

(1992) 08 KAR CK 0010

In the Karnataka High Court

Case No : M.F.A. No's. 896 of 1985 and 58, 68 and 593 of 1986

K.S. Shivadevamma

APPELLANT

Vs

Assistant Commissioner and Land Acquisition Officer

RESPONDENT

Date of Decision : 19-08-1992

Acts Referred:

Citation : (1992) ILR (Kar) 3740

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : Ajit J. Gunjal and Subash B. Adi, for the Appellant; L.Y. Premavathi, HCGP for R-1 and K. Balakrishna, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—M.F.As. 593, 58 and 56 of 1986 are represented by one Counsel and the lands involved are Survey No. 118/4 B1, B2, B3 and B4 in all measuring 3 acres 18 guntas. In M.F.A. 896/85 the land involved is Survey No. 118/5A and 5B measuring 5 acres 32 guntas. There is no dispute that all these lands abut each other and are situated in the outskirts of Davanagere town. These lands were sought to be acquired under a Preliminary Notification dated 12th January 1978. The provisions of Section 17(1) was invoked and it seems the possession was taken on 21st April 1978. These lands were acquired for the purpose of putting up K.S.R.T.C. Bus Stand and depot at Davanagere.

2. The Land Acquisition Officer awarded a compensation at the rate of Rs. 5,000/- per acre on 17th May 1979. On reference the Civil Court has awarded the compensation at the rate of Rs. 30,000/- per acre as per its common judgment dated 30th October 1984. Before proceeding further a few more basic facts may be clarified. The award of the Land Acquisition Officer actually works out at about Rs. 1.03 ps. per square yard and the award of the Reference Court works out at Rs. 6.20 ps. per square yard. The claimants in the first three Appeals pertaining to Survey No. 118/4 claim compensation at the rate of Rs. 135/- per square yard while the appellant in M.F.A.896/85 has confined the claim

to Rs. 100/- per square yard. The claimants contend that the lands are situated in a developed area and in fact have been converted for non-agricultural use and therefore proper value based on the potential of the lands should be awarded. The appellants mainly rely on the following documents in support of their case:

1) Exhibit P18, a registered Sale Deed, dated 30th May 1974 executed by one of the claimants and his father in favour of one Ravindran whereby a site measuring 130 ft. x 99 ft. bearing municipal No. 113/1 formed in the very land was conveyed for Rs. 41,000/-. This works out at Rs. 29/- per square yard.

2) Exhibit P1 is an Agreement to Sell which is dated 8.12.75 executed by the aforesaid Ravindran in favour of one Krishan Gopal Behal (P.W.1) in respect of a portion out of the above land measuring 80 ft. x 99 ft. The safe consideration was Rs. 60,000/- and therefore the rate works out to Rs. 68.19 ps, per square yard.

3) Exhibits P21 and P22 are the Judgment and Decree of this Court dated 12th September 1973 made in M.F.A.670/71, whereunder this Court awarded the compensation at a net rate of Rs. 35/- per square yard, in respect of a land acquired under a Preliminary Notification dated 24.4.1969 in Survey No. 75/3A measuring 1 acre 32 guntas and the rate was arrived at after deducting 53% from the gross rate towards the retail price.

4) Exhibit P23 which is an order of the Government dated 9th November 1973 fixing an upset price of Rs. 100/- per square yard in respect of a land measuring 27.5 ft. x 49.5 ft.

5) Exhibit P10 dated 5.1.1978 issued u/s 45A of the Stamp Act fixing the market value of the lands for the purpose of collecting stamp duty in respect of the sale deeds in the City of Davanagere whereunder the minimum rate was Rs. 108/- per square yard abutting National Highway No. 4 and the maximum rate was Rs. 135/- per square yard on the same National Highway.

3. The Reference Court has referred to these documents but has not relied upon any one of them for the purpose of awarding compensation. The learned Civil Judge opined that, because R.T.C. clearly show that these are agricultural lands in which ragi, jowar etc. are being raised for the years 1973-74 to 1975-76 and that there is no other evidence to show that the land has been converted, the land shall have to be considered as agricultural land. The trial Court further noticed that even though the claimant in the first batch of appeals have shown that some amount was paid for conversion as per Exhibit P 19, the claimants have failed to prove that they have complied with other conditions mentioned in Exhibit P20, which was the provisional approval granted by the Town Planning Authority and that the approval was only for a period of one year. The trial Court observes that the claimants failed to prove that the provisional approval was renewed subsequently at any time. We may also note here itself that Exhibit P20 is dated 19th July 1974 in respect of Survey No. 118/4B measuring three acres twenty five guntas and the No Objection Certificate issued by the Planning

Authority required the owner (father of appellant in M.F.A.593/86) to follow the City Municipality Building Bye Laws regarding the set-back, etc. Further the area under roads, open spaces and other public use shall have to be handed over to the concerned local authority and the necessary development costs for construction of roads, providing water supply mains, electricity lines, etc. shall have to be paid to the local authority. The plots shall have to be measured and demarcated and the certified copy of the same shall have to be submitted to the Planning Authority. Further it has to be noted that conversion fine was paid only in respect of two acres six guntas as per Exhibit P19.

4. In the above circumstances the trial Court concluded that the claimants failed to prove that the lands were alienated and that several Record of Rights indicated that ragi was being raised during a few years. The evidence of P.W.2 regarding valuation of the lands was rejected because he has not given any basis for the valuation. Thereafter the trial Court again referred to a few Decisions governing the application of the doctrine of potential value and ultimately came to the real question on facts at para 14 of its judgment. The trial Court opined that the acquired lands are near industrial area and by the side of developed City hardly two furlongs from the bus stand of Davanagere and that the acquired lands are near residential area, mills, hospital and that these lands have potential value for building house site's. The land which was the subject matter of the Decision of this Court (Exhibit P21) was at a distance of two to three kilometers from these acquired lands. The trial Court in this para refers to various other documents which we have already referred above. But no comment is made about the acceptability or otherwise of those documents; abruptly it came to the conclusion as follows.

".... Since the land acquired is not divided into house sites and there are no development activities, the grant of compensation in square yards would not be proper, or the lands site of Nituvalli village, our High Court has granted compensation at Rs. 30,000/- per acre, it is to be stated that such compensation granted for the land for the comprehensive water scheme, the LAO has based his award on the compensation granted for those lands which was approved by the Deputy Commissioner, as the compensation for those lands was granted at Rs. 30,000/- per acre the same rate would be reasonable and proper for these acquired lands."

5. The learned Counsel for the appellants quite rightly attacked the above conclusion of the learned Civil Judge because there is absolutely no reference to any document reflecting the award of compensation of Rs. 30,000/- per acre for the lands acquired under the comprehensive water scheme. No material has been placed before the Court to compare the said lands with the present acquired lands. The claimants were not cross-examined in any manner regarding the same. Even the relevant documents were not produced in the evidence. We cannot understand as to how the learned Civil Judge could have applied the said figure of Rs. 30,000/- even without discarding the various documents produced

by the claimants such as Exhibits P18, P1, etc. In view of the absolute lack of discussion by the trial Court on the relevant question we are constrained to examine the facts ourselves and we proceed accordingly.

6. The primary question pertains to the mode of valuing the acquired land in the instant case. The trial Court has proceeded as if the lands were agricultural and thereafter applied the compensation paid in respect of some other lands acquired for water works. The claimants contend that the lands are converted and are part of Davanagere City and therefore should be valued as urban lands.

7. A substantial part of the argument of Mr.Ajit Gunjal was to persuade us to hold the lands as non-agricultural because these have been converted long ago. The trial Court has found it not possible to accept this status of the lands because the entries in the R.T.C. were indicative of the agricultural crops being raised for the years 1973-74 to 1975-76. The appellants who are interested in Survey No. 118/4 point out that these lands were converted by an order dated 17th December 1974 made by the Special Deputy Commissioner. Under this order sanction was accorded for conversion of two acres six guntas in Survey No. 118/4-B2 and 118/4-B4 and a conversion fine of Rs. 3,060/- was levied. No doubt, this order is found amongst the trial Court records but the said order was not marked in evidence. However, we find Exhibit P19 being the challan dated 18.11.1974 under which the said sum of Rs. 3,060/- was paid, being the conversion fine at Rs. 1,400/- per acre in respect of two acres six guntas out of Survey No. 118/4-B2 and 118/4-B4. Exhibit P20 is dated 19th July 1974 issued by the Planning Authority, being No Objection Certificate for the plot or site measuring three acres twenty five guntas of Survey No. 118/4B, for commercial and residential use. According to this, the owner shall have to hand over to the concerned local authority the area under roads, open spaces and other public use and the necessary development cost for the construction of roads, etc. shall have to be paid to the concerned local authority. Further, the plots shall be measured and demarcated and after satisfying the conditions final approval will have to be obtained from the Planning Authority. Exhibit P20 is referred as "provisional approval valid for a period of one year." This apart, deposition of DW.1 was referred whereunder he states that:

"..... in R.R.5 it is shown that S.N.118/4 was alienated land.

It was alienated for industrial purpose. The conditions of the alienations should be satisfied. When I visited the spot, I did not find the formation of sites and other civic amenities. The conversion charges and special assessment were not paid as per the conditions of the alienations. The acquired lands are two furlongs from Davanagere Bus stand."

He further stated that he did not look into other records regarding the alienation of Survey No. 118/4B and 5. In the award of the Land Acquisition Officer also there is a statement that Survey No. 118/4 measuring three acres thirty nine guntas seem to have been alienated as long back as on 18.5.1948 but the said

order do not properly identify which of the area is converted and the transaction has not found place in the index.

8. The appellants in the connected Appeal pertaining to Survey No. 118/5 also assert that the said land has been converted long ago.

9. The learned Counsel for the contesting respondents on the other hand contended that the Record of Rights should be relied upon, from which it can be reasonably inferred the lands to be agricultural, wherein during some years at least, crops were being raised.

10. Having regard to the view we have taken, it is unnecessary to decide as to whether these lands have been converted earlier, though material on record is sufficient to conclude that at least two acres six guntas were converted because conversion fine has been paid. Having regard to the locality and the nearness to the City of Davanagere and other features of the lands acquired, we are inclined to accept the lands as fit for urban use. Several sketches and maps have been marked in evidence, apart from a few oral evidence on this aspect. P.W.2 was appointed as the Court Commissioner. His report found in the records shows that within 150 meters radius of the land in question there are several establishments like Shakthi Tyres Re-Moulding Factory, established in the year 1978, Nandi Petrol Bunk (its earlier existence has come on record elsewhere), Ganesha Mill Quarters, a few rice mills, etc. A part of the lands acquired touch the National Highway No. 4 (Bangalore-Poona road). The Preliminary Notification gave the boundaries as follows:

North - National Highway East - Ganesha Mill South - S.Nos. 95 and 123 West - Grave yard (this is also referred as Brindavan of R.H.)

The Mahazar dated 13th August 1977, Exhibit P30, under which the lands were taken possession of states that there are different buildings touching the lands acquired and that the lands are "level" in condition. It is five kilometers away from proper Nituvaili though it abuts Poona - Bangalore Highway and recently (about 20 to 30 days prior to the Mahazar) the Municipality had made a road in Survey No. 118/4B.

11. The claimants also rely on a sanctioned plan under which lay out of sites in Survey No. 118/4 was approved. But it is not possible for us to rely on this document because there is absolutely no evidence that actually layout was formed after building roads and drains and demarcating the" sites. There is nothing on record to show that the claimants have acted in furtherance of their intention to have a layout. Even the Commissioner, examined as P.W.2 does not say that actually layout has been formed in the land Survey No. 118/4. Therefore much importance cannot be given to the sanctioned plans. These documents at the most would show that a substantial area will have to be set apart for the various roads and drains before convenient sites could be laid out for the purpose of putting up of the constructions.

12. Reference was made to Exhibit P18, a Sale Deed dated 30.5.1974, under which a site measuring 130 ft. x 99 ft. bearing Municipal Door No. 113/1 formed in Survey No. 118/4-B1, B2, B3 and B4 was sold by PW.5 and his father in favour of Ravindran. There is a recital in the document that Survey No. 118/4B was got converted into a non-agricultural piece for industrial purpose. It is stated that, as there was no benefit to the vendors from the site in question they decided to sell the same for the sum of Rs. 41,000/-. The purchaser is the proprietor of Shakthi Tyres, Bangalore-Poona Road. As we have already stated, we are assuming that these lands are fit for non-agricultural use and therefore Exhibit P18 by itself need not be relied upon to hold the lands in question as non-agricultural. P.W.1 entered into an Agreement on 8th December 1975 as per Exhibit P1 with the aforesaid Ravindran to purchase a part of the land (purchased by Ravindran under Exhibit P18); the subject matter of Exhibit P1 was a site measuring 80ft. x 99ft. The sale consideration was Rs. 60,000/- out of which Rs. 35,000/- was paid under cheques as stated in the said document. PW1 states that he has a shop which is about 3/4th kilometer from the acquired land. His evidence indicates that there was Nandi Petrol Bunk near about. P.W.1 also stated that he purchased the site for the purpose of his business.

13. The Commissioner - PW2 stated that the acquired portion was an industrial area and it has potential value. He is working as a Consulting Engineer since the year .1974, being a partner of a firm called Make Engineering Consultancy. He is an Engineering Graduate. According to him the acquired land had the value of Rs. 300/- per square yard. He states that the lands acquired for comprehensive water schemes were about two and a half kilometers away from the present acquired lands. He admits that 1/3rd of the area will be gone for parks, roads, etc. Nowhere he speaks about any particular developments that had taken place in the acquired lands, prior to the acquisition. P.W.3 is the Sub-Registrar who was examined to mark Exhibit P10 whereunder the Deputy Commissioner had fixed values for the purpose of Karnataka Stamp Act, (for registration) in respect of various parts of Davanagere. PW.4 is a Municipal Councillor and also a Managing Director of the Co-operative Bank. He owns a Petrol Bunk adjacent to the acquired lands. He asserts that the acquired lands have potential value because they are in the midst of the City. He states that at no time crops were raised in the acquired land and that the acquired portion was alienated long back. Obviously, PW4 exaggerated the situation when he said that the claimants had formed sites in this portion and roads were also formed. According to him the value per acre will be Rs. 4 lakhs. He speaks to the existence of a Rice Mill of Aradhya and a Ginning Factory near about. However there is a big drain to the east and south of the acquired land. He asserted that the City developed east, west and south. His Petrol Bunk is known as Nandishwar Petrol Bunk.

14. PW.5 is one of the claimants. He also held Power of Attorney from his mother, sister and other claimants. He asserts that the front portion in Survey No. 11.8/4B was converted for industrial purpose in " the year 1948 out of which a portion was sold to Ravindran under Exhibit P18. According to him the remaining

portion of Survey No. 118/4B was also converted in the year 1975. PW5 asserts that the acquired portion is in industrial and commercial area and speaks about the existence of textile mills, D.R.R. High School, a bungalow, Davanagere Cotton Mills, etc., near about. To the north of the acquired lands there is a regulated market, fire station, central warehouse and a few mills and on the southern side there, are ginning factories and Aradhya Rice Mill. To the west, Nandi Petrol Bunk, weigh-bridge, mechanical work shops and automobile shops are found. National Highway is on the northern side. On the opposite side there is also a Hotel. This witness states that in the year 1969, one acre thirty two guntas was acquired in Survey No. 72/2A for extension of Chigateri General Hospital. According to him this land was in the outskirts of Davanagere. This witness also states that in the year 1973 the land on which Aruna Theatre was put up was on the outskirts of Davanagere. He speaks to the several developments that has taken place in the locality. But nowhere he asserts that on the lands acquired layout had been formed. It is not his statement that roads were laid and sites were demarcated.

15. D.W.1 was the Officer who made the Award. According to him the land was fallow when he visited the spot in December 1978 and there were no construction on it. He had also seen the land acquired for the water works, For the first time a road was formed by the Municipality on the land acquired. Ravindran had put up a small shed on the land purchased by him under Exhibit P18, where tyre retreading was being done. According to D.W.1 this was put up just three or four days prior to his visit. This witness is not able to remember the existence of the mills, petrol bunk, etc. However he states that there are number of shops and workshops in between Gandhi Circle and acquired lands and that the regulated market is opposite to the acquired land.

16. From the above material we are of the firm view that the lands in question had potential value for non-agricultural use, though it is not possible to accept the case of the claimants that they had already developed the lands by laying roads and making sites.

17. While considering the potential value, Court has to be satisfied that there is a reasonable possibility of the land in question being developed in the near-future; the possibility of development if remote, would affect the valuation.

18. In the instant case, though the alleged conversion of a part of the holding was in the year 1948, and other portions were allegedly converted for non-agricultural use in or about the year 1974, till the date of Preliminary Notification in the year 1978, we are able to find only one registered transaction reflected by Ex.P18 dated 30.5.1974 (sale in favour of Ravindran, of a site measuring 130ft. x 99ft.); the purchaser seems to be a businessman in tyre retreading already having a shop near about and therefore, he must have found the site facing the National Highway most convenient to establish his workshop; thereafter on 8.12.1975 Ravindran, in turn, agreed to sell a part of the site to P.W.1 as per Ex.P.1. Till the date of the trial of the proceedings, the Agreement did not get

fructified into a Sale Deed. Possession continued with the vendor Ravindran. Thus, in the entire extent of nearly 9 acres, transaction is confined to a small extent of 130ft x 99ft. under Ex.P.18

19. Parks in his "Principles and Practice of Valuations" (4th Edition, page 129) points out that land near a city passes through three phases:- (1) Agricultural Land; (2) Accommodation Land and (3) Building Land. Gradually the city will expand and a demand will be set up for accommodation land for use as market, gardens, playing fields and recreation grounds; when the city continues to expand further, this "Accommodation Land" becomes "ripe for building development". Development of an estate is done by clearing it of all easements and encumbrances, filling in all the tanks and raising low lands; preparing plans of new roads and executing engineering works for road making and installation of sewer like water supply, drainage, etc. The layout, therefore, necessarily requires, laying of roads and drains, and carving out the extensive area into various sizes of sites. The total value a developer gets, is the total value of all the sites, when he is able to sell them. This total receipt would cover up the value of lands consumed for faying roads and drains, and expenses incurred in carrying out the works and bringing in of the services, a reasonable return towards the investment, including the interest on the waiting, period until all the sites are sold. The value of the site (per sq.ft. or sq.yd.) has to be arrived at by estimating the gross value of all these factors. This being a laborious process, Courts have accepted a simpler mode of arriving at a reasonable value for the sites to be made from the total land area; 25% of the total area is deducted towards the roads and drains. Further, out of the gross receipt, one-third is deducted towards the expenses etc., incurable for developmental activities; both these deductions are again simplified by deducting about 53% from the gross receipt. (There may be circumstances justifying deduction of a larger or a lesser percentage, in case of deduction of 53% from the gross receipt is considered as not reasonable). Thus, in an extensive area, entire area will not be available for the owner for sale as sites. This meets the contention of Mr. Ajit Gunjal that, since the land has a potential value (and has been converted for non-agricultural one), no deduction should be made from the retail value of the site to arrive at the wholesale value of the entire land.

20. In Bhagwathula Samanna and others Vs. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality, acre 68 cents was acquired in a fully developed area. The only question was whether deduction towards developmental expenses should be made; Supreme Court held that question of incurring any expenses to bring in modern services would not arise, in the facts of the case. Similarly the land involved in VELU'S CASE ILR 1992 KAR 93 was already in the midst of a fully developed area in Bangalore City. The facts of the case, considered in 1992 AIR SCW 819, Spl. Tahsildar L.A., Vishakapatnam v. Smt. A. Mangalagowri are also different, because the acquired land was already part of a developed area.

21. The sale price of small site, if applied uniformly to the entire block of land, would include the value of land to be covered by roads and drains when a layout is formed; this gross figure also would include the charges and expenses incurable for the formation of the layout. Therefore, appropriate deduction, (normally 53%) has to be made from the gross figure, to arrive at the real market value of the sites to be formed in the block.

22. In SARASWATHI SUNDARAM v. ASST. COMMISSIONER & LAND ACQUISITION OFFICER 1976(1) KLJ 1. a large extent of land was acquired, which was in the midst of an industrial area; the acquired land was suited for industrial purposes. This Court held that: "when the award of the Land Acquisition Officer fails to take into consideration the potential value of the land acquired and values the land, on the basis that it is an agricultural land, such award is arbitrary."

23. In THE ASST. COMMISSIONER & LAND ACQUISITION OFFICER, DAVANAGERE v. THE BHARATH OIL MILLS LTD. 1973(2) KLJ 187 acres 11 guntas of land were acquired; the Preliminary Notification was in October 1959; the land was within Harihar Town Municipality, the trial Court relied on several sales of small sites to arrive at the average rate per sq.yd. Some part of the acquired land was converted and the remaining part was agricultural, having potentiality for urban use.

In the circumstances, this Court upheld the deduction of 25% of the area towards roads and drains. Since Harihar was a growing town, this Court held that, land has to be valued with reference to its potential use. Towards cost of development etc., this Court discounted one-third of the expected gross realisation, to arrive at the market value.

24. In Administrator General of West Bengal Vs. Collector, Varanasi, the principle is stated thus:

"It is trite proposition that prices fetched for small plots cannot form safe bases for valuation of large tracts of land as the two are not comparable properties. [See: The Collector of Lakhimpur Vs. Bhuban Chandra Dutta,

Mirza Nausherwan Khan and Another Vs. The Collector (Land Acquisition), Hyderabad, Padma Uppal and Others Vs. State of Punjab and Others, Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective. The principle requires that prices fetched for small developed plots cannot directly be adopted in valuing large extents. However, if it is shown that large extent to be valued does admit of and is ripe for user for building purposes; that building lots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical layout could with justification be adopted, then in valuing such small, laid out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification would be relevant. In such a

case, necessary deduction for the extent of land required for the formation of the roads and other civic amenities; expenses of development of the sites by laying out roads, drains, sewers, water and electricity lines, and the interest on the outlays for the period of deferment of the realisation of the price; the profits on the venture etc. are to be made. In *Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others*, this Court indicated that deductions for land required for roads and other developmental expenses can, together, come upto as much as 53% but the prices fetched for small plots cannot directly be applied in the case of large areas, for the reason that the former reflects "retail" price of land and the latter the "wholesale" price."

25. *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, has stated that seventeen factors must be etched on the metal screen. One of the factors, factor No. 15 is at page No. 1657, whereunder the Supreme Court said:

"The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Commonsense 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. yards cannot be compared with a large tract or block of land of say, 10000 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 layout, 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 approximately 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 capital of the entrepreneur would be locked up will be longer or shorter and the attendant hazards."

26. In *Suresh Kumar Vs. Town Improvement Trust, Bhopal*, the valuation of land as agricultural, which had the potentiality for urban use, was reversed by the Supreme Court. At page 1225, Supreme Court held:

"As was observed in *Gajapathy Raju (supra)* sometimes, it happens that the land to be valued possesses some unusual, and it may be, unique features, as regards its position or its potentiality. In such a case the Court has to ascertain as best as possible from the materials before it what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position, and with that particular potentiality. In the instant case also, the acquired land possesses some important features being located within the corporation area, and its potentiality for being developed as a residential area. In such a situation in determining its market value, where there was no sufficient direct evidence of market price, the court was required to ascertain as best as possible from the materials before it, what a willing vendor would reasonably have expected to

obtain from a willing purchaser from the land in this particular position and with this particular potentiality, it is an accepted principle that the land is not to be valued merely by reference to the use to which it has been put at the time at which its value has to be determined, that is, the date of the notification u/s 4 and also by reference to the use to which it is reasonably capable of being put in the future. A land certainly or likely to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or has been used for agricultural purposes, the owner, however willing a vendor is, is not likely to be content to sell the land for its value as waste or agricultural land as the case may be. The possibility of its being used for building purposes would have to be taken into account. However, it must not be valued as though it had already been built upon. It is the possibilities of the land and not its realised possibilities that must be taken into consideration, in other words, the value of the land should be determined not necessarily according to its present disposition but laid out in its lucrative and advantageous way in which the owner can dispose it of. It is well established that the special, though natural, adaptability of the land for the purpose for which it is taken, is an important element to be taken into consideration in determining the market value of the land. In such a situation, the land might have already been valued at more than its value as agricultural land, if it had any other capabilities. However, only reasonable and fair capabilities but not far fetched and hypothetical capabilities are to be taken into consideration. In sum, in estimating the market value of the land, all the capabilities of the land and all its legitimate purposes to which it may be applied or for which it may be adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner. The proper principle is to ascertain the market value of the land taking into consideration the special value which ought to be attached to the special advantage possessed by the lands namely, its proximity to developed urbanised areas."

27. In this regard, potentiality has to be determined on such materials as are available without indulgence in "fits of the imagination". If sufficient direct evidence of market value is not available, still, Court has to try to ascertain the market value, as best as possible from the materials before the Court.

28. Inevitability of some amount of arbitrariness has "been recognised, while evaluating the market value. See KAUSALYA DEVI v. LAND ACQUISITION OFFICER AIR 1984 SC 893 In Land Acquisition Officer Vs. Chandrasekhar Reddy, the Bench observed:

"The assessment of the market value in the ultimate analysis, is the predication of the incidents and the result of an economic event expressed in terms of all probabilities. This inevitable element of conjecture involved in the exercise is pointed out by the Supreme Court;

"....3) We are conscious that this process of determination of market value adopted by us may savour of conjecture or guess but the estimation of market value in many cases must depend largely on evaluation of many imponderables

and hence it must necessarily be to some extent the matter of conjecture or guess..."

29. Though a few more Decisions were cited before us, we do not think it necessary to refer to them. 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.

30. Coming to the facts on hand, lands acquired are about 9 acres in extent; they are in the outskirts of Davanagere, though, the locality certainly is in a take off stage for developmental activities. The lands, by themselves may have some topographical disadvantages, because of the drain on one side and an alleged grave yard on the other. The claimants assert that there is no grave yard. Trend of development is mainly industrial and commercial; probably, a part may have the potentiality for residential layout also.

31. The real question is how to arrive at the market value under the above circumstances. Ex.P.10 is the Circular issued by the Dy. Commissioner fixing the value of the lands in various parts of Davangere Town for the purpose of stamp duty; such a Circular was held to be arbitrary and opposed to Section 45A of the Karnataka Stamp Act, in KULKARNI, M.G. AND ORS. v. STATE OF KARNATAKA AND ORS. 1984(2) KLJ 341 Therefore, we prefer not to rely on the rates for lands stated in Ex.P.10.

32. It was contended by the claimants that, in view of Karnataka Vacant Lands in Urban Areas (Prohibition Against Alienation) Ordinance which was operative till the coming into force of the Urban Land (Ceiling and Regulation) Act, transactions in vacant lands were at a standstill and non-availability of sale deeds in respect of similar lands near about the year 1978 shall not be considered as an adverse factor against the claimants.

33. We have before us Ex.P.18 (Sale Deed in favour of Raveendran), Ex.P.1 (Agreement executed by Raveendran in favour of P.W.1) and Ex.P.21 a Judgment

of this Court in M.F.A. No. 670/71 & 7/72 (D.D. 12th September 1973) concerning the market value of the land acquired for expansion of Chigateri General Hospital.

34. Ex.P.1 is only an Agreement for Sale. Though sale consideration is stated to be Rs. 65,000/- under the Agreement only Rs. 35,000/- was paid. Possession continued with the vendor. Even by the time of the deposition of P.W.1 on 23.9.1981 sale transaction was not completed. Through an agreement for sale of a land can be relied upon to find out the market value, if the agreement is not a bona fide transaction, circumstances may warrant that undue reliance on such an agreement is not always safe. Here, the vendor (P.W.1 who agreed to purchase the site as per Ex.P.1) parted with a sum of Rs. 35,000/- in the year 1975 without any return for the amount paid by him; he did not even take possession of the site in question; no attempt was made to complete the sale transaction for several years; in the circumstances, it is hard to accept the sale consideration of Rs. 65,000/- fixed under Ex.P.1, as representing a proper consideration, for the site at the time of executing the said document. It is quite possible for the parties to take into consideration future escalation of price of the land and arrive at the figure as representing the sale consideration with reference to future date (on which, the sale deed would be registered). The rate per sq.yd. comes to Rs. 68.19ps. as per Ex.P.1; while, the rate as per Ex.P18 is only Rs. 29A per sq.yd. It is Not possible to accept that within an year and a few months, land value in the locality shot up to such an extent. The sale consideration fixed under Ex.P1 may be due to the attraction PW.1 had for the particular site, or the hope he was nurturing as to the future developments in the locality.

35. Ex.P21 is the Judgment rendered by this court in M.F.A. 670/71 and M.F.A. 7/72. It pertained to the acquisition of one acre thirty two guntas of land in survey No. 75/3A of Nituvalli village for the extension of Chigateri General Hospital. The Preliminary Notification was dated 24th April 1969. This Court awarded the compensation at the rate of Rs. 35/- per sq.yd., having come to the conclusion that the retail price per sq.yd would be Rs. 71.33 ps. The appropriate deductions from the latter amount was made. This land is stated to be about two kilometers from the lands which are the subject matter of these appeals. According to PW.5 Chigateri land is further away from the City. The land was acquired about 8 1/2 years prior to the present acquisition. Material on record does not in any way show that the land in Survey No. 75/3A acquired earlier was located in an undeveloped area. Since the land was acquired for the extension of a General Hospital, it is reasonable to assume that the locality was already developed when compared to the present lands. If Rs. 35/- per square yard was the reasonable wholesale value of the land appropriate escalation in the prices should be added to arrive at the value after 8 1/2 years. But in the absence of a definite evidence as to the comparability of the two localities, we are of the view that it is unsafe to rely on Ex.P21 as a guide to value the present lands. Ex.P23 was a Government Order dated 9th November 1973 fixing an upset price of Rs. 100A per square yard in respect of a land measuring 27.5ft x 49.5 ft., while

sanctioning the scale of the site by the Municipal Council to a third party. The said site is quite small and its comparability with the lands acquired in these proceedings, also is not forthcoming so as to form a definite basis for the valuation.

36. In the circumstances, Ex.P18 dated 30.5.1987 under which a portion of the very Survey No. 118/4 was sold by the claimants (PW.5 and his father) seems, to be more apposite, and reliable. Site measuring 130 ft. x 99 ft. was sold for Rs. 41,000/- which comes to about Rs. 29/- per square yard, This is the retail price. Preliminary Notification in the present Appeals is about 3 1/2 years after this Sale Deed. If we consider the escalation of price per annum at 8%, Rs. 29/- would go to Rs. 38/- in about 4 years. Evidence on record, nowhere, shows that actual layout has been laid in these lands, though the lands are ripe for development. In the circumstances we consider it appropriate to deduct 53% towards the roads and drains and charges and expenses towards the developments; if so, the wholesale price would be Rs. 17.86 ps which, could be rounded off to Rs. 18/- to be on the safer side. This will make the market value at Rs. 87,120/- per acre. Though the increase in the value estimated by us looks high when compared to the valuation by the lower Court at Rs. 6.20 per sq.yd., we have to grant an appropriate fair compensation to the claimants based on the materials on record. The trial Court's estimate was based on no evidence at all. The conversion fee of Rs. 1,400/- per acre (as per Ex.P.19) is only a marginal amount when compared to the market value of Rs. 87,120/- per acre (about 1.5% of the gross value), which would be absorbed in the 53% of deductions given while applying the hypothetical layout method of valuation.

37. The claimants also will be entitled to the various other amounts such as solatium, interest and the additional benefit as provided under the Act, in view of the Decision of the Supreme Court in Union of India (UOI) and Another Vs. Zora Singh and Others, as on today, the claimants will be entitled to the additional benefit u/s 23(1-A) also. In case the said view is reversed by the larger Bench of the Supreme Court an appropriate application may be filed for modification of the decree by the respondents. It is necessary to note that the Preliminary Notification was dated 12-1-1978 and possession was taken on 21-4-1978 and therefore the period involved is not much, to apply Section 23(1-A).

38. In the result, the Appeals are allowed. The appellants shall be paid the market value at the rate of Rs. 18/- (eighteen only) per square yard with all consequential benefits.

39. There shall be an order as to costs in these Appeals, to the extent of Appellant's success.