
(1991) 02 KAR CK 0044
In the Karnataka High Court
Case No : M.F.A. No. 2100/1983

The Assistant Commissioner, Belgaum	APPELLANT
Vs	
Chandasaheb Mohaddinsab and Others	RESPONDENT

Date of Decision : 04-02-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1992) 1 KarLJ 234

Hon'ble Judges : H. G. Balakrishna, J;M. Rama Jois, J

Judgement

Balakrishna, J.-This appeal is directed against the Judgment and award dated 20-4-1983 made by the Principal Civil Judge, Belgaum, in a reference under Section 18 of the Land Acquisition Act ("the Act" for short).

2. Briefly stated, the essential facts of the case are these: -

A reference is stated to have been made under Section 18 of the Act for fixation of the compensation in respect of the acquired lands. Sy.No. 1008 measures 6 acres 8 guntas of land, Sy.No. 1313 consists of 13 acres 32 guntas of land, Sy.No. 1314/1 measures 26 acres 27 guntas of land and Sy. No. 1353/1 measures 9 acres 120 guntas of land and all the lands are situate within the limits of Belgaum belonging to the claimants. All these lands were acquired by the erstwhile Bombay State pursuant to a preliminary Notification No. 112, dated 17-3-1941 issued under Section 4 of the Act for the purpose of extension of Belgaum City. The acquisition was made on the request of the President of the erstwhile Belgaum Borough Municipality and, subsequent to acquisition, and Assistant Commissioner, Belgaum, commenced proceedings for Fixation of compensation which culminated in the award dated 18-8-1960 fixing the market value of wet land at Rs. 1,100/- per acre and jirayat land at Rs. 400/- per acre. A reference under Section 18 of the Act was received in the Court of the Civil Judge on 31-2-1982.

3. The following points were considered by the learned Civil Judge:

- (1) Whether the reference was barred under Section 25 (2) of the Act?
- (2) Whether the compensation awarded by opponent No. 1 was adequate and proper?
- (3) What is the proper and adequate compensation to be awarded to the claimants?

4. The first two points were answered in the negative and, on the third point, the compensation was enhanced to Rs. 200/- per gunta as against the award of Rs. 1,100/- per acre made by the Land Acquisition Officer.

5. Before going to the merits of the case, it is necessary to refer to certain disturbing features of the case, which led to our making an order on 4-11-1987 framing two additional issues and calling upon the learned Civil Judge to record findings on those issues.

6. As stated earlier, the award of the Land Acquisition Officer was made on 18-8-1960 awarding a compensation of Rs. 1,100/- per acre for tari land and at the rate of Rs. 400/- per acre for jirayat land. The Judgment and award were made by the learned Civil Judge on 20-4-1983. It is against the said award, the appellant preferred this appeal. A Division Bench comprising of Kulkarni and Laxmeshwar, JJ., heard the appeal and dictated an order in open Court on 8-1-1986 dismissing the appeal. Later, before signing the order, by order dated 17-1-1986, the Division Bench recalled the order dictated on 8-1-1986 and released the matter from the category of part-heard and directed that the appeal be heard de novo. Aggrieved by the order of the Division Bench recalling its earlier order, a Special Leave Petition was preferred by respondents-1 and 2 before the Supreme Court. The Supreme Court dismissed the Special Leave Petition. The order of the Supreme Court dated 28-4-1987 reads:

"This special leave petition is dismissed. This SLP has been filed against the order of the High Court of Karnataka, dated 17th January, 1986 recalling the order of dismissal of the petition and releasing the matter as part-heard. The High Court had directed that the matter should be posted before the concerned Bench. As this relates to the matter of acquisition in the year 1940, it is desirable that this matter may be heard and disposed of as expeditiously as possible, but not beyond six months from today. This matter would be placed before the appropriate Bench immediately and would be heard and disposed of as quickly as possible, but before the expiry of six months. The State of Karnataka will supply to the petitioner a copy of the additional grounds which they want to argue in the matter and file that grounds by 31st May, 1987. In case the State of Karnataka fails to file the additional grounds, the petitioner will be at liberty to mention the matter before the concerned Bench of the Karnataka High Court for disposing of the matter without additional grounds."

Thereafter, the appellant filed an application for raising additional grounds. One of the additional grounds raised was that the reference itself was not genuine.

The matter was posted before us on 3-11-1987. The learned counsel for the appellant pointed out that the application seeking reference which was found at page No. 17 (Exhibit P-2 before the learned Civil Judge), though dated 1-10-1960 was actually sent to the Court of the Civil Judge on 31-3-1982 after 21 years and that the application for reference was a carbon copy and not original and the letter of the Assistant Commissioner forwarding the application did not contain the official seal. It was also pointed out that the Court fee stamp affixed on the said application bears the date 14-9-1960 and the stamp affixed was the denomination of 12 annas, which had already become obsolete even by 14-9-1960. In the circumstances, we made an order on 4-11-1987. The relevant portion of the same reads:

"In view of these glaring circumstances, we are satisfied that we should frame two issues and refer it for trial to the learned Civil Judge. Accordingly, we frame the following two issues:

I. Whether the application seeking reference found at page 17 of the records dated 1-10-1960 was in fact made by the applicants on 1-10-1960?

II. Whether the reference said to have been made by the Assistant Commissioner on 31-3-1982 found at page 5 of the records was really a reference made by the Assistant Commissioner, Belgaum Sub-Division, Belgaum, and non-fixing of the office stamp is only an inadvertence or a mistake?

and make the following order:"

Thereafter, the learned Civil Judge has recorded his findings on 1-6-1988 and has submitted his findings to the Court. The findings recorded by him are as follows:

"To make the matter very clear I will record my findings on the issues referred as below:

Issue No. I: The application Ex. P-2 seeking reference to the Court was in fact was not made by the applicants before the L.A.O. on 1-10-1960.

Issue No. II: The Assistant Commissioner, Belgaum has referred Ex. P-2 to the Court along with his covering letter Ex. P-12, dated 31-3-1982 and non-fixing of the offices stamp on Ex. P-12 was only due to inadvertence or mistake and also due to the fact that there was no such procedure followed in the said office."

In support of the second issue, the respondents examined the Land Acquisition Officer as their witness as P.W.-3. In his evidence he stated that the covering letter Exhibit P-2, dated 31-3-1982 with which a carbon copy of the application for reference said to have been made by the respondents was forwarded, was actually sent by him and there was no procedure to put the office seal on the letters and, therefore, no seal was put on the same and it may also be due to the mistake or inadvertence of the official concerned. In view of the statement made by the then Assistant Commissioner, who was examined by the appellant P.W.-3, the learned Civil Judge has held that the reference was actually made by the

Assistant Commissioner himself. This finding is not challenged by the learned counsel for the appellant and, therefore, we accept the said finding.

7. As regards the finding on issue No. 1, the learned counsel for the respondents strenuously contended that the finding was not justified. He submitted that the respondents had made the application on 1-10-1960 itself and that the Land Acquisition Officer, whose duty it was to send the same to the Court of the Civil Judge under Section 18 of the Act, had failed to do so for nearly 22 years and on account of such inordinate delay on the part of the Land Acquisition Officer, it cannot be said that the application itself was not made on 1-10-1960.

8. In view of the challenge to the finding recorded by the learned Civil Judge, we proceed to consider the evidence recorded on the said issue.

Nooruddin Mujawar, the younger brother of the first claimant, who had given evidence as P.W.-1 earlier, was recalled to give evidence and was examined on 4-1-1988. In the examination-in-chief he stated that he along with his brother went to the Office of the Assistant Commissioner and Land Acquisition Officer, Belgaum, and presented the application on 1-10-1960 and that he affixed 12 annas stamp and stated that the said stamp was in force in 1960. In the cross-examination, he stated thus:

"Ex. P-2 is a carbon copy. The original typed application of Ex. P-2 is not in our custody. Without consulting any Advocate we got typed Ex. P-2 and filed before the Assistant Commissioner. I do not remember whether the award amount was received by us either prior to 1-10-1960 or after 1-10-1960. I do not remember the name of the Typist who typed Ex. P-2.

In 1960 naiye paise stamps were in force. Myself and my brother (1st claimant) have received the award amount signing on the stamp. I see the voucher sheet now confronted to me marked as Ex. D-4. As per the entry at Sl. No. 71 marked as Ex. D-4(a) myself and my brother have signed on the stamp at Ex. D-4(b) and D-4(c) and received the award amount of Rs. 3736-35 ps. in respect of Sy. No. 1353/1. As per the entry at Sl. No. 47 marked at Ex. D-4(d) myself and my brother have signed on the stamp at Ex. D-4(e) and D-4(f) and received the award amount of Rs. 9067-75 ps. in respect of Sy. No. 1313.

Myself and my brother have signed on the stamps of Rs. 0-10 ps. to receive the above payments.

I do not remember from whom I purchased the stamp of 12 annas and on what date. I do not know the name of the Land Acquisition Officer who was working on 1-10-1960. The application given by me to the Asst. Commissioner in 1982 i.e. 23-3-1982 is shown to me. It is marked as Ex. D-5. Prior to Ex. D-5 I had not given any written application to the Land Acquisition Officer. I do not know whether the 1st claimant had given any application or not. Ex. D-5 is signed by me as well as the 1st claimant. I have not asked my elder brother whether he had given any application prior to Ex. D-5 to the L.A.O. After 1-10-1960 till the

application was referred to the Court in 1982 either myself or my brother had not filed any application before the Civil Judge's Court to compel the LA. O. to refer our application. After enquiring in the Court in 1982 we came to know that our application was referred to the Court."

9. From the above statement, it is clear that though the deponent stated that the application was given on 1-10-1960, after the said date, for more than 21 years, neither he nor his elder brother had addressed any letter or application to the Land Acquisition Officer to make the reference. P.W.-3 Somanath, the Assistant Commissioner, in the examination-in-chief stated that he was the Assistant Commissioner, Belgaum Sub-Division, from 12-1-1981 to 23-6-1983 and that he referred the application Exhibit P-2 along with his letter dated 31-3-1982 Exhibit P-12. The relevant portions of his deposition reads:

".....Under Ex. P-12 I sent the reference application of the claimants along with other applications. The letter Ex. P-12 or Ex. P-11 does not bear the seal of my office. Volunteers: There was no procedure to put the office seal on the letters.

"..... Generally, the claimants used to hand over their applications under Section 18 of the Land Acquisition Act either to the Assistant Commissioner-cum-L.A.O. or to the Sheristedar of the branch. Even if the application was received by the L.A.O., the same used to be handed over to the concerned Sheristedar. The office procedure that was being followed was that every applications received in the office either by the L.A.O. or by the Sheristedar used to be entered in the inward register maintained in the office. I did not verify before referring Ex. P-2 to the Court whether it was entered in the concerned in-ward register of the relevant period

Before referring Ex. P-2 to the Court, I did not verify whether any registers were maintained from 1960 to 1962 and whether this Ex. P-2 is mentioned in any register. Generally a list of the applications received will be maintained by the Sheristedar of the branch. On transfer every Sheristedar has to hand over by charge to his successor along with a list of documents handed over by him to his successor.

I do not know who was in the custody of all the applications filed under Section 18 of the Land Acquisition Act in 1960. In 1960 Tahsildar was the Special Land Acquisition Officer. As I remember in 1962 the Government started appointing the Assistant Commissioner as the Special Land Acquisition Officers. When the Assistant Commissioners were appointed as Land Acquisition Officers in 1962, the previous Special Land Acquisition Officer of the rank of Tahsildar handed over charge of the entire office to the Assistant Commissioner-cum-Land Acquisition Officer. I do not know and I have not verified as to what are the documents handed over by the then Tahsildar-cum-Special Land Acquisition Officer to the Asst. Commissioner-cum-Land Acquisition Officer in 1962 relating Mal Maruti Extension.....

I see Ex. D-5. The said application given by the claimants was received in the

office on 25-3-1982. The same was put before me for orders. I have ordered on the said application directing the Sheristedar concerned to speak. Since Ex. D-5 came to be given requesting to refer the earlier application, I have referred Ex. P-2 to the Court on 31-3-1982.....

In 1982 my Sheristedar told me that there are number of applications filed under Section 18 of the Land Acquisition Act pending for reference to the Civil Court. Volunteers: Even today there are some such applications pending. I have not made any report to the Deputy Commissioner or any Higher officer about the pendency of such applications. Since the claimants came and complained against my staff by giving Ex. D-5 I referred Ex. P-2 to the Court. The claimants generally complained against the staff members and not against any particular person."

The next witness was Motichand, D.W.-1, who was working as Sheristedar in the Office of the Land Acquisition Officer from 28-8-1981 till November 1983. In his deposition, he clearly stated thus:

"I see Ex. P-2 which is before Court. The said application had not come to my custody after I assumed charge."

The next witness was Ramachandra, who was working as I Division Clerk in the Office of the Land Acquisition Officer from 18-6-1980 till May 1986. He stated thus:

"I see Ex. P-2. When I was asked to look into the urgent work of Land Acquisition Branch, the application Ex. P-2 had not come to my notice."

B.B. Rawal, who was a I Division Clerk in the Office of the Assistant Commissioner from 23-6-1970 to 30-9-1971, stated thus:

"Inward and Outward register was being maintained in our office during the said period. Any applications received used to be entered in the Inward register. Any application sent to other offices used to be entered in the Outward register. The Sheristedar had prepared a list of all the applications received and pending under Section 18 of the Land Acquisition Act. I see the application Ex. P-2 which is before the Court. When I was working in the Office of the Assistant Commissioner, the said application had not come to my notice at any time."

Ramakrishna, who was working as a Sheristedar from 10-6-1978 to 30-4-1981 in the Office of the Assistant Commissioner, was examined as D.W.-4. In his deposition, he stated that he did not know as to whether any register was maintained regarding the applications made under Section 18 of the Land Acquisition Act. Virgouda, who retired as Tahsildar from the services of the State Government and who was working as Sheristedar attached to the Land Acquisition Branch of the Office of the Assistant Commissioner from June 1972 to January 1978, was examined as D.W.-5. In his deposition, he stated after seeing Exhibit P-2 that he could not say as to whether he has sent the said application when he was working as Sheristedar. He also stated that without looking into the

charge list, he could not say what file contained what paper. The person examined as D.W.-6 was Rudrappa, who was an Additional Head-quarter Assistant to the Inspector General of Registration and Commissioner of Stamps. He stated that the amendment to the Karnataka Court Fee Act came into force on 15-8-1960 and prior to that Bombay Court Fee Act was in force and that 4 Annas, 8 Annas and 12 Annas stamps were in force, but it was not possible for him to say as to whether the stocks of 4 Annas, 8 Annas and 12 Annas stamps came to be exhausted before September 1960 in Belgaum District. Basavaraj Appayappa Marali, who was a Sheristedar in the Office of the Assistant Commissioner and Land Acquisition Officer since 11-6-1987, was examined as D.W.-7. In his deposition, he stated thus:

"After the issue of direction by the Hon'ble High Court in the present case and service of the notice of this Court, myself and the other staff members searched for the old inward and outward registers and also land acquisition registers in the office. We were not able to get any such registers. From the year 1960 to 1982, the said registers could not be traced. I do not know whether the land acquisition registers and also inward and outward registers were maintained in the office of the Asst. Commissioner and L.A.O. for the period from 1960 to 1982."

The learned Civil Judge considered the relevant provisions of the Stamp Act introducing the Stamps of Nayapaise denomination in the year 1958 and the Circulars issued by the State Government and also the evidence of the aforesaid persons and has recorded his findings as follows:

"On 1-6-1958 the then Government of Mysore issued a Press Note as per the original of Ex. D-8 and the relevant portion is to the following effect:

"The existing India Non-judicial Impressed stamp paper and Judicial Adhesive stamps of 4 Annas, 8 Annas and 12 Annas and their multiples and India Adhesive Revenue Stamps of 9 pies which correspond to rounded decimal equivalent or 5 np., will also be continued to be issued to the public till their stocks in the Central, District, Taluka and Sub-Taluka Depots are completely exhausted."

Subsequently the Government of Mysore issued a circular dated 6-4-1959 in RD 24 RST 59 as per the original of Ex. D-7 declaring that the annas stamps have become obsolete with effect from 1-10-1958 and permitted the exchange of the same in the concerned treasuries within a period of 6 months. When there was some doubt about the date fixed, again the Government of Mysore has issued a further circular on 28-8-1959 as per the original of Ex. D-7(a) stating that the period of 6 months allowed for exchange of obsolete stamps in terms of new stamps or in money shall commence from 1-1-1959.

If all the above amended provisions and the circulars are read together and considered it becomes manifestly clear that the stamps of annas denomination were in force upto 30-6-1959 and not beyond that. Therefore it becomes manifestly clear that 12 annas stamp was not validly in force on 1-10-1960. The claimants are not entitled to make use of any of the rules under the Karnataka

Court Fee Rules. The claimants have summoned the records in O.S. No. 49/60 on the file of the Civil Judge Senior Division, Belgaum, and O.S. No. 366/60 on the file of the Civil Judge, Chikodi, O.S. No. 435/60 on the file of the Munsiff, Chikodi, O.S. No. 403/60 on the file of the Munsiff, Chikkodi and O.S. No. 406/60 on the file of the Civil Judge, Chikodi. It is seen from the said records that the said suits were filed in the year 1960 and the old stamps of rupee value were used to file the suit. On the basis of the same the counsel for the claimants submitted that old stamps were in use. On a close verification of the said records it is seen that annas stamps were not used in any of those suits. Stamp of one rupee face value or above have been used. Stamps for less than rupee value were in Naye Paise and such stamps of 25 Ps., 50 Ps., and 55 Ps. were used. It is only in O.S. No. 435/60 a stamp of 12 Annas is found. Simply because the validity of the said stamp was not objected by the Court before which the said 12 Annas stamp was used it cannot be said that annas stamps were in use in 1960. In my view and according to the above circulars and amended provisions of the Stamp Act the stamps of 4 Annas, 8 Annas and 12 Annas had become obsolete and they were not in force after 30-6-1959. Therefore affixture of an invalid stamp on Ex. P-2 has made the Court to say that the said application was not filed before the L.A.O. on 1-10-1960. The facts and circumstances of the case and the conduct of the claimants and their long silence over the matter for over a period of 20 years warrant a conclusion that making use of an old stamp the claimants have made a show of filing an anti-dated application somewhere in the year 1982.

I have said that the conduct of the claimants warrants such a conclusion. It has to be seen what is that conduct. Though the award came to be passed on 18-8-1960 the claimants claim that they have filed their application on 1-10-1960. When their application was not referred by the Special Land Acquisition Officer to the Court within the required period, the claimants have failed to take any action in the matter. Admittedly they have not filed any application before the Court compelling the Spl. L.A.O. to refer their application to the Court. P.W.-1 the 2nd claimant has stated in his further evidence that whenever he used to get time he used to go to the Office of the Assistant Commissioner and enquire about his application and the Assistant Commissioner was telling that he will refer the matter to the Court as early as possible. Admittedly no reference was made till 1982. Except the self serving say of P.W.-1 that he used to go to the office of the Assistant Commissioner to remind him to refer the application, there is no other independent evidence or documentary evidence to support his say. When his alleged application was pending for such a long time could it be expected in the normal course that the claimants would have kept quiet without complaining the matter to the higher authorities in writing and without filing an application before the Court to compel the reference. Therefore, inaction of the claimants and their long silence over the matter warrant a conclusion that there was no such application filed by them on 1-10-1960 and therefore they had kept quiet.

If all the facts and circumstances and the conduct of the claimants is taken into consideration in the light of their application Ex. D-5, dated 23-3-1982, the same makes the Court to arrive at a conclusion that in collusion with some officials in the office of the Land Acquisition Officer they have introduced the carbon copy Ex. P-2 and made a show of complaining by filing Ex. D-5 to refer the said application to the Court and without proper and reasonable enquiry, the then Assistant Commissioner P.W-3 has referred the said Ex. P-2 to the Court.

xxx xxx xxx

If all the above evidence is taken into consideration it is clear that the officials working in the Office of the Assistant Commissioner had not seen the application Ex. P-2 earlier. Even though charge lists were prepared when the officials were transferred and incoming officials took charge no such charge lists are produced before the Court. In the light of the facts and circumstances of the case and the evidence discussed hereinabove if the whole matter is considered it leads to a conclusion that Ex. P-2 was in fact not filed on 1-10-1960 by the claimants. I have got every reason to believe and hold that Ex. P-2 was somehow inserted or introduced in the Office of the L.A.O.-cum-Assistant Commissioner in the year 1982 by the claimants and they have made a show of complaining by filing Ex. D-5 that their application was not referred to the Court. At the cost of repetition I have to say that without verifying the concerned registers, the stamp and seal found on Ex. P-2 and not putting the office seal and not entering the number of inward register on Ex. P-2 and without verifying the land acquisition register, P.W. 3 has referred the said application to the Court. In view of all the reasons stated hereinabove, I hold on Issue No. 1 that the application Ex. P-2 was in fact not filed by the claimants on 1-10-1960."

10. After considering the entire evidence on record, we are of the view that the finding recorded by the learned Civil Judge on additional Issue No. 1 to the effect that the application dated 1-10-1960 was not made on 1-10-1960, is well founded and on this question we affirm the finding recorded by the learned Civil Judge. Under Section 18 of the Land Acquisition Act, 1894 as it stood before its Karnataka amendment in 1961 application seeking reference had to be made within six weeks from the date of service of notice or within six months from the date of the award whichever expires earlier. In the present case, as is evident from the records, the respondents had the notice of the award and had received the payments after affixing their signatures in the relevant register (Exhibit D-4) on 5-10-1960. Learned Government Advocate submitted that the compensation amount was received without protest and he pointed out that the Note "Received amount under protest without prejudice to my right for enhanced compensation" were written subsequently could be made out easily. Whatever they maybe, the fact remains that the respondents had the notice of the award and received the amount on 5-10-1960. There is no iota of evidence for the application having been made on 1-10-1969. P.W. 1 clearly admitted that not a single reminder was sent in the matter from 1-10-1960 till the date of Exhibit D-5, dated

23/25-3-1982 purporting to be a complaint for not forwarding the reference application on stated to have been made on 1-10-1960. No application was also made before the Court for over 21 years. Every one of the officials who were examined as witnesses stated that he had not come across the application in the Office of the Land Acquisition Officer. Even P.W. 3, who made the reference, has not stated how and from where he secured the 21 years old application. He only states that on receipt of Exhibit D-5 he made the reference on 31-3-1982 vide Exhibit P-12 enclosing thereto Exhibit P-2, which bears the date 1-10-1960. It is noticed that the bottom portion of Exhibit D-5 in which some matter had been written is nearly cut off. After giving careful and anxious consideration to all the circumstances and the evidence on record, we are of the view that the only inference that could be drawn is that Exhibit P-2 is an ante dated application given along with Exhibit D-5, dated 23/25-3-1982 and, therefore, the reference application was barred by time and consequently the reference itself was incompetent. We hold accordingly.

11. We also proceed to consider the case of the respondents on the basis that the application was presented on 1-10-1960 and, on that basis, proceed to consider the appeal of the appellant on merits. If the application had been presented within ninety days from the date of the award, there being no time limit fixed under Section 18 of the Act for making a reference by the Land Acquisition Officer, the contention of the appellant that the reference was barred by time, cannot be sustained. Therefore, we proceed to consider as to whether enhancement of the compensation from Rs. 1,100/- to Rs. 8,000/- per acre was justified.

12. According to the appellant, the learned Civil Judge has not followed any principle of valuation for determination of the market value of the acquired lands and the determination made is not based on any evidence and is arbitrary. The rate of compensation awarded is challenged as highly exorbitant and excessive and the rate of Rs. 200/- per gunta for the acquired lands is unjustified. It is urged that the situation of the lands as obtaining on the date of preliminary notification alone is relevant and the evidence led by the claimants regarding the location of the acquired lands and the development of lands around them cannot be relied upon since all the developments had taken place recently long subsequent to the acquisition.

13. It is further contended that whereas the claimant himself had stated in his deposition before the Court that the value of the land is Rs. 1,100/- per acre in 1940, the learned Civil Judge was not justified in fixing the market value at Rs. 200/- per gunta and that the learned Civil Judge was wrong in attaching importance and relevance to the Hotel, K.E.B. Office, K.S.R.T.C. Bus Stand and Housing Board Colony which came into existence long subsequent to the preliminary notification of acquisition and further that the lands which were subject matter of sale deeds were situate in the heart of the Belgaum City and not in the vicinity of the acquired lands and, therefore, the price paid for those

lands could not have been relied upon in arriving at the market value of the acquired lands.

14. The point for consideration is whether the impugned Judgment and decree awarding the compensation of Rs. 200/- per gunta is excessive and unreasonable.

15. Nooruddin Mujawar is P.W. 1 examined in support of the claimants. He himself is a claimant and is the brother of Chandasab Mohaddinsab Mujawar who is his elder brother. The elder brother has given a power of attorney in favour of P.W. 1. In cross-examination, P.W. 1 has admitted that the approximate market value of the land was Rs. 1,000/- per acre in the year 1940. He has stated:

"It is true that Sy. No. 1314/1 stands in the name of myself, my brother and Umabai Shankarrao Godbole. I received the notice in the year 1940. I did not file any objections. It is not correct to suggest that I received the notice under Section 9 of the Act. It is true that the population of Belgaum was very much less at that time. There was heavy rain fall in Belgaum at that time. The area wherein the Milan Hotel and other buildings are constructed was a thick forest in those days. The lands in question are situated near Medical College and the Housing Board Colony. It is not true to suggest that the lands in question are slopy and it is a cut up area with few nallas and a pond. I have not read the award passed in respect of the lands in question. Only grass and paddy used to be grown in the lands in question. The approximate market value of such a land was Rs. 1000/-per acre in the year 1940."

16. The same witness has produced certified copies of sale deeds which took place in 1940 and 1941. In cross-examination, since it has been admitted that there was a thick forest in the area, subsequently occupied by Milan Hotel and other buildings, the construction of the buildings and their existence subsequent to the preliminary notification of acquisition cannot be of any relevance for the purpose of fixing the market value of the lands. The sale deeds relied upon are not of any relevance because they relate to developed lands. The Medical College, Ramadev Hotel and the K.E.B. Office came into existence after the publication of the preliminary notification of acquisition. It is difficult to reconcile how the learned Civil Judge came to the conclusion that, in 1940, there were already buildings near about the lands in question. Even the existence of K.S.R.T.C. Bus Stand relied upon because of its location within a short distance of about one mile from the lands in question, was not in existence. The learned Civil Judge has not taken into account the value of undeveloped lands in the proximity of the acquired lands prevalent at the time of the preliminary notification. In fact, we are unable to discover any evidence which supports the enhancement of the compensation over and above what was awarded by the Land Acquisition Officer. Whereas the Land Acquisition Officer has adopted some rational basis for arriving at the market value, the learned Civil Judge has not adopted the norms for arriving at the market value. While observing that the lands sold under the sale deeds produced by the claimants are situated in developed areas and that they cannot be compared with the lands in question and further that on the basis of

the price for which the said lands were sold the market value of the lands in question cannot be fixed, without assigning any reasons the learned Civil Judge has arbitrarily enhanced the compensation at the rate of Rs. 200/- per gunta. Though the learned Civil Judge has observed that he has to fix the market value of the lands as on the date of the preliminary notification issued by the Government for the purpose of acquisition, he has proceeded to fix the market value without any material basis and without taking into account the admission of P.W.-1 that, in 1940, the market value of the lands was about Rs. 1,000/-per acre.

17. The reasoning opted by the Land Acquisition Officer is his award dated 18-3-1960 commends acceptance. In para 7 of the award is evident the reasoning adopted by the Land Acquisition Officer in arriving at the valuation. In the said award, he has stated:

"To arrive at a fair price to be paid as compensation for this vast stretch of land, I have taken the claim of the particular parcel of land. Whether tari or jirayat and the pieces realised by sale transaction of similar lands in the vicinity during 3 to 4 years immediately preceding the date of publication of the Notification under Section 4(1) of the Act, into consideration. The Notification has been published in the month of March 1941. The instructions for valuation of the lands given by the consulting Surveyor to Government in his Letter No. 13, dated 29-1-1947 have also been taken into consideration while determining the valuation of the Tari and Jirayat lands.

The sale transactions which are too high and too low have been left out in respect of Tari and Jirayat lands.

Some lands are Tari and the major portion is in this case, the Panchas have valued the lands Jirayat and Tari at the rate of Rs. 320/- and Rs. 1,000/- respectively. According to the sale statistics of the similar lands in the vicinity the valuation for Tari lands is Rs. 1103 and for Jirayat lands Rs. 395/-. In view of these transactions the P.V. recommended by the Mamlatdar cannot be accepted. After taking into consideration the soil and crops of the lands, and Sale Transactions of similar lands in the vicinity and other important factors and the instructions issued by the consulting Surveyor to Government, I fix the valuation of Tari lands at Rs. 1100/- per acre and Rs. 400/- in respect of Jirayat lands and Award Compensation accordingly."

18. We are of the opinion that the learned Civil Judge had neither any justification nor valid basis to differ from the Land Acquisition Officer and in enhancing the compensation. The award made by the Land Acquisition Officer ought not to have been interfered with by the learned Civil Judge.

19. Before concluding, we are constrained to observe that the circumstances under which the reference came to be made on 31-3-1982, and who were responsible for the making of the reference is a matter to be inquired into by the Government for it could not have happened except with the connivance of the

concerned officers including the officer who referred the matter to the Court and appropriate action should be taken in the matter.

20. In the result, for the reasons stated above, we make the following:

ORDER

(i) The appeal is allowed;

(ii) The Judgment and decree dated 20-4-1983 passed by the Principal Civil Judge, Belgaum, in L.A.C. No. 30 of 1982, is hereby set aside and the award passed by the Land Acquisition Officer is confirmed.