

(1992) 09 KAR CK 0011
In the Karnataka High Court
Case No : M.F.A. No. 1898 of 1991

Special Land Acquisition Officer

APPELLANT

Vs

V.G. Kulkarni

RESPONDENT

Date of Decision : 25-09-1992

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (1992) ILR (Kar) 3501 : (1992) 4 KarLJ 415

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

Bench : Division Bench

Advocate : B.V. Acharya for K.V. Narayanappa, for the Appellant; S.G. Sundaraswamy for Suresh P. Hudedaguddi and N. Dinesh Rao, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—In this Appeal the appellant is questioning the compensation awarded to the land acquired for the purposes of Karnataka Industrial Areas Development Board. The land is situated in Block No. 105, Kelageri village near Dharwad, in all measuring 20 acres 4 guntas out of which 29 guntas is potkarab.

2. The land was notified for the acquisition as per the Notification dated 6.1.1982 published in the Karnataka Gazette on 21.1.1982. The Land Acquisition Officer awarded compensation at the rate of Rs. 8,000/- per acre. At the instance of the claimant the Reference Court has now awarded the compensation which comes to Rs. 3,90,000/- per acre (Rs. 8.97 per square feet.) While the Land Acquisition Officer has awarded the compensation by treating the land as agricultural, the Reference Court has treated the land as urban land having immediate potentiality to be used as building sites. In the application filed for the reference the claimant stated that the market value of the land will be "more than" Rs. 1.5 lakhs per acre.

3. The Reference Court has relied on Exs.P2 to P6, under which the land

belonging to the City Improvement Trust Board were sold in auction as corner sites. The average price fetched under these five documents comes to Rs. 30.64Ps. per square feet. From this 40% was deducted towards developmental expenses and thereafter another 30% was deducted because these were the sale deeds of the year 1985, three years after the commencement of the present acquisition proceedings, The Reference Court has estimated the escalation rate at 10% per annum. Another 25% was deducted on the ground that all the five sites sold under Ex.P2 to P6 were corner sites and according to the Reference Court the price of the corner site will be 25% more than the price of other sites.

4. The only question for consideration is whether the compensation awarded by the Reference Court is proper and if not what will be the proper compensation?

5. Before the Reference Court the claimant examined himself as P.W.4. P.W.2 was a clerk in the office of Hubli-Dharwad Urban Development Authority to which the Trust Board had merged. He was examined mainly to prove Exs. P2 to P6. P.W.1 is a record keeper in the Land Records Office, Dharwad. He was examined obviously to prove that Survey No. 115 measuring 12.4 acres were converted in the year 1980 as non-agricultural land on which several sites were formed. While doing so three acres twenty five guntas were set apart to provide for roads. However, this 3 acres 25 guntas would not include the area to be kept for parks which will be about 1 acre 9 guntas. P.W.3 is an automobile shop keeper residing in the nearby locality called Srinagar. He was examined obviously to speak to the developmental activities that have taken place in and around the land under acquisition.

6. The appellant has filed I.A.2 before us under Order 41 Rule 27 of the CPC ("CPC" for short) seeking the production of oral as well as documentary evidence regarding the lands acquired for the same purpose, under the Notification dated 12.2.1981. According to this application some of the parties agreed to sell the lands to the Board referred above at the rate of Rs. 8,000/- per acre. This will be referred to presently.

7. Before the Reference Court the claimant made an application seeking the amendment of the Reference Application filed by the claimant before the Land Acquisition Officer. The trial Court seems to have permitted this amendment, though the actual order is not quite clear, as could be seen from a reading of para 12 of its judgment. This application was obviously filed to get over the difficulty caused by the statement in the Reference Application that the market value of the land is more than Rs. 1.5 lakhs per acre. By the application this is sought to be amended to bring the application in conformity with the present claim of the claimant. We do not think it is necessary for our purpose to go into this question because in the Reference Application, Ex.P7, the claimant has not given any particular rate of market value, he has simply said that the market value of the land is "more than" Rs.1.5 lakhs. u/s 18 of the Act it is not mandatory for the claimant to specify the particular amount of compensation claimed by the claimant.

8. The Reference Court has given a finding that the land acquired has non-agricultural potentiality. There can be no doubt that the land acquired has immense potentiality for non-agricultural use. The land is almost part of the City Corporation of Hubli-Dharwad. Though there has been some discussion before us as to whether this land is part of Saptapura or part of Kelageri, we are of the view that the question is not of much materiality because the developmental activities of the City has been expanding towards the land under acquisition, as could be gathered from the material on record. One important factor will have to be noticed by us at this stage is that this land has two main roads abutting it; (i) Dharwad-Haliyal road and (ii) another approach road.

9. The Reference Court has concluded that the land in question adjoins State Highway namely Dharwad-Haliyal Road and that the land falls within the limits of Hubli-Dharwad Municipal Corporation. At a distance of half a furlong from the land, the City Improvement Trust Board had formed plots; the University Campus is a furlong away; Dharwad main market is about two kilometers and the Railway Station and Karnataka College are about half a kilometer from the land. There is a reputed hospital by name German Hospital within a kilometer from the land acquired. Every 10 minutes the buses ply from the area to Dharwad market. The Karnataka University Campus is fully developed. Several residential buildings have come up nearby with layouts called Ganesh Nagar, Anand Nagar and Vishal Nagar, Saptapura locality is fully developed, which is also close by and in fact in the Outline Development Plan (ODP) "this area was treated as part of Saptapura locality (Ex.P8) though technically the land is part of Kelageri village. There is also a locality called Srinagar locality, well developed with residential houses. Ex.P2 to P6 pertain to the sites formed by the C.I.T.B. in this locality.

10. We were taken through the oral evidence as well as other evidence on record. Evidence of P.W.1 shows that in Block No. 115 measuring 12 acres 34 guntas a layout has been formed (of which some plots are covered by Exs.P2 to P6). According to P.W.1, 178 plots were made in the said layout of the C.I.T.B. Evidence of P.W.2 also justifies this conclusion of the trial Court that nearby the C.I.T.B. has formed a layout. P.W.3 also speaks to the vast development that has taken place in and around the locality. He has given the names of the several layouts that have come up. Saptapura locality stood developed for about 15 to 20 years prior to his deposition in March 1991. In the campus of the Karnataka University there are primary schools, temple, public park, banks etc. in addition to the staff quarters and the hostels. There is also a religious place known as Thapovan within a furlong from Srinagar; that is a place of pilgrimage. C.I.T.B. plots were laid in Srinagar locality. This witness says that there are three lands between the C.I.T.B. layout and the land under acquisition. One land belongs to one Tholmatti, another belongs to one Shilavanth, and another adjacent land is already converted into plots. Apart from the Haliyal main road abutting the land in question, there is another road to the West leading to Goa road. P.W.4 is the claimant; he also speaks to the locality and the developments that have taken place. The approach road to Goa Road abutting his land is also called Thapovan

road. According to him the C.I.T.B. plots are within half a furlong from his land. He also speaks to the several residential layouts which have come up in recent years. The land in question according to him adjoins Saptapura boundary and Saptapura locality is the best residential area in Dharwad and the land in question comes within the corporation limits.

11. It is unnecessary to refer to other evidence on this aspect. We concur with the trial Court that the land has immense non-agricultural potentiality and that Dharwad City has been developing towards this land. The Land Acquisition Officer has valued the land only as agricultural land. There is no dispute on this aspect. He has not referred to any of the developments in and around the locality. He has completely ignored the potentiality of the land in question. The award of the Land Acquisition Officer does not give any reason as to why the market value of the land is to be Rs. 8,000/- per acre. The opinion of the Land Acquisition Officer stated in his award is a mere assertion.

12. In the Decision reported in SARASWATHI SUNDARAM v. ASSISTANT COMMISSIONER, AND LAO, BANGALORE 1976(1) KLJ 1 a Bench of this Court held that if the Land Acquisition Officer ignores the non-agricultural potentiality of the land acquired in his award, the said award would be arbitrary. In such a case the burden is not shifted to the claimant to show that the award of the Land Acquisition Officer is inadequate. It is for the Land Acquisition Officer to support his award in such a situation.

13. No doubt the burden is always on the claimant to prove the enhanced market value before the Reference Court; but when the award of the Land Acquisition Officer ignores the relevant material as to the potentiality of the land, the Court cannot just proceed to uphold the said award. The Court will have to make a very serious attempt to arrive at the market value on the basis of the existing material placed before it without giving any weight to the award made by the Land Acquisition Officer. The award of the Land Acquisition Officer being arbitrary has to be ignored in this process. But, at the same time, the claimant's case cannot automatically be accepted, because, essentially it is for him to prove his case.

14. As held by the Supreme Court in FOOD CORPORATION OF INDIA v. MABHAN SINGH AIR 1992 SCW 1466 the Land Acquisition Act is neither a tool in the hands of the Government to deprive any person his land without payment of its market value, nor is it a bonanza to a land owner whose land has been acquired, permitting him to get a fanciful inflated price. In the process of ascertaining the market value, difficulties may crop.

"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."

15. The need to recognise the potentiality of the land for non-agricultural use and to value the land accordingly has been pointed out by the Privy Council as early as the year 1939. In AIR 1939 98 (Privy Council) it was held at page 102 thus:

"...No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes but which at the valuation date is waste land or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be, It is plain that in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account, It is equally plain however that the land must not be valued as though it had already been built upon, a proposition that is embodied in Section 24(5) of the Act and is sometimes expressed by saying that it is the possibilities of the land and not its realised possibilities that must be taken into consideration."

In the next paragraph the Privy Council also pointed out that some deduction may have to be given for the possibility that the land might never be required for the building purposes for a considerable time. The same principle has been reiterated in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, wherein the Supreme Court stated 17 factors to be kept in mind while valuing the land. In *Administrator General of West Bengal Vs. Collector, Varanasi*, again the Supreme Court applied the same principle, at the same time it was pointed out by the Supreme Court that the determination of market value of a land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria.

16. Having held that the land is ripe for development, the next, stage in our exercise will be to find out the factors which would have a bearing to arrive at the proper market value. It is quite well settled now that an element of guess work is inevitable in this exercise of determining the market value. Though speculation by the Court is absolutely unwarranted, a honest guess work is certainly permitted because the very nature of the exercise is such that the Court will have to analyse several economic factors and in this exercise, the Judges are expected to draw from their experience and draw the requisite inference. In the very nature of things it is possible for two reasonably minded persons to arrive at two different figures regarding the market value both of which could be termed as reasonable in the circumstances. In *Raja Srivalgoti Sarvagna Kumara Krishna Yachandra Bachadurvaru Vs. Special Land Acquisition Officer, City Improvement Trust Board, Bangalore and Others*, the Supreme Court observed as follows at page 871:

"..... 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 a matter of conjecture or

guess."

Earlier in Shamalbhai Lalubhai Patel Vs. The Additional Special Land Acquisition Officer, the Supreme Court had stated the inevitability of guess work, at para 7 of the report.

17.1. Realising the paucity of material on record on behalf of the Special Land Acquisition Officer an application (I.A.II) was filed before this Court under Order 41 Rule 27 CPC which we have to consider at this stage. The application seeks this Court 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 or agreement of the parties at Rs. 8,080/- per acre..." as detailed in the application. The application refers to Survey Nos. 115, 116, 120 and 121(P) of Kelageri village. It also refers to two sale deeds dated 7.8.1981 and 21.8.1981. The affidavit filed in support of the application states that the owners of these lands parted with their lands at the negotiated and agreed rate of Rs. 8,080/- per acre.

172. Thereafter the affidavit states as follows:

"5. I respectfully submit that all the lands are interior and do not enjoy any road facilities. Unfortunately the evidence regarding the agreements had not been adduced before the learned Civil Judge. Perhaps it was not within the knowledge of the Government Pleader nor in the knowledge of the Special Land Acquisition Officer as the Officers are subjected to transfers now and then.

6. It is further submitted that the evidence now sought to be adduced is very vital and necessary for arriving at a just decision by the Court in regard to the market value of the lands.

7.1 submit that there are sale deeds relating to the sale of the lands of the same village reflecting the prevailing price. Two certified copies of such sale deeds are produced."

17.3. Certified copy of the sale deed dated 7.8.81 purports to be a sale deed executed in favour of Chandrashekaraswamy Shivarudraswami Chulakimata by Smt. Sharaunnisa and others for a sum of Rs. 29,100/-. The land sold is a land in Kelageri village. It states that the vendors were compelled to sell the land to clear the loan obtained from the bank and also they are under necessity to meet the household expenses. The land is described as a dry land and it is cultivated only with the help of rain water and the annual income is only about Rs. 1,000/- from the lands. Another certified copy of the sale deed dated 28.1.81 purports to the execution of the sale by Mohammad Ghouse in favour of Pundalik Rao and others for Rs. 80,000/-. The land is situated in Kelageri village, Block No. 197, measuring 12 acres 22 guntas. The vendors had to sell the land in view of the financial stringency and to clear the bank loan as recited in the said deed. These two documents are not proved by the examination of the vendor or of the vendee, in the sense that they are bona fide transactions reflecting the correct

rate of the market value. Though the application states that oral evidence may be received, the application nowhere mentions the names of the witnesses to be examined. Further, both these sale deeds proceed on the basis that the lands covered by them are agricultural lands and were valued accordingly. Since the valuation of the land involved in the appeal before us had to be valued on the basis of its non-agricultural potentiality, these two sale deeds cannot have any relevance.

17.4. The third document is a copy of the indemnity bond executed by one Vital Jatara in favour of the Karnataka Industrial Areas Development Board. The Bond read with the agreement states that the executant was satisfied with the sum of Rs. 4,05,510.75Ps. in respect of the land in Survey Nos. 115 and 116 taken over by the Board as per the preliminary notification dated 5.11.1981. The extent of the land in two survey numbers is over 56 acres. The date of the agreement is not forthcoming in the agreement, however the date is stated to be 3rd January 1985, as could be seen from the copy of the "Indemnity Bond". The appellant strongly relied upon this document and sought its introduction into the case on the ground that a part of the very land notified for acquisition is the subject matter of this Indemnity Bond and the Agreement.

17.5. The question is whether we should entertain this application permitting the production of the evidence. Admittedly this is not a case where the appellant sought the production of the evidence in the trial Court which was refused by the trial Court. Therefore Clause (a) of Order 41 Rule 27(1) is not applicable. To enable the party to invoke Clause (aa), the party will have to establish that the evidence now sought to be produced could not be produced in the trial Court in spite of exercise of due diligence. The affidavit filed in support of I.A.II nowhere states that the appellant exercised due diligence in search of the evidence and in spite of such diligence, these three documents were not within the knowledge of the appellant. In fact it is impossible for the appellant to plead ignorance of the "indemnity bond" and the agreement dated 3.1.1985 because those were executed in favour of the Board of which the appellant is an Officer representing it.

17.6. The next question is whether the application would fall within Clause (b) of Order 41 Rule 27(1). This clause could be invoked only if the Court requires the evidence to be produced to enable the Court to pronounce judgments or for any other substantial cause. We are of the view that the material available is sufficient to determine the market value of the land in question on the basis that the land has immense urban use potentialities.

17.7. The power to admit additional evidence in appeal should be exercised very sparingly and with great caution. Additional evidence should not be admitted to enable a party to make out a fresh case in appeal and if a party omitted to tender the relevant evidence in the lower Court, the Appellate Court should not admit the same as an additional evidence (vide Mulla's Civil Procedure Code, 14th Edition, Volume III, page 2259). At page 2260 it is further stated while

considering Clause (b), the true test is not whether the Court would be unable to pronounce the judgment without production of the additional evidence but whether on the working of his mind, the Judge considered that he required the additional evidence to enable him to pronounce judgment. Consequently we reject I.A.II.

17.8. In a recent Decision, in Koyappathodi M. Ayisha Umma Vs. State of Kerala, Supreme Court upheld the order of the High Court rejecting the request to remand the case to enable the production of additional evidence under Order 41 Rule 27 CPC; Supreme Court observed:

"Remand under Order 41 Rule 27 CPC cannot be made to adduce fresh evidence, when though available but was not adduced."

18. The next question will be whether the Reference Court is justified in relying on Exs.P2 to P10 to compute the market value of the lands in question.

19. Exs.P2 to P6 are the five lease-cum-sale deeds executed by the C.I.T.B. in favour of the successful bidders in respect of five corner sites. Accordingly, the auctions were held on 23.7.1985, though lease-cum-sale deeds were executed on different dates, The respective dates of those documents, the area of the sites, price paid for the site and rate per area are as follows:-

Exhibits

Date

Area

Price

Rate Per acre

P2

23.07.85

2439.50

69,940

12,48,856.8

P3

12.12.85

1200.00

42,670

15,48,920.9

P4

07.11.85

1620.00

45,970

12,36,082.2

P5

08.11.85

1540.00

46,070

13,03,122.8

P6

24.10.85

1165.20

42,570

15,91,716.0

20. Average price under these transactions works out to be Rs. 30.64 per sq.ft. These are corner sites; auctioned by the City Improvement Trust Board. Genuineness of these transactions cannot be doubted. Under these transactions, the successful bidders became the purchasers of the respective sites, subject to certain conditions; one of the conditions prohibits further sale of the sites for a period of 10 years by the lessee-cum-vendees.

21. Reference Court opined that the land involved in this Appeal is quite near to the lay-out formed by the C.I.T.B. and these transactions reflected in Exs.P2 to P6 could be relied on to estimate the market value of the land in question. The land in question measures 20 acres 4 guntas (out of which 29 guntas is karab). Preliminary Notification is dated 6.1.1982. The Reference Court estimated the escalation of the market value to be 10% per annum, and proceeded to arrive at the wholesale price (market value) of the acquired land thus:

Average price under Exs.P2 to P6

Rs.30.64 per Sq.ft.

Deduct 40% towards developmental charges etc. Balance

18.39

Deduct 30% towards the escalation during 3 years Result

11.96

Since all the sites sold under Exs.P2 to P6 are corner sites, Reference Court assumes their price to be 25% higher than ordinary sites. Hence 25% for the estimated value of corner sites as on 1982 is again deducted, to arrive at the net value of Rs. 8.97 per sq.ft. (which is equal to Rs. 3,90,000/- per acre.)

22. The learned Counsel for the appellant seriously questioned the propriety of the methodology adopted by the Reference Court. It was contended that all those five sites are very small sites and are corner sites, in a fully developed layout formed by the Trust Board and the price fetched 3 1/2 years after the date of Preliminary Notification in question, in respect of these sites, cannot be a proper basis at all to compute the market value of the acquired land. Sri Sundaraswamy, appearing for the claimant, on the other hand, contended that precedents are available wherein subsequent sale deeds have been relied to estimate the market value of the acquired land, a few years prior to the sale deeds; that the transactions under Exs.P2 to P6 could not be challenged as lacking in bona fides because, public auctions were held by the statutory body and these sites were sold; that the sale price would have been still more, if there was no restriction against alienation for 10 years and the cumulative effect of these transactions was properly taken note of and made the basis to compute the market value of the land acquired.

23. In *State of Uttar Pradesh Vs. Major Jitendra Kumar and Others*, land was acquired under a Notification dated 6.1.1948 by a Co-operative Society. Neighbouring land was subsequently purchased by the Society on 11.7.1951 and this sale deed was made the basis to estimate the market value of the acquired land. Supreme Court upheld this estimate and observed, at page 877:

"..... It is true that the sale deed Ex.21 upon which the High Court has relied is of a date three years later than the Notification u/s 4 but no material was produced before the Court to suggest that there was any fluctuation in the market rate at Meerut from 1948 onwards till 1951 and if so to what extent. In the absence of any material showing any fluctuation in the market rate the High Court thought it fit to rely upon Ex.21 under which the Housing Society itself had purchased land in the neighbourhood of the land in dispute, On the whole we are not satisfied that any error was committed by the High Court in relying upon the sale deed Ex.21."

24. In *Mehta Ravindrarai Ajitrai (Deceased) by Lrs and Others Vs. State of Gujarat*, it was held that, a sale deed of the adjacent land could not be ignored altogether merely because it was a post-acquisition sale, when there was no evidence indicating that there was sharp or speculative rise of the land after acquisition.

25. In *Administrator General of West Bengal Vs. Collector, Varanasi*, it is observed at page 947:

".... 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 the large extent to be valued does admit of and is ripe for use 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 lay-out 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 deductions for the extent of land required for the formation of 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 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 the "retail" price of land and the latter the "wholesale" price."

"The sale transaction at Ext.24 was an year later. Such subsequent transactions which are not proximate in point of time to the acquisition can be taken into account for purposes of determining whether as on the date of acquisition there was an upward trend in the prices of land in the area. Further under certain circumstances where it is shown that the market was stable and there were no fluctuations in the prices between the date of the preliminary notification and the date of such subsequent transaction, the transaction could also be relied upon to ascertain the market value."

Similar is the observation of the Supreme Court in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*, factor No. 7)

26. These weighty Authorities were cited by Sri Sundaraswamy to sustain the market value estimated by the Reference Court, Before considering the respective contentions, we have to bear in mind, that, Court cannot completely ignore the experience it has gained while dealing with similar cases and the prevailing trend as to market values of lands in several parts in the State. Hubli-Dharwad, no doubt, is an important City in the State of Karnataka and the land acquired is within the Corporation limits of Dharwad; potentiality of the land for building sites is quite clear. We are concerned with the Notification issued in January 1982. The land, is not actually in the midst of any developed area; developmental activities were just projecting towards the land, that is to say, City seems to be expanding towards this land and probably, it would have taken a few more years for this land to get developed. In fact, the lay-out formed by the C.I.T.B., was only in the year 1985 and if so, it would have taken another 3 to 4 years for this land to be developed. As pointed out under Factor No. (15) in *Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another*,

there will have to be discounting also, for the waiting period during which the capital of the entrepreneur would be locked up.

27. The Judges are not computers and should not mechanically apply any particular formula to estimate the market value; they are expected to draw inferences from their experiences and apply them to the particular set of facts. This fundamental principle is found in the definition of the term "proved" in the Evidence Act, which says, "a fact is said to be proved when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists". The very exercise of inferring the probabilities requires the Judges to rely on their judicial experience.

28. in *Periyar and Pareekanni Rubbers Ltd. Vs. State of Kerala*, several principles were reiterated by the Supreme Court. One of the principles, is that,

"...., It is well settled law that the amount awarded by the Land Acquisition Collector form an offer and that it is for the claimants to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value and the amount offered by the Land Acquisition Collector was inadequate and he proceeded on a wrong premise or principle."

An earlier Decision of Supreme Court in *Chaturbhuj Pande and Others Vs. Collector, Raigarh*, was quoted, to the effect:

"..... It is true that the witnesses examined on behalf of the appellants have not been effectively cross-examined. It is also true that the Collector had not adduced any evidence in rebuttal; but that does not mean that the Court is bound to accept their evidence. The Judges are not computers. In assessing the value to be attached to oral evidence, they are bound to call into aid their experience of life. As Judges of fact, it was open to the appellate Judges to test the evidence placed before them on the basis of probabilities."

Again at page 2198, the Supreme Court held:

"... Thus, the object of the assessment of the evidence is to arrive at a fair and reasonable market value of the lands and in that process sometime trench on the border of the guesswork but mechanical assessment has to be eschewed. The Judges are to draw from their experience and the normal human conduct of parties in bona fide and genuine sale transactions is the guiding star in evaluating evidence. Misplaced sympathies or undue emphasis solely on the claimants' right to compensation would place heavy burden on the public exchequer to which everyone contributes by direct or indirect taxes."

29. To start with, the figure of Rs. 8.97 per Sq.ft. (Rs. 3,90,000/-) per acre for a land in the outskirts of a City like Dharwad, in the year 1982 looks to be quite high.

30. We have already noted that the land had immense potentiality for urban use.

Therefore it cannot be valued as agricultural land as has been done by the Land Acquisition Officer. To remind the principle we may refer to *Ebrahim Akbaralli v. The District Deputy Collector, P&Harpur Division, District Sholapur*, (1969) 3 SCC 735 wherein the Supreme Court re-iterated the principle stated by the Privy Council earlier and held that the adaptability of the agricultural land as site for buildings is an essential element to be taken into account for determining the market value. Therefore failure of the Land Acquisition Officer to take into consideration this element makes the award bad. That does not mean that the Court has to act upon the evidence led by the claimant, irrespective of the probabilities as to the fact in issue. In other words the Court cannot just mechanically accept several sale deeds produced by the claimant to form the basis for computing the market value of the acquired land. The claimant will have to prove that the sale deeds represent comparable sales and this involves proof of the following, as stated by the Supreme Court in *Periyar and Pareekanni Rubber Ltd's* case at page 2196:

".. In a comparable sales the features are: (1) it must be within a reasonable time of the date of the notification; (2) it should be a bona fide transaction; (3) it should be a sale of the land acquired or land adjacent to the land acquired; (4) it should possess similar advantages. These should be established by adduction of material evidence by examining as states above the parties to the sale or persons having personal knowledge of the sale transactions."

31. The first question is whether the transactions reflected under Exs.P2 to P6 are comparable transactions of sales. In this connection we have to consider following facts:

32. Developmental activities have been going on in the locality. The appellant-Board itself had already sought acquisition of a vast tract of land under a Preliminary Notification dated 30th October 1981 seeking to acquire block Nos. 193, 121/8, 118, etc. Thereafter under the present Notification of the year 1982 another tract of land measuring about 20 acres were acquired. Under these two notifications lands were acquired for formation of industrial sites. By the year 1985, a quite large part of the locality was developed by the establishment of industrial sites leading to the industrial activity. Therefore by 1985 when City Improvement Trust Board sold the sites under lease-cum-sale the locality as such had developed considerably. It is not the normal and routine expansion of the City resulting in the escalation of price of the land at a normal or usual rate. Court is entitled to draw the inference that the escalation of the land value must have been considerably at a higher rate than 10% per annum. In fact there is no rigid principle that that the escalation rate per annum is 10%. One can easily remind oneself of several instances where escalation rates have been as high as 100% per annum. (For example in the City of Bangalore the escalation rate in Sadashivanagar residential area during some years was as high as 100% per annum and even more). The price fetched under the documents Exs.P2 to P6 were the price reached at the time of auctioning of small sites. The largest

among the five sites is roughly 40 ft. x 60 ft. The price was Rs. 69,940/- for this site (Ex.P2). In this case of a small corner site, when there is an auction, the keenness of the competition would influence the bidder even to quote a higher figure which may not have a proper nexus to the real market value. For example a bidder may bid for Rs. 60,000/- and the rival may immediately call for Rs. 65,000/-, the difference of Rs. 5,000/- as such may not look a burdensome amount to the competing bidder. That is why the per acre rate of the sites under Exs. P2 to P6 varied from Rs. 12,36,082.20ps to Rs. 15,91,760.00. A comparison of the prices fetched amongst these sales does not indicate a particular uniformity in the rate, For example under Ex.P3 the corner site measuring 1,200 sq.ft. was sold for Rs. 42,670/- while under Ex.P2 the site measuring 2,439.50 sq.ft. was sold for Rs. 69,940/-. If Ex.P3 is to be the basis then the price under Ex.P2 should have been twice the price fetched under Ex.P3, which will be over Rs. 85,000/-, Therefore, we are of the view that these transactions do not reflect a true basis of the market rate for the land acquired in the year 1982 at all.

33. The Reference Court has deducted 40% towards the developmental expenses. The trial Court has lost sight of the fact that these sites are very small sites. When a very large extent of 20 acres is to be formed, under which a lay-out as building sites measuring very small extents, a very large extent of the land will have to be set apart for several roads and drains. The normal rule of deducting 1/3rd of the area may not be a proper deduction. Similarly the developmental expenses also will be higher than the normal 25% attributed to such expenses, because the percentage of the amenities to be provided will be higher when the number of sites are more.

34. There is absolutely no evidence to infer that the price of the corner sites will be just 25% above the price of the other sites. This deduction of 25% by the trial Court is also without any evidence on this aspect.

35. P.W.4 is the claimant. Nowhere in his evidence he has given the particulars of the escalation rate that will be applicable to the years and the locality in question. In para 4 of his deposition he states that Saptapura locality is the best residential area in Dharwad. He further states that: "Building sites are in high demand and scarcity in that area. Petition land is adjoining Saptapura boundary. My land comes in O.D.P. area". Again he states that, "My land is considered as part of Saptapura area for all practical purposes. My land comes under corporation limits." However P.W.4 has not produced any sale deed in respect of the land or sites from this locality, wherein sales took place between private parties. If building sites are in high demand there should have been and would have been other sale transactions to prove the market rate. The petitioner has produced Exs.P2 to P6 which are C I T.B. plots. As per para 2 of his deposition those plots and their surrounding is known as Srinagar locality.

36. Again as P.W.4, claimant stated that there are three lands separating his land from C.I.T.B. plots. Adjacent to C.I.T.B. plots is the land of Tholmatti. The land adjoining the land of the claimant on the East has already been converted into

non-agricultural and plots have been made (para 2 of the deposition). The claimant has not produced any sale deed pertaining to these plots, P.W.4 gave his evidence in March 1991. At para 3 of the deposition he stated that Tholmatti got his land converted into non-agricultural and sold away his plots. Houses of others have come up on those plots 10 to 15 years back. That means by the year 1981 at least houses had come up in the plots prepared by Tholmatti. Tholmatti had sold his lands but no evidence has been produced regarding those sale transactions, obviously because the sale prices under those sales probably would not support the high claim now made by the claimant. Though P.W.4 asserts that his land is suitable for building sites, admittedly it is not yet converted for non-agricultural purpose, Therefore the land under acquisition will have to be valued with reference to the potentiality only and not with reference to the land being already a developed urban land. According to P.W.4 development charges to convert agricultural land into non-agricultural would work out Rs. 20,000/- per acre.

37. For the reasons stated above it is not possible for us to rely on Exs.P2 to P7. No sufficient evidence has been led in by the claimant to prove that those transactions could be relied upon as a basis for valuing the land under acquisition. To summarise on this aspect we state that: 1) There is no evidence of actual development of the land in question. 2) Obviously the land in question may have to wait some more years for the realisation of the development. 3) The transactions reflected under Exs.P2 to P6 are not comparable to the deemed sale of land in question because they reflect the transactions of the year 1985, 3 1/2 years after the Preliminary Notification in question; the circumstances indicate that there must have been a very high rate of escalation in the price between the year 1981 and 1985. 4) There is no evidence to justify the inference that the market rate of the corner site will be 25% in excess of the other sites. 5) The site under Exs.P2, etc. are very small sites.

38. If these documents are excluded, there is no other direct evidence on record regarding the market value of the land in question. However, we cannot just uphold the award made by the Land Acquisition Officer on this ground alone. The award of the Land Acquisition Officer on the face of it does not give any reason for valuing the land at Rs. 8,000/- per acre. The basis of the said valuation seems to be that the land was agricultural. The said basis is entirely irrelevant, having regard to the proved facts of the case. The land is entitled to be valued as an urban land, nearly ripe for development. The Court is not expected to throw up its arms in despair and leave the claimant to his fate when the Court is convinced that the compensation awarded by the Land Acquisition Officer is illusory. In the present case the Court is not entirely helpless to decide the market value. The very appellant-Board had acquired several lands under Preliminary Notification dated 30th October 1981. The said acquisition resulted in several claims and today we have pronounced our Judgment in M.F.A.676 to 681 of 1989. In those Appeals, in respect of the lands involved therein i.e., Block Nos. 193, 121/8, 118/1, 118/2, 118/3 and 128, we have fixed the market value

at Rs. 56,000/-per acre. Those lands do not have the advantages of the present land. The present land involved in the instant Appeal has the advantage of two roads abutting two of its corners, out of which one is State Highway. The land also is closer to the developed area than those lands in M.F.A. 676/89, etc.

39. Having regard to these circumstances, we are of the opinion that the land in the present case will be entitled to be valued at a higher rate than those lands and in the circumstances we are of the view that the present claimant will be entitled to the compensation by fixing the market value which will be 20% higher than the value of the lands in those Appeals. In other words the market value of the land in question will be Rs. 56,000 + 11,200/- which comes to Rs. 67,200/- per acre.

40. In the result, we allow this Appeal and modify the Award of the Reference Court. The compensation shall be computed by applying the market value of the land at the rate of Rs. 67,200/- per acre in respect of the entire 20 acres and 4 guntas of acquired land. 29 guntas of pot karab need not be valued separately since the valuation is based on the potentiality of the land. The claimant also will be entitled to all statutory benefits and the interest at the rates awarded by the Reference Court.