

(2003) 10 KAR CK 0004

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 3514 of 2001

K. Gopala Gowda

APPELLANT

Vs

The Special Land Acquisition Officer, KIADB and Others

RESPONDENT

Date of Decision : 07-10-2003

Acts Referred:

Karnataka Industrial Area Development Act, 1966 — Section 28 (1), 28 (4)
Karnataka Land Revenue Rules, 1966 — Rule 107
Karnataka Stamp (Constitution of Committee for Estimation of Property) Rules, 1992 — Rule 3, 4
Karnataka Stamp Act, 1957 — Section 45 B, 68
Land Acquisition Act, 1894 — Section 18, 4 (1), 54 (1)

Citation : (2004) 1 KCCR 333

Hon'ble Judges : S.R. Nayak, J; S.B. Majage, J

Bench : Division Bench

Advocate : B.V. Acharya and M. Sudhakar Pai, for the Appellant; S. Vijayashakar for King and Patridge for Respondent 3 and Basavaraj V. Sabarad, for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—This appeal preferred by the owner of the acquired land u/s 54(1) of the Land Acquisition Act, 1894, for short, "the Act", is directed against the judgment and Award dated 19.4.2001 passed in L.A.C. No. 70 of 1999 on the file of the II Additional City Civil Judge at Bangalore, for short, "the Civil Court", determining the market value of the acquired land at the rate of Rs. 2,25,000/- per acre. In this appeal, the Appellant-owner has claimed the compensation at the rate of Rs. 8,00,000/- per acre.

2. The facts of the case, in brief, are as follows: 2 acres 37 guntas of land comprised in Sy. Nos. 54 and 55 situated in Meenukunte Village, Jala Hobli, Bangalore North Taluk, Bangalore Urban District, which land hereinafter shortly referred to as "the schedule land", was acquired by the Karnataka Industrial Areas Development Board - second Respondent herein under the provisions of

Karnataka Industrial Areas Development Act, 1966, hereinafter shortly referred to as "the KIAD Act", for the benefit of the I.T.C. Limited-third Respondent herein. The preliminary notification issued u/s 28(1) of the Karnataka Industrial Areas Development Act, was published in the official gazette on 29.6.1994 and the final notification u/s 28(4) of the said Act dated 24.2.1995 was published in the official gazette on 28.2.1995. The possession of the schedule land was taken over on 16.1.1996. The Special Land Acquisition Officer, K.I.A.D., after holding award enquiry, passed the award on 15.2.1999 determining the market value at the rate of Rs. 1,25,278/- per acre, placing reliance on sales statistics. The Appellant-owner being aggrieved by the award of the Special Land Acquisition Officer, on 25.2.1999, filed an application u/s 18 of the Act, seeking reference of his claim for more compensation for the schedule land at the rate of Rs. 8,00,000/- per acre. The Civil Court, placing reliance on Exhibit-P6 which is a Sale Deed dated 11.1.1984, under which 1 acre of land was sold for Rs. 1,95,000/- and allowing appreciation in value of the schedule land, determined the market value of the schedule land at the rate of Rs. 2,25,000/- per acre. Hence, this appeal by the aggrieved owner of the schedule land seeking higher rate of compensation.

3. We have heard Sri B.V. Acharya, learned Senior Counsel for the Appellant and Sri S. Vijay Shankar, learned Senior Counsel for the third Respondent-beneficiary and Sri Basavaraj v. Sabarad for Respondent Nos. 1 and 2. Sri B.V. Acharya would contend that the evidence adduced by the Appellant-owner before the Civil Court would justify determination of the market value of the schedule land at the rate of Rs. 8,00,000/- per acre; the Civil Court has seriously erred in brushing aside the recommendation of the Advisory Committee, as also the resolution of the Board offering to pay compensation at the rate of Rs. 10,00,000/- (inclusive of statutory benefits) per acre for the schedule land. According to Sri Acharya, since the Board was a willing buyer and had agreed to buy the schedule land at the rate of Rs. 10,00,000/- per acre, the Civil Court ought to have held that the real market value of the schedule land on the date of preliminary Notification u/s 28(1) of the Karnataka Industrial Areas Development Act was Rs. 10,00,000/- per acre. Sri Acharya would contend that the Civil Court is not justified in ignoring Exhibit P-16, which is a Notification dated 13.7.1996 issued under the Karnataka Stamps Act, 1957 estimating the market-value of the land situated in Meenukunte Village at the rate of Rs. 10,00,000/- per acre for the purpose of registration of instruments and Exhibit P-17 which is the newspaper cutting and which establishes that the market value of the schedule land at the relevant point of time, was about Rs. 10,00,000/- per acre. Sri Acharya would alternatively contend that the Civil Court is not justified in not placing reliance on Exhibit P-18 on the ground that the land concerned was acquired for International Airport at Devenahalli. According to Sri Acharya, the lands covered by Exhibit P-18 and Exhibit P-15 are situate far away from Bangalore City than the schedule land and that the schedule land is undoubtedly far superior to the land covered by Exhibit P-15 and Exhibit P-18. Since in respect of Exhibit P-18

lands, the Board has paid the compensation at the rate of Rs. 5,00,000/- per acre, Sri B.V. Acharya would maintain that the market value of the schedule land is undoubtedly much more than Rs. 5,00,000 per acre. Sri B.V. Acharya, would point out that preliminary Notification u/s 4(1) of the Act was issued with regard to the land covered by Exhibit P-18 on 7.7.1994, whereas preliminary Notification u/s 28(1) of the Karnataka Industrial Areas Development Act with regard to the schedule land was published on 14.7.1994. Sri Acharya would further contend that the Civil Court is not justified in not placing reliance on Exhibits P-21 and P-24 on the ground that there is no evidence to show the land covered by them and the schedule land are similar. According to Sri B.V. Acharya, the above finding of the Civil Court, is perverse. Sri Acharya would conclude by contending that the entire evidence on record, if taken cumulatively, would justify determination of the market value of the schedule land at the rate of Rs. 8,00,000/- per acre land and in that view of the matter, the award passed by the Civil Court cannot be sustained.

4. Sri Vijay Shankar, learned Senior Standing Counsel for the third Respondent, while supporting the impugned award, would maintain that the Civil Court is quite generous in determining the market value at the rate of Rs. 2,25,000/- placing reliance on Exhibit P-6. According to Sri Vijay Shankar, the Civil Court ought to have deducted conversion fee and development charges while determining the market value on the basis of Exhibit P-6 and during the relevant point of time, the conversion fee fixed under Rule 107 of the Karnataka Land Revenue Rules was at the rate of Rs. 54,450/- per acre. Sri Vijay Shankar would contend that the resolution of the K.I.A.D.B. dated 24.5.1997 marked as Exhibit P-12 and the letter dated 5.7.1997 of the K.I.A.D.B. to the third Respondent marked as Exhibit P-19, cannot be a legal basis for determining the market value at the rate of Rs. 8,00,000/- per acre; similarly, Exhibit P-18, as per which an offer to pay global compensation at the rate of Rs. 5,00,000/- was made, cannot be a legal basis to determine the market value of the schedule land at that rate. Sri Basavaraj V. Sabarad, learned Counsel appearing for Respondent Nos. 1 and 2 would support the impugned award and adopt the same contentions advanced by Sri Vijay Shankar.

5. Having heard the learned Counsel for the parties, the only point that arises for our decision is whether the market-value of the schedule land determined by the Civil Court at the rate of Rs. 2,25,000/- per acre is legal and justified and if not, what shall be the correct market-value of the schedule land.

6. As a preface to the consideration of the above question, it will be useful and guiding for decision-making, at the threshold, to notice relevant norms and principles governing valuation of the acquired lands for non-agricultural purposes. When a land is acquired for a public purpose by the State by way of compulsory acquisition by invoking eminent domain power, the owner of the acquired land should be adequately compensated. However, perception of the adequacy of an owner of the acquired land cannot be a basis to determine

adequacy of the compensation; adequacy of the compensation in the context of Section 23 of the Act is fair and reasonable compensation, or, in otherwords, a compensation determined on the basis of the actual market value of the acquired land as on the date of Section 4(1) Notification. In a given case, what could have been a fair and reasonable market-value of the land concerned as on the date of Section 4(1) Notification is undoubtedly a question of fact and that question has to be answered on the basis of evidence, direct and circumstantial, probabilities arising in that case. No straight-jacket formulae can be laid down to determine fair and reasonable market-value of an acquired land. Any rigid, straight-jacket formula instead of aiding right decision-making may lead to unjust decisions. Therefore, it is just and appropriate that the decision as to what shall be a fair and reasonable compensation in a given case should be left to good conscience and judicious mind of the Court to be exercised fairly having due regard to the evidence on record.

7. The Supreme Court in *Administrator General of West Bengal Vs. Collector, Varanasi*, observed thus:

The determination of market value of a piece of land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market value of a piece of property, for purposes of Section 23 of the Act., is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market value, as one author put it, is the prediction of an economic event, viz, the price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantage and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are resorted to if the evidence of sale of similar lands is not available.

8. The Supreme Court in the case of *Land Acquisition Officer, Eluru and Others Vs. Jasti Rohini (Smt) and Another*, held thus:

The question of fixation of market value is a paradox which lies at the heart of the law of compulsory purchase of land. The paradox lies in the facts that the market value concept is purely a phenomenon evolved by the Courts to fix the price of land arrived between the hypothetical willing buyer and willing seller bargaining as prudent persons without a medium (*sic modicum*) of constraints or without any extraordinary circumstances. But the condition of free market is the very opposite of the condition of the compulsory purchase which is *ex-hypothesi*, a situation of constraints. Therefore, to say that for compulsory purchase, compensation is to be assessed and market value is to be determined in that state of affairs has to be visualised in terms by its direct opposite. To solve the riddle, Courts have consistently evolved the principle that the present value as on the date of the compulsory acquisition comprised of all utility reached in a competitive field as on the date of the notification and the price on which a

prudent and willing vendor and a similar purchaser would agree. The value of the land shall be taken to be the amount that the land if sold in the open market by a willing seller might be expected to realise from a willing purchaser. A willing seller is a person who is a free agent to offer his land for sale with all its existing advantages and potentialities as on the date of the sale and willing purchaser taking all factors into consideration would offer to purchase the land as on the date of the sale.

9. The same principle was reiterated by the Supreme Court in Special Deputy Collector and another etc. Vs. Kurra Sambasiva Rao and others, etc., in the following words:

7. Whether fair and reasonable and adequate market value is always a question of fact depends on the evidence adduced, circumstantial evidence, and probabilities arising in each case. The guiding star or the acid test would be whether a hypothetical willing vendor would offer the lands and a willing purchaser in normal human conduct would be willing to buy as a prudent man in normal market conditions prevailing in the open market in the locality in which the acquired lands are situated as on the date of notification u/s 4(1) of the Act; but not an anxious buyer dealing at arm's length with throw away price, nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value. The Judge should sit in the arm chair of the said willing buyer and seek an answer to the question whether in the given set of circumstances as a prudent buyer he would offer the same market value which the Court proposed to fix for the acquired lands in the available market conditions. The Court is, therefore, enjoined with the bounded duty of the public functions and judicial dispensation in determination of the market value of the acquired land and compulsory acquisition.

10. The following observations of Macleod, CJ in Bombay Improvement Trust Vs. Mervanji Manekji Mistry, are quite apposite:

...Valuation cases must be dealt with just as much from the point of view of the hypothetical purchase as of the claimant. The valuation itself must often be more or less a matter of guesswork. But it is obviously wrong to fix upon a valuation which, judged by everyday principles, no purchaser would be likely to give

...I have always been adverse to elaborate hypothetical calculations which are no more likely to lead to a fair conclusion than for simpler methods. But in any event, no harm can be done by testing a conclusion arrived at in one way by a conclusion arrived at in another....

...A very simple method of valuing land wholesale from retail prices is to take anything between one and half one-third, according to circumstances of the expected gross valuation, as the wholesale price....

11. This Court in Jade Basappa Vs. Assistant Commissioner and Land Acquisition Officer, , held:

The approach of the Courts while dealing with the case of an agriculturist,...is to average and round off the figure, the acceptance always being on a little higher side rather than on the lower side. The object has not been to end up with the State paying more money, but to take note of the fact that whatever amount that the land owner seeks is a one time compensation, the computation of which must never be grudgingly done because even a generous compensation is more than offset by the real land value in the hands of the acquirer, and that consequently the lands have always a tremendous potential both for actual financial yield and capital appreciation.

12. In K.S. Shivadevamma Vs. Assistant Commissioner and Land Acquisition Officer, , a Division Bench of this Court held:

It is clear that, if reasonably the land acquired has a potentiality for urban use, said benefit should be extended to it while awarding compensation. Lands in the outskirts of an expanding city has every tendency to become ripe for building use in course of time. Court has to make a reasonable exercise to find out the market value by reference to the existing material, unless the material on record is absolutely useless to find out the value of similar lands. If the value of comparable land, is of small size, appropriate deduction has to be made after applying the said rate, when a hypothetical building layout is imagined to work out the market value of the acquired land. A few decisions also indicate that, Court may take note of the value of land which may not be in the very locality but, situated in a nearby locality, provided, it is comparable to the acquired land with regard to the potentiality. If the available market-rate is of some recent past, appropriate escalation rate may be applied to estimate the rate as on the date of the preliminary notification. No doubt, the entire exercise by the Court would be indirectly guided by the Court's own judicial sense as to what would have been a reasonable value for the land in question, at the relevant point of time.

13. This Court in Alisab (deceased) by L.Rs. v. Assistant Commissioner and Land Acquisition Officer Bellary 1995 (6) Kar.L.J. 686 dealing with factors to be considered in determining the compensation and onus of fixing fair compensation observed thus:

It is the onus of the State acting through the Land Acquisition Officer to fix the fair compensation in the first instance. Though the law assumes that the L.A.O. will act correctly, the law also makes provision for revision of the figure awarded, by the Court, and experience has shown that in almost every case, the Courts had even required to intervene by stepping up the compensation. It is true that if the original awarded amount is disputed that the onus lies on the claimant and that on such basic issues as the question as to how much grain or other agricultural produce a particular piece of land yielded in a particular year is concerned, that it is the landowner who is the best person to testify. If one were to take note of the fact that for purposes of obtaining some more money that there would be a natural tendency to exaggerate, a Court will go by the

prevailing standards and figures and as far as these are concerned, if independent evidence is not forthcoming then some reliance of a considerable degree will have to be placed on the figures which the State comes out with.

14. Having noticed the principles and norms governing determination of just compensation within the contemplation of the Act and keeping in mind the relevant and irrelevant factors and considerations enumerated in Sections 23 and 24 of the Act respectively, let us proceed to consider whether the Civil Court has determined the just compensation as claimed by Sri S. Vijayashankar and learned Government Advocate for the Respondents or whether the compensation is inadequate and unreasonable as contended by Sri B.V. Acharya. Sri B.V. Acharya in the course of arguments highlighted three circumstances in his endeavour to convince the Court that the compensation determined by the Civil Court is far below the actual market value of the schedule land; they are-(i) the schedule land is far superior to the lands acquired for International Airport and when admittedly compensation is paid at the rate of Rs. 5,00,000/- per acre for the lands acquired for International Airport as per Exhibits P-18 and P-25, the compensation payable to the schedule land under no circumstance, could be below Rs. 5,00,000/- per acre, (ii) the Advisory Committee of KIADB vide Exhibit P-12 dated 24.5.1997 passed a Resolution proposing to pay compensation at the rate of Rs. 10,00,000/- per acre and in that regard it wrote a letter - Exhibit P-19 dated 5.7.1997 to the ITC which is the beneficiary of the acquisition calling upon them to pay compensation at the rate of Rs. 10,00,000/- per acre and, therefore, assessment of the market value by the Board itself as reflected in Exhibits P-12 and P-19 could undoubtedly form a relevant consideration for the decision-making with regard to the actual market value of the schedule land, and (iii) Exhibit P-16-Notification dated 13.7.1996 issued by the Government of Karnataka under the Karnataka Stamp Act, 1957 fixing the market value at Rs. 10,00,000/- per acre for the lands situate in Meenukunte village for the purpose of registration of instruments is also a relevant piece of evidence for the purpose of determination of market value of the schedule land inasmuch as fixation of market value in Exhibit P-16 Notification has a statutory basis. Sri B.V. Acharya strongly placing reliance on these three circumstances and supporting documents would maintain that the claim of the owner of the schedule land for compensation at the rate of Rs. 8,00,000/- per acre is wholly justified and reasonable and the Respondents cannot have any legitimate grievance to pay compensation at that rate.

15. In appreciating the above contention of Sri B.V. Acharya, it needs to be noticed, as pointed out supra, what shall be fair and reasonable market value of an acquired land on the date of Section 4(1) Notification or Section 28(1) of the Karnataka Industrial Areas Development Act, is a pure question of fact and, therefore, the determination would depend upon evidence lead before a Civil Court by a claimant. In the course of decision-making, all the relevant considerations should be taken into consideration and all irrelevant considerations should be eschewed. In that view of the matter, it becomes

necessary for us to first appreciate the contention of Sri S. Vijayashankar, learned Senior Counsel that Exhibits-P. 12, P. 16, P. 18, P. 19, and P. 25 are not germane or relevant documents on the basis of which market value of the schedule land has to be assessed.

16. As regards the lands acquired for the International Airport, it has come in the evidence that those lands are situate 39 Kms away from Bangalore City, whereas the schedule land is only 22 Kms. away from Bangalore City. Further, the lands acquired for International Airport are situate within the Bangalore Rural District, whereas the schedule land falls within Bangalore Urban District.

17. It cannot be said that the Resolution passed by the KIADB vide Exhibit P. 12 dated 24.5.1997 on the basis of the recommendation of the Advisory Committee which is supposed to be an expert body, is totally an irrelevant consideration for decision-making. It is reasonable to infer that the Advisory Committee advised the Board to acquire the schedule land by paying compensation at the rate of Rs. 10,00,000/- per acre only after assessing the market situation at that point of time. It is true that the recommendation of the Board is not ultimately accepted by the Government and the beneficiary. But, only on that count, it will not be proper to totally eschew Exhibit P. 12 and Exhibit P.19 from the decision-making. Those documents undoubtedly reflect the assessment of an expert body like the Advisory Committee with regard to the actual market value of the schedule land then prevailing. As regards Exhibit-P.16 which is the Notification issued by the Government of Karnataka under the Karnataka Stamp Act, 1957 fixing the market value at Rs. 10,00,000/- per acre, we find some merit in the contention of Sri B.V. Acharya that though the value shown in the Basic Value Register in general cannot be a sole basis for determination of the market value of the acquired land under the Act in view of the decisions of the Apex Court in *Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. and Others*, and in *Land Acquisition Officer, Eluru and Ors. v. Jasti Rohini (Smt.) and Anr. (Supra)*, Exhibit P. 16 has a statutory basis unlike the value shown in the Basic Value Registers which fell for decision-making before the Apex Court in the above cases.

18. The Government of Karnataka, in exercise of the powers conferred by Section 68 read with Section 45B of the Karnataka Stamp Act, 1957 (Karnataka Act No. 34 of 1957), has framed the rules called the Karnataka Stamp (Constitution of Committee for Estimation of Property) Rules, 1992. Rule 3 of the said Rules deals with constitution of the Committee, whereas Rule 4 thereof deals with the manner of estimating the market value of properties. The Committee is required to determine the market value of the property taking into account several factors mentioned in Clauses (a) to (d) with regard to the lands, house-sites, buildings and properties other than lands, house-sites and buildings, respectively. Therefore, undoubtedly, the estimation of the market value vide Exhibit-P. 16 by the Government of Karnataka has statutory basis. At the same time, it needs to be noticed that simply because Exhibit-P. 16 has a statutory basis, it cannot be said that the Civil Court has to determine the actual market

value of the acquired land, whether under the Land Acquisition Act or Karnataka Industrial Areas Development Act, in terms of the value determined by the Government in its Notification issued under the Karnataka Stamp Act, 1957. It is trite that compensation of the acquired land has to be determined in terms of Provisions of Sections 23 and 24 of the Act. Sections 23 and 24 of the Act deal with what are relevant and what are irrelevant considerations while determining the actual market value of the acquired land. At the same time, it also needs to be noticed that Exhibit-P. 16 undoubtedly could be a piece of relevant evidence along with other pieces of relevant evidence for decision-making for the Civil Court while determining the actual market value of the acquired land as on the date of Section 4(1) Notification or u/s 28(1) of the Karnataka Industrial Areas Development Act.

19. We are of the considered opinion that in the absence of comparable sale deeds and awards of the Civil Court, Exhibits P-18 and P-25 along with other pieces of evidence adduced in this case together could be a legitimate basis to determine the actual market value of the schedule land as on the date of Section 28(1) preliminary Notification. We say this, because, Appellant- claimant has produced the Notice marked as Exhibit-P.18 issued by the Special Land Acquisition Officer, KIADB, to an owner of the land situated in Yarthigaranahalli bearing Sy. No. 55 which has been acquired for the formation of International Airport at Devanahalli in respect of which compensation has been determined after negotiations between the parties at the rate of Rs. 5,00,000/- per acre and calling upon the said land owner of produce necessary documents for claiming compensation. The Appellant-claimant has also produced Exhibit P-25, an Endorsement dated 3.1.2001 issued by the Special Land Acquisition Officer of KIADB wherein it is stated that compensation in respect of agricultural lands acquired for International Airport at Devanahalli, compensation is fixed at the rate of Rs. 5,00,000/- per acre by negotiated settlement. Therefore, Exhibit P-18 and P-25 clearly go to show and, in fact, there is no controversy between the parties, that the acquiring authority paid compensation at the rate of Rs. 5,00,000/- per acre with regard to the lands acquired for International Airport.

20. We find from the records that the acquisition of the lands for International Airport and acquisition of the schedule land in this case are proximate in time. It is borne out from the records that the acquisition of the land for International Airport was notified by issuing Section 4(1) Notification dated 7.7.1994, whereas the acquisition of the schedule land was initiated by issuing preliminary Notification dated 14.7.1994 u/s 28(1) of the Karnataka Industrial Areas Development Act. Thus, we could see that there was only a week's time-gap in issuing notifications for two acquisitions. It is also established by evidence that the schedule land is situated within Bangalore Urban District, whereas the lands acquired for International Airport are situate in Bangalore Rural District. Further, the distance of the schedule land from the Bangalore City is only 22 Kms, whereas the lands acquired for International Airport are situate 39 Kms away from Bangalore City. Above all, it is also evidenced that the schedule land is

separated by only one Km from the National Highway, whereas the lands acquired for International Airport do situate quite far away from National Highway. If these facts which reflect the superior potentiality of the scheduled land are kept in mind, and since both the acquisitions are very proximate in time and in the absence of any other comparable sale transactions, it cannot be said that the price paid for the lands acquired for International Airport cannot be a valid and reasonable primary basis for determining the market value of the schedule land.

21. The Civil Court has refused to place reliance on Exhibits- P.18 and P.25 solely on the ground that there was no evidence on record that when exactly the preliminary Notification u/s 4(1) of the Act was issued for acquisition of lands for Devanahalli International Airport. But, in this appeal, the claimant has produced Notification by way of Additional evidence by filing an application under Order 41, Rule 27, CPC and that application was ordered by this Court on 25.9.2003. Further, certain factual mistakes which were crept in the Affidavit filed in support of the application filed under Order 41, Rule 27, CPC were subsequently rectified/modified by this Court on 29.5.2003 at the instance of the Appellant.

22. The rate of compensation for the land acquired for International Airport was determined on negotiated settlement and such acquisition of the land undoubtedly is more beneficial to the acquiring/requisitioning authority, because, under such arrangement, the possession of the land would be immediately available to the acquiring authority and there would not be any further legal proceedings with regard to determination and enhancement of compensation. In that view of the matter, it is possible that the acquiring authority may likely to offer little more compensation than the actual market-value for the sake of benefits/advantages it may derive. Therefore, reasonable deduction in that regard should be made from compensation determined by way of negotiations. At the same time, in determining the market value of the schedule land, the Court cannot lose sight of the fact that the evidence in this case ex-facie shows that the schedule land is far superior in every material aspect than the lands acquired for International Airport Authority at Devanahalli. We have already referred to greater potentiality of the schedule land compared to the lands acquired for International Airport. In addition, it is quite apposite to notice the well-found finding of the Civil Court with regard to the potentiality of the schedule land when compared to the potentiality of the land covered by Exhibit-P. 6-sale-deed. In para 19 of the judgment, the Civil Court has recorded the finding thus:

It is also important to note that the said Ex.P. 6 is in respect of agricultural land without any potentiality of industrial use., and moreover, it is far away from the National Highway, but on the other hand, the acquired land is situated just beyond one land from National Highway No. 7 leading from Bangalore to Hyderabad. It is evident from Ex. P. 10 and the acquired land is eminently suited for industrial purpose and it has come in the evidence on record that there are

some industries in the nearby acquired land and moreover Ex.P. 16 establishes that these lands and the various other surrounding lands of the Meenukunte village have been declared as industrial area by the Government as far back as in the year 1992 and the very fact that the said land has been acquired for industrial purpose goes to show that the said land was having great potentiality for industrial use and this factor has not been taken in to consideration by the L.A.O., while determining the market value and he has treated the land simply as an agricultural land for determining the market value.

23. Neither Sri S. Vijayashankar, learned senior Counsel for the beneficiary nor the learned Advocate for KIADB has seriously assailed the correctness of the above factual finding recorded by the Civil Court with regard to the potentiality of the schedule land. Therefore, we may safely conclude that the schedule land in terms of potentiality is far superior to that of the lands acquired for International Airport at Devanahalli. Therefore, the market value of both the lands cannot be the same. Undoubtedly, on the date of preliminary notification, the market value of the schedule land must have been much more than the market value of those lands acquired for International Airport. However, as noticed above, the market value determined by way of negotiated settlement between the parties may be little more than the actual market value of the land in question because of the advantages such settlement may provide to the acquiring/requisitioning authority. Therefore, we can safely set-off the deduction to be allowed on that count against a part of the higher market value which the schedule land could have fetched on the date of preliminary notification. Looking from that angle, and also keeping in mind Exhibits P. 12, P 19 as well as Exhibit P. 16, we are of the considered opinion that it is just and fair for the acquiring/requisitioning authority-3rd Respondent herein to pay compensation to the Appellant-owner atleast at the rate of Rs. 6,00,000/- per acre. We do, however, hasten to add that in arriving at this rate, an element of guesswork has crept into the decision-making for obvious reason that there is no direct evidence to determine the market-value. We are also guided by the dictum that the Judges should not keep common sense in cold storage in the decision-making. The common sense tells us that if the lands which are situate 39 Kms away from Bangalore could fetch the price at the rate of Rs. 5,00,000/- per acre certainly the schedule land which is situate only 22 Kms away from the Bangalore with greater potentiality could have fetched the price atleast at the rate of Rs. 6,00,000/- per acre on the date of preliminary Notification.

24. The Civil Court has determined the market value at the rate of Rs. 2,25,000/- per acre on the basis of Exhibit-P. 6, sale-deed. We are at a loss to understand how Exhibit-P.6 could be regarded as a comparable sale transaction in the very premise of facts established in the case. Under Exhibit-P. 6, one acre of land comprised in Sy. No. 167 of Doddajala village has been sold for a sum of Rs. 1,95,000/- by registered sale deed dated 11.1.1994. The said land is admittedly situate in a different village and not in Meenukunte village where the schedule land is situate. Added to this, as could be seen from the finding of the

Civil Court extracted above, the land covered by Exhibit-P. 6 can never be regarded as a comparable land to the schedule land both in terms of "locus" and "potentiality". We are satisfied that since the Civil Court has determined the market value on the basis of Exhibit-P. 6, it has resulted in prejudice to the Appellant-owner.

25. In the result and for the foregoing reasons, we allow the appeal in part with costs and in substitution of the impugned award passed by the Civil Court, we determine the market value of the schedule land at the rate of Rs. 6,00,000/- (Rupees Six Lakhs) per acre. In addition, we also direct that the Appellant-claimant is entitled to all statutory benefits under the Act, in accordance with law.

26. The Advocate's fee is fixed at Rs.