Peerappa Hanmantha Harijan(D) By ... vs State Of Karnataka on 30 July, 2015

Equivalent citations: AIR 2015 SUPREME COURT 2908, 2015 AIR SCW 4662, 2015 (4) AIR KANT HCR 53, (2015) 8 SCALE 569, (2015) 6 MAD LJ 216, (2015) 154 ALLINDCAS 186 (SC), 2015 (10) SCC 469

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Bench: C.Nagappan, V.Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.5804 OF 2015
(Arising out of SLP (C) No.19819 of 2013)

PEERAPPA HANMANTHA HARIJAN (D)
BY LRS. & ORS. …APPELLANTS

Vs.

STATE OF KARNATAKA & ANR. …RESPONDENTS

WITH

CIVIL APPEAL NOS.5806-5807 OF 2015
(Arising out of SLP (C) Nos.31624-31625 of 2014)

AND

CIVIL APPEAL NOS.5808-5810 OF 2015 (Arising out of SLP (C) Nos.3482-3484 of 2015)

J U D G M E N T

V. GOPALA GOWDA, J.

Leave granted in all the special leave petitions.

Challenge in the appeal arising out of SLP No. 19819 of 2013 is arising out of the impugned judgment and order dated 05.03.2013 passed in Misc. First Appeal No.32157 of 2012 (LAC) by the High Court of Karnataka, Circuit Bench at Gulbarga (filed against the judgment and order dated 29.09.2012 of Principal Civil Judge (Sr. Divn.), Gulbarga, Reference Court in LAC No. 943 of 1997) whereby, the High Court upheld the quantum of compensation awarded by the Principal Civil Judge (Sr. Divn.) and declined to interfere with the same and dismissed the appeal filed by the appellants.

Challenge in the appeals arising out of the SLP Nos.31624-31625 of 2014 is preferred against the judgment and order dated 22.09.2014 passed in Review Petition No. 2537 of 2013 in MFA No. 32157 of 2012 (filed by the KIADB) and Writ Petition No. 100860 of 2013 (filed by the Company) of the

Karnataka High Court, Gulbarga Bench whereby the High Court has remanded the matter to the Reference Court for reconsideration of the case.

Challenge in the appeals arising out of SLP Nos.3482-3484 of 2015, filed by the Karnataka Industrial Area Development Board is arising out of the judgment and order dated 22.09.2014 passed by the High Court of Karnataka, Gulbarga bench, in Review Petition No. 2537 of 2013 in MFA No. 32157 of 2012, Misc. First Appeal No. 30702 of 2013 and writ petition No. 100860 of 2013, whereunder the High Court was pleased to dispose of the above mentioned appeal and petitions by remitting the matter to the Reference Court to give an opportunity of hearing to the beneficiary and incidentally to the petitioner therein (the allottee Company). The said appeals were filed by the KIADB as it was aggrieved of certain observations made in the judgment, while remanding the case, which affects the merits of the case.

This is the most pathetic case of a land owner, and after his death his legal heirs, who have been made to litigate the case for more than three decades to get just and reasonable compensation, after having lost their land in the acquisition proceedings at the instance of the Karnataka Industrial Areas Development Board (in short 'KIADB') which was their only source of income and livelihood, which right to livelihood is a fundamental right guaranteed under Article 21 of the Constitution of India as held by this Court Constitution Bench in the case of Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.[1] The matter has been pending before the courts for more than three decades. The appellant-landowners have been crying for justice for enforcement of their legitimate right of getting just and reasonable compensation under the Land Acquisition Act, 1894 (for short "the L.A. Act"). The land in the instant case has been acquired by the State Government of Karnataka in exercise of its power of eminent domain under Section 28 of the Karnataka Industrial Areas Development Act, 1966 (in short 'the KIAD Act') at the instance of KIADB. The said acquisition of land had been done by the State Government for the purpose of establishment of industries in the land vide notifications under Section 28(1) and 28(4) of the KIAD Act. By an earlier notification issued by the State Government under Section 3 of the KIAD Act, the land involved in these proceedings had also been included in the an Industrial Area. The KIAD Act provides for securing the establishment of industrial area in the State of Karnataka with a view to promote the establishment and orderly development of industries therein after formation of Industrial Estate in the acquired land.

The relevant facts which are required for the purpose of considering the rival legal contentions urged on behalf of the parties in these appeals are stated in brief hereunder.

The appellant (since deceased), represented by his legal representatives was the absolute owner of the land bearing survey No. 306/9/1, measuring 5 acres 20 guntas at Malkhed village in Sedam Taluka, Gulbarga District, Karnataka. It is claimed that on 12.2.1981, the predecessor of M/s Rajashree Cement Works, a unit of M/s Ultra Tech Cement Ltd. (originally a unit of India Rayon & Industries Ltd.) made a proposal to the State of Karnataka-respondent to set up a cement manufacturing plant and applied for acquisition and allotment of 1187 acres and 5 guntas of land towards setting up of a factory, residential colony etc at Malkhed, Gulbarga. This fact is not supported by the original land acquisition record of the government produced before this Court by

the State government's counsel.

The state government issued preliminary notification dated 18.06.1981 under Section 28(1) of the KIAD Act for acquisition of land measuring 1187.15 acres in favour of the KIADB which included the land of the appellants. The notification also stated that the acquisition of land was for the purpose of establishment of industries. The State Government on 24.11.1981 issued declaration as contemplated under section 28(4) of the KIAD Act. The state government on 03.12.1981 issued notices upon the interested parties under Section 28(6) of the KIAD Act.

The Special Deputy Commissioner, Gulbarga, vide award dated 28.05.1982 fixed the market value of the acquired land at Rs.1700/- per acre along with other statutory payments such as 15% solatium and statutory interest payable on the compensation amount.

On 07.06.1990, the state government took possession of the acquired land from the landowner and transferred the same to the KIADB which in turn, allotted the same in favour of the Company as per the provisions of the KIAD Act and relevant provisions of the Karnataka Industrial Areas Development Board Regulations, 1969 (hereinafter the "KIADB Regulations"). The appellants received the compensation under protest and made an application on 20.06.1982 to the Special Deputy Commissioner to make reference of the award to the Reference Court for enhancement of compensation under Section 18(1) of the L.A. Act. The reference application filed by the appellants before the Deputy Commissioner under Section 18(3) of the Act dated 12.4.1991 was numbered as Misc. Petition No.101 of 1991. The Special Deputy Commissioner, vide supplementary awards dated 30.12.1992 and 02.01.1993 granted solatium at the rate of 30% in view of the provisions under the Land Acquisition (Amendment) Act (No.68 of 1984). The reference papers were sent by the Land Acquisition Officer to Principal Civil Judge (Sr. Divn.), Gulbarga, was registered as LAC No. 943 of 1997. The learned judge refused to condone the delay of the application filed by the appellants under Section 18(3) of the L.A. Act on the ground that the date of first application had been interpolated. A Civil Revision Petition was filed by the appellants before the High Court against the order of the Principal Civil Judge, which was dismissed by the learned single judge of the Karnataka High Court vide order dated 21.08.2003.

Aggrieved by the same, the appellants filed an appeal before this Court being Civil Appeal No.3244 of 2005. This Court set aside the order of the Reference Court and remanded the case to it with a direction to re-decide the application of the appellants on merits and to re-determine the market value of the acquired land and award compensation accordingly. This Court further held that the Reference Court erred in holding that the petition of the appellants was barred by limitation as the award could be said to have been passed only on 07.06.1990, the date on which the state government took possession of the acquired land and compensation was offered to the appellants. It was further held by this Court that the Deputy Commissioner did not have the jurisdiction to pass the award in the first place on 28.05.1982, as all the acquisition proceedings with respect to the notifications of the state government dated 24.11.1981 had been stayed by the learned single Judge of the Karnataka High Court vide an interim order dated 05.03.1982 in Writ Petition Nos. 9356 to 9361 of 1982, filed by the appellants and other land owners who were affected by the acquisition of land and the interim order was operating on the date of passing of the award referred to supra,

which fact was neither noticed by the Reference Court nor by the High Court.

Accordingly, the amended claim petition was filed by the appellant (since deceased) before the Reference Court after remand order passed by this Court seeking compensation at the rate of Rs.2,50,000/- per acre before the Principal Civil Judge, Gulbarga, who relied upon the judgment and order of the Karnataka High Court dated 27.02.2005 in MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005, which had relied upon the sale deeds of the sites carved out in Sy. No.389 at the rate of Rs.7.5/- per sq. feet. The reference of the Sy. No.414/2 of the same village according to which the sale deed had been executed at the rate of Rs.13/- per sq. feet in the year 1985-1986 was also relied on, on the basis of which the learned Principal Civil Judge allowed the claim petition of the appellants in part and enhanced the compensation awarded initially from Rs.1,700/- per acre of land to Rs.1,37,000/- per acre of land after re-determination of the market value of the land and awarded the other statutory benefits payable to the owners under the provisions of the L.A. Act vide order dated 29.09.2012 passed in LAC No. 943 of 1997.

Aggrieved by the said judgment and order of Reference Court passed in LAC No. 943 of 1997, the appellants preferred MFA No. 32157 of 2012 before the Karnataka High Court, Gulbarga Bench. The State Government, through KIADB belatedly preferred MFA 30702 of 2013 before the High Court after the dismissal of the above Miscellaneous appeal of the appellants seeking for enhancement. The learned single Judge of the High Court held that the Reference Court while fixing the market value of the acquired land had taken into consideration the fact that it has got the Non-Agricultural (NA) potential and had also deducted charges towards the waiting period as well as development charges at the rate of 30% and had re-determined the market value of the acquired land at Rs.1,37,000/- per acre. Therefore, the learned single Judge of the High Court has held that the same did not call for its interference and accordingly dismissed the appeal of the appellants vide judgment and order dated 05.03.2013.

Aggrieved by the said judgment and order, the appellants-land owners filed the present appeal arising out of special leave petition No. 19819 of 2013 before this Court seeking for enhancement of compensation after re- determination of the market value of the land on the basis of the award passed by the High Court in MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005 on the ground that on an examination of Ext. P.5, which is the village map of the land, it becomes abundantly clear that the land covered in the award passed in the Cross Objection NO. 213 of 2005 is comparable to the land of the appellants which were acquired by the State Government for industrial development at the instance of KIADB.

While the matter was yet to be heard by this Court, the respondent-State through KIADB filed Review Petition No.2537 of 2013 before the High Court in MFA No.32157 of 2012. It had also filed belated MFA No. 30702 of 2013 against the judgment and Award passed by the Reference Court in LAC No. 943 of 1997 M/s Ultra Tech Cement Ltd. through its Unit M/s. Rajashree Cement Ltd. filed Writ Petition No. 100860 of 2013 before the High Court on 19.03.2013 questioning the correctness of the award of compensation passed in favour of the land owners on the ground that they are the necessary party to the reference proceedings before the Reference Court and they were not notified in the said proceedings. The learned single Judge set aside the judgment and award order of the

Reference Court by allowing the above writ petition and directed it to afford an opportunity of hearing to the alleged beneficiary-Company to participate in the proceedings and to decide the matter on merits in accordance with law after affording opportunity to the Company.

Aggrieved by the supplementary awards passed by the Special Deputy Commissioner dated 30.12.1992 and 02.01.1993, the Company filed Writ Petition No. 8707 of 1993 before the High Court of Karnataka challenging the legality and validity of the same. The learned single judge held that after the amendment in the L.A. Act, the land owners were entitled for 30% of solatium and additional benefits under Sections 23(1-A), 23(2) and 28 for the reason that the acquisition proceedings in the case were pending as on 30.04.1982 in respect of the lands as no award had been passed by the Special Deputy Commissioner on or before 30.04.1982. The learned single judge further held that the Special Deputy Commissioner was justified in passing a supplementary award, awarding benefits under the above said provisions of the L.A. Act. Hence, it was concluded by the learned single judge that the Company cannot have any grievance as against the supplementary awards and dismissed the Writ Petition.

Being aggrieved, the Company filed Writ Appeal No. 4321 of 1998 before the Division Bench of the Karnataka High Court for setting aside the order of dismissal dated 17.06.1998 passed in the writ petition by the learned single judge. The learned Division Bench allowed the appeal of the Company and set aside the supplementary awards dated 30.12.1992 and 02.01.1993 of the Special Deputy Commissioner by judgment and order dated 29.05.2000 holding that since the appellants had entered into an agreement with the State Government and KIADB as well as the Company as regards the compensation, the initial award had attained finality and thus, the Special Deputy Commissioner did not have the jurisdiction to pass the supplementary awards. The Division Bench further held that the said land had been allotted by KIADB in favour of the Company and that the Special Deputy Commissioner had no power to pass supplementary awards when no reference was pending. However, the rejection order passed in the reference case by the Reference Court affirmed by the High Court in the above Civil Revision Petition was set aside by this Court in the Civil Appeal No.3244 of 2005 vide its judgment and order dated 27.04.2011. Thereafter, the Reference Court re-determined the market value of the acquired land of the appellants- landowners as directed by this Court in which proceedings the state government through KIADB was a party.

The learned senior counsel on behalf of the appellants Ms. Kiran Suri has contended that the Company need not be party to the proceedings as it is not the beneficiary of the acquired land in terms of the provisions of the KIAD Act and L.A. Act to be party in the proceedings for determination of the market value of the acquired land before the Reference Court.

The learned senior counsel has further contended that the State Government through KIADB should not have been allowed to file either MFA or writ petition after the same matter had already been decided by the High Court at the instance of the appellants. In support of her above legal submission she has placed reliance upon the decision of this Court in the case of Ramchandra Dahdu Sonavane (dead) by LRs and Ors. v. Vithu Hira Mahar (dead) by LRs. And Ors[2] on the question of res judicata wherein this Court has observed that once the matter which was the subject matter of lis stood determined by a competent court, no party thereafter can be permitted to reopen it in a

subsequent litigation. Such rule was brought into the statute book with a view to bring such litigation to an end whose ultimate purpose is to harass the other party. It is further contended by the learned senior counsel that the matter is concluded by the High Court in the MFA filed by the appellants and as such the question of reviewing the judgment and order passed by it does not arise unless there is an error apparent on the face of the record. She has placed reliance on the case of Hari Das v. Usha Rani Banik[3]. Reliance has also been placed on the decision in the case of Ballarpur Industries Ltd & KIADB v. Civil Judge[4] in support of the contention that the lessee/ allottee need not be a party to the proceedings either before the Land Acquisition Collector or before the Reference Court as provided under Section 20 (c) of the L.A. Act, 1894.

Referring to the Review Petition and the appeal filed by the State of Karnataka, represented by KIADB before the High Court, it is further contended by the learned senior counsel on behalf of the appellants that at the relevant point of time when the matter was decided in MFA of the appellant/owners by the High Court at the instance of the land owners, no appeal was filed by the KIADB questioning the correctness of the re- determination of the market value of the acquired land and the award passed by the Reference Court, which has been confirmed by the High Court holding that the market value of the land of the owners at Rs.1,37,000 per acre. The same could not have been interfered with by the High Court in the writ petition as the Company is not entitled to challenge the award by filing writ petition. The belated MFA filed by the KIADB was rightly dismissed by the High Court. It was further contended by the learned senior counsel that neither the review petition filed by the KIADB nor the Writ Petition filed by the Company should have been entertained by the High Court as the same was not maintainable for more than one reason. Firstly, the Company had no locus standi to challenge the award passed by the Reference Court in the Writ Petition, when the remedy of appeal was provided to the aggrieved party viz. to the State Government and the KIADB. Secondly, the High Court had rightly rejected the review petition and belated Misc. First Appeal filed by the KIADB after disposal of the MFA filed by the landowners seeking for enhancement of compensation.

It is further contended by the learned senior counsel on behalf of the appellants that the High Court has committed a serious error in law by remanding the matter back to the Reference Court to give an opportunity to the Company without recording the specific finding as to whether the Company is a beneficiary of the acquired land either under the provisions of KIAD Act or the L.A. Act. It is further submitted by the learned senior counsel on behalf of the appellants that this specific issue was raised before the High Court, the same was not answered and therefore, there is no question of remanding the matter back to the Reference Court without recording the finding with valid and cogent reasons.

It is further contended by the learned senior counsel appearing on behalf of appellants that the High Court has committed a serious error in law in remanding of matter to the Reference Court after about 33 years of initiation of acquisition proceedings in a casual manner without examining the relevant provisions of the KIAD Act, L.A. Act, Regulations and the law laid down by this Court in this regard. It is impermissible in law for the High Court to entertain a non maintainable Writ Petition filed by the Company which is an allottee, and it has no right under the provisions of the L.A. Act to get impleaded as a party either in the reference proceedings or avail appeal remedy

provided under Section 54 of the L.A. Act against the award passed by the Reference Court as it has no right under the provisions of the L.A. Act to question the correctness of the award with regard to the re-determination of quantum of compensation as it is governed by the terms and conditions of the order of allotment and lease deed executed by it when the law on this aspect is clear with regard to the right of the Company as it is an allottee and therefore, the Writ Petition filed by it questioning the correctness of award passed by the Reference Court is not maintainable in law and the order of remand passed by the High Court in exercise of its extraordinary, discretionary and supervisory jurisdiction under Articles 226 and 227 of the Constitution of India, is void ab initio in law as the Writ Petition proceedings before the High Court are not at all maintainable in law. Further, the order of remand passed by the High Court without even deciding the legal right of the Company which was claimed by it stating that it is a beneficiary even though it is admittedly a lessee of the acquired land, which was allotted in its favour by the KIADB on the market value of the acquired land as per the provisions of the KIAD Act and Regulations. The letter dated 07.04.1982 relied upon by the state government clearly shows that the KIADB had intimated the Indian Rayon Corporation Ltd., that the land to an approximate extent of 971.07 acres has been decided to be allotted in favour of the Company on lease cum sale basis for a period of 21 years. One of the conditions at No.14 of the above said letter shows that the KIADB, on being satisfied that the land is not being put to use for the purpose for which it was asked for will be free to re-enter upon and take possession of the whole or that part of the land which has not been put to proper use by the Company. It is further submitted by the learned senior counsel that the agreement dated 30.03.2005 entered between KIADB and the Company relied on by the Company shows that the Company had applied for grant of lease of 27 acres 21 guntas of land including that of the landowners and the lease of the same is made by KIADB in favour of the Company for a period of 21 years which is independent from the acquisition proceedings initiated by the State Government at the instance of the KIADB in the case on hand. It is submitted that all the documents produced by the Company, which are relied upon would show that either the acquired land of the owners is for industrial development and that the Company is the lessee of the lands acquired in favour of KIADB. The material documents produced in these proceedings either by the state government or KIADB to assume the fact that the acquisition of the land is made at the behest of and at the expense of the Company is not factually correct. This fact is evident from the acquisition notifications issued by the state government under the provisions of the KIAD Act. On the contrary, as per the acquisition notifications it is acquired in favour of the KIADB for the formation of an Industrial Estate in the Industrial Area. Therefore, the Company cannot assert that it is either a beneficiary of the acquisition of land or a person interested for the purposes of KIAD Act or L.A. Act to give an opportunity for it to participate in the proceedings to determine the market value of the acquired land either before the Special Deputy Commissioner or Reference Court to pass an award, awarding just and reasonable compensation in favour of the appellants in respect of their acquired land.

It is further contended by the learned senior counsel on behalf of the appellants that as per Section 29 of the KIAD Act, where any land is acquired by the State Government, it shall pay for such acquisition cost of the acquired land in accordance with the provisions of the Act. The notifications issued by the state government under Sections 28(1) & 28(4) of the KIAD Act would clearly show that the land is acquired by the state government not in favour of any particular Company but for KIADB for establishing industries in the industrial area as notified by the state government under

Section 3 of the KIAD Act. Therefore, there is no specific role of the Company to take part in the proceedings either before the Land Acquisition Officer or the Reference Court for the purpose of determining just and reasonable compensation of the land payable to the land owners.

Further, the learned senior counsel has vehemently contended that the High Court committed an error in law by applying the law laid down by this Court in the case of DDA v. Bhola Nath Sharma[5], to the facts of the case on hand. In that case, the acquisition of the land covered was at the instance of the DDA, and the DDA was asked to pay the compensation amount determined in respect of the acquisition of the land in favour of the respondent- landowners therein. In the facts of the present case, the acquisition of land was not at the instance of the Company but at the instance of the KIADB which fact is evident from the acquisition notifications issued by the state government for the purpose of formation of industrial estate to establish industries in the industrial area already declared by the KIADB.

It is further contended by the learned senior counsel on behalf of the appellant-owners that the High Court has erred in not following the law laid down by the Division Bench of the High Court in the case of Ballarpur Industries v. Court of Civil Judge[6], wherein it was held by the court as under:

> "28. Provisions of Ss. 29 and 30 provide for the determination of compensation in respect of the land acquired. Payment of compensation is in accordance with the provisions of the Act. See. 29(2) contemplate determination of compensation by agreement between the State Government and the person to be compensated. Before such an agreement is arrived at between the Government and the person to be compensated, the Act does not require the KIADB to be a party to the negotiations or to the agreement. No provision of the Act contemplates a tripartite discussion or agreement in this regard. Similarly, no other private person like the Company has a say in this matter.
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> 29. It is only when such an agreement cannot be reached, State Government has to refer the case to the 'Deputy Commissioner' for determination of the amount of compensation. On receipt of reference, the Dy. Commissioner has to issue notice under S. 29(4) on the owner or occupier of the land and on all persons known or believed to be interested herein to appear before him and state their respective interests in the said land. Here, again, no provision to notify the KIADB or the Company is contemplated." (emphasis laid by this Court) Further, it is contended by the learned senior counsel on behalf of the appellants that this Court issued notice and permitted Dasti in SLP No.19819 of 2013 arising out of the judgment and order passed by the High Court in MFA 32157 of 2012 vide order dated 11.07.2013. This Court has also additionally mentioned in the said order that the notice shall indicate that this Court is likely to grant leave, set aside the impugned order and enhance the compensation awarded by the Reference Court.

On the other hand, Mr. Ranjit Kumar, learned Solicitor General and Mr. Mohan Parasaran, the learned senior counsel on behalf of the respondents- KIADB contended that the High Court having

set aside the award passed by the Reference Court on the ground that the Company has claimed to be the beneficiary of the acquired land is neither a party in the reference proceedings nor heard and therefore, the Reference Court must decide the matter afresh as directed by the High Court in the order of remand passed by it with regard to the compensation of the acquired land to be awarded after hearing all the interested parties including the Company. Further, it is urged that the High Court has erred in holding that compensation awarded by the Reference Court in favour of the land owners is just and proper.

It is further contended by the learned senior counsel on behalf of the respondents that the Reference Court has not taken into account and considered the sales statistics of the similar lands during the relevant period to that of acquired land which were produced at the time of re- determination of the market value of the land. The High Court has erred in not noticing the fact that the amount of compensation awarded by the Reference Court is 1000 times more than the value indicated in the sales statistics. It is further contended by them that the High Court erred in not considering the application filed under Order 41 Rule 27 of the Code of Civil Procedure, 1908 for production of the certified copies of the sale deeds of the land in the vicinity of the acquired land during the relevant period and to show that the compensation re-determined by the Reference Court in respect of the land of the appellants is exorbitant and unconscionably on the higher side.

On the basis of the rival legal contentions, the following points would arise for our consideration:

> Whether the allottee Company (M/s Ultra Tech Cement Ltd.) is either a beneficiary or interested person entitled for hearing before determination of the market value to award just and reasonable compensation in respect of the acquired land of the appellants either before the Deputy Commissioner or Reference Court?
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> Whether the Writ Petition filed by the allottee Company before the High Court is maintainable in law?
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> Whether the order of remand allowing the Writ Petition of the allottee Company to the Reference Court is legal and valid?
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> Whether the owners of the land are entitled for the enhanced compensation? If so, what award?
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> The point Nos.1, 2 and 3 are answered together as they are inter-related by assigning the following reasons:
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> It is an undisputed fact that the acquisition of land of the appellants was acquired along with the lands of the other owners at the instance of the KIADB by the state government in exercise of its power under Section 28 of the KIAD Act in favour of the KIADB for the purpose of formation of industrial estate in the Industrial Area to establish industries at Sedam Taluk, Gulbarga District.

Section 28 (1) of the KIAD Act, envisages that if, at any time, the State Government is of the opinion that any land is required for the purpose of development by KIADB or for any other purpose in furtherance of the objects of this Act, it may by notification, give notice of its intention to acquire such land. The Land Acquisition Officer after considering the cause, if any, shown by the owner of the land and by any other person interested therein and after giving such owner and person an opportunity of being heard, may pass such orders as it may deem fit for acquiring the land for establishment of industries. When the state government is satisfied that any land should be acquired for the purpose specified in the notification issued under Section 28(1) of the KIAD Act, and after such orders passed by the State government as per Section 28(3) of the KIAD Act are passed, the state government shall issue the declaration notification in the official Gazette to that effect as per Section 28(4) of the KIAD Act declaring the land mentioned in the notification under section 28 (1) of the Act to be acquired in favour of the KIADB for the purpose of industrial development by it.

As can be seen from the facts of the case on hand, in the notification under Section 28(1) of the KIAD Act, the purpose specified by the State Government for acquisition of the land of the appellants and other land owners is for establishment of industries by the KIADB. Further, it should also be remembered that in terms of the Act, the ownership of the land after acquisition by publication of the notification under Section 28(4) of the KIAD Act shall absolutely vest in the State Government under Section 28(5) of the Act and the same will be free from all encumbrances.

The State Government thereafter may by issuing notice in writing, order any person who may be in possession of the land to surrender or deliver possession of the land thereof in its favour or any person duly authorised by it within 30 days of the service of the notice. As per Section 28(7) of the KIAD Act, if any person refuses or fails to comply with the order made under sub-Section (5), then the state government or any officer authorised by it in this behalf may take possession of the land from either owner or interested person. Section 28(8) of the KIAD Act, in express terms states that where the land has been acquired by the state government for the KIADB, the state government, after it has taken possession of the land from either owner or interested person may transfer the land to the KIADB for the purpose for which the land has been acquired by it.

Further, the provision under Section 29 of the KIAD Act speaks of the compensation payable in relation to the acquired land to either owners or interested persons of such land and that the State Government shall pay such compensation in respect of the acquired land in accordance with the provisions of the KIAD Act. Section 30 of the KIAD Act states that the provisions of the L.A. Act shall mutatis mutandis apply in respect of holding enquiry and to pass an award of compensation by the Deputy Commissioner by determining the market value of the land. The case may be referred to the Reference Court for the apportionment of the compensation payable to such

person or persons if there is any dispute regarding claims and the payment of compensation in respect of the acquired land under Chapter VII of the KIAD Act. In view of the above statutory provisions of the KIAD Act, the provisions of Sections 11, 18 and 30 of the L.A. Act are applicable for the purpose of determination of just and reasonable compensation of the acquired land payable to the land owners either by the Deputy Commissioner or Reference Court.

Further, it is necessary for us to examine Section 32(2) of the KIAD Act, which provides that any land transferred in favour of the KIADB by the State Government, developed by or under the control and supervision of the KIADB shall be dealt with by it in accordance with the Regulations framed by it after approval by the state government and as per directions given by the state government in that behalf. Section 40 of the KIAD Act confers power upon the state government to frame Rules after previous publication by way of notification.

Further, Section 41 of the KIAD Act confers power upon the KIADB by notification to make regulations consistent with the Act and the rules made thereunder to carry out the purposes of the Act with the previous approval of the State Government. Section 41 (2) (b) of the KIAD Act is most relevant for the purpose of this case, which states that the KIADB can frame regulations laying down the terms and conditions under which it may dispose of the land acquired in its favour by the State Government under the provisions of Section 28(1) and (4) of the KIAD Act.

Further, it is also important in this case to refer to the relevant provisions under the KIADB Regulations. Regulation 4 under Chapter II of the KIADB Regulations prescribes the form of application to be filed and submitted by the applicant for the allotment of land or shed in an Industrial Area. It also provides that the application shall be made to the Executive Member of the KIADB in the prescribed form (Form-I) obtained from it in duplicate along with an earnest money. This proviso was inserted by notification dated 13.09.2002, w.e.f. 03.10.2002.

Regulation 5 of the KIADB Regulations pertains to the manner of disposal of land/shed in each Industrial Area or part thereof, whether by lease, lease- cum-sale, sale, auction-sale, auction-lease, assignment or otherwise. It also provides that in each case, the KIADB will also have the discretion to decide the detailed conditions in such agreement which shall be binding on the applicant.

Regulation 7 of the KIADB Regulations provides for the KIADB to notify the availability of land, the manner of disposal, the last date for submission of applications and such other particulars as the KIADB may consider necessary in each case, by giving wide publicity through newspapers having circulation in and outside the state of Karnataka, and invite applications from industrialists or persons intending to start industries in the Industrial Area.

Regulation 9 of the KIADB Regulations provides for the KIADB to register all the applications which are complete in order in the Register maintained in Form 2 and grant receipts for all sums received as application fee, initial deposit or other deposits.

Regulation 10 of the KIADB Regulations provides that the KIADB after being satisfied that the person, firm or Company who makes an application is likely to start production within a reasonable period, and is not one which is declared obnoxious under Regulation 14, may make an allotment in his/their favour thereafter. Clause (b) of the Regulation 10 of the KIADB Regulations empowers the KIADB to constitute sub-committees for considering the applications for allotment of plots and also delegate its power to the Executive Member of the Board; if necessary for the purpose of allotment of industrial plant/ shed. Clause (c) of the Regulation 10 of the KIADB Regulations empowers Executive Member to notify such applicant to whom an allotment is made and to execute the agreement in Form 3 or 4 or 5 as the case may be with such modification as may be required in each case on such date, time and place. Clause (d) of Regulation 10 of the KIADB Regulations provides that failure to execute the agreement or to pay the sums demanded by the Executive Member as per notice given under Regulation 10 (c) will render the allottee to have deemed to have declined the allotment; Clause

(e) of Regulation 10 grants the discretion to the KIADB or the Executive Member with the authority of the KIADB to grant extension of time for complying with the terms of the notice issued under Regulation 10 (c) with or without payment of interest at nine per cent on the sums payable to the KIADB in terms of the said notice for the extended period.

The aforesaid provisions of the KIAD Act and KIADB Regulations make it abundantly clear that the acquisition of the agricultural land in the notified Industrial Area vide notifications issued under Section 28(1) and (4) of the KIAD Act, empowers the State Government to acquire the land for the purpose of industrial development by the KIADB after the acquired land possession is transferred in its favour by the State Government.

Sections 29 and 30 of the KIAD Act read with Sections 11, 18 and 30 of the L.A. Act would clearly mandate that both the state government and the KIADB are liable, jointly or severally, to pay the compensation to the owners or interested persons of the acquired land. The market value of the acquired land is required to be determined by the Reference Court by applying the provisions of Section 18 of the L.A. Act, after passing an award as provided under Section 11 and notifying the same to the landowners or interested persons under Section 12(2) of the L.A. Act if the owners are not satisfied with either the compensation awarded by the Deputy Commissioner or with regard to the area of acquisition of land.

A careful reading of the regulations referred to supra make it abundantly clear that the land acquired shall be disposed off by the KIADB by inviting applications from the eligible applicants,

notifying the availability of land, prescribing the manner of such disposal and fixing the last date for submitting applications and giving such particulars as it may consider absolutely necessary by publishing it in the newspapers having wide circulation in and outside the state of Karnataka.

In the appeals arising out of SLP (C) Nos. 31624-31625 of 2014, it has been specifically mentioned in Annexure P-1, that the lands specified in the schedule mentioned in the notification are required for the development by the KIADB for the establishment of the industries therein. In exercise of powers conferred by sub-Section (1) of Section 28 of the KIAD Act, the state government had given notice to the landowners of its intention to acquire the said land in favour of industrial development by the KIADB.

Clause 1 of Annexure P-5, which is a copy of the agreement made between KIADB and M/S Rajshree Cements reads thus:

> "An agreement made at Gulbarga the Second day of April, 2005 between the Karnataka Industrial Area Development Board having its office at Kapnoor 1st Stage Industrial Area Humnabad Road Gulbarga represented by Sr. G.H. SREEDHARA, Deputy Development Officer hereinafter called the 'lessor' (which term shall wherever the context so permits, and include its successors in interest) of the one part M/s. Rajashree Cement, Aditya Nagar, Malkhed, represented) by Sri Sunil Kothari Vice-President (F&C) hereinafter called the 'lessee' (which term shall wherever the context so permits, mean and include his/her/its heirs, executor, administrators, assignee and legal representatives) of the other part.... NOW IT IS HEREBY AGREED BETWEEN THE PARTIES HERETO as follows:
>
> In consideration of the sum of Rs. 65,704.00 paid by the lessee to the lessor as premium and of the rent hereby reserved and of the covenants and agreements on the part of the lessee hereinafter contained the lessor hereby demise unto the lessee all that piece of land known as Sy. Nos. 306, Sy. Nos. 306/9/1, 306/10/J of Malkhed (J) village Sedam Taluk and Sy. Nos. 323/1, 324/1, 325/1 of Diggaon village Chittapur Taluk District Gulbarga containing by admeasurements 27 acres 21 Guntas or thereabouts and more fully described in the first schedule hereunder written and delineated on the plan annexed hereto and thereon surrounded by a red colour boundary line together with the buildings and erections now or at any time hereafter standing and being thereon and together with all rights, easements and appurtenances thereto belonging except and reserving unto the lessor all mines and minerals in and under the said land, or any, part thereof to hold the land and premises hereinbefore expressed to be there by demised (hereinafter referred to as the 'demised premises') unto the lessee for the terms of 21 years computed the the 31st day of March, 2005 unless the lease is determined earlier under clause – 4 hereof PAYING therefore yearly, during the said term unto the lessor at the office of the Executive Member or as otherwise required the yearly rent of R.100/- the said rent to be paid over a period of 21 years without any deductions whatsoever on the 31st day of March month in each and every year.

Provided always that in case any payment is not made on the date on which day it becomes due amount in shall be charged interest at 18% per annum or such rates as may be fixed by the lessor from time to time the due date to the date of payment." (Emphasis laid by this court) The said lease deed is executed between the parties viz. KIADB and the Company with such terms and conditions as mentioned under Clauses 5 (a) and

(b) which are extracted hereunder:

"5(a) The premium indicated in clause I of this agreement represents the tentative cost of land. In the event of lessor incurring the payment of amounts to the land owners over and above the awards made by the acquiring authority by virtue of awards passed by the competent court of law or in view of the provisions of the Land Acquisition (amendment) Act, 1984 in respect of demised premises or any part thereof the same shall be met by the lessee within one month from the date of receipt of communication signed by the Executive or any other officer authorized by the lessor. Further, in the event of lessor incurring the payment amounts to the land owners for the Malkies and structures existing on the demised premises, the same shall be met by the lessor within one month from the date of receipt of communication signed by the Executive Member or any other officer authorised by the lessor.

b) As soon as it may be convenient the lessor will fix the price of the demised premises at which it will be sold to the lessee and communicate it to the lessee and decision of the lessor in this regard will be final and binding, on, the lessee. The lessee shall pay the balance of the value of the property, if any after adjusting the premium and the total amount of rent paid by the lessee and earnest money deposit within one month from the date of receipt of communication signed by the lessor or any other officer authorised in this behalf by the lessor. On the other hand, if any sum is determined as payable by the lessor to the lessee after the adjustment as aforesaid, such sum shall be refunded to the lessee before the date of execution of the sale deed." (Emphasis laid by this court) On a careful examination of the aforesaid clauses of the lease agreement executed between the parties in respect of the land of the appellants, it becomes manifestly clear that the said agreement is executed by the KIADB in favour of the Company after allotment of land was made in favour of the Company as provided under Regulation 10 (a) and (c) of the KIADB Regulations respectively by following the procedure of inviting applications and submission of the applications by the interested parties along with the required deposits towards the cost of the land. Further, Clauses 5 (a) and (b) of the lease agreement referred to supra, would clearly state that the premium indicated in Clause (1) of the lease agreement represents the tentative cost of the land and in the event of the lessor incurring payment of amounts to the land owners over and above the awards made by the acquiring authority by virtue of the award passed by the competent court of law or in view of the provisions of the L.A. Act in respect of demised premises or any

part thereof, the same shall be met by the lessee within one month from the date of receipt of the communication signed by the Executive Member or any other officer authorised by the lessor. Clause 5(b) also makes similar provision to that effect between the lessor and the lessee.

From a careful reading of the aforesaid clauses of the lease agreement along with the provision Section 32(2) of the KIAD Act and Regulation Nos. 4, 7, 10 (b), (c) and (d) of the KIADB Regulations, it is clear that the Company is only the lessee by way of allotment of the land as the same has been allotted by the KIADB in its favour and has executed the lease deed in its favour in respect of the allotted land.

In view of the aforesaid documents, namely, the notifications issued under Section 28(1) and 28(4) of the KIAD Act by the State Government, it can be safely concluded by us that the acquisition of the land involved in these proceedings is for the purpose of industrial development by the KIADB in the Sedam Taluk. Therefore, the beneficiary of the acquired land is only the KIADB but not the Company as claimed by it. A reading of Section 28 (5) of the KIAD Act makes it clear that the land which is acquired by the State Government statutorily vests absolutely with it. After following the procedure provided under Sections 28 (6) and (7) of the KIAD Act, the state government takes possession of the acquired land from the owners/person/persons who are in possession of the land and transfers the same in favour of the KIADB for its development and disposal of the same in accordance with Regulation 10(a) of the KIADB Regulations, referred to supra.

In the instant case, a perusal of the provisions of the lease agreement executed between the parties referred to supra and Regulation 10 clauses

(a), (c), (d) and (e) of the KIADB Regulations make it abundantly clear that the Company is only the allottee-lessee of the acquired land and as per Clauses 5(a) and (b) of the lease agreement referred to supra, the premium indicated in the lease agreement in respect of the allotted land in its favour represents the tentative cost of the land. It has been further specified in the lease agreement that in the event of the lessor incurring the payment of amounts to the land owners over and above the awards made by the acquiring authority by virtue of awards passed by the competent court of law in view of the provisions of the Land Acquisition (Amendment) Act, 1984 in respect of demised premises or any part thereof, the same shall be met by the lessee within one month from the date of receipt of communication signed by the Executive Member or any other officer authorized by the lessor. In view of the above conditions of the lease agreement, neither the KIADB nor the Company can contend that the acquisition of the land involved in these proceedings is in favour of the lessee Company. Therefore, the Company is neither a beneficiary nor an interested person as claimed by them in terms of Section 2(11) of the KIAD Act or under Section 3 (b) of the L.A. Act as per which, “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the KIAD Act and that a person shall be deemed to be interested in the land if he is interested in an easement affecting the land. It is necessary to examine Section 3(b) read with Section 9 of the L.A. Act, which deals with notice to persons interested and Section 11, which deals with enquiry and award to be passed by the Deputy Commissioner/ Land Acquisition Officer.

A careful reading of the aforesaid provisions of the L.A. Act, KIAD Act and the KIADB Regulations would clearly go to show that the Company is neither a beneficiary, nor an interested person in the land as on the date of acquisition of the land, as the land was acquired by the state government in favour of KIADB who is the beneficiary and it has allotted in favour of the Company after the acquired land was transferred in its favour by the State Government and executed the lease agreement referred to supra.

The strong submissions made by learned senior counsel on behalf of the respondents Dr A.M.Singhvi and Mr. Basava Prabhu Patil, in interpreting the aforesaid provisions of Sections 3(b),9,11 and 20(b) read with Section 54 of the L.A. Act are totally misplaced and misconceived for the reason that the Company cannot be considered as "person interested" to claim interest in the compensation to be made to the owners on account of the acquisition of the land of the appellants/owners and other landowners.

Further strong reliance has been placed by the learned senior counsel on behalf of the Company upon Section 3(f) (viii) of the L.A. Act, as amended by the Karnataka legislature by Act No.17 of 61 to show that the Company is an 'interested person' in the proceedings of determination of the market value of the acquired land and passing of an award. Section 3 (f) (viii) includes the provision of land for acquisition in favour of a company- a) where the land is needed for the construction of some work, and such work is likely to prove substantially useful to the public; or b) where the land is needed by a building co-operative society or corporation for the construction of houses. The said contention of the learned senior counsel is wholly misconceived as the said provision has no application to the fact situation.

The acquisition of land under the provisions of the L.A. Act in favour of a Company the mandatory procedure as provided under part VII of the L.A. Act and Rules must be adhered to, that is not the case in the acquisition of land involved in these proceedings as the acquisition of land is under the provisions of KIAD Act and therefore the reliance placed upon the provision of Section 3(f)(viii) of the Karnataka L.A. Amended Act of 17/1961 is not applicable to the facts of the case on hand and therefore, the said provision cannot be made applicable to the case on hand.

The definition of "public purpose" under the L.A. Act cannot be imported to the acquisition of land by the State Government for the industrial development under the provision of KIAD Act as the words 'Development', 'Industrial Area' and 'Industrial Estate' have been clearly defined under sub-Sections(5), (6) and (7) of Section 2 of the KIAD Act which reads thus :-

> "(5)Development with its grammatical variations means the carrying out of levelling, digging, building, engineering, quarrying or other operations in, on, over or under land, or the making of any material change in any building or land, and includes re-development; and 'to develop' shall be construed accordingly;
>
> (6)Industrial area means any area declared to be an industrial area by the State Government by notification which is to be developed and where industries are to be accommodated; and industrial infrastructure facilities and amenities are to be

provided and includes an industrial estate;

(7)Industrial estate means any site selected by the State Government where factories and other buildings are built for use by any industries or class of industries.

Reliance has also been placed by the learned senior counsel upon Sections 3(b), 9 and 20(b) of the L.A. Act, which provisions deal with service of notice to all persons interested in the possession of the acquired land except such (if any) of them as have consented without protest to receive payment of compensation awarded for the purpose of holding an enquiry by the Special Deputy Commissioner for determination of compensation of the acquired land. None of the above provisions of the L.A. Act supports the case of either the KIADB or the Company. Therefore, the contention urged on their behalf that the Company is an interested person in the acquired land for determination of compensation to be paid to the landowners for their acquired land is wholly untenable and therefore, the same cannot be accepted by this Court.

The reliance placed upon the provisions of Sections 50 (1) and (2) of the L.A. Act, also are not applicable to the case on hand for the reason that Section 50 of the L.A. Act applies to the acquisition of land in favour of a Company by the State Government by following the mandatory procedure contemplated under Part VII of the L.A. Act and relevant Rules framed for that purpose. Therefore, the claim made by the Company that it has got every right to participate in the proceedings for determination and re- determination of the market value of the acquired land and award of compensation passed by the Land Acquisition Officer or Deputy Commissioner or before the Reference Court or the Appellate Court is wholly untenable in law and therefore, the submissions made on behalf of the Company cannot be accepted and the same is rejected.

Further, both the learned senior counsel on behalf of KIADB and the Company have placed reliance on various decisions rendered by this Court in support of their above respective legal submissions that the Company is an interested person and therefore it has got right to participate in the proceedings before the Reference Court for determination of compensation before passing the award either by Land Acquisition Officer or Deputy Commissioner or the Reference Court at the instance of the owner or any other interested person. These include judgments rendered by this Court in the cases of U.P Awas Evam Vikas v. Gyan Devi, (1995) 2 SCC 326, Himalayan Tiles and Marble Pvt Ltd v. Francis Victor (1980) 3 SCC 223, and P Narayanappa and anr v. State of Karnataka & Ors., (2006) 7 SCC 578 and other decisions which are not required to be mentioned in this judgment as they are all reiteration of the law laid down in the above cases.

The reliance placed on the various decisions of this Court by both the learned senior counsel on behalf of the KIADB and the Company, is misplaced as none of the said judgments relied upon are applicable to the fact situation in the present case for the reason that those cases dealt with reference to the acquisition of land under the provisions of the L.A. Act, either in favour of the Company or Development Authorities, whereas in the case on hand, the acquisition proceedings have been initiated under the KIAD Act for industrial development by the KIADB. Further the original acquisition record in respect of the acquired land involved in the proceedings by the learned standing counsel on behalf of the State of Karnataka as per our directions issued vide our orders

dated 17.11.2014 and 24.3.2015, do not disclose the fact that the acquisition of lands covered in the acquisition notifications are in favour of the Company. Thus, the acquisition of land in favour of the KIADB is abundantly clear from the preliminary and final notifications issued by the state government and thereafter following the procedure under sub-Sections (6) and (7) of Section (28) of the KIAD Act, it took possession of the acquired land from the owners who were in possession of the same and was transferred in favour of the KIADB for its disposal for the purpose for which lands were acquired as provided under Section 32(2) of the KIAD Act read with the Regulations referred to supra framed by the KIADB under Section 41(2) (b) of the KIAD Act. Therefore, the reliance placed upon the judgments of this Court by the learned senior counsel on behalf of the Company and the KIADB, are wholly inapplicable to the fact situation and do not support the case of the Company. In view of the foregoing reasons recorded by us on the basis of the acquisition notifications issued by the State Government under the statutory provisions of the KIAD Act and therefore, we have to answer the point nos.1, 2 and 3 in favour of the landowners holding that the Company is neither the beneficiary nor interested person of the acquired land, hence, it has no right to participate in the Award proceedings for determination of the market value and award the compensation amount of the acquired land of the appellants. Hence, the Writ Petition filed by the Company questioning the correctness of the award passed by the Reference Court which is affirmed by the High Court is not at all maintainable in law. On this ground itself, the Writ Petition filed by the Company should have been rejected by the High Court instead it has allowed and remanded the case to the Reference Court for re-consideration of the claims after affording opportunity to the Company which order suffers from error in law and therefore the same is liable to be set aside.

Further, the learned Judge of the High Court has erroneously held that the allottee Company is a beneficiary of the acquired land of the appellants, which finding of the learned Judge is not correct both on facts and in law. The findings and reasons recorded by the High Court in the impugned judgment in allowing the Writ Petition and quashing the award of the Reference Court and remanding it back to the Reference Court and allowing the Company to participate in the proceedings for re-determination of compensation for the acquired land is wholly impermissible in law and the same are in contravention of the provisions of the KIAD Act, L.A. Act, the KIADB Regulations and the lease agreement, which has been executed by the KIADB in favour of the Company and therefore, the impugned judgment and order is liable to be set aside by allowing the appeals of the owners.

Further, the learned single Judge of the High Court has further committed an error in law in not appreciating Section 54 of the L.A. Act, which provision provides the right to appeal to the land owners, or state government and beneficiaries of the acquired land but not to the Company which is the lessee. When the company does not have the right to file an appeal against the award it also has no right to file a writ petition. The KIADB has filed the belated appeal after disposal of the appeal filed by the appellants by the High Court and against which award it has filed the present appeal questioning the correctness of the same and prayed for enhancement of compensation and the said appeal is being disposed of by this common judgment after adverting to the rival legal contentions urged on behalf of the parties. The High Court has rightly dismissed the belated appeal filed by the KIADB.

Therefore, the appeal filed by KIADB questioning the order of remand passed in the Writ Petition and Review Petition is liable to be set aside. The appeal has been filed by the KIADB as it is aggrieved of the findings and certain observation recorded against them by the High Court and it has got reasonable apprehension that the Reference Court may not appreciate the facts and evidence that may be produced before it. For the reasons stated above, the appeal filed by the KIADB has no merit and they have become unnecessary hence, the same are liable to be dismissed. Accordingly, we dismiss the same.

Answer to Point Nos. 4 & 5 regarding enhancement of Compensation Since the appeals arising out of S.L.P. Nos. 31624-31625 are allowed and the appeals arising out of S.L.P. Nos. 3482-3484 of 2015 filed by the State of Karnataka through Special Deputy Commissioner, Gulbarga, wherein it has sought to set aside certain findings in the impugned judgment and order dated 02.09.2014 passed in Review Petition No. 2537 of 2013 filed in MFA No. 32157 of 2012 and Writ Petition No. 100860 of 2013 passed by the learned Judge, are dismissed, we are required to consider the appeal arising out of SLP (C) No. 19819 of 2013 filed by the appellants as they are aggrieved by the inadequate compensation awarded by the Reference Court, which has been upheld by the High Court.

The Reference Court vide its judgment and order dated 29.09.2012 enhanced the compensation from Rs 1,700/- per acre to Rs. 1,37,000/- per acre. The Reference Court relied on the judgment and order of the Karnataka High Court dated 27.02.2005 in MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005, which pertains to the same village, where the lands of the owners were acquired for establishment of industries under notification in the year 1988. The High Court in the said case questioned the correctness of determination of market value by the Reference Court at Rs. 5.7/- per sq. ft. in Cross Objection No. 213 of 2005 filed by the respondent-landowner in the said appeal. In arriving at the market value of the land under acquisition, the said compensation was made on the basis of the average of the various rates covered under various sale-deeds under different sites, carved out from the lands in survey numbers which lands are adjacent to the land covered in the said MFA and Cross Objection, located at different places and sold on different dates, which had been taken at Rs.6.33 per sq.ft. The same had been escalated by 10% on the ground that the date of preliminary notification in that case was issued on 03.11.1988. The said sites under the said sale-deeds referred to above were sold two to three years earlier. The High Court held that taking the average of the prices of different sites situated at different places and sold at different points of time is not permissible in law. The High Court took the value of the plot as would be the most beneficial to the claimant which was Rs.7.5/- per sq.ft for land carved out of Sy. No. 389 and at Rs. 13/- per sq. ft for the land carved out of Sy. No. 414/2. The High Court enhanced the compensation accordingly, after deduction of 10% towards escalation charges. The Reference Court in the present case after taking the aforesaid criteria of developmental charges, de-escalation charges and waiting period charges, awarded the compensation at Rs 7.5/- per sq.ft. in relation to the land of the appellants in the present case. The compensation was fixed at Rs.7.5 x 43,560 sq.ft. which came to Rs.3,26,700/- after giving the necessary deduction towards developmental charges was made at the rate of 25% and 5% towards waiting period and expenses for conversion i.e. 30%, which came to Rs.98,000/- deducted from Rs.3,26,700/-. This was determined as the market value of the land as on the date of the preliminary notification dated 03.11.1988 as in the MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005. Since in the instant case, the notification was issued on 18.06.1981, de-escalation

charges were deducted at the rate of 5% for 8 years, and an award of Rs.1,37,000/- per acre was arrived at in the present case by the Reference Court as compared to Rs.2,50,000/- per acre as demanded by the appellants, which was upheld by the High Court.

The correctness of the same has been challenged by the learned senior counsel on behalf of the appellants contending that the methodology adopted by the High Court in determining the market value of the land covered in the MFA 3796 of 2005 and Cross Objection No. 213 of 2005 by deducting charges including developmental charges, waiting period charges, de- escalation and conversion expenses is arbitrary and unreasonable. The same could not have been adopted by the High Court.

Mr. Ranjit Kumar, the learned Solicitor General appearing on behalf of the respondent State placed reliance on the decision of this Court in the case of Chandrashekar and Ors. v. Land Acquisition Officer and Another[7], and contends that the deduction to be made from the value of the acquired land to be kept aside for providing developmental infrastructures like roads, parks etc and second component under the head of "development" should not exceed upper benchmark of 67%. It was further contended that the deductions towards the de-escalation and waiting charges can be made at appropriate rates but all the deductions put together should not exceed upper benchmark of 75%. In the Chandrashekar case referred to supra, the High Court had allowed 55% under the heading of development, 10% under de-escalation and 5% under waiting period which works out cumulatively to 70%. This Court had held that it did not call for any interference which is well within the upper benchmark of 75%.

It is further contended by the learned Solicitor General that the lands acquired by way of notification Sy. No. 389 were acquired in 1988, which could not be compared to the land in the instant case, which had been acquired by way of notification seven years earlier in 1981. It is further contended by him that the lands covered in this case are situated at 4 kms away from the land in Sy. No. 414/2, by relying on the village map. Hence, it is contended by the learned Solicitor General that the same could not have been taken by the Reference Court as the criteria to re-determine the market value of the land of the appellants in the award passed in respect of the land covered in the notification of 1988. Therefore, it is submitted that the enhancement of compensation sought by the appellants is without any basis, hence they are not entitled for the same and prayed for the dismissal of the appeal.

It is further contended by the learned senior counsel on behalf of the KIADB that on the basis of the sale statistics, the sale deeds produced in this appeal along with counter statements after collecting the same from the Sub-Registrar's office in relation to the lands which are sold nearby to the acquired land should be applied for the purpose of re-determination of the market value of the acquired land. It is contended that if the said sale-deeds are taken into consideration, the appellants are not even entitled to the compensation of Rs.1,37,000/- awarded by the Reference Court, which award is affirmed in the MFA filed by the appellant landowners. Therefore, he prayed for dismissal of the appeal of the landowners seeking for enhancement.

The learned senior counsel Mr. Mohan Parasaran, appearing on behalf of the respondent KIADB in the connected appeals arising out of SLP (C) Nos.3482- 3484 of 2015 has vehemently requested this Court, if this Court is of the view to re-determine/enhance the compensation, then it may confine it to the owners of the land involved in this case only for the reason that the said benefit cannot be extended to other land owners as a vast extent of land has been acquired by the state government in the 1981 notification along with the land of the owners herein for the purpose of industrial development by the KIADB and will have serious financial implications on the part of the allottee if the benefit is extended to all land owners whose lands were acquired vide 1981 notification.

This Court at the time of issuing notice in the Civil Appeal arising out of SLP (c) No. 19819 of 2013 has indicated to the respondents that the owners are entitled for enhancement of compensation and directed the Registry of this Court to secure the original LAC record from the Reference Court. We have heard the learned counsel on behalf of the parties at length and perused the records made available for our perusal.

The statutory notifications of acquisition of land would clearly go to show that the land of the appellants was acquired way back in the year 1981 for the purpose of establishment of industries The land of the appellants has non-agricultural potentiality, which fact is proved from the notifications published by the State Government under Sections 28(1) and (4) of the KIAD Act, as the State Government specifically mentioned therein that the acquisition of the land of the appellants is for the industrial development and establishment of industries which is for non agricultural and commercial purpose.

Further, the land which has been covered under notification in 1988 is also adjacent to the residential sites which were formed. The land owners in that case produced the sale deeds of the year 1986 and 1988 respectively, which was 2 years and 2 months earlier respectively to the notification issued in the year 1988 and some of which were two to three years earlier. Taking the said relevant facts into consideration, the High Court of Karnataka re-determined the compensation at Rs. 7.5/- per sq. ft of land bearing Sy. No. 389 covered in award passed in MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005 after giving deduction towards the developmental charges, de-escalation and conversion charges. The same method should be applied in the case on hand.

Further, the High Court ought to have taken into consideration the relevant fact that though the final notification for the land covered in MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005 was in the year 1988, it was for the industrial development and the said land was also leased in favour of the allottee Company by the KIADB to be used for the industrial development. The land along with the other lands covered in 1981 notification was also acquired by the State Government for the purpose of the industrial development and allotted to the Company for the development of the industrial estate. Therefore, apart from the fact that there was a gap of 7 years in which the lands of the appellants were notified for acquisition to the land covered in MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005, it is an admitted fact that there is similarity in the nature of the land and the purpose for which they were acquired.

Keeping in mind that the land in question has got non-agricultural potentiality, a 25% deduction towards development charges and 5% deduction towards waiting period for every year and expenses for conversion by the Reference Court is definitely on the higher side. Hence, the same is required to be rejected, as it is erroneous and suffers from error in law. Further, the reliance placed by the learned Solicitor General on Chandrashekar's case referred to supra is misplaced, as the case has no relevance to the facts of the case on hand. The total amount of charges deducted in that case were to the tune of 55%. In the instant case, a 30% deduction was made towards development and waiting charges. As per the survey conducted by the state government, it is an undisputed fact that mineral is available in the land and the Company is extracting the same to be used as raw material for the manufacture of cement in its factory. Therefore, though the land in the present case is a short distance away from the lands covered in MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005, both have been acquired for the purpose of industrial development and sought to be used for the same purpose by the Company. The land of the appellants herein along with other lands that was acquired vide notification in 1981 have been allotted in favour of the Company for the purpose of extracting the mineral of limestone which is the raw material used for the purpose of manufacturing the cement used for the commercial purpose. Therefore, the land of the appellants is acquired for the non- agricultural potentiality and the same is used for commercial purpose. Therefore, determining deductions towards de-escalation at 5% per year for 7 years and 10% towards waiting and other incidental charges would justify the re-determination of the market value of the land of the appellants. There is no need to deduct the developmental charges as has been done by the Reference Court and Appellate Court in respect of the land covered under MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005 upon which strong reliance has been placed by the learned senior counsel for the appellants, for the reason that there is no development activities involved in respect of the land involved in these appeals, as the same is being used by the Company for extraction of minerals from the land, which are used as a raw material for the purpose of manufacturing cement and also for development of infrastructure of its factory. Therefore, the enhancement of compensation at Rs.1,92,000/- per acre as per the calculation below would be just and reasonable.

CALCULATION Per sq ft = Rs.7.5/-

Per acre = Rs.7.5 X 43,560 square feet= Rs.3,26,700/- per acre.

Incidental and other charges @ 10%= Rs.32, 670/-

After the above deduction = Rs.2,94,030/-

De-escalation charges = 5% for 7 years (5% x 7 x 2,94,030/- = Rs.1,02,910/- per acre(rounded off)
Compensation = Rs. 2,94,030/- (-) Rs. 1,02,910/- = Rs. 1,91,120/-

Final Compensation= Rs.1,92,000/- (rounded off) It would be relevant to state here that compensation of market value has to be determined notwithstanding the fact that the date of the notification issued under Section 28(1) of the KIAD Act has not been taken into consideration, but the criteria for determination of market value of the land put to uses to which it is reasonably

capable of being put to in the future shall be considered by the Court, as was held by the Privy Council in the case of Raja Vyricherla Narayana Gajapatiraju v. Revenue Divisional Officer, Vizagapatam[8], wherein the law on the subject has been succinctly laid down as under :

> "The compensation must be determined therefore by reference to the price which a willing vendor might reasonably expect to obtain from a willing purchaser. The disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy must alike be disregarded. Neither must be considered as acting under compulsion. This is implied in the common saying that the value of the land is not to be estimated at its value to the purchaser. But this does not mean that the fact that some particular purchaser might desire the land more than others is to be disregarded. The wish of a particular purchaser, though not his compulsion, may always be taken into consideration for what it is worth. But the question of what it may be worth, that is to say, to what extent it should affect the compensation to be awarded is one that will be dealt with later in this judgment. It may also be observed in passing that it is often said that it is the value of the land to the vendor that has to be estimated. This, however, is not in strictness accurate. The land, for instance, may have for the vendor a sentimental value far in excess of its "market value". But the compensation must not be increased by reason of any such consideration. The vendor is to be treated as a vendor willing to sell at "the market price", to use the words of Section 23 of the Indian Act.
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> It is perhaps desirable in this connection to say something about this expression "the market price". There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the ease of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by "the market value" in Section
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> 23. But sometimes ii happens that the land to be valued possesses some unusual, and it may be, unique features as regards its position or its potentialities. In such a case the arbitrator in determining its value will have no market value to guide him, and he will have to ascertain as best he may from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser, for the land in that particular position and with those particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by 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 under Section 4 (1)], but also by reference to the uses to which it is reasonably capable of being put in the future." (Emphasis laid by this Court) The above position of law laid down by the Privy Council has been reiterated by this Court in a catena of cases. In view of the same, we are of the considered view that the market value of the land

covered in MFA No. 3796 of 2005 and Cross Objection No. 213 of 2005 has to be applied to the land of the appellants in the present case for the reason that in both the notifications as the required land has been put to use for the industrial development by the KIADB, and the lands have been allotted to the Company for the purpose of extracting sand stone from the lands which is used as raw material for manufacture of cement and for providing infrastructure of the Company. However, having regard to the facts and circumstances of the present case, considering the fact that acquisition of the land was made in the year 1981, it would be just and proper to fix the compensation as per the above referred calculation at Rs.1,92,000/- per acre, with all statutory benefits such as solatium at 30% as provided under Section 23 (2) and statutorily payable interest under Sections 23(1-A) and 28 of the L.A. Act, from the date of taking possession of the land till the date of payment. The appellants are also entitled to costs throughout as provided under Section 27 of the L.A. Act. The Respondents are directed to pay the compensation to the appellants-landowners as directed above, within eight weeks from the date of the receipt of the copy of this judgment and award after proper computation in the above terms.

Accordingly, the appeals arising out of SLP (C) Nos.31624-31625 of 2014 for setting aside the judgment and order of remand passed by the High Court in Writ Petition No. 100860 of 2013 (filed by the Company) and the Review Petition No. 2537 of 2013 (filed by KIADB) are allowed and set aside the same by allowing these appeals.

The appeals arising out of SLP (C) Nos.3482-3484 of 2015 filed by the KIADB for setting aside the observations and findings recorded in the judgment and order of remand passed by the High Court at the instance of KIADB and the Company are dismissed as it is unnecessary in the light of the setting aside of the impugned judgment and order of remand to the Reference Court by this Court.

The appeal arising out of SLP (C) No. 19819 of 2013 filed by the landowners for enhancement of compensation in respect of their acquired land is allowed as clearly mentioned in the penultimate paragraph of this judgment i.e. enhancement of the compensation amount from Rs.1,37,000/- to 1,92,000/- per acre along with solatium at the rate of 30% under Section 23 (2)and statutorily payable interest under Sections 23 (1-A), 28 of the L.A. Act upon the compensation awarded in this appeal. The appellants are also entitled to the costs of the proceedings throughout as provided under Section 27 of L.A. Act. The memo of costs may be filed within three weeks to prepare the decree.

I.A. No. 2 for impleadment of Ultra Tech Cement Ltd. is dismissed as not maintainable, however, they have been heard in the matter.

... ... J. [V.GOPALA GOWDA] .....J. [C.NAGAPPAN] New Delhi, July 30, 2015 ITEM NO.1A-For Judgment COURT NO.2 SECTION IVA S U P R E M E C O U R T O F I N D I A RECORD OF PROCEEDINGS Civil Appeal No(s).5804/2015 @ SLP(C) No.19819/2013 PEERAPPA HANMANTHA HARIJAN(D) BY LRS.& OR Appellant(s) VERSUS STATE OF KARNATAKA Respondent(s) WITH Civil Appeal No(s).5806-5807/2015 @ SLP(C) Nos. 31624-31625/2014 Civil

Appeal No(s).5808-5810/2015 @ SLP(C) Nos. 3482-3484/2015 Date : 30/07/2015 These appeals were called on for pronouncement of JUDGMENT today.

For Appellant(s) Dr. (Mrs.) Vipin Gupta,Adv.

Mr. Anup Jain,Adv.

For Respondent(s) For M/s. Khaitan & Co.

Mr. Abhijat P. Medh,Adv.

UPON hearing the counsel the Court made the following O R D E R Hon'ble Mr. Justice V.Gopala Gowda pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice C. Nagappan.

Leave granted.

The appeals arising out of SLP(C) Nos.31624-31625/2014 are allowed, the appeals arising out of SLP(C) Nos.3482-3484/2015 are dismissed and the appeal arising out of SLP(C) No.19819/2013 is allowed in terms of the signed Reportable Judgment.

I.A. No. 2 for impleadment of Ultra Tech Cement Ltd. is dismissed as not maintainable, however, they have been heard in the matter.

Pending application(s), if any, stands disposed of.

(VINOD KR.JHA) (VEENA KHERA)
COURT MASTER COURT MASTER

(Signed Reportable Judgment is placed on the file)

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[1] (1985) 3 SCC 545
[2] (2009) 10 SCC 273
[3] (2006) 4 SCC 78
[4] (ILR) 1987 KAR 3445
[5] (2011) 2 SCC 54
[6] ILR 1987 Kar 3445
[7] (2012) 1 SCC 390
[8] AIR 1939 Privy Council 98