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rights and duties."—(Strange's Hindu law, volume I, edition 1830, page 97).

Amongst the reported decisions I would refer to the case of *Uma Shanker Moitra* v. *Kali Komul Mozumdar* (1). The views expressed in that case on the effect of an adoption under the Hindu law were confirmed by their Lordships of the Privy Council on appeal from that decision, see *Kali Komul Mozumdar* v. *Uma Shanker Moitra* (2). I, therefore, agree with the learned Chief Judge that the appeal should be dismissed with costs.

STUART, C. J., and HASAN, J. :—The appeal is dismissed with costs. Each of the respondents Rani Subhadra Kunwar and Tewari Chandra Dhar will get full costs. Tewari Chandra Prakash will get no costs. The plaintiffs will pay their own costs.

Appeal dismissed.

Before Sir Louis Stuart, Knight, Chief Judge, and Mr. Justice Muhammad Raza.

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ALI AKBAR MIRZA AND OTHERS (OBJECTORS-APPELLANTS) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (OPPOSITE-PARTY-RESPONDENT).*

United Provinces Town Improvement Act, section 58—Acquisition of land—Compensation, rules for awarding of —Market value, meaning of.

Held, that the duties of the Tribunal created under section 58 of the United Provinces Town Improvement Act for the purpose of acquiring land under the said Act is to award the market value of the property as it stood at the time of the acquisition and irrespective of the fact that it was about to be acquired.

* First Civil Appeal No. 41 of 1925, against the order of C. H. B. Kendall, President of the Lucknow Improvement Trust Tribunal, dated the 16th of December, 1924.

(1) I.L.R., 6 Cal., 256 F.B. (2) L.R., 101. A., 138.

Held further, that the words "market value" mean the price which a willing buyer will give to a willing seller when both are actuated by the business principles that should guide such persons in the locality at the time; and in calculating that market value account must be taken of such potentialities as would be in the mind of the buyer and the seller apart from the prospects at the time of the acquisition. Different methods must be applied in obtaining the market value in each particular instance. In all cases, however, the Tribunal should look at the use to which the proprietor was putting the property, the limitations that attached to that use and the income that he was making out of it. It is not usually of great advantage to examine the prices at which land in the locality has sold unless a very shrewd discrimination is made as to the difference and peculiarities of each site and the circumstances of such transaction.

Held also, that the price that a speculator would pay who had no intention of retaining the property but hoped to part with it to somebody less informed than himself at a higher value would not be a market value.

Dr. *J. N. Misra*, for the appellants.

Mr. *G. H. Thomas*, for the respondent.

STUART, C. J., and RAZA, J.:—This is an appeal against an award of compensation made by the Tribunal created under section 58 of the United Provinces Town Improvement Act for the purpose of acquiring land under the said Act for the Lucknow Improvement Trust. The President of the Tribunal has granted permission to appeal under the provisions of section 3, clause (2), Act III of 1920. The facts are as follows. The Trust acquired 13 odd biswas of land and certain wells in Jhawai Tola in the Lucknow city. The owners of the land and wells objected to the compensation offered to them and came before the tribunal. The tribunal refused to increase the compensation. We have no jurisdiction except to set aside or modify the award

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because the decision is contrary to law or to some usage having the force of law, or has failed to determine some material issue of law or usage having the force of law or because there is a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits. We have had difficulty in understanding the particular point on which the President of the Tribunal considered this case a fit case for appeal. We consider that in all probability he thought that the dissatisfied parties should be given an opportunity of questioning the validity of the pronouncement made by the Tribunal that they were precluded in their opinion from awarding compensation on the basis of the market value of the land at the date of the acquisition. Upon the facts, as we shall show, the Tribunal appears to have granted the owners considerably more than the market value of the land and the wells at the date of the acquisition, so that the owners were not affected by what the Tribunal believed to be the limitation of their powers. We consider that we should be justified in dismissing this appeal *in limine* on the ground that no appeal lies to us under the provisions of the Act itself. But as the matter is before us, we shall not be exceeding our powers in laying down certain principles for the future guidance of such Tribunals. What we understand their duties to be in such a case is to award to the applicant the market value of the property, as it stood at the time of the acquisition, and irrespective of the fact that it was about to be acquired. The principle is simple.

A certain person owns agricultural land or land available for building purposes, and a Town Improvement Trust proposes to acquire that land because it abuts on a new avenue which they propose

to construct. The proprietor is entitled to the market value of the land as it stood before the avenue is constructed. He is not entitled to the market value of the land as it will be after the avenue is constructed. He is entitled to get the market value at the time of acquisition, and in addition, under the terms of the Act, will receive certain compensation. The words " market value " have never been defined by statute or enactment. We interpret them to mean the price which a willing buyer will give to a willing seller when both are actuated by the business principles that should guide such persons in the locality at the time; and in calculating that market value account must be taken of such potentialities as would be in the mind of the buyer and the seller apart from the prospects at the time of the acquisition. Different methods must obviously be applied in obtaining a market value in each particular instance. The method of obtaining a market value of agricultural land would not be the same as the method of obtaining the market value of a building site. In all cases, however, the Tribunal should look at the use to which the proprietor was putting the property, the limitations that attached to that use and the income that he was making out of it, if he was making any income. It is not usually of great advantage to examine the prices at which land in the locality has sold unless a very shrewd discrimination is made as to the differences and peculiarities of each site and the circumstances of each transaction. The method adopted by the appellants in the present case was not likely to help the Tribunal. They produced a haphazard series of sale-deeds, and put in witnesses to say that certain land, which was not shown to have any similitude to the land in question, had been sold at a certain price. There are, however, sufficient

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materials on the record on which we decide to our own satisfaction that on the merits the Tribunal's decision was a good one. We have it that on this small plot of land, which has been acquired, there were 14 separate households each of which was paying a very small ground rent to the proprietor. The total amount of ground rent paid to the appellants was only Re. 1-14 a month, that is to say Rs. 22-8 a year. Now it is obvious to us that if this land had not been acquired, but had been sold in the market to any person of ordinary intelligence, he would have looked upon it as likely to bring him in a net income of not more than Rs. 15 a year, for he would have the expense of collecting 4 annas from one tenant and 2 annas each from the remaining 13 every month, and the expense of such collection would certainly come to at least Rs. 7-8 a year. There was no prospect, as we can see, of removing these tenants and no advantage in removing them, for if they were removed it would not appear that their successors would pay more. The land does not appear to have had any value as a building site. Such a purchaser would then consider that he would make Rs. 15 a year on purchase and by letting in more tenants might eventually make Rs. 20 a year. In these circumstances what would he be likely to give? A prudent man would certainly not have given more than Rs. 300 and that would be the very outside price. We are not talking of the price that a speculator would pay, who had no intention of retaining the property but hoped to part with it to somebody less informed than himself at a higher value, for that would not be a market value. We consider that if this property had been sold in the open market at the time of the acquisition the appellants would have been lucky if they had got as much as Rs. 300 for the

land and Rs. 300 for the wells. The authorities have awarded them as compensation Rs. 650-12 for the land and Rs. 321 for the wells and have, therefore, given them what in our opinion is more than the market value of the land. We accordingly dismiss this appeal with costs.

Appeal dismissed.

FULL BENCH.

Before Mr. Justice Wazir Hasan, Mr. Justice Muhammad Raza and Mr. Justice Kendall.

MUSAMMAT SARTAJ KUAR (APPELLANT-PETITIONER) *v.* MAHADEO BAKHSH (RESPONDENT-OPPOSITE-PARTY).*

1926 *May*, 5.

Leave to appeal to Privy Council—Civil Procedure Code, section 110*—Interpretation of the word* malik *in a wajib-ul-arz, whether a substantial question of law—Wajib-ul-arz, interpretation of.*

Where the valuation of the suit and of the subject-matter of appeal before His Majesty in Council were over Rs. 10,000 and there were concurrent findings of the two courts and the only point in the appeal was the question of interpretation of the word *malik* in a wajib-ul-arz with respect to a Hindu widow, *held*, that there being no surrounding circumstances nor anything in the context to modify the natural meaning of the word and the interpretation being settled by a series of decisions of their Lordships of the Privy Council, it cannot be held that it is a substantial question of law nor does it make any difference as regards the interpretation that the court had to construe, in the present case a wajib-ul-arz and not a deed of transfer. [L.R., 50 I.A. 196 and 179 and L.R., 49 I.A., 1 and 25, referred to.]

This application for leave to appeal to His Majesty in Council was originally heard by Sir LOUIS STUART, C. J., and GOKARAN NATH MISRA, J. There was a difference of opinion between them as to whether a substantial question of law arose so as to justify

* Privy Council Appeal No. 3 of 1926, against the order of Bench consisting of Sir LOUIS STUART, KNIGHT, CHIEF JUDGE, and Mr. Justice GOKARAN NATH MISRA.