

(1991) 08 KAR CK 0038
In the Karnataka High Court
Case No : MFA Nos. 111 and 112 of 1983

V.T. Velu and Others

APPELLANT

Vs

Special Land Acquisition Officer, Bangalore and Another

RESPONDENT

Date of Decision : 27-08-1991

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1991) 3 KarLJ 684

Hon'ble Judges : K. Jagannatha Shetty, J;M. Rama Jois, J

Judgement

Rama Jois, J.-These two appeals are presented under Section 54 of the Land Acquisition Act against the Judgment and award made by the 13th Additional City Civil Judge, Bangalore City in a reference under Section 18 of the Land Acquisition Act. M.F.A. No. 111/1983 is presented by the claimants aggrieved by the award on the ground that the compensation awarded is inadequate; whereas M.F.A. No. 112/1983 is presented by the Special Land Acquisition Officer aggrieved by the award on the ground that the compensation awarded is excessive.

2. Brief facts of the case are these: The appellants in M.F.A. No. 111/1983 (hereinafter referred to as "the claimants") were the owners of land measuring 50,094 Sq. Ft. situated in Division No. 49 on Abdul Hafiz Road, Cox Town, Bangalore. The same land had been earlier numbered as Sy. No. 169 of Doddigunta village of Bangalore North Taluk. The land in question had been requisitioned for defence purpose under Section 29 of the defence of India (Requisition and Acquisition of Property) Act, 1962. The notification to that effect was issued on 29-3-1965, which is marked as Ex. P-pursuant to the order, the possession of the land had been taken by the Defence Department of the Central Government and it has been in their possession since then. On 27th April, 1972, a notification under Section 4 of the Land Acquisition Act was issued proposing to acquire the same property for the Defence Department of the Central Government. On 14th December, 1972 final notification under Section 6 of the Act was issued. Thereafter the Land Acquisition Officer proceeded to determine

the compensation to be paid to the appellants. An award was passed by the Land Acquisition Officer on 31st January, 1976. The Land Acquisition Officer awarded a compensation at the rate of Rs. 24,250/- per acre. Aggrieved by the said award, the claimants sought reference to the Civil Court under Section 18 of the Land Acquisition Act. Before the City Civil Court, the claimants claimed compensation at the rate of Rs. 50/- per square foot. The City Civil Court enhanced the compensation payable to the appellants by fixing the value of the land at Rs. 75,000/- per acre. Aggrieved by the said award, the claimants have preferred the appeal. In the appeal, the appellants have restricted their claim at Rs. 10 per square foot, in that they have claimed a compensation of Rs. 5,00,940/- as against the amount of Rs. 75,000/- per acre awarded by the learned Civil Judge. The Special Land Acquisition Officer has preferred the appeal contending that the compensation awarded at Rs. 75,000/- per acre was excessive.

3. Sri K. Balakrishna, learned counsel for the claimants, contended that the land in question, which was originally an agricultural land had been converted for non-agricultural use, as early as in 1948 and had become part of the City of Bangalore and was situated in the 49th Division of the Corporation, and that having regard to the evidence adduced, compensation at least at Rs. 10/- per square foot should have been awarded and the awarding of compensation at Rs. 75,000/- only per acre was totally inadequate.

4. In support of the above contention the learned counsel submitted as follows:

(1) After the land in question was requisitioned for the use of Defence Department of the Central Government in the year 1965 for the purpose of computing the rent payable under that Act, the value of the land was fixed at Rs. 4/- per square foot and on that basis the total value of the land was computed and on the said amount 6% per annum, which worked out to Rs. 12,052/- was being given to the appellants. When the land was valued at Rs. 4/- per square foot as early as in the year 1965, the value of the land on the date of preliminary notification i.e., on 27-4-1972 could have been more than double, for the reason in and around Bangalore as held by a Division Bench of this Court in the case of *H. Narayanaiah v Land Acquisition Officer*, AIR 1981 Kar. 26 there has been 10% appreciation in the value of the immovable property in and around the City of Bangalore. As the preliminary notification was after more than 7 years from 29-3-1965, the date of requisition for the value fixed in the year 1965 atleast 70% should have been added, which would have worked out to about Rs. 8/- per square foot as on the date of preliminary notification.

(2) Under Ex. P-4, which is a registered sale deed dated 20th October, 1962, a site measuring 98" x 113" bearing Municipal No. 56, situated at Charles Campbell Road, very near the acquired site was sold for an amount of Rs. 29,040/-, which works out to Rs. 6/- per square foot. This was a bona fide sale of a property 3 years prior to the date of requisition and more than 9 years prior to the date of preliminary notification. As the value according to the said sale deed was Rs. 6/- per square foot, the value after nearly 10 years would have

been more than double and consequently the claim of the appellants at Rs. 10/- per square foot is fully justified and the City Civil Court erred in lightly brushing aside this valuable piece of evidence.

(3) As early as on 3-8-1965, the Deputy Commissioner addressed a letter to the Commissioner, MEG and Centre, who was in possession of the land for and on behalf of the Central Government expressing the opinion that the land under requisition could reasonably be valued at Rs. 7/- per square foot. Even so, ultimately the Deputy Commissioner, by his order dated 19-2-1968 determined the value of the land at Rs. 4/- per square foot as on the date of requisition and after ascertaining the value of the said land on the said basis rental of Rs. 12,052/- was being paid to the appellants. As the claimants disputed the value fixed by the order of the Deputy Commissioner dated 19-2-1968, the matter was referred to arbitration and the arbitrator made an award dated 28th February, 1970. In the award the arbitrator fixed the value of the land at Rs. 7/- per square foot. This matter was taken in appeal before this Court in M.F.A. Nos. 512 to 522 of 1970. This Court by its Judgment dated 19-11-1971 modified the arbitrator's award and fixed the value at Rs. 4/- per square foot to be effective from the date of requisition. This Court, however, said that the valuation fixed at Rs. 4/- per square foot was upto 1968 and left the matter of fixation of higher value open for the subsequent period. Thus, it is clear that even for the period between 1965 and 1968 the value of the land was fixed at Rs. 4/- per square foot and therefore the market value of the land as on the date of preliminary notification on 27-4-1972 ought to have been fixed giving due weight for the escalation in the rate at 10% in respect of the land situated in and around the City of Bangalore.

(4) There was a partition among the members of the family of the claimants as evidenced by the registered partition deed dated 6th February, 1970. Under the said partition deed the value of the land in question for the purpose of stamp duty and registration was fixed at Rs. 9/- per square foot. This document was produced as Ex. P-10 before the Civil Court. This again being a valuation arrived at 2 years prior to the date of preliminary notification, the said value should have been acted upon as there had not even been a suggestion that the market value mentioned in the said deed was deliberately put at a higher rate.

(5) The Corporation of the City of Bangalore had fixed the value of the land situated at Abdul Hafeez Road at Rs. 70/- to Rs. 80/- per square yard even during the year 1968-69 as evidenced by Ex. P-5. The value so fixed prior to the date of preliminary notification worked out to Rs. 8/- to Rs. 9/- per square foot. This evidence atleast ought to have been acted upon.

5. Relying on the above evidence and in particular unimpeachable evidence regarding the value of the land fixed at Rs. 4/- per square foot, the learned counsel submitted that by applying the ratio of the decision of this Court in Narayanaiah's case AIR 1981 Kar. 26, the fair market value of the land in question should have been fixed as below:

1966-Rs. 4.40 per sq. foot

1967-Rs. 4.84 per sq. foot

1968-Rs. 5.32 per sq. foot

1969-Rs. 5.85 per sq. foot

1970-Rs. 6.43 per sq. foot

1971-Rs. 7.07 per sq. foot

1972-Rs. 7.77 per sq. foot

6. The learned counsel for the respondents in M.F.A. No. 111 of 1983 and appellants in M.F.A. No. 112 of 1983, however, contended that the land in question was an agricultural land and the compensation awarded itself was on the higher side.

6-A. The point therefore for our determination in these appeals is:

(1) Whether the compensation awarded by the Court below at Rs. 75,000/-per acre is inadequate, and if so, what is the proper compensation to be awarded and if not how much should be reduced?

7. We shall now proceed to consider each of the items of evidence adduced in the case and examine the correctness of the view expressed by the City Civil Court.

(1) Value of the land as disclosed from Ex. P-4, registered sale deed dated 20-12-1962: Under this sale deed property being Municipal No. 36 situate at Charles Campbell Road was sold for Rs. 29, 040/-. The sale deed is dated 20th October, 1962, i.e., 10 years prior to the date of preliminary notification and 7 years prior to the date of requisition. This evidence has been rejected by the learned Judge, vide para 12 of his Judgment. It reads:

"Ex. P-4 is a land measuring 537 Sq. yds. and it was sold for nearly Rs. 29,000/-. It works out at Rs. 6/- per sq. ft. On the basis of this Ex. P-4, the claimant's counsel asked me to determine the market value of the acquired lands at Rs. 15/- per sq. ft. Firstly, it can be ascertained from Ex. P-4 that it was executed in the year 1962 and it is not proximate to the date of notification in this case. Secondly, the land sold under Ex. P-4 consisted of not only land but "fixtures, plan ways, water courses" and other advantages. Thirdly, the said site was situated in Charles Campbell Road cross in Cox Town, Civil Station, Bangalore. It means it was situated in a well developed locality even as back as in the year 1962. Fourthly, it was lying by the side of several houses and also a main road called Hirachand Road. It is needless for me to say that the said site possessed electricity, water, road, drainage and other facilities. Therefore, the said site cannot be compared to the notified lands by any stretch of imagination. Even slight differences in situations can sometimes cause considerable differences in value. In view of these facts, it is held that the price paid under Ex. P-4 is neither proximate to the date of preliminary notification in this case nor

the land is comparable to the notified lands in any respect. It cannot therefore be a guiding factor in determining the market value of the acquired land."

It is difficult to agree with every one of the reasonings of the learned Judge. First reason given is that it is not proximate to the date of notification in the case. The notification under Section 4(1) of the Land Acquisition Act concerned in this case was dated 27-4-1972. Exhibit P-4 is dated 20th October, 1962 i.e., nine years earlier. If the sale deed was of the year 1972 and the preliminary notification was of the year 1962, then only the reasoning of the learned Judge would have been unexceptionable. It is well settled that sale deeds of comparable properties earlier to the preliminary notification is a relevant material. The learned Judge has rejected as if the sale deed was subsequent to the preliminary notification. The second reason gives an impression there were some structures. A reading of the contents of the sale deed clearly indicates it was a vacant site formed by consolidation of two sites and the words "together with fixtures, plants, water courses, rights, easements, advantages and appurtenances" used are only usual terms employed. Therefore, there was no basis to say that the land of the claimants and the site sold under Exhibit P-4 were not comparable. The third and fourth reasons are also not tenable. According to evidence of P-W. 1 Sampath Kumar, the purchase under Exhibit P-4 the land sold under Exhibit P-4 is situate in Charles Campbell Road, which is situate just 20 yards from Abdul Hafeez Road in Cox Town, Civil Station and had the benefit of being located in a well developed locality with all the facilities of drainage, electricity, water etc. We are therefore of the view that Ex. P-4 being a bona fide sale transaction nine years earlier to the date of preliminary notification, it constituted a valuable and reliable piece of evidence to assess the value of the land in question.

(2) Partition deed dated 6th February, 1970: It is under this deed the family partition among the members of the claimants' family was effected and this registered partition deed dated 6th February, 1970 (Exhibit P-10) is 2 years prior to the date of acquisition. This evidence was rejected by the learned Judge, for the reasons stated in paragraph 14, which reads:

"14. Fourthly, the claimant brought to my notice the partition deed as per Ex. P-10. It is a partition deed effected among the claimants 1 to 4 and also one other by name Smt. Sujana. It can be ascertained from Ex. P-10 that the claimants and another effected partition in respect of the notified lands on February 6, 1970 and that claimant No. 1 was given 1/10 share and claimants Nos. 2,3 and 4 were each given 3/10th share in the notified lands. Ex. P-10 is a duplicate and it discloses that the claimants themselves valued the notified lands for the purpose of partition at Rs. 4,50,000/- and each share was valued at Rs. 45,000/-. To repeat it was in the year 1970. It is on this basis the claimants asked me to determine the market value at Rs. 4,50,000/- plus appreciation for a period of 2 years at 10% per annum on the said amount. It was also contended that there was no necessity for the claimants to value these notified lands at Rs. 4,50,000/- in the year 1970 and then pay stamp duty on the said amount to get

it registered unless the market value of the said land was so much. It appears to be so. But the Government Pleader contended before me that Ex. P-10 came into existence for the purpose of claiming compensation in this case for avoiding lands regarding urban lands (ceiling and regulation) and it is not genuine. It was contended that it does not disclose or delineate the specific portion of the property given to each member except mentioning the share. In other words, nobody can say specifically whether a specific portion is given to a particular member. Secondly, para 4 of the deed discloses that the said deed is not open to challenge. Thirdly it provided that all taxes and other charges shall be payable by the party to whom the specific share has gone. But Ex. P-9 discloses that taxes are paid by only one person. In view of all these facts, I am reluctant to rely upon Ex. P-10."

Though there was no specific material on record to show that the market value of the land was shown at higher rate for the purpose of claiming compensation, it is possible that the appellants expected that the land would be acquired and therefore might have shown the value of the land at a higher rate so that in the event of the acquisition of the land by the Government, it would constitute the basis for claiming higher rate of compensation cannot be excluded. It is an undisputed fact that the land had already been under requisition and therefore it was quite possible that the claimants expected that the preliminary notification for acquiring the land might be issued at any time. Therefore, in the absence of any other independent evidence to show that the market value of the land in question was Rs. 9/- per square foot, as early as in the year 1970, the said rate cannot be acted upon for the purpose of fixing compensation.

(3) Market value of property as fixed by the Corporation in the City of Bangalore during 1968-69: The learned counsel for the appellants relied on Ex. P-5, which is a letter dated 23-9-1979 by the Assistant Revenue Officer, North East Range, Corporation of Bangalore, addressed to the claimant V.T. Velu. The relevant portion of the letter reads:

"With reference to your letter dated 23-9-1975, requesting to intimate the market value of properties in Abdul Hafeez Road, 49th Division, in Bangalore City Corporation, I write to inform you that market value of the properties vacant sites in Abdul Hafeez Road, 49th Division, during the year 1968-69 were being taken between Rs. 70/- to Rs. 80/- per sq. yd. for the purposes of assessment as the area was a developed one."

The learned Judge has rejected this piece of evidence. We are also of the view that the above letter cannot constitute a basis to show that, in fact, the Corporation had fixed the value of the property in Abdul Hafeez Road at Rs. 70/- to Rs. 80/- per square yard. It may be that the Assistant Revenue Officer had furnished the information on the basis of the records of the Corporation. The relevant certified copies of the Assessment Registers not having been produced the information furnished in the letter of the Assistant Revenue Officer cannot be acted upon.

(4) Rate fixed by the Central Government for the purpose of granting rental compensation: The learned counsel placed strong reliance on Ex. P-6 under which the value of the land was fixed at Rs. 4/- per square foot as on the date of requisition. The fact that for the purpose of granting rental compensation the value of the land was fixed at Rs. 4/- per square foot is not and cannot be disputed. On the basis of the value so fixed, compensation at the rate of 6% was being given to the appellants right from the date of requisition till the date of preliminary notification. The annual rental which was being paid was Rs. 12,052/-. As stated earlier the claimants were not satisfied with the rate of compensation so fixed. Therefore, they had sought for higher compensation and the matter was referred to an arbitrator and fixed the value of the land for the purpose of awarding rental compensation at Rs. 7/- per square foot even as on the date of requisition. The award of the arbitrator was made on 20th February, 1970. It is this arbitration award which was the subject-matter of appeal before this Court in M.F.A. Nos. 512 to 522/1970. The relevant portion of the Judgment in M.F.A. No. 518 of 1970 concerning the very land reads:

"9. The subject-matter of M.F.A. No. 518 of 1970 is a vacant land of an extent of one acre and 6 guntas in S. No. 169 of Doddigunta. For this land the arbitrator has awarded as compensation a sum representing a return at the rate of 6 per cent per annum of the capital value of the land assessed at the rate of Rs. 7/- per sq. ft."

xx xx xx "M.F.A. No. 518 of 1970 (Case No. ARB 10 of 1969-70):

106. In this case the requisitioned land bears S. No. 169 of Doddigunta and measures 1 acre and 6 guntas. The Competent Authority had assessed its market value at Rs. 4/- per sq. ft. and awarded as compensation a sum representing a return of 6 per cent per annum on such market value. The arbitrator assessed its market value at Rs. 7/- per sq. ft. and awarded a sum representing a return of 6 per cent per annum on such market value.

107. The owner of this land, V.T. Velu, claimed that it had been converted for being used for non-agricultural purposes. Since this land has been assessed to municipal taxes, the learned Assistant Central Government Pleader did not contest, and we think rightly too, that this land been so converted.

108. Regarding the location of this land, this is what C.W. 13 V.T. Velu has stated in his evidence. The Northern boundary of this land is Abdul Hafiz Road, and the Southern boundary is M.V.G.T.B. area (of the Military authorities). About 100 ft. away from Abdul Hafiz Road is Charles Campbell Road. The Road frontage of this land (facing Abdul Hafiz Road) is approximately 319 ft. Abdul Hafiz Road is 30 ft. wide. The value of properties in Bangalore City and particularly in this locality, were on the increase from the year 1962, and much more so from the year 1965.

109. In his cross-examination this witness stated that he had not leased this land to anyone but used to get it cultivated by his own men and that he was paying Corporation Tax from the year 1959-60.

110. From the plan, Exhibit P-39, it is seen that this land is to the south of Bangalore-Madras railway line and is nearer to developed parts of Bangalore City than the land bearing S. No. 148/2. This land has also got the advantage of having a fairly long road frontage. C.W. 11 Sampath Kumaran who had purchased a site under Exhibit P-26, dated 20-12-1962, has stated that that site is 15 to 20 yards from this land of V.T. Velu.

111. Mr. L. D'Silva, learned counsel for respondent V.T. Velu, submitted that there was steady rise in the price of building sites that when a plot of land was sold at Rs. 6 per sq. yd. On 20-12-1962 under Exhibit P-26, the assessment of the market value of this land of V.T. Velu at Rs. 7/- per sq. ft. can, by no means, be said to be excessive and that the compensation awarded by the arbitrator should not be disturbed. Mr. L. D'Silva also referred to the fact that in the year 1959 V.T. Velu had valued this land at Rs. 15,000/- for the purpose of payment of Court-fee in the suit O.S. 12 of 1959 on the file of the District Judge, Civil Station, Bangalore, instituted against the Military authorities. Mr. L. D'Silva also relied on the letters of the Deputy Commissioner, Bangalore, dated 3-8-1966 and 12-5-1967 to the Commanding Officer, Madras Engineer Group and Centre, in which the Deputy Commissioner had opined that this land could be reasonably valued at Rs. 7/- per sq. ft. as on the date of the requisitioning.

112. On the other hand, learned Assistant Central Government Pleader contended that the prices fetched in sales of small plots of land, would not be a safe guide for determining the market value of larger extents of land. In support of his contention he referred to the following observations of the Supreme Court in *Collector, Lakhimpur v B.C. Dutta*, AIR 1971 SC 2015 at 2016:

"..... It is well-known that when a large area like the one which the subject-matter of the acquisition has to be sold, it would not be possibly fetch price of the same rate at which small plots can be sold."

113. On the other hand, learned counsel for the respondent sought to derive support from the following observations in *U.P. Government v. H.S. Gupta*, AIR 1957 SC 202 at 206:

"The application of the principle that if the land had to be sold in one block consisting of a large area, the rate per square foot likely to be fetched would be smaller than if an equal extent of land was parcelled out into smaller bits and sold to different purchasers, could not reasonably be applied to the circumstances in the present case."

114. We think the above observations cannot be understood as laying down any general proposition at variance with what the Supreme Court has laid down in *Collector, Lakhimpur v B.C. Dutta*, as Their Lordships have expressly stated that that principle could not be applied to the circumstances of that case.

115. Reliance was placed on the following observations of the Supreme Court in *C.A. Nos. 756 to 759 of 1967, State of U.P. v Ramswaroop and Others*, reported

in 1970(2) Unreported Judgment (SC) 385:

"The argument was raised in the High Court as well as in this Court on the assumption that the land, which is being acquired, has a very large area, so that a number of roads, etc., may have to be laid out in this land. In fact, the total area being acquired, as mentioned earlier, is 84,092 sq. ft. which is less than two acres. In order to develop land having an acre of less than two acres, there can be no need for laying out extensive roads and lanes."

116. There, it is seen that the land in question consisted of 7 plots in the City of Lucknow, and that the land was by the side of a main road. There was also a kacha road on the other side of these plots of land. The land had already been divided into 7 plots. The above observations of the Supreme Court had reference to the particular facts of that case and cannot be understood as laying down a proposition that no deduction need be made for the area required for roads, drains and spaces while forming a layout of sites in an area of more than an acre.

117. Mr. L. D'Silva argued that for forming a layout in this land of V.T. Velu, there was no need to form any roads because this land had a road frontage and that even if any road or roads had to be formed, the area covered by the same would not be considerable.

118. It is seen from the plan, Exhibit P-39 that this land is of irregular shape and of varying depth from Abdul Hafeez Road. In spite of the fact that this land had considerably long road frontage it appears to us that it would be necessary to lay some roads for formation of a layout and after laying such roads many of the sites formed in that layout would be of irregular shape.

119. Thus the advantage of a long road frontage for this land, is off set by its irregular shape which would result in irregular dimensions of sites formed therein.

120. There is no evidence that V.T. Velu had applied to the Corporation of the City Improvement Trust Board for permission to form a layout of his land. The price fetched by a small building site though close to this land, would not be a safe guide for ascertaining the market value of this land. Applying the six factors stated in the decision, *Assistant Commissioner and Land Acquisition Officer v Bharath Oil Mills*, the market value at Rs. 4/- per sq. ft. assessed by the competent authority cannot be said to be low and we adopt that valuation. Accordingly, we modify the compensation awarded by the arbitrator and restore that award made by the competent authority for this land. In other words the respondent V.T. Velu is awarded a compensation representing a return of 6 per cent per annum on the capital value of the land assessed at Rs. 4/- per sq. ft."

8. The facts set out in the order establishes that the land was a converted land, it was facing Abdul Hafeez Road and it was only 100 feet away from Campbell Road. The Court though did not agree to apply the rate at which a site in Campbell Road was sold under Exhibit P-4, it upheld the contention of the Government and fixed the market value of the land at Rs. 4/- per square foot for

a period commencing from 1965 to 1968 leaving scope for agitating for grant of higher compensation for the subsequent period, and also leaving liberty for claiming appropriate compensation in the event of acquisition. The resultant position was on the date of preliminary notification also the claimants were receiving a rental compensation at 6% of the value of the land which in turn had been fixed at Rs. 4/- per square foot. Taking this as the basis, the learned counsel for the appellants strenuously contended as follows:

9. Applying the principle laid down by the Division Bench of this Court in Narayanaiah's case, 10% escalation in the value of the land should be granted from 1965 for a period of 7 years which works out to Rs. 7.77 as on the date of preliminary notification. This evidence so adduced had been rejected by the learned Judge at paragraph 15 of the Judgment. It reads:

"Fifthly, the claimants brought to my notice Ex. P-6, which is an extract of rental compensation payable to the owner of the notified lands issued by the Assistant Commissioner, Bangalore Sub-Division, Bangalore. It discloses that the claimant received rental compensation of Rs. 15,779/- in respect of the acquired lands in the year 1970-71 for a period of one year. Ex. P-6 cannot be correct. Because, the claimant himself has stated in para 4 of his statement dated 2-3-1976 filed before the Deputy Commissioner under Section 18(1) of the Act that the rental compensation was fixed at Rs. 12,022,56 ps. per annum, and these facts appear to be correct, if 6% compensation is given on the valuation of Rs. 4/-per sq, ft, in respect of the notified lands. However, on the basis of this crop compensation, the claimant asked me to multiply it by 20 years purchase value and then determine the market value. The said rental compensation was fixed for payment of rent and not for determination of the market value of the lands. Therefore, it does not apply."

In our opinion, the rejection of the above piece of evidence by the Civil Court is plainly unsustainable. The land having been valued at Rs. 4/- per square foot as early as in the year 1965 and the Central Government having paid the compensation on the value so calculated at 6% per annum, cannot turn round and take a stand that that was not the value of the land as on the date of requisition or even on the date of preliminary notification. In our opinion, the value so fixed which has been affirmed by the Division Bench of this Court in M.F.A. Nos. 512 to 522 of 1970 should constitute the basis for fixing the compensation of the land in question and no valid reason is shown by the learned counsel for the Central Government why it should be disregarded.

10. At this stage, the learned counsel, for the State and the Central Government relied on a Division Bench Judgment of this Court in M.F.A. Nos. 4 and 5 of 1983, decided on 18-7-1984. They were two appeals under Section 54 of the Land Acquisition Act by Land Acquisition Officer and the Defence Department of Government of India and the land which was the subject-matter for awarding compensation in the said cases was also one of the items of land acquired under the same preliminary notification under which the land belonging to the

claimants were acquired. The land was an agricultural land situated in the same village, viz., Doddigunta village. The relevant portion of the Judgment reads:

"8. The learned Civil Judge has no doubt fixed the market value on the basis of the crop compensation given to the party from 1963 at Rs. 20,450/- for the entire land. That works out to Rs. 80,000/- per acre. Learned Government Pleader submitted that that represents the gross value of the crops and he illustrated the same by calculation. In Sy. No. 131/2 there are 136 plants. At Rs. 120/- per plant Rs. 16,320/- was granted. In Sy. No. 143 there are 55 plants. At Rs. 75/- per plant Rs. 4,125/- was granted. Together therefore the gross value would be Rs. 20,445/-. The cost of cultivation was not taken into consideration since the entire land was taken over by the Department. If we take the net yield deducting 50% towards cost of cultivation it would be nearly about Rs. 4,000/- per acre and multiplying it by 10 we get, Rs. 40,000/- as market value. Since the lands acquired in Lingarajapura were granted compensation at Rs. 38,000/- on the basis of the potential we have to take the basis of potential instead of the basis of capitalisation method from net yield, and having done so and viewing in a broad common sense only, we have arrived at the figure sixty five thousand, which in our considered view is just and proper. Rupees eighty thousand awarded by the learned Civil Judge on the basis of the gross income is unwarranted and cannot be allowed to stand.

(emphasis supplied)

9. In the result, the appeals are partly allowed. The compensation fixed at Rs. 80,000/- per acre is reduced to Rs. 65,000/- per acre. Rest of the award stands confirmed. The interest shall run on the enhanced amount of compensation. There shall be no order as to costs of these appeals."

As could be seen from the above Judgment, the learned Civil Judge had awarded a compensation of Rs. 80,000/- per acre and this Court reduced it to Rs. 65,000/- per acre. The learned counsel for the State and the Central Government submitted that following the said Judgment the compensation fixed by the Civil Court at Rs. 75,000/- per acre for the land of the claimants should be reduced to Rs. 65,000/- per acre.

11. The learned counsel for the claimants submitted that the said Judgment which has been rendered by this Court on the basis of the evidence adduced in the said case cannot constitute the basis for fixing the rate of compensation in this case. He gave the following reasons for not applying the said Judgment to this case.

(1) The valuation fixed in the above appeal is plainly contrary to the earlier Division Bench Judgment of this Court in M.F.A. Nos. 517 of 1970 in which the lands which were the subject-matter of award of compensation in M.F.A. Nos. 4 and 5 of 1983 were also the subject-matter of appeals in the matter of compensation on requisition fixed in the arbitration proceedings. To demonstrate this point the learned counsel relied on the Judgment in M.F.A. No. 517 of 1970,

relevant portion of which reads:

M.F.A. No. 517 of 1970 (Case No. ARB 2 of 1969-70):

47. This appeal relates to lands bearing S. Nos. 131/2 and 143 of Doddigunta. It is undisputed that there were 191 vine plants on these lands and that the Military Authorities took possession of those lands i.e., 13-5-1965.

48. C.W. 18 M. Muniyellappa, the owner of these lands, has stated thus in his evidence: The vine plants therein were 5 years old in 1965 and were yielding two crops a year. These plants were planted at a greater distance from each other than is usually done in other gardens and hence those plants were yielding more grapes. By the year 1965, the annual yield of grapes had reached 116 Kgs. per plant. Between the years 1962 and 1965 the price of grapes was ranging from Rs. 1.50 to Rs. 2.00 per Kg. The price was increasing between 1965 and 1969. The maintenance expenses of his entire garden used to be between Rs. 6,000/- to Rs. 7,000/- per yield.

49. In his cross examination C.W. 18 Muniyellappa denied the suggestion that the maximum yield in each plant was only 45 to 60 Kgs. of grapes.

xx xx xx "53. It was contended for Muniyellappa that R.W. 3 Gopal had admitted in his cross examination that the vine plant would yield 100 Kgs. per crop, and that since he had also admitted that good plants would yield 2 crops, it must be regarded that he has also admitted that the annual yield from the vine plants would be 200 kgs. per plant.

54. But none of the respondents-claimants has claimed that the annual yield from the grape plants would be so high as 200 kgs. per plant. In fact, the highest yield claimed by the respondents themselves, is only 135 Kgs. per plant per annum."

xx xx xx "57. Taking the entire evidence, the average price at which the growers could have sold grapes between 1963 and 1968 may be taken as Rs. 1.50 per Kg.

58. Regarding the cost of cultivation, in the valuation report Ex. R-33 it is stated that the annual cost of cultivation per vine plant works out at Rs. 30 per annum. On the other hand, C.W. 18 Muniyellappa has stated in his evidence that the maintenance charges of his garden used to be between Rs. 6,000/- and Rs. 7,000/- and that this was per yield. As the plants yielded two crops per annum, the cost of cultivation mentioned by C.W. 18 Muniyellappa is actually higher than R.W. 3 Gopal has stated in his valuation report. However, we prefer to adopt the cost of cultivation estimated by R.W. 3 Gopal at Rs. 30/- per vine plant in the garden of C.W. 18 Muniyellappa. Deducting this cost of cultivation, the annual income from grape plants in S. No. 131/2 would amount to Rs. 120/- as against Rs. 100/- per plant awarded by the arbitrator.

(emphasis supplied)

59. No doubt, Muniyellappa has not appealed from the award of the arbitrator.

But the total compensation awarded to him by the arbitrator consists of two parts one representing the income from vine plants, and the second representing 6 per cent return per annum on the capital value of the land. Even though we award Muniyellappa compensation at the rate of Rs. 120/- per plant per annum, the total compensation we award for his land bearing S. No. 131/2 will be less than what the arbitrator had awarded for it. Hence, there is no impediment for our awarding annual compensation for these 136 vine plants in S. No. 131/2 at the rate of Rs. 120/- per plant inspite of his not having preferred an appeal from the award of the arbitrator.

60. As stated earlier, 55 vine plants in S. No. 143 belonging to Muniyellappa were not of the same quality. In the valuation statement, Ex. R. 33, it has been mentioned that the vine plants in S. No. 143 were about 2 1/2 years old and were not looked after very well and that the support for spreading of the grape plants was incomplete. R.W. 3 had valued the income from these plants at only about 55 per cent of the value he had assessed for the vine plants in S. No. 131/2. Though these vine plants were only 2 1/2 years old at the time when R.W. 3 Gopal inspected this plot, in subsequent years the yield from these plants was likely to have improved steadily until these plants reached the age of 8 years. Taking into account the average yield of these vine plants between the years 1965 and 1968 and the inferior condition of these plants compared to those in S. No. 131/2, we assess the annual compensation for these 55 vine plants at the rate of Rs. 75/- per plant."

The learned counsel pointed out that the Division Bench of this Court had computed the compensation payable at Rs. 120/- per vine plant for 136 vine plants in S. No. 131/2 and at Rs. 75/- per plant for 55 plants in S. No. 43, after deducting the cost of cultivation at Rs. 30/- per vine plant, fixed the value of the land. But as can be seen from the order in M.F.A. Nos. 4 and 5 of 1983 it was represented wrongly by the learned Government Pleader before the Division Bench that the income arrived at in M.F.A. No. 517 of 1970 was the gross income and in view of this the Division Bench deducted 50% out of it towards cultivation expenses and then applied the multiplier of 10. The learned counsel for the State and the Central Government could not and did not dispute that such a grievous error had occurred in the Judgment of this Court in M.F.A. Nos. 4 and 5 of 1983 on account of the representation that the net income arrived at in M.F.A. No. 517/1970 was the gross income and that if the correct position had been brought to the notice of the Court the compensation would have been certainly fixed at much higher rate than Rs. 65,000/- per acre.

(2) The lands concerned in M.F.A. Nos. 4 and 5 of 1983 were agricultural lands; whereas the land of the claimants was a converted land as is established by Exhibits P-17, P-18 and P-19 as early as on 20-3-1948 and this factual position had been admitted by the Government in M.F.A. No. 518 of 1970 as recorded in para 107 of the Judgment extracted earlier. It was part of Cox Town of the City of Bangalore and was facing Abdul Hafeez Road and therefore there could be no

comparison between this land and the lands concerned in M.F.A. Nos. 4 and 5 of 1983.

12. The learned counsel for the claimants next submitted that the Judgment rendered in the earlier land acquisition case regarding the quantum of compensation cannot be taken as final and binding in a subsequent reference as each case is to be decided on the basis of the evidence adduced in the case concerned. In support of this, the learned counsel relied on the Judgment of the Supreme Court in *C.I.T., Bangalore v H. Narayanaiah*, AIR 1976 SC 2403 at 2413. The relevant portion of the said Judgment reads:

"24. Another contention which found favour in the Karnataka High Court was that a Judgment filed by the respondents claimants in Civil Appeal Nos. 644-650 of 1974, when they appealed to the Karnataka High Court against the orders passed by a Civil Judge of Bangalore, on a reference made under the Acquisition Act, could be accepted as additional evidence under Order 41, Rule 27, C.P.C. on the ground that it was relevant evidence for the purpose of determining compensation of lands which were the subject-matter of appeals before the High Court. The reasons given for admitting, at the appellate stage, a Judgment of the High Court, which had not been filed before the Trial Court, were: firstly, that it was not available when the proceedings were pending in the Trial Court and secondly, that lands dealt with by the Judgment were adjacent to the lands the value of which needed determination, and that both sets of lands were acquired at different stages of what is known as the "layout scheme within the limits of Bhinnamangala village." The High Court overruled the objection that the Judgment admitted as additional evidence was not final inasmuch as an appeal against it was pending in this Court.

25. We find that the High Court did not consider it, for some reason, necessary to refer to the provisions of the Indian Evidence Act which regular the admissibility of all evidence including Judgments. There could be no question of res judicata in such a case. The previous Judgment was not between the same parties. Furthermore, the appellant was not given any opportunity of showing that the Judgment related to land which was at some distance from the lands whose value was to be determined or that its site value was, for some reason, higher. Even the time at which the value of the other land was determined was not shown to be identical. Such Judgments are not Judgments in rem. They are Judgments in personam. The general provision of law governing admissibility of all Judgments, whether the are Judgments in rem or Judgments in personam operating as res judicata, is Section 43 of the Evidence Act, which reads as follows:

"43. Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such Judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act."

26. It is apparent that Section 43 enacts that Judgments other than those falling

under Sections 40 to 42 are irrelevant unless they fall under some other provision of the Evidence Act; and, even if they do fall under any such other provision, all that is relevant, under Section 43 of the Evidence Act, is "the existence" of such Judgment, order, or decree provided it "is a fact in issue, or is relevant under some other provision of this Act." An obvious instance of such other provision is a Judgment falling under Section 13 of the Evidence Act. The illustration to Section 13 of the Evidence Act indicates the kind of facts on which the existence of Judgments may be relevant.

27. In *Special Land Acquisition Officer, Bombay v Lakhamshi Ghelabhai*, AIR 1960 Bom. 78, Shelat, J., held that Judgments not inter partes, relating to land acquired are not admissible merely because the land dealt within the Judgment was situated near the land of which the value is to be determined. It was held there that such Judgments would fall neither under Section 11 nor under Section 13 of the Evidence Act. Questions relating to value of particular pieces of land depend upon the evidence in the particular case in which those facts are proved. They embody findings or opinions relating to facts in issue and investigated in different cases. The existence of a Judgment would not prove the value of some piece of land not dealt with at all in the Judgment admitted in evidence. Even slight differences in situation can, sometimes, cause considerable differences in value. We do not think it necessary to take so restrictive a view of the provisions of Sections 11 and 13 of the Evidence Act as to exclude such Judgments altogether from evidence even when good grounds are made out for their admission. In *Khaja Fizuddin v State of Andhra Pradesh*, C.A. No. 176 of 1962. Decided on 10-4-1963 (SC), a Bench of three Judges of this Court held such Judgments to be relevant if they relate to similarly situated properties and contain determinations of value on dates fairly proximate to the relevant date in a case.

28. The Karnataka High Court had, however, not complied with provisions of Order 41, Rule 27 of the C.P.C. which require that an appellate Court should be satisfied that the additional evidence is required to enable them either to pronounce Judgment or for any other substantial cause. It has recorded no reasons to show that it had considered the requirements of Rule 27, Order 41 of the C.P.C. We are of opinion that the High Court should have recorded its reasons to show why it found the admission of such evidence to be necessary for some substantial reason. And if it found it necessary to admit it, an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading other evidence.

29. The result is that we allow these appeals and set aside the Judgment and order of Karnataka High Court and direct it to decide the cases afresh on evidence on record, so as to determine the market value of the land acquired on the date of the notification under Section 16 of the Bangalore Act. It will also decide the question after affording parties opportunities to lead necessary evidence, whether the Judgment sought to be offered as additional evidence,

could be admitted."

He also relied on a Division Bench Judgment of this Court in Additional Special Land Acquisition Officer v P. Anantha Bhat, AIR 1972 Mys. 313. Relevant paragraph of the Judgment reads:

"14. It is now fairly established that in matters relating to land acquisition, a Judgment of a Court in regard to similar lands or properties would be a relevant piece of evidence. This is not to say that such a Judgment is binding as a precedent. The award in a L.A. case is essentially a decision on a question of fact depending on the facts and circumstances of such case, unless a question of law or principle has been settled therein. Whenever such a Judgment is sought to be used as a piece of evidence, it must satisfy the usual test of relevancy and application to the facts and circumstances of the case in which it is relied on."

Relying on the above decisions, the learned counsel submitted that, unless an application under Order 41, Rule 27 of the C.P.C. was made by the State for adducing the Judgment in M.F.A. Nos. 4 and 5 of 1983 and it was admitted as additional evidence in these appeals no reliance can be placed on the said Judgment.

13. Without prejudice to the above submission, the learned counsel for the claimants submitted that it is of no assistance to the State for the following reasons:

(1) The land which was the subject-matter of acquisition in M.F.A. Nos. 4 and 5 of 1983 continued to be an agricultural land; whereas the land of the claimants was a land in respect of which permission for non-agricultural use had been granted, as early as in the year 1948, and the fact that it was converted land had been accepted by the State in M.F.A. No. 518/1970, as recorded in para 107 of the Judgment in that appeal.

(2) The land was situated facing Abdul Hafeez Road in Cox Town of the City of Bangalore and therefore not comparable to the agricultural land concerned in M.F.A. Nos. 4 and 5 of 1983.

(3) While documentary evidence to prove the value of the land have been adduced in this case, no such documentary evidence was adduced in the reference out of which M.F.A. Nos. 4 and 5 of 1983 arose.

(4) Even regarding agricultural income, there had been an incorrect representation in M.F.A. Nos. 4 and 5 of 1983, in that what was actually net income according to the finding recorded in M.F.A. No. 517 of 1970 was represented as gross income and as a result this Court proceeded to deduct cost of cultivation out of what was actually net income in the belief it was gross income and on that basis fixed the compensation.

14. In our opinion, every one of the reasons given by the learned counsel for the claimants is valid. Therefore, after giving careful consideration to the

submissions made by the learned counsel for the State and the claimants, we are of the view that the Judgment in M.F.A. Nos. 4 and 5 of 1983 cannot constitute a basis to discard the unimpeachable evidence adduced by the claimants. Therefore, it is unnecessary for us to consider the objection raised by the claimants, that unless procedure prescribed under Order 41, Rule 27 is observed, the order in M.F.A. Nos. 4 and 5 of 1983 cannot be relied upon.

15. The learned counsel for the State next submitted that even while applying the valuation in respect of the lands in the vicinity which had been sold 53% should be deducted, as held by the Supreme Court in *Administrator General v Collector Varanasi*, AIR 1988 SC 943. Relevant portion of the Judgment reads:

"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 plots that could be laid out on the land would be good selling propositions and that valuation on the basis of the method of a hypothetical layout could with justification be adopted, then in valuing such small, laidout 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 v Amritsar Improvement Trust*, (See (1982)1 SCC 419: AIR 1982 SC 940) 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." Relying on the above Judgment, learned counsel for the State submitted even if there is justification to apply the rate as found in the registered sale deed dated 20-10-1962 under which property bearing M.L. No. 36, Charles Campbell Road was sold at Rs. 6/- per square foot, 53% should be deducted.

16. The learned counsel for the claimants submitted that the principles laid down in the above case was not applicable to the present case for two reasons:

(1) The land in question was facing the road and therefore there was no question of utilisation of land acquired for formation of road.

(2) The land in question was not meant for making a layout consisting or large number of sites in which event there ought to be deduction of the area required for such development purpose.

17. On the basis of the material on record we are satisfied that the principle of deducting 53% of land for development purpose while applying the price for which a site is sold for determining compensation payable for large extent of land

acquired cannot be applied to this case, for, even as on the date of requisition and as on the date of preliminary notification the locality in which the land in question was situate was well developed. It was facing Abdul Hafeez Road and therefore formation of a road on the front side was unnecessary. Further, in M.F.A. No. 518/1970 the Division Bench of this Court after considering the fact that though the site was facing Abdul Hafeez Road, there was necessity to form roads inside and in view of the irregular shape of the sites formed, as seen from the plan, fixed the value at Rs. 4/- per square foot. In doing so, the Division Bench also considered the sale price of the site in Campbell Road, situate within one hundred feet which was sold under Ex. P-4 on 20th October, 1962 which measured 98" x 113" at Rs. 6/- per square foot. In the face of this finding in M.F.A. No. 518/1970 in respect of this very land, the value of the land in question cannot be fixed at a rate less than Rs. 4/- per square foot as on the date of preliminary notification for purposes of awarding compensation.

18. As can be seen from paragraph 129 of the order in M.F.A. No. 518/1970 extracted earlier, the Division Bench held that the value of the land fixed at Rs. 4/- per square foot holds good till March, 1968. At paragraph 128, the Division Bench also held that in the event of acquisition of the land, the quantum of compensation to be awarded should depend on the material placed regarding the market value of the land. In view of the findings recorded and the material placed on record and discussed earlier, we are of the view that the market value in 1968 should be taken as Rs. 4/- per square foot, and as the preliminary notification was issued on 27-4-1972, one rupee per square foot should be added towards price escalation. Thus, we hold that awarding of compensation at Rs. 5/- per square foot is just, fair and adequate. The appellants are entitled to all additional benefits flowing from the amendment of the Land Acquisition Act by Amending Act 68 of 1984, except the one under Section 23(1-A) of the Act as the award of the Land Acquisition Officer is earlier to 30-4-1982.

19. Accordingly, we make the following order:

I. In M.F.A. No. 111 of 1983:

(i) The appeal is allowed with costs.

(ii) The award dated 30th June, 1982 made by the Court below in L.A.C. No. 485/1980 is modified by awarding higher compensation at the rate of Rs. 5/- per square foot for the land acquired.

(iii) The appellants shall be entitled to all consequential benefits flowing from the amendment to the Land Acquisition Act by Amending Act 68 of 1984, except the additional compensation under Section 23(1-A) of the Act.

II. In M.F.A. No. 112 of 1983:

The appeal is dismissed with costs.