

(1992) 09 KAR CK 0046

In the Karnataka High Court

Case No : M.F.A. No's. 676 to 681 of 1989

Special Land Acquisition Officer

APPELLANT

Vs

Nagappa Krishnappa Dandina

RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Land Acquisition Act, 1894 — Section 4 (1)

Citation : (1992) ILR (Kar) 3652 : (1992) 4 KarLJ 571

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

Bench : Division Bench

Advocate : B.V. Acharya and K.V. Narayanappa, for the Appellant; R.P. Hiremath, for F.V. Patil, S. Vijaya Shankar, Senior Advocate and Ravi S. Balikai and J.S. Pant, for the Respondent

Judgement

R. Ramakrishna, J.—The Special Land Acquisition Officer, Karnataka Industrial Areas Development Board, Dharward, shortly referred as "KIADB" preferred the above Appeals against the enhancement of compensation of market value made by the Reference C.out.

2. The lands are acquired for the Improvement of KIADB under a Preliminary Notification dated 30.10.1981 u/s 28(4) of Karnataka Industrial Areas Development Act 1966 which is analogous to Section 4(1) of the Land Acquisition Act 1894, shortly "Act". The particulars of the lands acquired are as follows:

SI.No.

M.F.A.

L.A.C.

Block Nos.

Area A. G.

1.

676/1989

9/87

193

8-06

2.

677/-

10/-

121/8

9-35

3.

678/-

7/-

118/2

4-19

4.

679/-

8/-

118/1

4-19

5.

680/-

11/-

128

7-00

6.

6817-

6/-

118/3

5-18

3. There is no dispute that all these lands abut each other and are situated within

the Municipal Corporation area of Dharwad of a Village Kelageri. The Land Acquisition Officer awarded a compensation at the rate of Rs. 8,000/- per acre vide his awards dated 22.08.1985, On Reference, the compensation was enhanced and fixed at Rs. 1.72 per Sq.Ft. by the Reference Court vide its common Judgment dated 11th October 1988. The determination of the market value by the Reference Court works out to be Rs. 74,923.20ps, per acre.

4. The enhancement in the market value is questioned by the appellant mainly on the ground of rejecting the sale deeds at Ex D-1 by the Reference Court which according to them, reflected the true market value, and relying upon a sale deed at Ex.P-10 related to a sale transaction of a small site situated at Narayanapura, a place far away from Kelageri village,

5. The respondents have mainly relied on the following documents in support of their claim before the Reference Court:

(1) Ex P-6, an award in LAC No. 328/1981 on the file of the First Additional Civil Judge, Belgaum, connected to acquisition of lands for extension of Mal Maruti area and to form layout under preliminary notification dated 26th July 1976. The reference Court relying on several sale deeds transacted near about the relevant points of time fixed the market value of compensation at Rs. 1,20,000/- per acre for lands converted to non-agricultural use and at Rs. 80,000/- per acre in respect of other lands. The total extent of land acquired was 37 acres 19 guntas.

(2) Ex P-7, an award in LAC No 164/1982 on the file of the Civil Judge, Chikodi. Out of R.S.No. 50 A/9 of Nipani 15,518 Sq.Ft. (04A-14G) acquired for formation of bye pass Road, Against the total compensation of Rs. 35,691.40 awarded by L.A.O the reference Court fixed the market value at Rs. 3/- per Sq.Ft. which comes to Rs. 1,30,680/- per acre. Section 4(1) notification is dated 26.8.1976.

(3) Ex P-8, an award in LAC No. 829/1983 on the file of the Civil Judge, Chikodi following Ex P-7 and fixing the market value at Rs. 3/-per Sq.Ft. The extent of land acquired was 2A-23G.

(4) Ex P-10, a Registered sale deed dated 24.3.1980 executed by one Deshapande in favour of Smt.Laxmibai (PW 2) conveying 03 guntas of land situated at Narayanapura for a sum of Rs. 12,000/- i.e., Rs. 4,000/- per gunta works out to Rs. 5/- per Sq.Ft.

6. The appellant mainly relied on the following document:

(1) Ex D-1 a Registered sale deed dated 19.2.1981 executed by Sri Ranganath Shamba Rao Jatara & others in favour of Smt.Padmaja Aruna Huilgol in Block No. 194 measuring 16A - 32G, at Rs. 3,000/- per acre situated within the corporation limit at Kelageri. This value works out to Rs,5/- per Sq.Ft.

7. The Reference Court relied on Ex P-10 to fix the market value and rejected Ex D-1. The learned Civil Judge has not placed reliance on other sale deeds Ex P-11 to Ex P-13 produced by the claimants due to non examination of vendors or

vendees or persons attesting sale deeds in accordance with the case law in The Collector, Raigarh Vs. Harisingh Thakur and Another, These documents are sale deeds marked as Exs.P 11 to Ex. P 13 marked in LAC Nos. 9/1987 and Ex D-2 and Ex D-3 marked in LAC No. 9/1987. The Reference Court accepted Ex P-10 and the evidence of claimants. Against this, the Reference Court discarded the sale deed Ex D-1 even though DW1 was examined. So the correctness of the award is to be examined on the basis of the document Ex P-10, Ex D-1 and oral evidence of PW 1, PW 2 and DW1.

8. Before taking up the merits of enhancement of claim by the Reference Court, it is necessary to decide an application filed by the appellant for additional evidence.

9. I.A.No. VII is the application under Order 41 Rule 27 r/w Order. 17 and 19 and Section 151 CPC to receive oral as well as documentary evidence regarding the lands acquired for the same purpose covered under the Notification of acquisition dated 12.2.1981. An affidavit accompanying the application was sworn to by the Executive Member KIAD Board. According to him the owners of lands in Survey Nos. 116, 119, 120 and 121 (P) covering an extent of 102 Acres 13 guntas acquired under the Notification, and the owners negotiated and agreed the rate of Rs. 8,000/- per acre. The agreements were made u/s 29(2) of the Act. A xerox copy of one such agreement of one Vinaya Vittal Jataria was produced. This agreement is dated 3.1.1985 and the lands involved in the agreements are Survey No. 115 measuring 37 Acres 32 Guntas and Survey No. 116 measuring 19 Acres 06 Guntas.

Order 41 Rule 27 reads thus:

"(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not after exercise of due diligence be produced by him at the time when the decree appealed against was passed or

(b) the Appellant Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined."

10. For the purpose of allowing the application it is necessary to see whether the appellant has fulfilled the requirement contained in Rule 27(1). It is contended that the evidence regarding the agreements had not been produced before the Reference Court, perhaps as it was not within the knowledge of the Government Pleader nor in the knowledge of Special Land Acquisition Officer as the officers are subjected to transfer.

11. This contention of the appellant does not fulfill the conditions laid down in

Rule 27(1). The affidavit does not disclose who was the Government Pleader and Special Land Acquisition Officer at the time of this agreement, when they are changed from their post and who are the new officers succeeded them to as to appreciate the contentions. There should be definiteness in their assertions.

12.1. The twin principles of satisfaction to allow the application for additional evidence is that the applicant should show that he has exercised due diligence and the new evidence was not within the knowledge or it could not be produced by him at the time when the award under the appeal was passed. Since there is want of diligence on the part of the appellant, this application does not merit consideration and the same is rejected.

12.2. This is not a case where the lower Court refused to admit the evidence which is now sought to be produced (Vide: KOYAPPATHODI M.AIYSHA UMMA v. STATE OF KERALA. The appellant submits that, this evidence was not within the knowledge of the Government Pleader nor within the knowledge of Special Land Acquisition Officer as these persons are liable to transfers and changes, the present incumbent of the respective offices at the time of the trial had no occasion to know the sale deeds in question.

12.3. This is an explanation available to the State and its instrumentalities in every case. The Industrial Board which was party to the proceedings before the lower Court, cannot plead ignorance of the sale deeds under which it purchased vast tracts of lands in the very locality. To permit it plead ignorance of such purchases is to judicially recognise and condone the gross inefficiency on its part in conducting the litigation. Affidavit filed in support of the application does not explain as to how, it came to fight now and how and when the Appellant came across the existence of those sale deeds, it does not even state as to whether any action is taken against the negligent officers responsible for this lapse. No doubt, appellant's liability, affects public interest. But at the same time, Court should not shut its eyes to the harassment that would result to the claimants, by keeping alive the litigation, in case these documents are admitted in evidence; matters shall have to be remanded if these I.As. are allowed. These documents cannot clinch the issue, because these sale deeds are admittedly on the basis that lands purchased thereunder were agricultural lands, without any urban use. Obviously, those vendors were satisfied with whatever amount received by them under those deeds; or, those cases may be cases of utter ignorance of the factual situation. Existence of a relevant evidence, by itself, is not a ground to permit its production at the appellate stage.

12.4. As we are of the view that the exercise of estimating the market value can be completed on the existing material, and for the above reasons, the I.As seeking production of additional evidence are rejected.

13. Sri Vijaya Shankar, learned Senior Advocate representing the Respondents/claimants raised a preliminary objection regarding maintainability of the Appeals. According to the learned Advocate there is no provision made in the KIAD Act

1966 to file an appeal on the award made by the Reference Court as Section 30 does not provide the provision for appeal.

Section 30 reads thus:

"30. Application of Central Act 1 of 1894:

The Provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894) shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, the apportionment of compensation and the payment of compensation, in respect of lands acquired under this chapter."

14. It is true that there is no express provision made for appeal against the order of Reference Court which is the Court of a Civil Judge in the hierarchy of Civil Jurisdiction. Merely because there is no express provision made for appeal, the same cannot be understood to say that the appellate jurisdiction is taken away, unless there is an express exclusion made for barring appeals. One such question came up for consideration in *National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee)*, the Supreme Court held thus:

"The Trade Marks Act does not provide or lay down any procedure for the future conduct or career of that appeal in the High Court, indeed Section 77 of the Act provides that the High Court can if it likes make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established then that appeal must be regulated by the practice and procedure of that Court. This rule was very succinctly stated by Viscount Haldane L.C. in *NATIONAL TELEPHONE CO., LTD. v. POST MASTER GENERAL* (1913) AC 546 (A) in these terms:

"When a question is stated to be referred to an established Court without more, it, in my opinion, imports that the ordinary incidents of the procedure of that Court are to attach, and also that any general right of appeal from its decisions likewise attaches."

The same view was expressed by Their Lordships of the Privy Council in AIR 1948 12 (Privy Council) wherein, it was said:

"Where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not, in terms confer a right of appeal."

Again in *SECRETARY OF STATE FOR INDIA v. CHELLIKANI RAMA RAO*, when

dealing- with the case under the Madras Forest Act Their Lordships observed as follows: "It was contended on behalf of the appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the statute just quoted. In their Lordships opinion this objection is not well founded. Their view is that when proceedings of this character reach the District Court that Court is appealed to as one of the ordinary Courts of the country with regard to those procedure, orders and decrees the ordinary rules of the CPC apply."

When a special Act on matters governed by that Act confers a jurisdiction to an established Court, as distinguished from a persons designata, without any words of limitation, then, the ordinary incident of procedure of that Court including any general right of appeal or revision against its decision in attracted. "The True rule is", said LORD SIMONDS, "that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does not in terms confer a right of appeal." Hence the submission of Sri Vijaya Shankar is not well-founded and the same is rejected.

15. Sri B.V.Acharya, learned Senior Advocate, representing the appellant, has submitted that the Reference Court has committed an error in relying on Ex P-10 as a comparable piece of evidence to arrive at the market value of the lands in question. The learned Advocate further submitted that the non-consideration of Ex D-1 which alone reflected the true market value on the date of preliminary notification by the Reference Court has caused grave injustice to the appellant, who has to pay the compensation which is actually more than nine times than the award of compensation made by the Land Acquisition Officer.

16. Shri Vijaya Shankar, learned Senior Advocate, representing the claimants in each appeals, submits that the Reference Court on the basis of the evidence both oral and documentary, and the relevant case law on the subject has arrived at a proper market value. Hence the same cannot be required to be interfered with.

17. It is admitted of no doubt that the Reference Court has placed reliance on Ex P-10 a registered sale deed dated 1.4.1980 of land measuring about 0-03 guntas situated at Narayanapura, which is near to the place of lands in question i.e., Kelageri and on that basis the market value was fixed after holding that the potential value of the lands are capable of being used for non-agriculture purpose. The Reference Court discarded Ex D-1 by giving its own reasons on the basis of the evidence and declined to rely on the said documents to fix the market value.

18. The claimants have produced a Map of the City of Hubli and Dharwad Corporation marked as Ex P-4 to show the location of the lands acquired in this Notification, There is oral evidence corroborating Ex P-4 regarding the location of the acquired lands. PW 1, one of the claimants, in respect of Block No. 193

measuring 8 Acres 06 Guntas, has stated in his evidence that after purchase of this land a well was sunk and Mango trees were planted. With regard to the location, this witness says that these lands comes within the Hubli -Dharwad Corporation Limits, which is reflected in Ex P-4. Those lands are at a distance of about two furlongs from Kelageri lands as shown in Ex P-5, The population of Hubli and Dharwad Corporation is more than 5 to 6 lakhs, This land is situated near Karnataka University. The Dharwad Bus stand is at a distance of about 4 to 5 Kms. The land abutted Dharwad Hatyal Road, Towards Western side New National High way was made recently. Nearby this land several plots were converted into non-agricultural use and therefore, he says that during 1981-82 the value of 0-01 guntas of land is between Rs. 5,000/- to Rs. 8,000/-. in the cross examination of this witness nothing much was elicited to support the case of the appellant. He has stated that Narayanapura locality is at a distance of about 8 to 10 furlongs from this land.

19. PW 2 Laxmibai, who purchased 0-03 guntas of Sand under Ex P-10, was examined as PW 2 in LAC No. 9 of 1987. Her evidence confined to her purchase of 0-03 guntas of land for Rs. 12,000/- as per Ex P-10. According to her evidence, Narayanapura is a new extension of Dharwad and after Narayanapura, Sadankeri and Kelageri comes. The distance in between Narayanapura and Kelageri is about one mile, The lands which were acquired for Industrial purpose are located nearby and from this site to that Industrial area, there are several residential houses built and she is also residing in the same place after constructing a house in that site. She has stated in her cross examination that Narayanapura is a big area and a new extension. Near to her place L.I.C. Office and State Bank Colony are located. In between Narayanapura and Kelageri there is an extension called Sadankeri and the distance in between Narayanapura and Kelageri may be one and half miles.

20. Another witness, Marigowda, who was examined as PW 1 in LAC No. 10 of 1987 has also given a detailed evidence corroborating the evidence of PW 1 in LAC No. 9 of 1987. According to his evidence, after Bangalore City, Hubli - Dharwad is the biggest City in Karnataka. From Kelageri to Bus Stand one cannot find any vacant space, as several buildings were constructed and from this land Karnataka University, Dharwad Bus stand, Dharwad Railway Station are at a distance of 1 1/2 kms, 4 kms & 5 kms. respectively. The National High way is at a distance of about 250 ft. and Thapovana, a famous religious place is at a distance of 3 to 4 furlongs. Surrounding these lands there are several extensions viz., Karnataka University, Gowlidaddi, Sadankeri, Banashankari and Narayanapura. His further evidence concerned to various other facilities available at Dharwad.

21. On behalf of the appellant a witness Aravinda was examined as DW 1 to prove the sale deed Ex D-1. This sale deed is concerned to Block No. 194, which was purchased by one Padmaja, a relative of this witness, The sale deed discloses that an extent of 16 acres 36 guntas were sold by a family called

"Jatara1 at Rs. 3,000/- per acre. The sale deed is dated 19.2.1981, This witness is a Power of Attorney Holder to the purchaser. In his cross examination, he has stated that he does not know that the vendor Devi Jatara sold this land to avoid the Urban Land Ceiling Act. A suggestion was made that for avoiding stamp duty the market value of the land was shown less than what it should be. It has been brought out that the sale transaction took place by virtue of an agreement made between the parties during 1970. This fact is reflected in the sale deed. An argument was advanced by the claimants that the value of the land involved in the sale deed admittedly shown as Rs. 3,000/- per acre in the year 1970 and therefore, the said sale deed cannot be relied to fix the proper market value. There is some force in this submission as the sale deed does not disclose to a bona fide transaction between the parties reflecting a true and correct market value that was existing during 1981, Hence the reasoning of the Reference in rejecting Ex 0-1 and the oral evidence of DW 1 does not call for any interference,

22. in addition to Ex P-10 the claimants have produced some more relevant documents to prove the market value of the acquired lands. We have already adverted to those documents and the market value fixed by the Reference Court where the lands acquired were similarly situated to the lands now under acquisition. The market value of the lands which were acquired even prior to 1981 were valued at Rs. 3/- per Sq.Ft. . Though these were agricultural lands the potential value for non agricultural use was considered and on that basis the market value was fixed.

In Smt. Kausalya Devi Bogra and Others Vs. Land Acquisition Officer, Aurangabad and Another, Vijay Kumar Moti Lal Vs. State of Maharashtra, Brig. Sahib Singh Kalha and Others Vs. Amritsar Improvement Trust and Others, are some of the cases which point out that while fixing the market value if the lands are situated within the Municipal limits, the potentiality to use it for non-agricultural purposes should not be over-looked. In such cases where the Courts are to assess the market value on the basis of a sale deed of a small bit of land, normally the method of deducting 53% towards the developmental charges etc,, to reach the market value is followed.

23. 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 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 carrying 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 laying roads and drains, and expenses incurred in carrying out the works and bringing in of the services, a reasonable return towards the investments, 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.

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

"It is trite proposition that prices fetched for a 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 did 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 adapted, then in valuing such small, Said out sites the valuation indicated by sale of comparable small sites in the area at or about the time of the notification could 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 the land required for roads and other developmental expenses can, together, come up to 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 tractor 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 of an appropriate rate ranging approximately between 20% and 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."

In SURESH KUMAR v. TOWN IMPROVEMENT TRUST, BHOPAL AIR 1999 SC 1222 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 relevant disposition but laid out in its inscriptive and advantageous way in which the owner can dispose of 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 land; namely its proximity to developed urbanised areas."

26. The sale price of a 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.

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.

IN Land Acquisition Officer Vs. Chandrasekhar Reddy, the Bench observed thus:

"The assessment of the market value in 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. In Food Corporation of India through its District Manager, Faridkot, Punjab and Others Vs. Makhan Singh and Another, relied by the appellant, the compensation awarded by the Reference Court and the High Court was reduced. The reason for reducing the compensation is stated at para 15.

Para 15: reads thus:

"This Court as the last Court of Appeal, will ordinarily not interfere in any Award granting compensation unless there is something to show not merely that on the balance of evidence it is possible to reach a different conclusion, but that the judgment cannot be supported by reason of a wrong application of principle or because some important point affecting valuation has been over-looked or mis-applied. Besides, generally speaking, the appellate Court interferes not when the Judgment under appeal is not right but only when it is shown to be wrong. See in this connection, The Dollar Company, Madras Vs. Collector of Madras, Added thereto are other rules of prudence that the Courts do not treat at par land situated on the frontage having special advantage and the land situated in the anterior undeveloped area, or to compare smaller plots fetching better price with large tracts of land. See in this connection Periyar and Pareekanni Rubbers Ltd. v. State of Kerala."

30. The Reference Court took into consideration the market value of the land on the basis of Ex,P-10r a sale deed which came into existence earlier to the Preliminary Notification. The price then applicable was adopted without adding escalation to the market value which was worked out to Rs. 1,20,000/- per acre. After giving deduction of 53% towards the development charges etc., the market value was fixed at Rs. 1.72 per Sq.Ft. . The question that the land situated on the frontage having special advantage and the lands situated in the anterior having disadvantage position does not arise as the sale deed relied by the Reference Court was in respect of land situated at a distance of 8 to 10 furlongs with the same potential value to make use of the land for building purposes, Ex,P.4 a sketch produced in this case shows topography of the land involved in this case and the land situated at Narayanapura. The Reference Court with cogent reasons refused to place reliance on Ex.D.1 which according to the facts and circumstances does not reflect the true state of affairs to arrive at a correct market value.

31. The Reference Court has determined the market value after | taking into consideration the well recognised principles enunciated in various cases and the materials placed including oral evidence. Hence the Judgment of the Reference Court does not call for any interference.

31.1. Ex.D.1 was sought to be proved through D.W.1, the purchases of the land. Surprisingly, he feigns ignorance of several admitted developments that took place in the locality, such as the existence of Srinagar Extension, acquisition of lands by K.I.A.D. Board for industrial purposes, existence of Hoysaia Extension etc, Witness admits that the lands purchased under Ex.D.1 was outside the

Municipal limits of the City. There is an important recital in Ex.D.1 which makes it irrelevant for the purposes of these cases. Though it was registered in February, 1981, it was in pursuance of an agreement entered into between the parties thereto in the year 1970; sale deed was executed after vendor obtained permission of the Special Deputy Commissioner (Competent Authority). The trial Court rightly suspected that this sale deed was to overcome the provisions of Urban Land- Ceiling and Regulation Act, That apart, if the agreement was of the year 1970, the sale price must have been agreed upon in the year 1970 itself and therefore the sale price stated in this document should relate back to the year 1970.

31.2. In Suresh Kumar v. Town Improvement Trust, Bhopal, it was held:

"A land which is 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 he is, is not likely to be content to sell the land for its value as waste or agricultural land as the case. The possibility of its being used for building purposes would have to be taken into account. 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 land; namely, its proximity to developed urbanised areas."

32.1. While computing the market value, mathematical precision cannot be achieved. Even in the same area, no two sites may fetch identical price. An element of guess work is inevitable in this sphere of law. The deduction of development charges and area to be deducted towards roads, drains and parks, etc., are again based on estimates and the percentage applied, at the most, is an attempt at honest guess work. When a city is developing in a particular direction it may take a few months, or even years, for a particular land to reach the stage of development. Even after the land is developed, the developer may have to wait for some more time to sell all the sites and realise his investment with his margin of profits.

32.2. In the instant case, trial Court has based its decision on the value fetched by a site measuring 3 guntas (7 1/2 cents). Narayanapura, admittedly is a mile away from the acquired lands. But on the basis of the evidence on record, it has thought it fit to treat the area comparable to the area under acquisition.

33.1 The award of Land Acquisition Officer has fixed the market value at Rs. 8,000/- only on the basis that the lands are agricultural, even though the potentialities of the lands for non-agricultural use, glares at us. This obvious advantage attached to those lands, has been ignored; therefore, awards of the LAO are liable to be ignored as arbitrary (vide; SARASWATHI SUNDARAM v. ASST. COMMISSIONER AND LAO, BANGALORE. Preliminary Notification in the instant case is of October 1981. Lands are in the outskirts of Dharwad City Corporation. Locality is nabbing with developmental activities; and is close to a

reputed University campus. The land value, on the face of it, cannot be as low as Rs. 8,000/- per acre, if we may draw inferences from our experience in dealing with this type of cases. Even in remote parts of this State, dry lands were being awarded compensation by fixing market value of about Rs. 6 to 8 thousands per acre in respect of the lands acquired in the years 1978 and 1980. Those cases were, cases of agricultural lands.

33.2 In the circumstances, it will be quite arbitrary if we affirm the award of the LAO fixing the market value at Rs. 8,000/- per acre for these lands having immense non-agricultural potentiality.

33.3. Burden, no doubt, is on the claimant to prove the market value. Claimants have placed their cards to the best of their ability; in doing so, they may have outstretched their arms too wide. On the other hand there is no reliable material placed before the Court, by the LAO. A belated attempt is made before this Court to produce some additional evidence, without even satisfactorily explaining the cause to justify the exercise of Court's power under Order 41 Rule 27 of the Code of Civil Procedure.

34.1. In the circumstances, we are constrained to make an attempt to estimate the market value of the land on the basis of the existing evidence, as per Ex.P.10.

34.2. Having regard to the distance between Narayanapura and the acquired lands and the possibility that a developer may have to wait for some time to realise the fruits of development, we deem it fit to deduct further 12% from the net figure arrived at (after deducting the normal 53% from the retail price), to reach the market value of these lands. This deduction is permissible having regard to the depth of the lands under consideration, from the land sold under Ex.P.10, ; and the waiting period for the development to take place. In this regard, we derive sustenance from the observations of the Supreme Court in *Chimanlal Hargovinddas v. Special Land Acquisition Officer*, 15. 1976(1) KLJ 1 One of the factors, (No. 15) stated by the Supreme Court, inter alia, provides for such discounting.

"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 locked up, will be longer or shorter and the attendant hazards."

(underlining is ours).

34.3. Therefore, we deduct 65% from the price fetched under Ex.P. 10 (The per acre value as per Ex.P.10 is Rs. 1,60,000/-). The net figure will be 35% of this, which comes to Rs. 56,000/- per acre. This looks to be reasonable as a measure of fair compensation to the lands acquired. This will come to Rs. 1,400/- per gunta.

35.1. In *Koyappathodi M. Ayisha Umma v. State Of Kerala*, evidence of transactions in respect of small sites with buildings thereon, was held as not a

proper evidence to evaluate 6 acres of land acquired; but, at the same time, all round developments that had taken place, and the potentiality of the land for urban use were considered as relevant to estimate the market value.

35.2. In *FOOD CORPORATION OF INDIA v. THAKUR SINGH* AIR 1992 SCW 1466 it was pointed out, while considering the process of valuation:

"Somewhere in the process, where difficulties crop up, the Courts employ the rule of thumb, since compensation has to be assessed and arms cannot be raised in despair. It is bounden duty of the Court while ascertaining compensation to see that it is just, not merely to the individual whose property is taken, but to the public which is to pay for it even if it be a public corporation set up for public needs."

35.3. Discussion at para 16 of the above Report, shows that Ex.A.11 was relied therein, which was a sale deed in respect of an area less than a kanal (a kanal is 1/8th of an area = 5 guntas). It had the advantage of G.T. Road. Therefore, it was held that compensation ought to be lower than the value of the land under Ex.A.11; Court "lifted the thumb" and sliced out a part of the sale consideration under Ex.A.11 and the balance was held to be the market value of the acquired land.

35.4. An exhaustive survey of the case law is found in *Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*, After pointing out that onus is on the claimant to establish the market value, in excess of the amount found in the award of Spl. L.A.O., the Supreme Court after quoting *Katarki's* case where action taken against a judicial officer for awarding higher compensation was referred, proceeded to observe at page 2198:

"The rule of conduct spurned by this Court squarely put the nail on the official act as a refuge to fix arbitrary and unreasonable market value and the person concerned shall not camouflage the official act to a hidden conduct in the function of fixing arbitrary or unreasonable compensation to the acquired land. Equally it is salutary to note that the claimant has legal and legitimate right to fair and reasonable compensation to the land he is deprived of by legal process. The claimant has to be re-compensated for rehabilitation or to purchase similar lands elsewhere, in some cases for lack of comparable sales it may not be possible to adduce evidence of sale transactions of the neighbouring lands possessed of same or similar quality. So insistence of adduction of precise or scientific evidence would cause disadvantage to the claimants in not getting the reasonable and proper market value prevailing on the date of notification u/s 4(1). Therefore, it is the paramount duty of the Land Acquisition Judge/authority to keep before him always the even scales to adopt pragmatic approach without indulging in "facts of imagination" and assess the market value which is reasonably capable to fetch reasonable market value, What is fair and reasonable market value is always a question of fact depending on the nature of the evidence, circumstances and notification u/s 4(1) but not an anxious buyer

dealing at arm's length nor facade of sale or fictitious sales brought about in quick succession or otherwise to inflate the market value."

36. These Appeals are instance wherein the Spl.L.A.O, assigned no reason at all for awarding Rs,8,000/- per acre. Patent and obvious potentiality of the lands were completely ignored by him. Before the Reference Court, the LAO kept quiet without leading any evidence, taking shelter behind the burden of proof, being on the claimant in such a situation, it will be a denial of Justice to the claimants, if we non-suit them by discarding the material disclosed as per Ex.P.10. We have attempted to arrive at the market value by resorting to Ex.P.10 (as has been done by the Reference Court), and conclude that a just compensation in these cases will be a market value of Rs. 56,000/- per acre.

In the result, these Appeals are allowed in part; compensation be awarded fixing the market value at Rs. 56,000 per acre. No costs.