

Land Acquisition Officer, City ... vs H. Narayanaiah Etc. Etc on 16 August, 1976

Equivalent citations: 1976 AIR 2403, 1977 SCR (1) 178, AIR 1976 SUPREME COURT 2403, 1976 (2) KANTLJ 189, 1976 4 SCC 9, 1977 (1) SCR 178

Author: M. Hameedullah Beg

Bench: M. Hameedullah Beg, A.N. Ray, Jaswant Singh

PETITIONER:

LAND ACQUISITION OFFICER, CITY IMPROVEMENT TRUST BOARD

Vs.

RESPONDENT:

H. NARAYANAIAH ETC. ETC.

DATE OF JUDGMENT 16/08/1976

BENCH:

BEG, M. HAMEEDULLAH

BENCH:

BEG, M. HAMEEDULLAH

RAY, A.N. (CJ)

SINGH, JASWANT

CITATION:

1976 AIR 2403 1977 SCR (1) 178

1976 SCC (4) 9

CITATOR INFO :

RF 1976 SC2517 (2,3,5,8)

ACT:

Land acquisition--City of Bangalore Improvement Act, 1945, ss. 16 18 and 27--Notification under ss. 16. and 18 on different dates--Date for determining market value for awarding compensation for acquisition of land.

Evidence Act (1 of 1872) s. 43 and Code of Civil Procedure (Act 5 of 1908) O. 41, 27--Admission of Judgments in land acquisition proceedings as additional evidence.

HEADNOTE:

The City of Bangalore Improvement Act, 1945, is concerned with the improvement and future expansion of the city, and for the appointment of a Board of Trustees with

special powers to carry out that purpose. As an incident of such improvement and expansion, it provides for acquisition of land. Section 16 of the Act provides for the publication of a notice so that any representations which objectors may make may be considered by the Board itself under s. 17. The object of the two sections is to provide for the notification similar to that under s. 4(1), Mysore Land Acquisition Act, 1894, and for hearing of objections as under s. 5A, of that Act. Section 18 of the Bangalore Act provides for the publication in the Gazette of the declaration that the land is acquired for a public purpose.

Section 27 provides that acquisitions otherwise than by agreement, shall be regulated by the provisions of the Acquisition Act in so far as they are applicable and by certain further provisions in the section 27(1) provides that upon the passing of a resolution by the Board that an improvement scheme is necessary in respect of any locality, it shall be lawful for any person, authorised by the Board to do all such acts in respect of the land as it would be lawful for an officer duly authorised by the Government under s. 4(2) of the Acquisition Act; and s. 27(2) the publication of a declaration under s. 18 shall be deemed to be the publication of a declaration under s. 6, Acquisition Act

In the present case, the notifications under s. 16 of the Bangalore Act were issued in 1960 and the notifications under s. 18 were published in 1967. On the question as to which date was to be taken for the determination of the market value for the purpose of awarding compensation, the High Court held that the date of notification is the relevant date. The High Court held that decision of Full Bench of the High Court in Venkatamma v. Special Land Acquisition Officer (AIR 1972 Mysore 193) covered the question: and it also relied on another decision of the Court, determining compensation with respect of the acquisition of certain other lands, as relevant evidence for the purpose of determining compensation in the instant case. In appeal to this Court the respondent also supported the judgment of the High Court on the ground that s. 23(1) of the Acquisition Act which provides that the determination of the market value should be as on the date of the publication of a notification. s. 23(1), would not apply, because, (a) no principle or procedure governing award of compensation is specified in the Bangalore Act, (b) the words "so far as applicable", s. 27 are equivalent to "in so far as they are specifically mentioned"; s. 23(1) is not so specifically mentioned; and, (c) since no principle or procedure is laid down for the award of compensation in the Bangalore Act, it would be equitable to hold that the market value should be determined with reference to the later date of the notification under s. 18 of the Act.

Allowing the appeal,

HELD: The matter should be remanded to the High Court for

determination of the market value of the land as on the date of the notification under

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s. 16 of the Bangalore Act, which corresponds to. the notifications. under) of the Acquisition Act, after affording opportunities to the parties whether the judgment sought to be offered as additional evidence could be so admitted shall be decided. [193 E-F]

(1)(a) The Full Bench of the High Court, while interpreting the City of Mysore Improvement Act, 1903, observed that the Acquisition Act had been amended in 1927 so as to make compensation payable as on the date of the notification under s. 4(1) of that Act instead of the date of notification. according to the unamended law and but that, in the Mysore Act, there was no corresponding amendment. Therefore, the Mysore Act had to be construed with reference to the provisions of the Acquisition Act as it stood in 1903. [182 F-G]

But, the Bangalore Act, even though its corresponds substantially with the provisions of the Mysore Act of 1903, should be interpreted with reference to the Acquisition Act as it stood in 1945, because, the Bangalore Act was, enacted in 1945. [182 H]

(b) The Full Bench also held that if there was long delay between the two notifications, the acquisition itself would be unconstitutional, and therefore the date of notification under s. 18 would be the relevant date. The delay between the dates of notifications. under and under s. 18 would not have any bearing on the question of the date on which the market value is to, be determined, because, if a particular acquisition becomes unconstitutional due to an unreasonable mode. of exercising the statutory powers of acquisition, the meaning of provisions, which are relevant for determining the date of market value, could not be affected. [183 F-H, 184 A]

(2) Under Evidence Act, judgments other than those falling under 40 to 42, Evidence Act are irrelevant unless they fall under some other provisions of the Evidence Act. In the present case, the earlier judgment of the High Court cannot operate as resjudicata because it is not between the same parties. Such judgments are also not judgments in rem. However, in Khaja Fizuddin v. State of Andhra Pradesh (CA. No. 176 dt.. 10-4-1963) this Court held that such judgments would be relevant if they relate to similarly situated properties and contain determinations of value on dates fairly proximate to the relevant date in a case. BUT, in the present case, the appellant was not given any opportunity of showing that the earlier judgment related to dissimilar land. The High Court also did not comply with the provisions of 0.41 CrP. 27, before admitting the earlier judgment as additional evidence. It had recorded no 'reasons to show that it had considered the requirements or' the rule and why it found the admission of such evidence to

be necessary.

[191 G-H, 192 B-H 193 A-B]

Special Land Acquisition Officer, Bombay v. Lakhamsi Ghelabhai, AIR 1960 Bom. 78, referred to.

(3)(a) Section 27 of the Bangalore Act enables the procedure in the Acquisition Act to be utilised except to the extent to which the procedure in the Bangalore Act may differ from that in the Acquisition Act. These differences s. 27(2) and (2); are: (i) that the Board of Trustees could do the things provided for s. 4(1) of the Acquisition Act without a notification under s. 4(1); and (ii) the notification under s. 18 of the Bangalore Act is equated to the one under s. 6 of the Acquisition Act. Therefore, even though s. 23 of the Acquisition Act is not specifically mentioned in the Bangalore Act, the obvious purpose of the opening words of s. 27 of the Bangalore Act, and the effect of non-specification of a different principle in the Bangalore Act, is that the award of compensation, which is a necessary part of any law providing for acquisition must be governed by s. 23 of the Acquisition Act, which is the only provision applicable; for determining the date of market value. [189 D-G]

(b) The words "so far as they are applicable" cannot be equated to in so far as they are specifically mentioned." The words are used to exclude only those provisions of the acquisition Act which become inapplicable, because

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of the special procedure prescribed by the Bangalore Act. They cannot be construed as excluding the application of general provisions such as s. 23 of the Acquisition Act. They amount to stating that what is not either expressly or by necessary implication excluded must be applied. [190 H, 191 A-B]

(c) Equity supplements but does not supplant law. If, in the face of the provision that the notification under s. 18, Bangalore Act is equated with a notification under of the Acquisition Act for the purpose of determining the market value for awarding compensation, some transcendental principle of equity is applied, then, it would be supplanting the law laid down in s. 27 of the Bangalore Act read with s. 23 of the Acquisition Act. It would also be absurd to hold that a notification under s. 18, Bangalore Act, could be equated with a notification under s. 4(1) Acquisition Act. Therefore, the relevant date would be the date of notification under s. 16, Bangalore Act, and one under s. 4, Acquisition Act are identical. In the Full Bench decision of the High Court, it was held, relying on s. 23 of the City of Mysore Improvement Act, 1903 that of that Act should be equated to s. 4(1) of the Acquisition Act. But in view of the provisions of s. 27 of the Bangalore Act, the only result of equating a resolution under s. 14 of the Bangalore Act with a notification under s. 4(1) of the

Acquisition Act would be to shift the date of ascertaining of market value still further back which is not the contention of the respondents. [191 A, F]

OBITER: An additional compliance with s. 4(1) of the Acquisition Act is not necessary in view of the special procedure unders. 16 of the Bangalore Act: and, it would be reasonable for the authorities to exercise the powers provided for by s. 27(1) of the Bangalore Act, corresponding to those in s. 4(2) of the Acquisition Act, only after the notification under s. 16 of the Bangalore Act. [185 B.C]

M. Manicklal v. The State of Mysore 1967 (2) M.L.J. 239 approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 644-650/74. (Appeals by Special Leave from the Judgment and Order dated 21-6-1975 of the Karnataka High Court in Misc. First Appeal Nos. 77, 444-450/70 respectively).

K. Sen, V.M. Tarkunde, H.B. Datar and R.B. Datar for the appellant.

S. Rangaraj, M. Qamaruddin, P.N. Puri, S.K. Mehta for Mr. K.R. Naggrain, for respondent in CA. No. 644/74. A.R. Somnath Iyer, S. Laxminarasu, for respondents in CA. Nos. 645-650/74.

The Judgment of the Court was delivered by BEG, J. Civil Appeals Nos. 644. to. 650 of 1974 are by special leave against the judgment of a Division Bench of the Karnataka High Court. The common and principal question of law which arises is: Does the City of Bangalore Improvement Act, 1945 (hereinafter referred to as 'the Act' or 'the Bangalore Act'), applying the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894). (hereinafter referred to as 'the Acquisition Act'), to acquisitions of land in Bangalore require the determination of market value, for purposes of awarding compensation, on a date corresponding to the date of notifi-

cation under Section 4 of the Acquisition Act or to the date corresponding to that of the notification under Section 6 of the Acquisition Act The facts of the cases are not really material for the determination of the question of law stated above. A few facts relating to the lands acquired may, however, be mentioned. They have a bearing on a connected question dealt with at the end of this judgment.

The seven appeals by special leave arise out of land acquisition proceedings in which the 1st of the preliminary notifications, under Section 16 of the Bangalore Act, took place in the Mysore Gazette from 1960 onwards; and, the subsequent notifications, under Section 18 of the Bangalore Act, equated by Section 27(2) of the Bangalore Act with notifications under Section 6 of the Acquisition Act, were made in 1967. All the lands involved in these appeals are situated in Birmamangala Village, Bangalore North Taluk, and are shown to have been acquired for the purposes of a scheme known as 'Bhinnamangala Lay Out II Stage or Indira Nagar Extension'.

The Bangalore Act, as its preamble states, is really concerned with the "improvement and future expansion of the City of Bangalore and for the appointment of a Board of Trustees with special powers to carry out the aforesaid purposes;". As an incident of this improvement and expansion it provides for acquisition of land also.. It does not, however, contain a separate code of its own for such acquisitions. But, Section 27 of the Bangalore Act lays down:

"27. Provisions applicable by the acquisition of land otherwise than by agreement.--The acquisition otherwise than by agreement of land within or without the City under this Act shall be regulated by the provisions, so far as they are applicable, of the Mysore Land Acquisition Act, 1894, and by the following further provisions, namely :--

(1) Upon the passing of a resolution by the Board that an improvement scheme under Section 14 is necessary in respect of any locality, it shall be lawful for any person either generally or spe-

cially authorised by the Board in this behalf and for his servants and workmen, to do all such acts on or in respect of land in that locality as it would be lawful for an officer duly authorised by the Government to act under Section 4(2) of the Mysore Land Acquisition Act, 1894 and for his servants and workmen to do thereunder; and the provision contained in Section 5 of the said Act shall likewise be applicable in respect of damage caused by any of the acts first mentioned. (2) The publication of a declaration under section 18 shall be deemed to be the publication of a declaration under section 6 of the Mysore', Land Acquisition Act, 1894.

(3) For the purposes of section 50(2) of the Mysore Land Acquisition Act, 1894 the Board shall be deemed to be the local authority concerned.

(4) After the land vests in the Government under section 16 of the Mysore Land Acquisition Act, 1894 the Deputy Commissioner shall, upon payment of the cost of the acquisition, and upon the Board agreeing to pay any further costs which may be incurred on account of the acquisition, transfer the land to the Board, and the land shall thereupon vested in the Board".

The Mysore Land Acquisition Act of 1894 exactly reproduces our Central Land Acquisition Act 1 of 1894. Therefore, the term 'Acquisition Act' in this judgment covers references to both the Mysore Land Acquisition Act as well as the Central Land Acquisition Act 1 of 1894. It was stated by Counsel that the Mysore Land Acquisition Act was also correspondingly amended whenever provisions of the Central Land Acquisition Act 1 of 1894 were altered so that the two could be treated as identical for our purposes.

The judgment and orders of the Division Bench, under appeal before us, purports to follow a Full Bench decision of the Mysore High Court in Venka- tamrna v. Special Land Acquisition Officer(1), where it was held that the relevant date for determining the market value of the property to be acquired is the date of notification under section 18 of the City of Mysore Improvement Act of 1903. It appears that the provisions of the last mentioned Mysore Act of 1903 largely correspond with the

provisions of the Bangalore Act before us. It has, however, to be remembered that the Act which the Full Bench of the Mysore High Court was interpreting was. enacted in 1903. It had, there- fore, to be construed with reference to the provi- sions of the Acquisition Act as it stood in 1903. The Mysore Full Bench had observed that the Mysore Land Acquisition Act had been amended by the Mysore Act 1 of 1927 "so as to make compensation payable as on the date of publication of the notification under section 4(1) of that Act" instead of with reference to the date of notification under section 6 according to the unamended law. It said:

"It is significant to note that the Mysore Legis- lature did not make any corresponding amendment in the Act" (that is to say, the City of Mysore Act of 1903). The Bangalore Act, even though it may Correspond substantially with the provisions of the Mysore Improvement Act 3 of 1903, was enacted in 1945. Hence, references in the Bangalore Act to the Acquisition Act, which had been amended considerably between 1903 and 1945, could not have the same effect as similar references to the Acqui- sition Act in the Mysore Act of 1903. We think that the Division Bench of the Karnataka High Court overlooked this vital distinction.

(1) A.I.R. 1972 Mysore 193.

The Full Bench of the Mysore High Court ex- pressed the view that the contention that a notifi- cation under Section 16 of the Mysore Act of 1903 could be equated with a notification under section 4 of the Acquisition Act was negated by the provisions of Section 23 sub. s. (1) of the Mysore Act of 1903. It said (at p. 198):

"Section 23 (1) of the Act states that upon the passing of a resolution by the Board that an improvement scheme under Section 14 is necessary, it would be lawful for any person authorised by the Board to enter upon the land carry out the several acts on the land in question as provid ed under section 4(2) of the Acquisition Act and the pro visions of section 5 of the Acquisition Act would likewise be applicable in respect of damage caused by any of the acts of servants or workmen of the Board".

It, therefore, thought that what was sought to be achieved by notification under section 4(1) of the Acquisition Act was done by a resolution under section 14 of the Mysore Act. Taking the view that such a resolution could only be anterior to the publication of the notification under sec- tion 16, it equated the notification under section 16 of the Mysore Act with a notification under section 6 of the Acquisition Act. Thus, the Mysore. Full Bench found in Section 23 (1) of the Mysore Act of 1903, a justification for equating provisions of section 14 of that Act with, those of section 4(1) of the Acquisition Act. But, we do not find either in section 23 of the Bangalore Act, which deals with an entirely different subject matter, or, any- where, apart from section 27, additional provision (1) of the Bangalore Act, a similar provision which could ;indicate that proceedings under a section other than those under section 16 of the Bangalore Act could possibly correspond with those under section 4(1) of the Acquisition Act. And, we think that to equate a resolution under section 14 of the Act with a notification under section 4(1) of the Acquisi- tion Act, on a similar reasoning, would be to miss the very different purposes meant to be served by a resolution under section 14 of the Bangalore Act

and a notification under section 4(1) of the Acquisition Act. Such reasoning appears to us to be very far fetched.

Another reason given by the Full Bench of the Mysore High Court, for holding that market value should be determined as on the date of notification under section 18 and not that of notification under section 16 of the City of Mysore Improvement Act (both these sections, correspond to section 16 and 18 of the Bangalore Act) was that a delay of 20 years between the two notifications would make the acquisition unconstitutional. We are unable to appreciate the bearing of this consideration on a decision of the statutory requirements as to the date on which market value is to be determined for purposes of compensation. If a particular acquisition becomes unconstitutional due to an unreasonable mode of exercising the statutory powers of acquisition, neither the provision which is so misused nor the meaning of other provisions, which are relevant for determining the date of market value, is affected. We are constrained to observe that some of the reasons given by the Full Bench of the Mysore High Court as well as the Division Benches of the Karnataka High Court have little connection with the date on which the market value has to be determined according to statutory provisions. A pure question of interpretation of fairly clearly expressed legislative intent which should not have been permitted to be fogged by adverting to irrelevant matters. It is true that the Bangalore Act has its own distinct purposes and prescribed modes in which they are to be carried out. Acquisition of land, as already observed, is a mere incident in the carrying out of those purposes. Section 26 of the Act gives, it the power to acquire land by agreement. Section 27 of the Act reproduced above, enables the procedure 'found in the Acquisition Act to be utilised except to the extent to which the procedure for compulsory acquisition in the Bangalore Act may differ from that contained in the Acquisition Act. Section 27 of the Bangalore Act gives certain "further provisions" indicated under four heads. Apparently, these are meant to displace corresponding actions under the Acquisition Act. We have to identify the corresponding provisions only for the purposes of applying Section 23(1) of the Acquisition Act. It is evident that the first of these additional provisions enables the Board of Trustees, by virtue of section 14, to undertake what could have been done under the Acquisition Act only after a notification under section 4(1) of the Acquisition Act. In other words, the deviation from the procedure laid down in the Acquisition Act is that, whereas the Agents of the Govt. could not undertake anything provided for by section 4(2) of the Acquisition Act without a notification under section 4(1) of the Acquisition Act, the Board of Trustees could do those very things without any notification under section 4(1) of the Acquisition Act. Even if we could equate the resolution under section 14 of the Bangalore Act with a notification under section 4(1) of the Acquisition Act, we could not dispense with the requirements of section 23(1) of the Acquisition Act which is the only provision applicable for determining the date of the market value. The only result of equating a resolution under section 14 with a notification under section 4(1) of the Acquisition Act could be to shift the date of ascertainment of market value farther back. But, that is not what the respondents contend for. The second additional provision under section 27(2) seems designed, by way of abundant caution, to clarify the meaning of provisions of section 18 of the Act, Obviously, it prevents any construction which could enable a notification under section 18 of the Bangalore Act to be equated with section 4(1) of the Act. To hold that a notification under section 18 of the Bangalore Act could be equated with section 4(1) of the Acquisition Act, in the face of this clear provision, equating it with a notification under section 6 of the Acquisition Act, is to countenance the obvious absurdity that there is no difference between a

notification under section 4(1) and section 6 of the Acquisition Act.

A possible line of argument, in view of the 1st additional provision in section 27 of the Bangalore Act, could be that, since the general procedure under the Acquisition Act applies, a notification under section 4(1) of the Acquisition Act itself should precede any action under section 14 of the Act which is to be equated with section 4(2) of the Acquisition Act. But, that has not been the argument of any side either in the Karnataka High Court or before us. Had that been necessary and no notification under section 4(1) of the Act had taken place, the validity of the whole acquisition proceedings could have been challenged, but, the validity of the Acquisition proceedings is not assailed before us at all. Such a line reasoning would be also shut out by the principle that the particular and the especially provided procedure would exclude the more general if we hold, as we have to have regard to Section 16 of the Act, that the special procedure was meant to take the place of and to serve the same object as the general. The argument that an additional compliance with section 4(1) of the Acquisition Act was necessary despite the special procedure in section 16 of the Act, which fulfils the same function, is also repelled by the correct view taken in *M. Manicklal v. the State of Mysore* (1) by the Mysore High court.

The real question before us is whether the market value should be determined with reference to the date of notification under section 16 of the Act. As we find that the notification under section 18 has been actually equated, by the second additional provision contained in section 27 of the Bangalore Act, with a notification under section 6 of the Acquisition Act, so that it could not be also equated with any notification under section 4(1) of the Acquisition Act and, as we also find that the provisions of section 16 of the Bangalore Act and section 4(1) of the Acquisition Act show that the obvious intention behind and objects achieved by a notification under section 16 of the Act and one under section 4(1) of the Acquisition Act are identical, we think that it is most reasonable to hold that it is not necessary at all, in such cases, to comply with section 4(1) of the Acquisition Act in addition to complying with section 16 of the Bangalore Act. The general provisions of section 4(1) of the Acquisition Act are displaced by the special provisions of section 16 of the Act.

Here, we may set out the provisions of section 4 of the Acquisition Act and section 16 of the Bangalore Act to indicate the identity of purposes and the extent of similarity of procedure.

Section A of the Acquisition Act provides:

"4. Publication of preliminary notification and powers of officers there upon.--(1) Whenever it appears to the appropriate Government or the Deputy Commissioner that land in any locality is needed or is likely to be needed for any public purpose, a notification stating the purpose for which the land is needed, or likely to be needed, and describing the land by its survey number, if any, and also by its boundaries and its approximate area; shall be published in the official Gazette, and its Deputy Commissioner (1) 1967 (2) M.L.J.p.239 1414--1003SCI/76 shall cause public notice of the substance of such notification to be given at convenient places in the said locality. The Deputy Commis-

sioner may also cause a copy of such notification to be served on the owner, or where the owner is not the occupier, on the occupier of the land. Explanation.--The expression 'convenient places' includes, in the case of land situated in a village, the office of the panchayat within whose jurisdiction the land lies.

(1A) The notification under sub-section (1) shall also specify the date, (such date not being less than thirty days from the date of publication of the notification) on or before which, and the manner in which, objections to the proposed acquisition may be made, under section 5A.

(2) On the publication of such notification it shall be lawful for any Officer, either generally or specially authorized by such Government or by the Deputy Commissioner in this behalf, and for his servants and workmen to enter upon and survey and take levels of the land; to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of work (if any) proposed to be made thereon;

to mark such levels, boundaries and line by placing marks and cutting trenches; and where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days notice in writing of his intention to do so.

(3) Where the acquisition is for a company, an officer of such company may be authorised by the appropriate Government or the Deputy Commissioner to exercise the powers conferred by sub-section (2).

(4) The Officer authorised, under sub-section (2) or sub-section (3) shall complete his investigation-

tion and submit his report to the Deputy Commissioner within a period of three months (or within such longer period not exceeding six months in all as the Deputy Commissioner may allow), from the date of the publication of the notification under subsection (1). with his remarks to the appropriate Government along-with his report under sub-section (2) of section 5A".

Section 16 of the Bangalore Act enacts:

"16. Procedure on completion of scheme.--(1) Upon the completion of an improvement scheme, the Board shall draw up a notification stating the fact of a

scheme having been made and the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the area comprised therein and a statement specifying the land which it is proposed to acquire and of the land in regard to which it is proposed to recover a betterment fee may be seen at all reasonable hours; and Shall-

(a) Copy of notification of scheme to be communicated to Mayor or of the Corporation-Communi-

cate a copy of such notification to the Mayor of the Corporation who shall, within thirty days from the date of receipt thereof forward to the Board, for transmission to the Government as hereinafter provided, any representation which the Corporation may think fit to make with regard to the scheme;

(b) Publication of notification.--Cause a copy of the said notification to be published during three consecutive weeks in the Mysore Gazette and posted up in some conspicuous part of its own office, the Deputy Commissioner's office, the office of the Corporation and in such other places as the Board may consider necessary.

(2) Service of notices on owners of property to be acquired in executing the scheme.--During the thirty days next following the day on which such notification is published in the Mysore Gazette the Board shall serve a notice on every person whose name appears in the assessment list of the Corporation or the Municipality or local body concerned or in the land revenue register as being primarily liable to pay the property tax or land revenue assessment on any building or land which it is proposed to acquire in executing the scheme, or in regard to which the Board proposes to recover a betterment fee, stating that the Board proposes to acquire such building or land or to recover such betterment fee for the purpose of carrying out an improvement scheme and. requiring an answer within thirty days from the date of service of the notice stating whether the person so served, dissents or not to such acquisition of the building or land or to the recovery of such betterment fee, and if the person dissents, the reasons for such dissent. (3) Notice how to be served.--Such notice shall be signed by, or by the order of, the Chairman and shall be served-

(a) by delivery of the same personally to the person required to be served or if such person is absent or cannot be found, to his agent, or if no agent can be found, then by leaving the same on the land or building; or

(b) by leaving the same at the usual or last known place of abode or business of such person as aforesaid; or

(c) by registered post addressed to the usual or last known place of abode or business of such person".

It will be set that Section 16 of the Bangalore Act provides even more elaborately for the publication of the initial notice which is given in section 4(1) of the Acquisition Act so that any representa- tions

which the objectors may have to make may be considered by the Board itself under section 17 of the Bangalore Act. Thus, the object of the procedure provided by section 16 and section 17 seems to be to take the place of the notification under section 4(1) and the hearing of objections under section 5A of the Acquisition Act. Under the Bangalore Act, it is the Board itself which gives notices and considers objections to a scheme before communicating the scheme to the Govt. for sanction. It is true that the Board has not been specifically given the power by the Bangalore Act to rescind the scheme. The Bangalore Act only mentions the Board's power to modify the scheme, if it considers that to be necessary. After that, the Act directs the Board to send it to the Government for sanction. Of course, the Govt. could either sanction or reject the scheme. And, in suitable cases, the Board could perhaps revoke its own resolution. But, we need not consider or decide that question here. All we need observe here is that a corresponding special procedure, which we find in the provisions of section 16 of the Bangalore Act, need not necessarily be identical with the general procedure, serving the same object, which we find in section 4(1) of the Acquisition Act. We are concerned more here with the identity of objects and functions of provisions rather than with that of precise steps prescribed or words used in them. The next stage is found in section 18 which lays down:

"18. On receipt of sanction, declaration to be published giving particulars of land to be acquired-

(1) (a) On receipt of the sanction of the Govern-

ment,. the Chairman shall forward a declaration for notification under the signature of a Secretary to the Government, stating the fact of such sanction and that the land proposed to be acquired by the Board for the purposes of the scheme is required for a public purpose.

(b) The declaration shall be published in the Mysore Gazette and shall state the limits; within which the land proposed to be acquired is situate, the purpose for which it is needed, its approximate area and the place where a plan of the land may be inspected.

(c) And upon such publication Board to proceed to execute the scheme.--The said declaration shall be conclusive evidence that the Land is needed for a public purpose, and the Board shall, upon the publication of the said declaration, proceed to execute the scheme.

(2) Board to have power to alter any part of the Scheme.--(a) If at any time it appears to the Board that an improvement can be made in any part of the scheme, the Board may alter the scheme for the purpose of making such improvement, and shall, subject to the provisions contained in the next two clauses of this sub-section forthwith proceed to execute the scheme as altered.

(b) If the estimated cost of executing the scheme as altered exceeds, by a greater sum than five per cent the estimated cost of executing the scheme as sanctioned, the Board shall not, without the previous sanction of the Government, proceed to execute. the scheme as altered.

(c) If the scheme as altered involves the acquisition otherwise than by agreement, of any land other than that specified in the schedule accompanying the scheme under section 17(2)(e), the provisions

of sections 16 and 17 an sub-section (1) shall apply to the part of the scheme so altered, in the same manner as if such altered part were the scheme".

It will be seen that, but for the 1st additional provision, contained in section 27 of the Bangalore Act, perhaps it could be urged that the powers contained in section 4(2) of the Acquisition Act and the right to damages, contained in section 5 of the Acquisition Act, do not apply at all to acquisition under the Act. Hence, this additional provision became necessary. We are not called upon to determine here at what stage, powers under section 4(2) of the Acquisition Act could or should reasonably be exercised in a case falling under the provisions of the Bangalore Act. Nevertheless, we may mention that it would seem more reasonable to exercise the powers provided for by section 27(1) of the Bangalore Act (i.e. powers in section 4(2) of the Acquisition Act) only after a notification under section 16 of this Act.

An examination of the provisions of the Bangalore Act and of acquisition proceedings under the Acquisition Act, contemplated by it, would reveal that, whereas the procedure from the notification under section 4 to the notification under section 6 of the Acquisition Act gives place to the procedure provided by sections 14 to 18 of the Bangalore Act, the stage at which compensation is to be determined is to be regulated entirely by the general provisions of section 23 (1) of the Acquisition Act because there is no special or separate provision in the Bangalore Act to regulate the compensation payable. It is true that section 23 is not specifically mentioned in the Bangalore Act. But, the obvious purposes of the opening words of section 27 of the Bangalore Act seems to us to be that award of compensation, which is a necessary part of any law providing for acquisition, must be governed by section 23 of the Acquisition Act. The last mentioned section enacts:

"23. Matters to be considered in determining compensation.--(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration--

first, the market value, of the land at the date of the publication of the 'notification under section 4, subsection (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Deputy Commissioner's taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Deputy Commissioner's taking possession of the land, by reason of severing such land from his other land; fourthly, the damage (if any), sustained by the person interested, at the time of the Deputy Commissioner's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Deputy Commissioner, the person interested is compelled to change his residence. or place of business, the

reasonable expenses (if any), incidental to such change; and sixthly, the damage (if any), bona fide result-

ing from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Deputy Commissioner's taking possession of the:

land.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of the acquisition".

Non-specification of a different principle or procedure in the Act, governing award of compensation under the Bangalore Act, far from indicating, as learned Judges of the High Court erroneously opined, that section 23(1) of the Acquisition Act was not applicable here at all, was one of the strongest arguments for holding that it is covered by the general provisions applied by section 27 of the Bangalore Act. An acquisition proceeding without providing for award of compensation on some principle is unthinkable. Such a situation would have invited an attack on the validity of the acquisition itself. But, as we have already observed, there is no such challenge here.

There was some argument on the meaning of the words "so far as they are applicable", used in section 27 of the Bangalore Act. These words cannot be changed into: "in so far as they are specifically mentioned" with regard to the procedure in the Acquisition Act. On the other hand, the obvious intention, in using these words, was to exclude only those provisions of the Acquisition Act which become inapplicable because of any special procedure prescribed by the Bangalore Act (e.g. section 16) corresponding with that found in the Acquisition Act (e.g. section 4(1)). These words bring in or make applicable, so far as this is reasonably possible, general provisions such as section 23(1) of the Acquisition Act. They cannot be reasonably construed to exclude the application of any general provisions of the Acquisition Act. They amount to laying down the principle that what is not either expressly, or, by a necessary implication, excluded must be applied. It is surprising to find mis-construction of what did not appear to us to be reasonably open to more than one interpretation.

Learned Counsel for the respondents, rather desperately, attempted to argue that, as there was no procedure or principle laid down at all for award of compensation in the Bangalore Act, we should invoke the aid of Equity and hold that the market value should be determined with reference to the date of notification under section 18 of the Act. We do not think that such an argument could be advanced at all in the face of the provisions of section 27(2) which clearly equate a notification under section 18 of the Bangalore Act with the notification under section 6 of the Acquisition Act. We know the maxim that "equity follows the law". We have not heard of the proposition that some transcendental Equity should be so used as to defeat or amend the law as it stands. Maitland said long ago that equity came to supplement and not to supplant the law. We think that, if we were to equate a notification under section 18 with the notification under section 6 of the Act for purposes of determining the market value, which is to be awarded, we would be doing nothing short-of

supplanting at least 'the law as found clearly laid down in section 27 of the Bangalore Act read with section 23 of the Acquisition Act. We think that the Division Bench of the Karnataka High Court had seriously misdirected itself in not giving effect to obvious meanings of the plain words used in statutes under consideration.

Another contention which found favour in the Karnataka High Court was that a judgment filed by the respondents claimants in Civil Appeals Nos. 644-650 of 1974, when they appealed to the Karnataka High Court against the orders passed by a Civil Judge of Bangalore, on a reference made under the Acquisition Act, could be accepted as additional evidence under Order 41, Rule 27 C.P.C. on the ground that it was relevant, evidence for the purpose of determining compensation of lands which were the subject matter of appeals before the High Court. The reasons given for admitting, at the appellate stage, a judgment of the High Court, which had not been filed before the Trial Court, were:

firstly, that it was not available when the proceedings were pending in the Trial Court; and secondly, that lands dealt with by the judgment were adjacent to the lands the value of which needed determination, and that both sets of lands were acquired at different stages of what is known as the "layout scheme within the limits of Bhinnamangala village". The High Court overruled the objection that the judgment admitted as additional evidence was not final inasmuch as an appeal against it was pending in this Court. We find that the High Court did not consider it, for some reason, necessary to refer to the provisions of the Indian Evidence Act which regulate the admissibility of all evidence including judgments. There could be no question of res judicata in such a case. The previous judgment was not between the same parties. Furthermore, the appellant was not given any opportunity of showing that the judgment related to land which was at some distance from the lands whose value was to be determined or that its site value was, for some reason, higher. Even the time at which the value of the other land was determined was not shown to be identical. Such judgments are not judgments in rem. They are judgments in personam. The general provision of law governing admissibility of all judgments, whether they are judgments in rem or judgments in personam operating as res judicata, is section 43 of the Evidence Act which reads as follows:

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

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

In *Special Land Acquisition Officer, Bombay v. Lakhamsi Ghelabhai*,⁽¹⁾ Shelat J, held that judgments not inter partes, relating to land acquired are not admissible merely because the land dealt with in the judgment was situated near the land of which the value is to be determined. It was held there that such judgments would fall neither under section 11 nor under section 13 of the Evidence Act. Questions relating to value of particular pieces of land depend upon the evidence in the particular case in which those facts are proved. They embody findings or opinions relating to facts in issue and investigated in different cases. The existence of a judgment would not prove the value of some piece of land not dealt with at all in the judgment admitted in evidence. Even slight differences in situation can, ⁽¹⁾ A.I.R. 1960 Bom. 78.

sometimes, cause considerable differences in value. We do not think it necessary to take so restrictive a view of the provisions of Sections 11 and 13 of the Evidence Act as to exclude such judgments altogether from evidence even when good grounds are made out for their admission. In *Khaja Fizuddin v. State of Andhra Pradesh*,⁽¹⁾ a bench of three Judges of this Court held such judgments to be relevant if they relate to similarly situated properties and contain determinations of value on dates fairly proximate to the relevant date in a case.

The Karnataka High Court had, however, not complied with provisions of Order 41, Rule 27 of the C.P.C. which require that an Appellate Court should be satisfied that the additional evidence is required to enable them either to pronounce judgment or for any other substantial cause. It had recorded no reasons to show that it had considered the requirements of Rule 27, Order 41, of the C.P.C. we are of opinion that, the High Court should have recorded its reasons to show why it found the admission of such evidence to be necessary for some substantial reason. And if it found it necessary to admit it, an opportunity should have been given to the appellant to rebut any inference arising from its existence by leading other evidence. The result is that we allow these appeals and set aside the judgment and order of the Karnataka High Court and direct it to decide the cases afresh on evidence on record, so as to determine the market value of the land acquired on the date of the notification under section 16 of the Bangalore Act. It will also decide the question, after affording parties opportunities to lead necessary evidence, whether the judgment, sought to be offered as additional evidence, could be admitted.

The parties will bear their own costs.

V.P.S.
allowed.

Appeal

⁽¹⁾ C.A. No. 176 of 1962, decided on 10-4-1963.