

PETITIONER:
LEND ACQUISITION OFFICER

Vs.

RESPONDENT:
R.K. HANMANTENAWAR OR ANR.

DATE OF JUDGMENT: 23/09/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave granted.

We have heard learned counsel on both sides.

Notification under Section 4(1) of the Land Acquisition Act 1894 (for short, the 'Act') was published on April 14, 1977 acquiring an extent of 3 acres 34 gunthas, 1 acre 2 gunthas for extension of Agricultural Produce Marketing Committee, Gadag in Dharwad District of Karnataka State. The Land Acquisition Officer (LAO) by his award dated January 23, 1982 determined the compensation at the rate of Re.0.76 per sq. ft. On reference, the Civil Judge, Gadag in his award dated November 29, 1982 enhanced the compensation to Rs. 8.50 per sq. ft. On appeal under Section 54, in the impugned judgment dated October 7, 1992 and November 4, 1992 in MFA No.837/87 and MFA No 1962/87 respectively, the High Court of Karnataka reduced the compensation to Rs.7/- per sq. ft. Thus, these appeals by special leave.

The reference Court and the High Court relied on three sale instances of an extent of 38.4 sq. ft. and 87.35 sq. ft. which worked out at the rate of Rs 8/- and Rs. 19.98 per sq. ft.; another sale deed of 78 sq. ft. was worked out at the rate of Rs.31.25 per sq. ft. The question is whether the principle adopted by the courts below is correct in law? It is now settled legal position by catena of decisions of this Court that the civil Court has to sit in the arm chair of a willing prudent purchaser and put a question to itself and answer whether such a willing prudent purchaser would offer to purchase in the open market at the rate Court proposes to determine as compensation. When a total extent of 7 acres and odd is sought to be acquired no prudent purchaser in open market would offer to purchase the open land on sq. ft. basis that too on the basis of few small sale transactions and small extents would always fetch higher market value and the same will never command such price in respect of large extent. This Court had always rejected such instances as being not comparable sales. Therefore, the Civil Judge adopted feats of imagination and determined the compensation on the basis thereof. Unfortunately, the High Court also fell into the same grave error in determining the compensation on the same basis but deducted 1/3rd towards

developmental charges. The principle adopted by the courts below is obviously erroneous and, therefore, it cannot be sustained on that basis. However, when we asked the learned counsel for the parties to produce the evidence, the appellant has produced certain documents indicating therein that for the same purpose they appeared to have negotiated and purchased the properties from others at the rate of Rs.9,000/- per acre and registered sale deed came to be executed. They are produced for the first time. Shri Ranjit Kumar, learned counsel for the respondents, contended that the documents were not placed either in the reference Court or in the High Court. He also says that location of the lands are different. Under these circumstances, we cannot decide for the first time the value of the land on the basis thereof without giving an opportunity to either of the parties for adducing evidence and without consideration thereof by the reference Court. Accordingly, the awards and decrees of the reference Court and that of the High Court stand set aside. The cases are remitted to the civil Court for decision afresh after giving an opportunity to the parties to adduce evidence afresh and then decide the market value according to law. Pending these appeals since the respondents have withdrawn the amount as per the interim direction passed by this Court, the same may not be disturbed and the amount withdrawn will be adjusted when the award was passed by the reference Court.

The appeals are accordingly disposed of. The judgment of High Court to the extent of awarding additional amount under Section 23(1-A) of the Act stands set aside since the LAO had made his award before the Amendment Act came into Force. No costs.