APPELLATE CIVIL.

Before B. B. Ghose and Panton JJ.

MADHAB GOBINDA RAY

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL.*

1928.
Dec. 5.

Land acquisition—"Loss of business," meaning of—Land Acquisition Act (I of 1894), s. 23.

Where land had been acquired under the Land Acquisition Act and there was dispute as to the amount of damages allowed for loss of business,

held that loss of business means either that a person is compelled to give up his business or has to carry it on elsewhere, suffering loss in either case. Such circumstances only give rise to a claim for compensation. The profit a person makes by using the corpus—the effect of which is to render the property thus used altogether valueless after some time—the loss of such profit is not loss of business.

APPEAL FROM ORIGINAL DECREE, by claimant No. 5.

The facts relevant to this report are briefly as follows: Under a declaration dated the 6th December, 1920, and published in the "Calcutta Gazette" of the 8th December, 1920, lands of several persons were acquired for the project of *Kumer Puker* lock and sluice at the mouth of *Kumer Puker Khal*. This dispute in the present case has reference to about 4 *bighas* of brickfield land belonging to the present appellant. The Land Acquisition Collector awarded Rs. 5,669 altogether including the 15 per cent. statutory allowance. Against this award of the Collector, the appellant filed a suit in the Court of the Special Land Acquisition Judge, and the learned Judge raised the award by allowing Rs. 4,000, by way of compensation for loss to the plaintiff's brickfield business. From that decision the present appeal was taken to the High Court.

*Appeal from Original Decree, No. 107 of 1926, against the decree of S. C. Mallik, Special Land Acquisition Judge, 24-Parganas, dated Mar. 2, 1926.

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Mr. Jogeshchandra Roy, *Mr. Gopalchandra Das* and *Mr. Nerodbandhu Roy*, for the appellant.

The Senior Government Pleader, *Mr. Surendranath Guha*, with the *Assistant Government Pleader*, *Mr. Nasim Ali*, for the respondent.

B. B. GHOSE J. This is an appeal by claimant No. 5 against the award of the District Judge in a matter of land acquisition by which the learned District Judge varied the award of the Collector by increasing it to the extent of about Rs. 4,000. The land acquired is about 4 *bighas* in area which was divided in two plots by the Collector. Both the plots were divided into two belts and the total amount awarded by the Collector with the statutory allowance came up to Rs. 5,669-15-8. Before the Collector, the claimant asked for plot No. 2 at the rate of Rs. 7,000 per *bigha* and plot No. 3 at the rate of Rs. 5,000 per *bigha*, together with compensation for loss and damage to business to the extent of Rs. 10,000, altogether Rs. 39,775. In his application for reference, the claimant only claimed the same amount in a lump without specifying the amount he claimed separately, either as value of the land or for loss of business. The land acquired with other lands was purchased by the claimant by a *kabala*, dated the 8th December, 1919. The total area conveyed by that document was 32½ *bighas* and the price paid was Rs. 45,000. On the 19th December, 1919, the claimant purchased by a document which purported to sell a half share of 21 *bighas* 10 *cottas* for Rs. 10,000. It is urged on behalf of the claimant that this *kabala* included about 3 *bighas* of land included in the previous *kabala*. The claimant purchased another piece of land, 1 *bigha* 17½ *cottas* in area, for Rs. 2,250 on the 15th December, 1920. These three plots are apparently in the same locality. The declaration was made in December, 1920. The learned Judge took an average of the price of these three purchases per *bigha* and came to the conclusion that the market value of the land would be a little under Rs. 1,200 per *bigha*. Calculating the price of the

area acquired, he came to the conclusion that the actual value would be about Rs. 5,000. To that he added what he considered to be the loss to the business of the claimant and he allowed damages at Rs. 4,000. Adding these two figures with the statutory allowance he varied the award of the Collector to Rs. 10,400 which was reduced to Rs. 9,800 by correcting a mistake in the calculation and Appeal No. 72 of 1927 was preferred on account of this correction. In the appeal on behalf of the claimant the same amount which was claimed in the court below was claimed. The principal ground upon which the claim rested was that the Judge made a mistake in taking an average of the price of the three purchases stated above. The argument was that, out of the lands purchased within the 32½ *bighas* area, 14 *bighas* were in the possession of *mokarari* tenants paying Rs. 5 or Rs. 6 as rent and the value of that area could not by any means exceed Rs. 100. Therefore, the value of Rs. 45,000 should be calculated on about 22 *bighas* of land. This argument is answered on behalf of the Secretary of State by pointing out to us the recitals in the *kabala* itself by which the claimant purchased the property. The recitals are that only a small portion of the lands is in the possession of temporary *thika* tenants whom the claimant might eject at any time. The claimant himself has given evidence in this case. He is a business man and a person of education and position. From him we may naturally expect definite evidence with regard to matters of claim. He himself states that he does not know the lands which were in the possession of tenants : nor does he know how many tenants there were on the lands. Apparently, there was no investigation on his part as regards the truth or otherwise of the statement that he made in his examination-in-chief, about 14 *bighas* being in the possession of *mokarari* tenants. There is no evidence whatsoever that between the date of purchase in 1919 of the 32½ *bighas* of land by the claimant and the date of the declaration land values

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had increased to any appreciable extent in that part of the locality. On the other hand, it appears from the claimant's own *kabala* of the 15th December, 1920, that the land values were about the same. Therefore, in calculating the market value of the lands acquired, it cannot be said that the learned Judge was wrong in taking an average of the price that was paid on account of the lands purchased by the claimant himself only a year before the acquisition. It is urged, however, that the Collector valued a portion of the land which was only 17 *cottas* in area at the rate of Rs. 2,000 per *bigha* and, therefore, the claimant was entitled to have the market value of the whole of the area acquired at the rate of Rs. 2,000 per *bigha*. Now, if the claimant really accepts the valuation of the Collector who went to the locality and valued different portions of the land according to its character, then the value would be much less than he claims it to be. But even assuming that Rs. 2,000 per *bigha* would be the valuation of the land, the total amount of the market value of the land would be only Rs. 8,000. Let us take that as the basis of valuation by accepting the entire contention on behalf of the claimant. The next thing that was urged on behalf of the claimant was that the learned Judge has given Rs. 4,000 for loss of business which ought to have been at least Rs. 10,000 as claimed in the petition of the claimant before the Collector, if not more. Evidence was given on behalf of the claimant that he intended to use 3 *bighas* of land for the purpose of making bricks and he examined an expert to show that by making an excavation of 15 feet on this land, the claimant could manufcture 64 lacs of brick. The first difficulty in accepting the evidence is that no boring was made on the land: nobody could tell whether there was any soil fit for making bricks down to the depth of 15 feet in the land. The claimant himself gives evidence that on the contiguous land he was making bricks and that it was exhausted after he had made six lacs of bricks. It is unnecessary to pursue that question,

because in my opinion "loss of business" does not mean the profit you may make by using the corpus, the result of which would be that after some lapse of time, the property would be altogether valueless. "Loss of "business" means that a man pursuing some trade or business is compelled to give it up or to carry it on elsewhere, which would give him less profit than what he was making at the former place. In that case he would be entitled to compensation on that account. There is no evidence that the claimant cannot carry on the trade of brick-making on the other land that he has on account of the acquisition, nor is there any evidence that he could not obtain any other lands to carry on the trade of brick-making in the vicinity. To give the market value of the land and, in addition compensation for loss which, the claimant says, has happened to him for being prevented from taking the *corpus* of the land would really be giving the value of the land twice over. Under the circumstances, in my opinion, nothing could be claimed by the claimant for any loss of business. There is another remarkable thing which was not expected from the claimant of the position of the present appellant that no definite evidence has been given as to what his profits were before the acquisition and what loss he has suffered in his business after the acquisition. No account books have been filed, although we have been told that a mass of papers had been produced in the court below. The claimant himself says that from his account books profit and loss cannot be calculated. Under these circumstances, to claim anything for the loss of business on the ground as purported to have been proved by the so-called expert is of no substance whatsoever. The appeal, is dismissed with costs, as accepting the market value as urged by the appellant, the total award is not below that amount.

PANTON J. I agree.

O.C.A. *Appeal dismissed.*