APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao and Mr. Justice Newsam.

1937, August 3.

THE COLLECTOR OF KISTNA AT MASULIPATAM (FIRST RESPONDENT), APPELLANT,

v.

SREEMANTHU RAJA YARLAGADDA SIVARAMA PRASAD BAHADUR, ZAMINDAR OF CHALLAPALLI (PETITIONER-CLAIMANT), RESPONDENT.*

Land Acquisition Act (I of 1894), sec. 23—Zamindar—Land of, acquired—Melwaram interest of zamindar in—Capital value of—Assessment of—Proper method of—Twenty years' purchase rule—Applicability and implication of.

Where land belonging to a zamindar is acquired under the Land Acquisition Act the proper method of assessing the capital value of his melwaram interest therein is to start with his gross income from that land; next to ascertain his net annual revenue therefrom; then to capitalise that net annual revenue by computing the number of years' purchase; and to add to the figure thus arrived at fifteen per cent as compensation for compulsory acquisition.

The net income can be ascertained by deducting a proportion of the peshkush payable by the zamindar to Government and also a proportion of the cost of revenue collection and administration. There is no uniform rule as to the deduction to be made under the latter head. In view of the nature of the property acquired a deduction of ten per cent of the gross income would be fair and equitable.

The rule of the number of years' purchase is not a theoretical or legal rule, but depends upon economic factors, such as, the rate of interest prevailing on gilt-edged securities at the time of the acquisition, i.e., on the date of the notification under section 4 of the Act. There is no uniform or rigid principle that no more than twenty years' purchase should be allowed. Twenty times the net income would be fair if the

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* Appeals Nos. 290 to 295 and 354 to 391 of 1935.

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prevailing rate of interest was five per cent. But when there is definite evidence that the prevailing rate of interest was three and a half per cent the number of years' purchase which it would be right to allow would be thirty.

Implication of the twenty years' purchase rule explained.

APPEALS against the decrees of the District Court of Kistna at Masulipatam in Compensation Cases Nos. 1, 5, 7, 10, 20, 22, 42, 47, 49, 50, 51, 53, 58, 60, 63, 65, 66, 68, 71, 73, 77, 79, 87, 88, 90, 94, 96, 98, 100, 102, 104, 108, 112, 114, 127, 138, 143, 146, 154, 156, 162, 164, 197 and 200 of 1935 respectively (Original Petitions Nos. 1, 5, 7, 10, 26, 28, 71, 76, 78, 79, 80, 82, 87, 89, 92, 94, 95, 97, 100, 102, 106, 108, 116, 117, 119, 123, 125, 127, 129, 131, 133, 137, 141, 143, 156, 167, 172, 175, 183, 185, 191, 193, 242 and 245 of 1935 respectively).

(Reference under section 18 of the Land Acquisition Act for enhancement of the amount awarded by the Special Deputy Collector, Masulipatam, in his Awards Nos. 112, 111, 121, 120, 123, 124, 129 and 130 of 1934 ; 1, 2, 3 and 8 of 1935 ; 11 of 1934 ; 15, 12, 19, 17, 23, 16, 6, 18, 21, 49, 50, 51, 53, 52, 62, 75, 74, 45, 66, 60, 67, 39, 31, 81, 69, 77, 63, 86, 72, 76 and 14 of 1935 respectively, dated 30th October 1934, 30th October 1934, 15th November 1934, 15th November 1934, 30th November 1934, 30th November 1934, 31st December 1934, 31st December 1934, 23rd February 1935, 23rd February 1935, 28th February 1935, 25th February 1935, 25th February 1935, 25th February 1935, 25th February 1935, 26th February 1935, 26th February 1935, 27th February 1935, 25th February 1935, 27th February 1935, 26th February 1935, 27th February 1935, 30th March 1935, 31st March 1935, 31st March 1935, 5th April 1935, 2nd April 1935, 15th April 1935, 24th

April 1935, 24th April 1935, 30th March 1935, 24th April 1935, 13th April 1935, 24th April 1935, 21st March 1935, 16th March 1935, 30th April 1935, 24th April 1935, 26th April 1935, 15th April 1935, 30th April 1935, 24th April 1935, 24th April 1935 and 28th February 1935 respectively.)

Government Pleader (*K. S. Krishnaswami Ayyangar*) for appellant.

V. Govindarajachari for respondent.

Cur. adv. vult.

JUDGMENT.

NEWSAM J.

NEWSAM J.—The short question arising for decision in all these appeals is what is the proper method of valuing the melwaram interest in land which is being acquired for public purposes. The method adopted by the Land Acquisition Officer in these cases was to deduct the proportionate peshkush from the melwaram revenue and then to multiply the net income thus found by twenty. The learned District Judge was unable to find a better method but thought that the net income should have been multiplied by thirty. Many of the reasons which he gave for adopting the figure thirty in preference to the figure twenty do not at all commend themselves to us.

These appeals have been filed by Government with the object of restoring the award passed by the Land Acquisition Officer. Cross-appeals have also been filed by the zamindar.

Now, it seems to us that the principles which should be applied in assessing the capital value of the melwaram interest in land may be thus stated. It is necessary to start with the one

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known fact—the gross income of the zamindar from the land which is being acquired. The next step should be to ascertain the net income. This can be done only roughly by deducting a proportion of the peshkush payable by the zamindar to Government and also a proportion of the cost of revenue collection and administration. Neither calculation presents any real difficulty. We think that it would be fair and equitable to make a deduction of ten per cent of the gross income towards the expenses of a revenue collecting and administrative staff. Having thus ascertained the net annual revenue of the zamindar from the land being acquired, it must be capitalised by computing the number of years' purchase. Twenty times the net revenue from property has in the past been commonly taken to be the capital value of any property or interest in property, and the true justification for this was that approximately five per cent was the prevalent rate of interest. But it is clear that the number of years' purchase must depend upon the rate of interest prevailing on gilt-edged securities at the time of the acquisition, i.e., on the date of the notification under section 4 of the Act. The higher the rate of interest on that date, the fewer will be the number of years' purchase. Twenty times the net income would be fair if the prevailing rate of interest was five per cent but if it was two and a half per cent nothing less than forty times the net income would be adequate compensation.

Of course, to the figure thus arrived at must be added the usual fifteen per cent for compulsory acquisition.

Applying these principles to the cases in hand, we find that both the Land Acquisition Officer and the learned District Judge failed to make any deduction from the gross income on account of the costs of a revenue establishment. Further we find that the notifications in these cases were made at the end of 1933 in some cases and at the beginning of 1934 in others, when the rate of interest on gilt-edged securities was approximately three and a half per cent. In the circumstances we are not prepared to interfere with the District Judge's order adopting thirty years' purchase as the proper estimate of the capital value of the melwaram, but the income to be multiplied by thirty should first be reduced by ten per cent in order to arrive at a true estimate of the zamindar's income by allowing for essential establishment charges.

We direct therefore that ten per cent be first deducted from the gross income to allow for collection charges, then proportionate peshkush should be deducted and the result multiplied by thirty. Finally fifteen per cent should be added as compensation for compulsory acquisition.

The Government appeals have thus succeeded in part, though not on the grounds urged, while the cross-appeals have failed. In the circumstances, each party will bear his own costs in the appeals and in the memoranda of objections.

Let these cases fall into two batches (one batch, Appeals Nos. 290 to 295 of 1935, and second batch, Appeals Nos. 354 to 391 of 1935) for the purpose of computing the fees between the Government and the Government Pleader.

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VENKATASUBBA RAO J.

VENKATASUBBA RAO J.—I agree. The only real question that these appeals raise is, what is the number of years' purchase at which the rental of the lands acquired should be capitalised? The contention of the learned Government Pleader that there prevails a rule, to be rarely departed from, that no more than twenty years' purchase should be allowed does not rest upon any sound principle. What does the twenty years' purchase rule imply? It means that the value of the property might be taken to be a capital sum which, if invested at the rate of five per cent per annum, would yield an income equivalent to the rent. Thus, if Rs. 500 represent the annual return and the twenty years' rule is adopted, the capitalised value of the property would be Rs. 500×20, i.e., Rs. 10,000. Now let this sum be invested at five per cent interest. It would yield a return of Rs. 500. Therefore the twenty years' purchase rule rests upon this assumption: the owner of the property compulsorily acquired, if paid twenty times the annual rental, would get a five per cent return upon his money (five per cent of any given amount being the 1/20th of it). There is another assumption upon which this rule rests, namely, that the return expected from immovable property is five per cent and that therefore if the rental is capitalised at twenty years' purchase, the owner would be properly compensated for the acquisition. It will thus be seen that the rule of the number of years' purchase is not a theoretical or legal rule, but depends upon economic factors, such as, the prevailing rate of interest. That there is no uniform or rigid principle in regard to

the number of years' purchase is illustrated by several decisions. In *Harish Chunder Neogy* v. *The Secretary of State for India in Council*(1) and *The Secretary of State for India in Council* v. *Shanmugaraya Mudaliar*(2), the rentals were capitalised at twenty-five years' purchase and in *Secretary of State for India in Council* v. *Sham Bahadoor*(3), twenty-three years' purchase was awarded.

The return from landed property, generally speaking, reflects the prevalent rate of interest on money investments. One of the criteria in determining the compensation to be awarded is the market-value of the land at the date of the publication of the notification under section 4 (1) (Section 23, Land Acquisition Act). In the present cases, the relevant notifications were published towards the end of 1933 and the beginning of 1934. The Government of India loan at that time took the form of a three and a half per cent issue liable to income-tax. The issue price was reckoned at Rs. 96 per cent, and the loan was repayable at par between 1947 and 1950. When there is definite evidence that the actual return on investments is three and a half per cent, it would be wrong to adopt the arbitrary rule of the twenty years' purchase. The return having been ascertained, the years' purchase is arrived at by dividing 100 by the figure of such return. In the present cases, the return is about three and a half per cent and the number of years' purchase which it would be right to allow would therefore be about thirty.

(1) (1907) 11 C.W.N. 875. (2) (1893) I.L.R. 16 Mad. 369 (P.C.).
(3) (1884) I.L.R. 10 Cal. 769, 774.

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The learned District Judge has capitalised the rentals at thirty years' purchase and with his conclusion we agree, although, as pointed out by my learned brother, his reasons are wrong.

The rent that is to be capitalised is the net and not the gross rent and the question arises, what should be the deduction on account of collection charges and other contingencies? Here again there is no uniform rule but, having regard to the nature of the property acquired, we think that besides the peshkush, ten per cent of the gross collections may be deducted on account of outgoings.

On this basis the computation should be made and to that sum will be added the statutory allowance of fifteen per cent.

A.S.V.