not relying upon sale deed dt. 24-1-1974 relied upon by claimants, but have erred in ignoring to consider sale deed dt.19-3-1971 produced by respondents. No evidence to show the similarity in location/situation of acquired land vis-a-vis land of sale deed dt. 24-1-1974. Moreover, land involved in sale deed dt. 24-1-1974 is relatively very small piece of land having dimension to extent of 1/4th of land in question. No evidence led by claimants to show that land covered under sale deed dt. 24-1-1974 is having similar characteristics as land in question. Both courts below have rightly not relied upon sale deed dt. 24-1-1974. However, no reason to ignore sale deed produced by respondents dt. 19-3-1971 in*

> *respect of 11 bighas and 10 biswas of land situated in village R. Land in question as well as land covered under same sale deed are approximately having similar dimension and are situated in same village. Some sort of guesswork is necessary while determining compensation for land acquired perceiving from viewpoint of prudent purchaser. As acquisition is of 1973, compensation determined relying upon same sale deed particularly when there is no other reliable material on record by adding 15% normal escalation taken, per year by Supreme Court in recent times per year keeping in mind escalation in price of lands day by day.*

Thus, escalation @ 15% is considered to be normal by the Supreme Court in various Judgments looking to the fact of escalation of price of lands day by day. As such, we find that the impugned Judgment and Award passed by the learned District Judge in both the Appeals need not be interfered with. The learned Principal District Judge has rightly placed reliance on the Judgment of this Court in *Edgar Francisco Valles v/s. Deputy Collector & Sub-Divisional Officer (*supra) and after having considered the evidence on record, arrived at the correct market value of the acquired land.

22. We, therefore, hold that First Appeal no. 56 of 2011 with Cross Objection no. 5 of 2012 and First Appeal no. 58 of 2011 with Cross Objection no. 11 of 2011, deserve to be dismissed and are, accordingly, dismissed. There is no order as to costs. Needless to say

that the Claimants/Respondents shall be entitled to statutory benefits including interest on solatium amount as awarded by the learned Principal District Judge in the impugned Judgments and Award.

Prithviraj K. Chavan , J. ***N.M. Jamdar, J.***