Karnataka High Court The Executive Engineer (Elecl) (O ... vs The Assistant Commissioner And ... on 16 March, 2005 Equivalent citations: ILR 2005 KAR 2183 Author: S Nayak Bench: S Nayak, S Majage JUDGMENT S.R. Nayak, J. 1. The beneficiary as well as the owners of the acquired land being aggrived by the awards passed by the Civil Court, have preferred these appeals under Section 54 of the land Acquisition Act, 1894, (for short, 'the Act'). M.F.A. Nos. 2451, 2453, 2457 and 2461 of 2001 are by the beneficiary, whereas M.F.A Nos. 3428, 3429, 3430 and 3431 of 2001 are by the owners of the acquired land. 2. 19 acres 24 guntas of land comprised in R.S. No. 395 which is situate within the limits of Gadag-Betgeri Municipality was acquired for a public purpose, to wit, for the purpose of installation of electricity power transmission station at Gadag, building KEB office, ware-house etc, by issuing Section 4(1) Notification dated 15.09.1994. The land in Survey No. 395 is phoded in favour of four brothers and they are the claimants in LAC Nos. 1 of 1997, 2 of 1997, 3 of 1997 and 4 of 1997 and each block measures 4 acres 36 guntas. The Land Acquisition Officer after conducting award enquiry placing reliance on sales statistics awarded the compensation at the rate of Rs. 60,000/- per acre vide his order No. LAQSR-1/94-95 dated 15.11.1996. The owners of the acquired land being aggrieved by the said award sought reference of their claims to the Civil Court for enhanced compensation by making necessary applications under Section 18 of the Act. The Civil Court on such reference placing reliance on Ex.P-5 sale deed fixed the marked value of the acquired land at the rate of Rs. 3,79,260/- per acre. Hence, these appeals by the Karnataka Electricity Board (now Karnataka Power Transmission Corporation Limited) who is the beneficiary of the acquisition and hereinafter shortly referred to as the 'the beneficiary' contending that the compensation fixed by the Civil Court is excessive and unreasonable whereas in the appeals preferred by the owners of the acquired land, it is contended that what is awarded by the Civil Court is totally inadequate and unreasonable and it does not reflect the correct market value of the acquired land as on the date of Section 4(1) Notification. The owners of the acquired land in their appeals have sought for compensation at the rate of Rs. 31,000/-per gunta. 3. Since all the appeals are directed against the same judgment of the Civil Court, we have clubbed all these appeals, heard together and they are being disposed of by this common judgment. We have heard Sri B. Rudra Gowda, learned Counsel for the beneficiary and Sri G. Gangi Reddy, learned Counsel for the owners and Sri K.P. Aso Kumar, learned Government Advocate for the State of Karnataka and Land Acquisition Office. The State of Karnataka and land acquisition officer the have not preferred any appeal against the judgment and awards of the Civil Court. 4. It is contended by Sri Rudra Gowda that the acquired land is a dry agricultural land and only Ragi and Jowar are grown in the said land and, therefore, the Civil Court is not justified in awarding compensation at the rate of Rs. 3,79,260/- per acre. In doing so, Sri Rudra Gowda would contend, the Civil Court has ignored several binding judgments of the Supreme Court which deal with determination of the market value of the acquired land. It was also contended by Sri Rudra Gowda that the Civil Court ought not to have placed reliance on Ex. P-5 sale deed under which a small bit of 1 gunta

2 annas of land was conveyed. Be that as it may, it was contended that the Civil Court ought to have deducted 65% towards developmental charges. It was also contended that Ex.P-5 document could never be regarded as a comparable sale document to determine the market value of 19 acres 24 guntas of land, it was contended by Sri Rudra Gowda that the market value fixed by the Land Acquisition officer based on statistical data is quite reasonable and fair. Sri K.P. Aso Kumar, learned Government Advocat would support the contentions of Sri Rudra Gowda. Sri Gangi Reddy, learned Counsel for the owners, per contra, would contend that the compensation awarded by the Civil Court at the rate of Rs. 3,79,260/- per acre is totally unreasonable and inadequate having regard to the fact that the acquired land is situate within the municipal area and it has high potentiality of being used for non-agricultural purposes. It was contended by Sri Gangi Reddy that the owners have produced as many as 17 documents marked as Ex.P1 -P17 in support of their claims, but, the Civil Court did not take into account any of those documents except Ex.P-5 for fixation of compensation. It was also contended by Sri Gangi Reddy that the Government itself in their notification have fixed the market value at the rate of Rs. 31,000/- per gunta for the purpose of stamp duty while registering sale deeds with regard to the lands situate in the Gadag-Betageri municipal area. It was also contended that even assuming that Ex.P-5 could be the basis for fixation of the market value, the Civil Court is not justified in deducting 1/3rd of the price reflected in Ex.P-5 sale deed towards developmental charges and awarding compensation at the rate of Rs. 9,481/- per gunta. According to Sri Gangi Reddy, the Civil Court ought to have fixed the market value in terms of Ex.P-17 which is the certified copy of an award passed in LAC 84 of 1985 under which the Civil Court has awarded compensation at the rate of Rs. 30/- per square foot for that award was confirmed by this Court in the appeal as per Ex.P-18. Alternatively, it was also contended that the Civil Court ought to have fixed the market value of the acquired land on the basis of Ex.P-16 and Ex.P. 16(a), sale documents. Sri Gangi Reddy would finally conclude by contending that in the facts and circumstances of the case, Ex.P-17 and Ex.P-18 are the best pieces of evidence on the basis of which the market value of the acquired land ought to have been fixed by the Civil Court and not on the basis of Ex.P-5 sale deed. 5. Having heard the learned counsel for the parties, the only point that arises for our decision is whether the market value fixed by the Civil Court at the rate of Rs. 3,79,260/- per acre in the facts and circumstances of case and evidence on record, could be considered to be excessive as contended by the beneficiary or whether the same is unreasonable and inadequate as submitted by the owners of the acquired land and what was the correct market value of the acquired land as on the date of Section 4(1) Notification. 6. Before dealing with the above question, we may usefully notice the principles governing valuation of the lands acquired for non-agricultural purposes. Sections 23 to 25 offer a complete code for the guidance of the Court. Sections 23 and 24 of the Act stipulate factors that need to he taken into account and those that need to be eschewed while determining compensation payable to the owners of the acquired land Section 23 is, however, not exhaustive as it does not prohibit other factors from being

consideration in special cases. What is actually taboo for consideration in the process of determination of the market value is detailed in Section 24. Valuation of immovable property is not an exact science and that valuation cannot be made by merely applying algebraic formulae for it quite often abounds in uncertainties and imponderables, and, therefore, no exact reasons for the conclusions arrived at is possible on all occasions. Some room has to be allowed for conjectures and guessworks, though the Court should be reluctant to venture too far in that direction because, there is a danger of being mislead in the decision-making, The Court while determining the market value should take into consideration the evidence adduced as to the nature, situation, income and potential value of the land. 7. The Apex Court in a catena of decisions over the past four and half decades and more have evolved principles and norms for determination of compensation of the lands compulsorily acquired by the State in exercise of its eminent domain power under the Act or under any other enabling statute. One of the principles discernible from the pronouncements of the Apex Court is mat while determining compensation for larger extent of land, price paid for or compensation determined by the Court for smaller parcels of lands does not provide a safe and dependable base. At the same time, it is also discernible from the pronouncements of the Supreme Court that in the absence of any better evidence, even transactions involving conveyance of smaller extends of land or blocks of land which are comparable in terms of point of time and the locus would become relevant. 8. The Supreme Court in ADMINISTRATOR GENERAL OF WEST BENGAL v. CONLLECTOR VARANASI observed thus- "The determination of market value of a piece of land with potentialities for urban use is an intricate exercise which calls for collection and collation of diverse economic criteria. The market value of a piece of property, for purposes of Section 23 of the Act., is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms length. The determination of market value, as one author put it, is the prediction of an economic event, viz, the price-outcome of a hypothetical sale, expressed in terms of probabilities. Prices fetched for similar lands with similar advantage and potentialities under bona fide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are resorted to if the evidence of also of similar lands is not available." 9. This Court in JADE BASAPPA (DEAD) BY L.Rs. AND Ors. v. ASSISTANT COMMISSIONER AND LAND ACQUISITION OFFICER, HOSPET, BELLARY DISTRICT, 1995(6) Kar.LJ. 130 held: "The approach of the Courts while dealing with the case of an agriculturist, ...is to average and round off the figure, the acceptance always being on a little higher side rather than on the lower side. The object has not been to end up with the State paying more money, but to take note of the fact that whatever amount that the land owner seeks is a one time compensation, the computaion of which must never be grudgingly done because even a generous compensation is more than offset by the real land value in the hands of the acquirer, and that consequently the lands have always a tremendous potential both for actual financial yield and capital appreciation". 10. In SMT K.S.

SHIVADEVAMMA AND Ors. v. ASSISTANT COMMISSIONER AND LAND ACQUISITION OFFICER, DAVANAGERE AND Anr., (DB) a Division Bench of this Court held: "It is clear that, if reasonably the land acquired has a potentiality for urban use, said benefit should be extended to it while awarding compensation. Lands in the outskirts of an expanding city has every tendency to become ripe for building use in course of time. Court has to make a reasonable exercise to find out the market value by reference to the existing material, unless the material on record is absolutely useless to find out the value of similar lands. If the value of comparable land, is of small size, appropriate deduction has to be made after applying the said rate, when a hypothetical building layout is imagined to work out the market value of the acquired land. A few decisions also indicate that, Court may take note of the value of land which may not be in the very locality but, situated in a nearby locality, provided, it is comparable to the acquired land with regard to the potentiality. If the available market-rate is of some recent past, appropriate escalation rate may be applied to estimate the rate as on the date of the preliminary notification, no doubt, the entire exercise by the Court would be indirectly guided by the Court's own judicial sense as to what would have been a reasonable value for the land in question, at the relevant point of time." 11. This Court in ALISAB (SINCE DECEASED) BY L.Rs. V. ASSISTANT COMMISSIONER AND LAND ACQUISITION OFFICER, BELLARY, 1995(6) Kar LJ. 686 dealing with the factors to be considered in determining the compensation and onus of fixing fair compensation observed thus:- "it is the onus of the State acting through the Land Acquisition Officer to fix the fair compensation in the first instance. Though the Law assumes that the L.A.O. will act correctly, the law also makes provision for revision of the figure awarded, by the Court, and experience has shown that in almost every case, the Courts had even required to intervene by stepping up the compensation. It is true that if the original awarded amount is disputed that the onus lies on the claimant and that on such basic issues as the question as to how must grain or other agricultural produce a particular piece of land yielded in a particular year is concerned, that it is the landowner who is the best person to testify. If one were to take not of the fact that for purposes of obtaining some more money that there would be a natural tendency to exaggerate, a court will go by the prevailing standards and figures and as far as these are concerned, if independent evidence is not forthcoming then some reliance of a considerable degree will have to be placed on the figures which the State comes out with". 12. A Division Bench of this Court speaking through one of us (S.R. NAYAK,. J.,) in the case of ADDITIONAL SPECIAL LAND ACQUISITION OFFICER, UPPER KRISHNA PROJECT, ALMATTI v. CHANDRASHEKAR SIDRAMAPPA HERALAGIAND Ors., MFANOS 1409/2003 and CONNECTED CASES D.D. 14.08.2003 held thus: "It needs to be noticed that whether deduction should be made towards development charges or not is a question of fact and answer to that question depends upon facts and circumstances of each case and that no general or universal rule or formula to answer the question whether deduction towards development charges should be made at all, and if deduction has to be made in a case, at what percentage such deduction should be made, can be

laid down so as to make it applicable to each and every case. There is no hard and fast rule that 60% of the value of a land should be deducted towards development charges when such land is acquired for housing purpose regardless of the location, current use and potentiality of the land and development already made, if any". 13. In the same Judgment, the Court futher observed: "The State should be fair and reasonable in compensating the uprooted agriculturists and it shall not be permitted to make unlawful gain while exercise eminent domain power under the Act or any other statute". 14. Having noticed the relevant case law governing the fixation of market value of the lands acquired, let us proceed to fix the market value of the acquired land in this case. The market value postulated in Section 23(1) of the Act is designed to award just and fair compensation for the lands acquired. The word "market value would postulate price of the land prevailing as on the date of the publication of the Notification under Section 4(1) of the Act. The acid test for determining the market value of a land acquired is what is the price which a willing vendor might reasonably expect to obtain from a willing purchaser of that land, and that that price would form the basis to fix the market value. The Court, for ascertaining the market rate, can rely upon such transactions which would offer a reasonable base to fix the price. The price paid in sale or purchase of the land acquired within a reasonable time from the date of the acquisition of the land in question would be the best piece of evidence. In its absence, the price paid for a land possessing similar advantages to the land in the neighbourhood of the land acquired in or about the time of the notification would supply the data to assess the market value. What is fair and just or reasonable market value is always a question of fact depending on the nature of the evidence circumstances and probabilities in each case. The market value of the land acquired should be fixed not only by reference to the use to which it was put on the dale of publication of Section 4(1) notification, but also by reference to the uses to which it is reasonably capable of being put in the future. All its existing advantages and its potential possibilities when laid out in its most advantageous manner, should be taken into account while fixing the market value. The Court can also take into account any special circumstances, apart from the methods of valuation traditionally adopted, in order to arrive, as nearly as may be, at an estimate of the market value. 15. We can take judicial notice of the fact that in some situtations, the assessment of the market value depends mainly on evaluation of many imponderables and uncertainties and may involve to some extent a matter of guesswork. The Court's attempt should always be to adequately and reasonably to compensate the loss sustained by a person as a consequence of compulsory acqusition of his property by the State by invoking its eminent domain power. No man can be deprived of his land except on payment of compensation and the person who is deprived of his land is entitled to be compensated to the full of value of the deprivation caused. The Court should also remember that it awards compensation cumulatively under all possible heads only once for deprivation of the land and injurious affection and there is no scope for an afterthought in the matter of claims to compensation, Therefore, failure of the Court to award just and fair compensation results in perpetual injustice to the person deprived

of his land. 16. The Parliament itself, to avoid injustice to the persons whose lands are acquired, in Section 24 of the Act, has enacted factors which should go into the decision-making while determining the market value and fixation of compensation. The Court, therefore, should be alive to the factors mentioned in Section 24 of the Act and keep them at the back of the mind. Further, the Court, in assessing the market value, should balance plus factors such as smallness of area of the land acquired, proximity to road, frontage on road, vis-a-vis land acquired etc., as well as minus factors such as largeness of area, situation in the interior at a distance from the road, remoteness from developed locality and any other disadvantageous factor which would deter a purchaser and then evaluate all those relevant plus and minus factors in terms of price variation as a prudent purchaser would do. 17. Having noticed the norms, principles and the factors statutorily specified and those laid down by the Apex Court and this Court for fixation of market value of the acquired lands, let us proceed to briefly refer to the nature and the non-agricultural potentiality of the acquired land in this case. Admittedly, the acquired land is situate within the limits of Gadag-Betegeri Municipality and it abuts Sambapur road. The acquired land is very nearer to the bus stand, educational institutions and the market. The acquired land is in one block and whole of the land is levelled. It has a high non-agricultural potentiality for being used for non-agricultural purposes. It is stated that after the formation of Gadag District and Gadag being the Head Quarter of that district, the rise in land value in the area has been mercuric wheras there has been tremendous demand for lands required for the State and State authorities, public corporations, Banks etc. to provide infrastructure facilities, consequent upon the formation of the new District Gadag and the land available is inadequate to meet the demand. It has come in the evidence that to the southern side of the acquired land the road leading to Sambapur runs parallely; to the southern side of the said road, house sites are already formed; to the northern side of the acquired land there lies R.S. No. 396 and 397 in which sites are already formed; adjacent to R.S. No. 397 there is Hudco colony. It has also come in the evidence that even on the eastern side of the acquired land sites arc formed; Sankeshwar Oil Mill is also situtate nearby. In and around the acquired land there arc oil mills, Nursing Home, Polytechnic and other institutions, APMC Yard, Petrol Bunks, Garages and shops. There are more than 100 industries and more than 20 educational institutions in Gadag town itself apart from the fact that Gadag is a well-known and fast-developing business center in the past several decades. Even according to the Land Acquisition Officer, the acquired land has high non-agricultural potentiality. In the award passed by him, the Land Acquisition Officer has slated thus: 18. This it is quite clear that the acquired land as on the date of acquisition itself had tremendous non-agricultural potentiality because the whole area abutting on all four sides of the acquired land was being used for non-agricultural purposes. Apart from high non-agricultural potentiality possessed by the acquired lands as pointed supra, since the acquired land is situtate within the municipal limits of Gadag-Betageri Municipality, the market value of the acquired land has to be fixed treating the same as urban property. The Punjab and Haryana High

Court in the case of BHAGATRAM v. STATE OF PUNJAB AND ORS. held that any land situtate within the municipal limit should be evaluated as urban property. The Punjab & Haryana High Court held thus:"Where land acquired under the Act is within the Municipal limits of a particular town it ought to be evaluated as urban property even if the property at the lime of acquisition is used as agricultural property. In the instant case the Collector and the Tribunal and evaluated agricultural property acquired by the standards of agricultural property and not by the standards of urban property. Thus it was a patent error on the face of record and as such could be corrected in exercise of writ jurisdiction." We are in respectful agreement with the above view of the Punjab and Haryana High Court. 19. Although it is true that that in determining the market value of a large extent of land, no reliance can be placed on sale deeds or awards involving smaller extents of lands provided that sale deeds involving conveyance of larger extent of land which are comparable in point of time and locus arc available, the Civil Court can certainly place reliance on sale deeds involving conveyance of smaller extents of land which are comparable in terms of time and locus for the determination of the market value of a larger extent of land, of course, subject to deductions etc., towards development if there arc no comparable sale deeds involving conveyance of larger extents of land. Thus, there is no hard and fast rule that under no circumstance, the Civil Court can rely upon the sale deeds involving smaller extents of land for deterination of the market value of larger extents of land though such sale deeds are comparable in terms of time and locus. This position is well settled not only by the judgments of the Supreme Court and this Court already referred to above, but also the judgments of the Supreme Court in the Case of U.P. AVAS EVAM VIKAS PARISHAD v. JAINUL ISLAM AND ANR. , THE LAND ACQUISITION OFFICER, REVENUE DIVISIONAL OFFICER, NALAGONDA, A.P. v. MORISETTY SATYANARAYANA AND ORS. ALL ACC 2002 (1) SC VOL 24, KASTURI AND Ors. v. STATE OF HARYANA , LAND ACQUISITION OFFICER AND MANDAL REVENUE OFFICER v. V. NARASAIAH , LAND ACQUISITION OFFICER, REVENUE DIVISIONAL OFFICER, CHITTOR v. SMT. KAMALAMMA (DEAD) BY LRs AND ORS. , RAVINDER NARAIN AND ANR. v. UNION OF INDIA ILR 2003 KAR 1143 (SC) and the judgment of this Court in THE SPECIAL LAND ACQUISITION OFFICER, UPPER KRISHNA PROJECT, JAMKHANDI v. NOORAHAMMAD HUSEN MULLA AND ORS. 2002 (1) LACC 537 (DB) Therefore the contention of the learned Counsel for the beneficiary that the Court would not be justified in placing reliance on the sale-deads produced by the owners of the acquired lands for the purpose of the fixation of proper market value of the acquired land as on the date of Section 4(1) Notification only because under the sale-deeds produced by the owners smaller extents of land have been conveyed, is not acceptable to us in the light of the binding authorities of the Supreme Court and this Court as well. 20. The next question that is required to be considered would be whether the Court should take into account all the sale deeds produced by the owners for the purpose of determination of the market value of the Court should rest its decision only on Exhibit-P5 sale deed as has been done by the Court below?

21. Although Sri Gangi Reddy had primarily contended that Exhibits P17 and P18 awards passed by the Civil Court and this Court are the best pieces of evidence to determine the market value of the acquired land, alternatively, he would, placing reliance on the judgment of the Supreme Court in the case of V. NARASAIAH {supra} & RAVINDER NARAIN {supra}, contend that the market value has to be fixed taking into average of the prices paid under the sale deeds and/or awards passed by the Courts and according to him, if the average of the sale prices paid under Exhibits-P5, P16, P17 and P18 after dedication at 33% towards development costs and allowing appreciation in the market value of the acquired land at 10% per year is taken, the market value of the acquired land per acre would be Rs. 12,95,383/-. In both the above cases, the Supreme Court has upheld the determination of the market value based on the average of the prices reflected in the sale documents which were used as a evidence for determining the market value. We are of the considered opinion that the application of similar method/procedure in this case also would serve the ends of justice. However, we hasten to add that Exhibits P.17 and P.18 which are the awards passed by the Civil Court and this Court having regard to the fact that they are not proximate in terms of time, are not comparable and therefore, cannot be a safe basis for fixing market value of the land. Those documents have to be eschewed in the fixation of market value. Although it was contended before us by the learned Counsel for the beneficiary and the Government Advocate that we should deduct at least 60% towards developmental costs while determining the market value, it needs to be noticed that there is no hard and fast rule as to what rate of deduction should be made towards developmental charges. The question whether any deducation should be made towards developmental charges and if it has to be made, then at what rate, are all questions of fact and answer to those question depends upon facts and circumstances of each case and that no general or universal rule or formula to answer those questions can be laid down so as to make it applicable to each and every case. 22. In the instant case, we have already pointed out supra the high non-agricultural potentiality possessed by the acquired lands on the date of Section 4(1) notification. The Civil Court has deducted l/3rd amount towards developmental charges. We are of the considered opinion that the deducation made by the Civil Court is on a lower side. Taking into account the totality of the circumstances, we are of the considered opinion that deducation of 50% cost towards developmental charges is warranted. 23. This takes us to the question as to what is the proper rate of appreciation in the land value to be allowed, if Exhibits P16 and P16(a) are also to be the basis for determination of the market value? Although Sri Gangi Reddy would contend that having regard to the scarcity of available land and emergence of tremendous developmental and building activities consequent upon the formation of new Gadag District, we should allow appreciation at the rate of 10% after taking into account the totality of the circumstances and since the owners have not adduced any direct evidence to show that the rate of escalation in the value of the land in that locality at the relevant point of time, was at 10% we are inclined to allow appreciation only at the rate of 5% and not 10%. Thus, if we rest on Exhibits-P5, P16 and P16(a) only for determination of

the market value by deducting 50% of the cost towards developmental charges and by adding 5% appreciation every year for a period of three years, having regard to the date of Section 4(1) notification for acquiring the land covered by Exhibits P16 and P16(a) documents and the date of Section 4(1) notification in this case, the value of the land covered by Exhibits-P5, P16 and P16(a) would come to Rs. 2,84,440/-, Rs. 6,90,000/- and Rs. 10,65,360/- per acre respectively, and the aggregate of these three sums would be Rs. 20,39,800/- and the average of the three sums would be Rs. 6,79,933.33 (rounded off to Rs. 6,79,935/ per acre). 24. In the result and for the foregoing reasons, we dismiss M.F.A. Nos. 2451 of 2001, 2453 of 2001, 2457 of 2001 and 2461 of 2001 filed by the beneficiary with costs and allow M.F.A. Nos. 3428 of 2001, 3429 of 2001, 3430 of 2001 and 3431 of 2001 filed by the owners of the acquired land with costs, and in substitution of the market value fixed by the Court below, we fix the market value of the acquired land at the rate of Rs. 6,79,935/- per acre. In all other respects, the awards made by the Court below shall stand unaltered. The owners are also entitled to all statutory benefits.