**(2006) 08 KAR CK 0066**

**In the Karnataka High Court**

**Case No :** M.F.A. No. 2799 of 2002, MFA Crob No. 89 of 2006 in MFA No. 2799 of 2002

| | |
|---|---|
| The Special Land Acquisition Officer, Karnataka Industrial Area Development Board and The Karnataka Industrial Areas Development Board | APPELLANT |
| Vs | |
| Dasappa <BR> Dasappa Vs The Spl. LA. Officer, Karnataka Industrial Area Development Board and The Executive Member Karnataka Industrial Areas Development Board | RESPONDENT |

**Date of Decision :** 08-08-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3, Order 6 Rule 17, 151
Karnataka Industrial Area Development Act, 1966 — Section 2 (7), 28 (1), 28 (4), 29 (2), 30
KT and CP Act, 1963 — Section 72
Mysore Court-fees and Suits Valuation Act, 1958 — Section 48

**Citation :** (2007) ILR (Kar) 2848 : (2008) 1 KarLJ 164

**Hon'ble Judges :** V. Gopalagowda, J;C.R. Kumaraswamy, J

**Bench :** Division Bench

**Advocate :** Basavaraj V. Sabarad, in M.F.A. No. 2799 of 2002, P. Krishnappa, in M.F.A. CROB No. 89/2006 in MFA No. 2799 of 2002, for the Appellant; P. Krishanappa for R 1 in M.F.A. No. 2799 of 2002, Basavaraj V. Sabarad in M.F.A. CROB No. 89/2006 in MFA No. 2799 of 2002, for the Respondent

**Final Decision :** Dismissed

# Judgement

Gopalagowda, J.—The M.F.A. No. 2799/2002 is filed by the Special Land Acquisition Officer and Karnataka Industrial Areas Development Board (hereinafter called in short in this judgment as SPLAO and KIADB, respectively) have questioned the correctness of the judgment and award passed by the reference court in re-determining the market value of the acquired land at Rs. 2,30,000/- per acre of 8 acres 31 guntas in Sy. No. 456/2 of Jigani village of respondent, urging various legal grounds and sought for setting aside the same and prayed to modify the impugned judgment by awarding just and fair compensation in respect of the acquired land.

2. The respondent also filed cross objection seeking for enhancement of compensation originally at Rs. 50,000/- per acre over and above the amount awarded by the Reference Court. The same is sought to be amended by him by filing an application under Order 6 Rule 7 read with Order 41 Rule 3 read with Section 151 of CPC requesting this Court to amend the memorandum of cross objection for enhancement of compensation at the rate of Rs. 10,50,000/- per acre over and above the marker value fixed at Rs. 2,30,000/- per acre by the Reference Court and requested this Court to delete paras 9(a), (b) and (c) of the cross-objections and prayed to amend the prayer column of the cross objection in place of words Rs. 50,000/- to be read as Rs. 10,50,000/- by placing reliance upon the judgment of the Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, paragraph 3 and also Ghaziabad Development Authority Vs. Anoop Singh and Another, ) Ran Singh and Others Vs. State of U.P., contending that amended application may be allowed by this Court in exercise of this Court''s power in view of the law laid down by the Supreme Court and Allahabad High Court in the above said cases with a view to determine just and fair compensation in respect of the land acquired in favour of KIADB, by the State government with a direction to him to pay the advolerem court fee payable u/s 48 of Karnataka Court Fees and Valuation Act, 1958, urging various legal grounds in support of the claim for enhancement of market value of the land acquired by the state Government in favour of the KIADB for purposes of formation of industrial estate and allot industrial plots carved out in the estate in favour of eligible industrialists as provided under the Karnataka Industrial Areas Development Board Regulations of 1969 (hereinafter in short called as Regulations).

3. The ground of attack of the impugned judgment by the SLAO and KIADB is that the Reference Court has committed an error in law by placing reliance upon the award at exhibit P1 in respect of the lands bearing Sy. No. 20 and 95 of Jigani village, which lands were acquired under the same notification without taking into consideration the findings recorded at page 4 of the said award, wherein the finding of fact is recorded stating that those lands are converted lands for industrial purposes, whereas the lands involved in this appeal are agricultural lands and therefore the same could not have compared with the lands covered in Ex. P1.

4. The findings and reasons recorded by the learned Judge of the reference court in determining the market value of the lands covered in this appeal by answering the contentious point at the rate referred to supra, for the reason that appellant having challenged the evidence of PW1 covered in the exhibit P1 are similar in nature to the land in question which is factually incorrect though the learned Judge of the Reference Court has made reference to this aspect of the case at para 9 of the impugned judgment without considering the statement of PW1, the learned Judge of the reference court without considering the statement of

 

evidence of PW1, wherein he has clearly stated that the lands covered in except P1 are converted lands and his lands are agricultural lands. Therefore, it is urged on behalf of the Appellants that the said award ought not to have been placed reliance by the learned Judge of the Reference Court and re-determined the market value of the land covered in this case at the same rate. Further it is contended that the Reference Court ought to have deducted 50% out of the market value as determined by it towards development charges and ought not placed reliance upon exhibit P1 and fixed the market value of the land, as the lands covered in this appeal are agricultural land whereas the land covered in the said document are converted land. Then, the market value of the land covered in this Appeal would be Rs. 1,65,000/- per acre and further learned Judge of the Reference Court has not given weightage to the evidence placed by the appellants herein and majority of the land owners lands were acquired against the same notification have accepted compensation at a negotiated market value at Rs. 1,80,000/- per acre, which was inclusive of solatium, additional market value and interest payable upon the compensation amount awarded. This factual position can be seen from the documents marked as exhibit R1, R4 and R5, on behalf of the Appellants, the land bearing Survey number 136, which was notified in the same notification u/s 28(1) & 28(4) of the KIADB Act. This fact has been admitted by PW1 in his evidence, the said amount was also offered to him as per exhibit P2 by the appellants, but he has not accepted the same. The learned Judge of the Reference Court has referred the above said fact at para 11 of the impugned judgment. But he has not considered the said evidence, while rendering the finding on the contentious point and determining the market value of the land in question. The determination of the market value of the acquired land on the basis of preliminary notification dated 28.11.1999, though factually it has gazetted on 6.2.1992, to that extent the percentage of interest awarded on the compensation payable by the appellants will be on the higher side, to that extent 12% of the compensation amount awarded required to be scaled down in this judgment by allowing the appeal of the Appellants. Learned Counsel Mr. Basavaraj V. Sabarad on behalf of the appellants has placed reliance on the judgment of the Supreme Court reported in Prem Nath Kapur and Another Vs. National Fertilizers Corpn. of India Ltd. and Others, in support of his submission that determination of market value of the acquired land is contrary to the aforesaid decision. He has also placed reliance upon the decision of this Court reported in ILR 1995 KAR 1261 (The Special Land Acquisition Officer v. Siddappa Channa Tumari) in support of his legal contention that the compensation payable be agreement is a relevant piece of evidence, which was required to be taken into consideration by the reference court at the time of re-determination of the market value of the land, as the said amount reflects the correct market value and also placed reliance upon the judgment of the Supreme Court in the case reported in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, at paragraph 4, the Apex Court has laid down the guidelines and the factors to be taken into consideration by the Land Acquisition Officer and Reference Court for purposes of determination of the market value of the acquired land, particularly, at sub paragraph 1, 2 & 5 of paragraph-4. For the purpose of re-determination of market value of the land upon the very same judgment, learned Counsel for the cross objector has also placed reliance at sub paragraphs 6, 7, 10, 11, 13, and 14 of paragraph 4. Learned Counsel for the Appellants further submits placing reliance upon the case reported in Administrator General of West Bengal Vs. Collector, Varanasi, , with regard to the percentage of amount at 53% out of the market value re-determined to be deducted, towards developmental charge, if, the land is comparable on par with the converted lands for purposes of non agricultural potentiality.

5. The learned Counsel Sri. P. Krishnappa on behalf of the cross objector placing strong reliance upon the evidence of PW1, which has been read to us to show that the acquired land has got non agricultural potentiality and land of the respondent/objector has got better non agricultural potentiality than the lands covered in exhibits P1 and P3, the awards and the acquired land of the cross objector are all situated adjacent to the Jigani Industrial Estate and therefore they are all comparable lands to the acquired land, the same are adjacent to the main road, whereas the lands covered in exhibit P1 was not situated adjacent to the main road, lands covered in exhibit P5 and the land of the cross-objector have similar non-agricultural potentiality and therefore they are comparable to each other for the purpose of fixing the market value. The lands covered in exhibit P3 are of the Arekalli Village, which were acquired after the land of the claimant was acquired by the State Government in favour of KIADB. At the time of acquisition, the market value of the land per acre is Rs. 16.00 lakhs and there were also 40 honge trees, Eucalyptus trees in 5 acre, 700 Honnangi trees. The PW1 claimant has spoken about the cost of the same but the same had not been valued and awarded compensation by the Reference Court in its judgment. The land of the cross-objector is situated within 20 Kms. from the Bangalore City Corporation limits. The said evidence has not been challenged by the appellants'' counsel except disputing certain aspects in the cross-examination. The evidence of RW1 particularly, lands covered in exhibit P1 Sy. Nos. 456/1 and 456/1A of Jigani village, he has admitted in his cross-examination made by the Cross-objector counsel that they are all similarly situated and further admitted that they are all adjoining to the industrial estate of Jigani and further he has stated that subsequent to acquisition of lands starting from Jigani to Arekalli village compensation was awarded at the market value at Rs. 6.00 lakh per acre and the said witness has stated that those lands are acquired in the year 1999. However he has admitted in his evidence that the distance from the road to the nearest land acquired was about 1 k.m. The above said piece of evidence of RW1 supports the claim of the cross-objector/claimant. Apart from that, he has placed strong reliance upon exhibit D1 award passed by him, wherein he has determined the market value at Rs. 1.00 lakh per acre though lands are of different villages by agreement given Rs. 1,80,000/- per acre as compensation amount and he has referred to various small bits of lands/industrial plots formed in various survey numbers of agricultural lands of the same village and adjacent

 

village, which particulars of survey number of lands, the sites, date of the sale deeds, value of each site, sale-deeds of 3 years, 2 years one year prior to the preliminary notification published in respect the land covered in this Appeal. They are all sale statistics stated by the Land Acquisition Officer in his award, which are not disputed by the respondents. The above relevant facts and evidence on record was required to be taken into consideration by the reference court for purposes of re-determination of the correct market value of the acquired land without giving any reasons for not placing reliance on those documents, though the lands covered in the said sale deeds are small bits of lands, are comparable to the acquired land, having regard to the undisputed fact that the lands are surrounded by industrial estate, which was established 8 years prior to the acquisition of the respondent''s land, the market value of the same is fixed at Rs. 2,30,000/- per acre which is inadequate. The learned Counsel for the cross objector contends that as per the decision of the Supreme Court reported in AIR 1988 SC 781 (Land Acquisition Officer, Revenue Divisional Officer, Chittoor v. Smt. L. Kamalamma and Anr.) wherein the Apex court has observed that there cannot be classification of small bits of land and vast area of land for purposes of determination of market value of the acquired land as they are all comparable lands, as the land in question was acquired by the State Government in favour of KIADB which had acquired non agricultural potentiality, particularly having regard to the fact that the land was earmarked in the comprehensive development plan approved by the State Government under the provisions of Karnataka Town (country & planning) Act & in short called as KT & CP Act is proposed for industrial purpose, the same was required for the KIADB for purpose of establishment of Industrial Estate, based on which the acquisition was made by the State Government. The another decision of the Supreme Court reported in The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, upon which learned Counsel for the objector/claimant has placed reliance, wherein the Apex Court while interpreting Section 23 of the Land Acquisition Act, Mysore (Extension & Amendment) Act of 1961 hereinafter called as L.A. Act, has held that the factors to be taken into consideration by the court for methods of evaluation and determination of the market value of the acquired land are (1) opinion of the experts within a reasonable time, (2) if lands are purchased land of the land adjacent to the lands acquired, should possess similar conditions (3) number of years purchase of the actual or immediately perspective of the land acquired and also placed strong reliance upon the another decision of the Supreme Court in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, referred to supra at paragraph 4 and sub paras referred to supra are the relevant factors to be taken into consideration by this Court for the purposes of awarding just and fair compensation of the acquired land by determining the market value and also placed strong reliance upon the Division Bench judgment of this Court reported in The Land Acquisition Officer and Assistant Commissioner Vs. Fredrick Noronha (Deceased) by L.Rs and Others, wherein this Court has held that determination of market value is a question of fact and such question should be answered by the Reference Court on the basis of substantial legal evidence placed on record before it. Sale transaction of the sale deeds of the comparable lands should be taken into consideration by the reference Court for fixing the market value of the acquired land. The land acquired in this case does not involve any development as the same can be used for the purpose for which they are acquired by the State Government in favour of KIADB. Therefore, learned Counsel Sri. Krishnappa placed strong reliance on the above judgment at paras 15 to 21. The lands in question are acquired for the formation of industrial estate, formation of plots to allot the same in favour of the eligible applicants/industrialists for the purpose of establishing industries, prior to acquisition of land the same were surrounded by industrial buildings which were already in existence. For the formation of industrial plots no developmental charges required to be deducted as no development of the acquired land is involved. The above relevant factors as have been taken into consideration by this Court in the above said case by the Division Bench, therefore the law enunciated in the said case should be considered as it is the claim of PW1, before the reference court. The same has not been taken into consideration by it without assigning any reason on the contentious point in its judgment. Therefore, while answering the contentious point to that extent, the findings and the reasons recorded by the reference court are not legal and valid for the reason that it has not considered the legal evidence on record is the ground on which cross objector has approached this Court for enhancement of compensation by filing cross-objections in the Appeal filed by the appellants. Therefore, the learned Counsel for the cross-objector has requested this Court to apply the observations made in the said judgment and also placed strong reliance upon the unreported decision of this Court in the case that the acquisition of land by KIADB in the same vicinity was the subject matter of writ petitions before this Court in W.P. Nos. 4086-4088/2004 along with connected matters, the same came to be disposed of by this Court on 12th April, 2004. The lands covered in the said cases were in favour M/s. Primal Project Pvt. Ltd., who was the 4th respondent in said writ petitions and it came forward to pay compensation to the owners of those lands at the rate of Rs. 58 lakhs per acre. Therefore, the above writ petitions were dismissed by this Court with liberty given to the owners to seek an order of reference u/s 18(1) of the Land Acquisition Act, for enhancement of compensation amount if, the owners are not satisfied by the compensation offered by the 4th respondents herein. The same was the subject matter in W.A.No. 2870/2004 and connected matters filed by the KIADB, questioned the correctness of the said order regarding the officer of Rs. 58 lakhs per acre by the beneficiary in whose favour of the lands were acquired. This Court has dismissed the said appeals filed by the KIADB, having regard to the fact that the beneficiary had already filed a memo dated 2.2.2005, before the learned single Judge, the contents of the same was extracted in the order passed in the writ petitions. Further learned Counsel for the objector has also placed reliance upon the endorsement dated 14.11.1997 issued by the KIADB wherein the acquisition of 85 acres 35 guntas by the KIADB of Arekalli village of Sy.No. 97/1 and other lands of number of survey numbers acquired in the year 1993 in its favour, the notification was gazetted on 30th August 1993. On the basis of the advisory committee per acre 12.00 lakhs compensation was determined by the said Committee, which acquisition of lands covered in the above notification was one year later to the acquisition of land of the cross objector/claimant. The learned Counsel for the objector submits that the said land are adjacent lands involved in this Appeal, the same benefit of compensation may be extended in respect of the land of the cross objector also by scaling down 5% or 10% of Rs. 12.00 lakh per acre and he has also placed reliance upon another unreported decision of this Court in MFA No. 3832/1999 along with Crob. No. 81/2000, wherein this Court has adopted the procedure to determine the market value taking into consideration the small bits of lands comparing the same to the acquired lands on vast extent by placing reliance on various judgments of the Supreme Courts at paragraph 3 or 4. This Court has re-determined the market value and awarded the compensation after giving necessary deductions towards the developmental charges. Therefore, learned Counsel for the objector submits that the appeal filed by the appellants is liable to be dismissed and the market value has to be re-determined in the cross-objection at the rate of Rs. 10,50,000/- per acre by suitably modifying the impugned judgment passed by the reference court.

6. On the basis of the aforesaid rival legal contentions urged by the learned Counsel on behalf of the parties, we are required to answer the following points that would arise for our consideration and determination:

(1) Whether the compensation awarded by the reference court in the impugned judgment is on the higher side or just and fair compensation?

(2) Whether non consideration of the legal evidence on record exhibit at exhibit P1, P2 and sales statistics extracted at exhibit R-1 by the land Acquisition Officer has rendered the findings and reasons recorded on the contentions/point No. 2 and determining the market value at Rs. 2,30,000/- per acre by the Reference Court is erroneous or suffers from error in law?

(3) Whether the cross objector is entitled for enhanced compensation as prayed in the cross-objection, if so what should be the market value of the acquired land per acre?

(4) What order?

7. The above points framed by us are required to be answered by us in favour of the cross objector and against the appellants for the following reasons:

8. The respondents - owner at the time of filing cross objection has paid towards stamp duty at Rs. 50,000/- over and above the compensation awarded by the Reference Court and prayed for enhancement of compensation for that amount. Having regard to the economic inability of the respondents-owner, he could not claim the just compensation as has been prayed in the amendment application. The learned Counsel Sri. P. Krishnappa has placed reliance upon the decisions of

 

the Apex Court in this regard to the observation in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, , another decision of the Supreme Court in Ghaziabad Development Authority Vs. Anoop Singh and Another, High Court and also the unreported decision of this Court passed in M.F.A. No. 3871/2001 D.D. on 09/07/2004 in support of the aforesaid application which are referred to in the earlier paragraph of this judgment. In the amendment application the objector has sought for an amendment to the cross objection both to add certain grounds as well as to the prayer column in the place of Rs. 50,000/- per acre over and above the compensation awarded by the Reference court, in its place to add at Rs. 10,50,000/- per acre as compensation by re-determining the market value of the acquired land, by assigning the reasons in the affidavit that the prayer in the amendment application shall be allowed in view of the observations made by the Supreme Court in the Cases referred to supra. Therefore the cross-objector has requested this Court for allowing the prayer in the amendment application for enhancement of compensation in the cross objection which application is seriously contented by the appellants by filing written objections. We have through the above said application and the observations made by the Supreme Court in the above cases. The judgment of the Supreme court in ANUPSINGH''s case after referring to the Order 43 Rule 3 of CPC and other various constitutional Bench decisions of the Supreme court has permitted to amend the appeal in the said case by making certain observations at paragraph 7, which reads thus:

7. As in the above case, in the instant case too, the award was passed by the Land Acquisition Officer and the Reference Court earlier to the effective date of substitution of Section 25. Hence, the limitation on the power of the Court to award compensation as enjoined by the pre-amended Section would be attracted. However, there is formidable impediment for the appellant to take shelter under the pre-existing Section 25. On a petition filed by the claimant, the application dated 11.7.1967 wherein compensation was claimed at Rs. 20 per sq. yard was allowed to be amended by an order of the Reference Court passed in the year 1983. It is to be noted that by virtue of Section 53 of the Land Acquisition Act, the provisions of the CPC shall apply to all proceedings before the Court unless they are inconsistent with anything contained in the Act. In the light of this provision, the High Court rightly held that there is no bar under the Land Acquisition Act to file a petition for amendment of the claim application in regard to the quantum of compensation claimed as there is no provision in the Land Acquisition Act which is inconsistent with the power to allow amendment. The effect of allowing the amendment is to substitute the figure of Rs. 20 by Rs. 100 per square yard. When once this amendment is recognised and taken note of, its is obvious that the bar u/s 25, does not get attracted. Whether this amendment could have been permitted in the face of the unamended Section 25 has not been put in issue before the High Court in specific terms. Even in the SLP we found, in vain, any ground questioning the order allowing the amendment. No

 

doubt, a party has right to challenge a non appealable order in an appeal against the decree as laid down in Rule 1A of Order 43. But, the fact remains that the legality or propriety of the order permitting amendment was neither specifically challenged before the High Court nor a specific ground taken that it was contrary to Section 25. At this stage, the appellant cannot be permitted to assail the correctness of the order permitting amendment. If that be so, the first contention based on the pre-existing Section 25 has to be necessarily rejected.

9. Having regard to the observations made by the Apex Court in the above case, though the application for amendment was strongly opposed by the appellants herein, we are allowing the same in the interest of justice to award just and fair compensation as held by the Apex Court in catena of cases. As the lands have been acquired for the industrial area development Board Second appellant herein for purposes of formation of industrial estate and allot the plots in favour of the eligible applicants by following the procedure under the Regulations. The KIADB is an instrumentality of the State under Article 12 of the Constitution of India and acquisition of the lands is for the purpose of formation of industrial estate, in which plots were carved out and the same were available for the eligible applicants to establish small scale industries to implement the industrial policy of the State Government to provide employment to the unemployed youth of the State, it does not mean to say that the owners of the acquired lands can be deprived their legitimate constitutional and statutory rights of determination of the market value of the land and award compensation having lost their lands for public purpose. Therefore, non-payment of court fee in the cross-objection of the correct market value of the acquired land per acre by the objector as prayed in the amendment application at the time of filing cross-objection shall not ensure that benefit either to the KIADB or to the allottee/industrialists who will be the beneficiaries of the acquired land. The cross-objector has got legitimate constitutional rights under Article 300-A of the Constitution of India to get the correct market value of the land lost by him for the public purpose. The Appeal of the appellants is pending before this Court to determine just and fair compensation by fixing the correct market value to be paid by the KIADB to the owner is yet to be determined in this case. Therefore, it would be suffice for us to determine just and fair compensation out of which amount we can give a direction either to the KIADB to deduct the advolerem court fee or owner of the land as required u/s 48 of KCFSV Act 1958 for the enhanced compensation and remit the same to this Court''s account if, the objector is entitled for more compensation to be awarded in his cross-objection. That will take care of the revenue payable to the State Government, therefore, the objection taken by the appellants to the amendment application is not sustainable in law as the same is without substance and opposed to the decisions of the Apex Court referred to supra, therefore objections filed by them to the application is rejected. Accordingly amendment application is allowed. Cross-objector is directed to file amended cross objection within a week from today.

10. The market value of the acquired lands require to be determined on the basis

 

of the relevant factors as enumerated under the amended Section 23 of the L.A. Act as per Section 72 of the KT & CP Act of 1963. Undisputedly the lands are acquired by the State Government in favour of KIADB for purpose of formation of industrial estate as defined u/s 2(7) of the Karnataka Industrial Area Development Act, 1966 (hereinafter called as the ''KIADB'' Act''). It is not in dispute that the acquired lands along with the other lands were designated lands u/s 69 of the KT & CP Act in the comprehensive development plan published by the State Government under the provisions of KT & CP Act. Chapter IX of the KT & CP Act provide certain lands to be designated for certain designated purposes in the comprehensive development plan approved by the State Government. Section 69(1) Clause (S) of the KT & CP Act states that if the land is acquired for the designated purposes under the provisions of the Land Acquisition Act, the provisions of Section 72 of the KT & CP Act are applicable. u/s 72 of the Act the provisions of Sections 23 and 24 of the Land Acquisition Act, 1894 is amended in pursuant to Section 30 of the KIADB Act, the provisions of Land Acquisition Act, 1894 shall mutatis mutandis apply for the purpose of determining compensation of the acquired land by fixing the market value, if the owners are not agreed to the proposed compensation as determined by the L.A.O. or fixed by the Deputy Commissioner and entered into agreement u/s 29(2) of the KIADB Act or Section 23 of amended provisions u/s 72 of the KT & CP Act which provision of the Act provides guidelines for the L.A.O. & reference court to determine the correct market value of the acquired land, the guidelines provided under the amended Section 23 of the Land Acquisition Act are entirely different from Section 23 of the Land Acquisition Act 1894. Therefore the Land Acquisition Officer was required to determine the market value of the acquired land keeping in view the guidelines provided under the amended Section 23 of the Land Acquisition Act u/ s 72 of the KT & CP Act. He is also required to follow the decisions of the Supreme Court regarding interpretation of the provisions of Section 23 of the Land Acquisition Act at the time of determination of market value of the acquired land. The Land Acquisition Officer has passed an award of compensation as per exhibit P1. He has procured the sales statistics regarding small bits of lands measuring 23x32, 23x38/11x36, 40x30, 30x40 of the sale deeds dated 23.11.1990, 14.2.1991, 31.7.1991 and 10.10.1991 respectively. The sale consideration amount also mentioned in the award passed by SPLAO. The correctness of those particulars and sale consideration amount and the extent of small bits of land covered in the said sale deeds are not is dispute. The case of the respondent-owner is that the acquired land, along with the other acquired lands has already acquired non-agricultural potentiality on account of the industrial buildings were already constructed in and around the acquired land and industries have been functioning in the Jigani Industrial Estate, this evidence on record is not challenged by the appellants in the cross-examination of P.W-1. In this view of the matter, the Special Land Acquisition Officer has got the statutory duty u/s 11 of the LA Act at the time of passing the award to fix the correct market value of the acquired land with reference to the market value of the land of the locality. He has not followed either capitalisation of sales statistics method for purposes of determining the market value of the acquired land, though he has procured the evidence of sale deeds in relation to the small bits of land formed in the adjacent land of the acquired land, he has not chosen to compare those lands with that of the acquired land and determined the compensation and he has also not kept in mind the ratio laid down by the Supreme Court in the catena of cases particularly The Special Land Acquisition Officer, Bangalore Vs. T. Adinarayan Setty, and also the decision of the Supreme Court in The Land Acquisition Officer, Revenue Divisional Officer, Chittoor Vs. Smt. L. Kamalamma (Dead) by Lrs. and Others K. Krishnamachari and Others, in support of the proposition of law that there cannot be any classification regarding small bits of land and vast extent of land for purposes of determination of the market value of the acquired land and relevant factors to be taken into consideration by him for purposes of determination of market value as held by the Supreme Court in the case of AIR 1988 SC 1653, which relevant aspects are elaborately extracted at sub-paragraphs 1 to 14 of paragraph 4 of the decision and other decisions of the Apex Court referred to supra upon which reliance is placed by the objector''s counsel with regard to percentage of deduction to be effected towards developmental charges, including the decision of this Court reported in ILR 1994 KAR 112. The re-determination of the market value of the acquired lands is also contrary to the decision of Privy Council in the case of AIR 1939 98 (Privy Council) , wherein it has held that the potentiality of the acquired land shall be determined on the basis of its immediate use, the relevant portion at page 102 is extracted hereunder which reads thus:

It is perhaps desirable in this connexion.... For it has been established by numerous authorities that the land is not be valued merely be reference to the use to which it is being put at the time at which its value has to be determined (that time under the Indian Act being the date of the notification u/s 4(1)), but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition. It is a self-evident one. 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.

Strangely the Special Land Acquisition Officer has not discharged his statutory duties while determining the correct market value of the acquired land. He has determined the market value of the acquired land at Rs. 1.00 lakh per acre the KIADB by consent agreement with the other adjacent land owners, whose lands were acquired against the same preliminary notification the market value is fixed at Rs. 1,00,000/-. That amount was offered to the objector by the KIADB was not acceptable for him and therefore the market value at Rs. 1.00 lakh was fixed by the SPLAO in respect of his acquired land and other statutory benefits in the award as per Annexure-D1, which proposed compensation was not acceptable for the objector. Therefore, he has sought for reference of the award of the Special Land Acquisition Officer u/s 18(1) of the Act by filling an application before him to make reference to the Jurisdictional Reference Court. Accordingly the reference was made u/s 18(3) of the LA Act. The objector was examined as PW1 and produced documents exhibit P1 to P3. The Land Acquisition Officer was examined as RW1 and produced the documents and marked as exhibits R1 to R5. The Reference Court for purposes of determining the market value of the acquired lands has evaluated both oral and documentary evidence of PW1 and RW1 to determine the market value of the acquired land and answered the points 1 and 2 in favour of the owner. The grounds urged on the appellants is that determination of the acquired land is on the higher side. The grievance of the cross-objector-owner is that it is on the lower side and it is not the excess determination of the market value, but on the hand the reference court ought to have made proper analysis of the legal evidence on record by applying the law laid down by the Apex Court and this Court in the cases referred to supra upon which reliance is placed on the relevant aspects of the matter, under the amended Section 23 as per Section 72 of the KT & CP Act, 1961 and it should have awarded just and fair compensation in favour of the objector. The Reference Court has not considered the sales statistics available in respect of comparable lands in the award Ex. P1, which fact regarding the sale of the small bits of land, in respect of sites, consideration of amount mentioned in the exhibit P1 are not disputed by the owner; those figures of the sales statistics should have been taken into consideration by the reference court and fixed the market value of the acquired land is the grievance of the owner. The learned Counsel for the cross-objector has also placed reliance upon the endorsement dated 14.11.1997 issued by the KIADB, wherein the similar adjacent lands acquired in the year 1993 by it u/s 28(4) of the KIADB Act by publishing final notification in the gazette on 30th August 1993 compensation amount was paid to those lands at Rs. 12.000 lakhs per acre. No doubt this endorsement was not produced before the Reference Court, the same is made available to this Court during the course of addressing arguments by the learned Counsel for the objector which document is not disputed by the learned Counsel for the Spl.L.A.O. and KIADB on behalf of the appellants. Therefore, he submits that the cross objection has to be allowed and the appeal filed by the appellants is liable to be dismissed.

11. We have carefully gone through the findings and reasons recorded by the learned Reference Judge in the impugned judgment. In our considered view, the determination of market value of the acquired land according to us is not the correct market value on the basis of legal evidence placed on record by the claimant and also the law laid down by the Supreme Court and this Court in catena of cases referred to supra, by comparing the acquired lands on par with the similar adjacent lands, which lands were converted and carved out small bits of sites, the same were sold way-back in 1991, and 12.4.1991, 3.1.1991, 10.10.1991, whereas the land in question against the preliminary notification

 

dated 16.11.1992, which were subsequent to the above said sale deeds. Having regard to the undisputed fact that the land in question along with the other lands of the area are earmarked in the CDP for the purpose of formation of industrial estate to form plots and allot the same in favour of the eligible industrialists under the provisions of the KIADB Act and Regulations thereunder. The above said important aspect of the case would indicate that the land in question is potential land as it has acquired non agricultural potentiality, further the land is situated at a distance of 20 km from Bangalore City Corporation. As held by the Supreme Court in the case of SPLAO v. A.N. Shetty case three factors which are required to be taken into consideration, for purposes of determining the market value of the acquired land are stated at paragraph 9 of the said case, upon which strong reliance is rightly placed by the learned Counsel for the objector, namely, the opinion of experts, of the acquired lands, the price paid within a reasonable time any bonafide sale transaction of the lands acquired and the lands acquired have got similar advantage of the adjacent lands. The acquired lands are comparable to the small bits of sites measuring 30 x 40 feet in the converted land, which were sold for Rs. 40,000/- in the year 1991, for the residential purpose, one year prior to the preliminary notification published in respect of the lands covered in this case. Therefore, the Reference Court did not accept the determination of market value at Rs. 1.00 lakh as fixed by the SPLAO, by recording the finding of fact on the basis of the evidence on record and rightly he has held that it has acquired non agricultural potentiality. Having recorded such a finding the Reference Court did not take into consideration all the relevant aspects of the matter regarding sales statistics available on record which are extensively referred to by the Land Acquisition Officer in his award marked as Ex.P1 and D1. He should have compared the land in question on par with those lands, and determined the market value of the land in question after giving necessary deductions towards developmental charges, that has not been done in the instant case by the learned Judge of the Reference Court at the time of passing the impugned judgment. The various legal contentions urged on behalf of the claimant''s counsel, which are referred to in the earlier paragraphs of this judgment are applicable to the case on hand in support of the claimant''s case. For the reasons stated supra, the submission of the learned Counsel for the Spl.L.A.O. and KIADB that the compensation awarded in the impugned judgment is on the higher side cannot be accepted by us. But on the other hand, the grievance of the claimant/objector is well founded in not determining the market value of the acquired land for which we have to answer point Nos. 2 and 3 in his favour and allow the cross objection of the claimant.

12. The undisputed fact is that the learned Judge of the Reference Court has placed reliance upon exhibit P2 for purposes of determining of market value that the lands are comparable on par with the land covered in the sale deeds dated 23.11.1990, 14.2.1991, 31.2.1992, 10.10.1991 of either measuring 40 x 30 sold at Rs. 40,000/- is an undisputed fact. The above particulars were rightly summoned by the Land Acquisition Officer from the Sub-Registrar office for his

 

consideration to determine the correct market value but he has not placed reliance on the document summoned from the Sub-Registrar nor assigned any reason to show those lands are not comparable to the acquired land and therefore the said document cannot be relied upon by him. The learned Judge of the Reference Court also referred to exhibit P2, but not applied his mind to the undisputed fact contained in exhibit P1 to determine the correct market value of the acquired land. The award of more compensation awarded by the Spl.L.A.O. in respect of other similar lands of as that of cross-objector of different villages acquired for the same purpose by the KIADB and determined the market value at Rs. 1,00,000/- per acre is on the lower side. Therefore the findings and reasons recorded by the learned Judge of the reference court on the contentious points and re-determining the market value of the land in question is erroneous and suffers from error in law for the reason of non consideration of undisputed fact of sale consideration amount as shown in the sale deeds of the small bits of sites sold by the land owners formed in the lands bearing Sy.No. 286/1, 303/2, 549/68, 549/43, 549/36, 2/26/3 of the same village. The above facts are no doubt extracted in the award by the SPLAO and the claim of the objector was established before the Reference Court and those lands are comparable lands to the land involved in this case and therefore the same has acquired non-agricultural potentiality which is the relevant consideration for the reference court to determine the correct market value of the same. Further having regard to the undisputed fact of earmarking the acquired land for the purpose of formation of industrial estate in the CDP, and land in question are situated adjacent to the main road and surrounded by industrial estate buildings and keeping in view the ratio laid down by the Supreme Court in Shetty''s, Triveni''s and also L. Kamalamma''s cases and Full bench judgment of this Court referred to ILR 1995 Kar. 1261 case and unreported judgment of this Court in M.F.A. No. 3832/1999 a/w cross objection No. 81/2000 referred to supra and the above decision of this Court, and also law laid down by the Apex Court should have been taken into consideration by the reference court to fix the correct market value as determined in similar and comparable lands to the land in question and determine the market value of the same by taking into consideration the relevant aspects as enumerated in the sub paragraphs 1 to 4 of paragraph 4 of the decision reported in Chimanlal Hargovinddas Vs. Special Land Acquisition Officer, Poona and Another, in the case of CHIMANLAL''S upon which strong reliance is placed by the learned Counsel for the objector in the case referred to supra. It is an undisputed fact that the land is situated within the proximity of the main road, surrounded in the developed area and land has got special value on account of the fact of adjoining properties, the valuable sites are formed, which is the special advantage for the lands in question to determine the market value. The law laid down by the Supreme court in the above case in this regard and the legal evidence on record placed by PW1 and the sales statistics collected by the Land Acquisition Officer from the Sub-Registrar, which documents are produced as legal evidence in favour of the objector, the same has not been taken into consideration by the learned Judge of the Reference court and determined the market value of the land in question. Non-consideration of the legal evidence on record regarding sales statistics of the adjacent lands which is very much available in exhibit P1 award passed by the Special Land Acquisition Officer, non-consideration of the statutory provisions and guidelines required to be taken into consideration as enumerated under amended Section 23 of the L.A. Act u/s 72 of the K.T. & C.P. Act, 1961 by the learned Judge of the reference court, as the said provisions of the L.A. Act are applicable for determination of compensation in view of section 30 of the KIAD Act. The findings and reasons recorded by the learned Judge of the reference court on the contentious point in the impugned judgment by determining the market value of the lands at Rs. 2,30,000/- per acre has certainly vitiated on account of erroneous reasoning as he has not considered the legal evidence on record in favour of the objector-owner. The finding recorded by the learned Judge on the contentious point is also contrary to law for not having applied his mind to the law laid down by the Supreme court & this Court in catena of cases referred to supra, which are extensively referred to in the earlier paragraphs of this judgment. The various relevant aspect to be taken into consideration for purpose of determination of market value of the acquired land & comparing acquired lands on par with the other lands which were already acquired, situated within the industrial estate are not taken into consideration by the learned Judge of the reference court. Therefore, the legal contention urged by the learned Counsel Sri. P. Krishnappa on behalf of the objector that the market value determined in respect of the land in question in the impugned judgment is also vitiated on account of erroneous reasoning and error in law is well founded, hence the same must be accepted. For the above reasons, the second point also is required to be answered by us in favour of the objector-owner.

13. Having answered point No. 2 in favour of the objector-owner, what market value of the acquired lands to be determined is examined by us to answer the last point framed by us. Since we have accepted the case pleaded by the learned Counsel on behalf of the objector and having regard to the location of the land and the same had acquired non-agricultural potentiality, and undisputed fact that the adjacent land owners have already formed a small bits of sites sold 30'' x 40'' feet measurement site at the rate of Rs. 40,000/- one year earlier to the preliminary notification of the acquired lands, one acre of land measures 43560 sq.ft., the residential sites of 22 sites can be formed in the layout then it would be 26,400 sq.ft. area can be utilized, i.e., 53% of the area has to be utilized for purposes of residential sites as provided under the provision of Karnataka Development Authority Act of 1987, the remaining 47% of the area of land shall be utilised towards developmental purposes, if the lands are used for residential layout. For formation of industrial estate there is no statutory requirement in the KIAD Act for the purpose of earmarking the area as open spaces, parks, play grounds or any other civic amenity sites. If 22 residential sites of measurement of 30" x 40" feet of one site are taken into consideration the area would be 1,200 sq.ft. per site, then the market value of the acquired lands at the rate of Rs.

 

40,000/- per site, then for 22 residential sites value would be Rs. 14,52,000/- per acre if we deduct 33% amount towards the development charges of the area 47% the market value of the acquired land would be at Rs. 9,72,840/-. If it is 40% Rs. 8,70,000/, if it is 50%, Rs. 7,69,600/-. In view of the undisputed facts and the sales statistics available in exhibits P1 & D1, the award passed by the Land Acquisition Officer and the impugned judgment of the reference court are not correct. Further the endorsement issued by the KIADB dated 14.11.1997 in respect of acquisition of similar lands of the area in question, which lands were acquired after 3 years from the date of acquisition of the lands covered in this case, wherein the final notification of the lands in question to an extent of 8 acres 36 guntas for the purpose of formation of industrial estate. In respect of the adjacent land owners, the compensation was determined by the advisory committee u/s 29(2) is at Rs. 12.00 lakhs per acre. The endorsement issued by the KIADB is not disputed by the appellant, if, this document is taken into consideration by us, after 10% or 15% of the amount is scaled down from the market value of 12.00 lakhs per acre, the compensation can be awarded in respect of the lands in question which were acquired 3 years later the market value of the land in question having regard to the fact of acquiring non-agricultural potentiality of the same as they are comparable lands and acquisition of those lands and acquisition of the land covered in the case are for the same purpose in favour of the KIADB. Therefore, the market value of the acquired land would be not less than Rs. 9,00,000/- per acre. In our considered view it would be just and proper for us to award Rs. 7,50,000/- per acre along with all statutory benefits including the interest payable u/s 34 of the LA Act taking into consideration the sales statistics of small bits of sites available in the award passed by the Land Acquisition Officer and the endorsement issued by KIADB referred to supra and also keeping in view the law laid down by the Supreme Court and this Court in the cases referred to supra. As already stated supra, the developmental charges towards the land, which is required to be utilised only for the purpose of formation of industrial estate is required to be taken into consideration by deducting from the total amount of market value of the land fixed, towards developmental charges. For the reasons stated supra, in our considered view, the market value of the acquired land is at Rs. 7,50,000/- per acre is just and proper, accordingly we fix the same by modifying the impugned judgment.

14. For the reasons stated supra in our considered view the objector-owner is entitled for enhanced compensation at Rs. 7,50,000/- per acre along with all other statutory benefits including interest in the place of Rs. 2,30,000/-per acre awarded by the reference court in the impugned judgment.

15. For the reasons stated supra, the appeal filed by the Special Land Acquisition Officer and KIADB is liable to be dismissed. Accordingly, dismissed. Cross objection filed by the objector-owner is required to be partly allowed. We have modified the impugned judgment of the reference court to the extent of compensation amount as indicated above along with the statutory benefits

including interest and cost of the cross-objection. Further we direct the Registry of this Court to calculate the advolerem court fee required to be paid on the enhanced compensation amount by the objector after deducting the court fee paid at the time of cross objection and we direct the objector to remit that amount of the office. Cross-objection is allowed in part as indicated above with costs of these proceedings which is payable to the objector/owner. The officer is directed to draw the award as per this modified judgment.