

Limitation Act and that it was not a case of redemption of a mortgage. In *Abdul Wahab v. Basant Lal* (1) the same learned Judge held that the remedy after partition of a transferee of an undivided estate is "to follow the transmuted security although in cash in the hands of his transferor." We agree with this view of the law and are giving effect to it in the present case. Apparently the decision in *Abdul Wahab v. Basant Lal* (1), was not brought to the notice of the learned Judge in the subsequent two cases quoted above.

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We accordingly allow this appeal, set aside the decrees of the courts below and grant the declaration prayed for to the plaintiff with costs in all courts.

Appeal allowed.

APPELLATE CIVIL.

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

ALI QADAR AND OTHERS (APPELLANTS) *v.* SECRETARY
OF STATE FOR INDIA IN COUNCIL (RESPON-
DENT).*

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*Land Acquisition Act (I of 1894), section 23—Acquisition of
land by Crown in a city—Compensation to be awarded,
determination of—Market value, determination of.*

Where the Crown acquired land in a city the compensation should be based not on a capitalization of the present income but on the potential value that the land would have as a building site.

The market value which under the provisions of section 23, Act I of 1894, is the value that should be given under the Act, is the potential value of the property at the time of acquisition which would be paid by a willing buyer to a willing seller when both are actuated by the business principles prevalent in the locality at the time. The market value should be determined on a capitalization of the annual income.

*First Civil Appeal No. 59 of 1929, against the decree of J. R. W. Bennet, District Judge of Lucknow, dated the 18th of March, 1929.

(1) (1917) 4 O.L.J., 386.

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Where city land was acquired by the Crown for building purposes and its annual income, which was also the potential value, had been correctly determined, *held*, that it was not a fair capitalization to award ten times the gross annual rent as laid down in paragraph 477, chapter XV of the Board of Revenue Manual, but it would be fair to allow a compensation which will give the owner in the future the same annual income by investing it on good security.

Messrs. *Ali Zaheer, Muhammad Ayub and Wasi Ahmad Akhgar*, for the appellants.

The Government Advocate (Mr. *G. H. Thomas*), for the respondent.

STUART, C. J. and RAZA, J. :—This is an appeal against an award made by the District Judge of Lucknow on a reference made to him under section 18 of the Land Acquisition Act (I of 1894). The facts are these. There is in the Wazirganj quarter in the Lucknow City a police station which has been in existence for many years. The acquisition in question was made by the Crown to take up land on the other side of the road from that police station, in order to construct residential quarters for police officers serving in the station. The plot in question is a triangular plot, 6 biswas, 9 biswansis and 19 kachwansis in area, that is to say roughly about $6\frac{1}{2}$ biswas. The Crown offered the appellants, who were the owners of the plot, Rs. 1,104 as compensation. They claimed Rs. 18,000. The Crown not increasing its offer the appellants applied for a reference under section 18 of the Land Acquisition Act. On that reference the learned District Judge has awarded them Rs. 1,265. Being dissatisfied with this award they have appealed to this Court. Here, however, they have only claimed Rs. 5,000 more than the amount already awarded. In the trial court the case set up for the appellants was that the land was valuable as a building site for shops and that one person had offered Rs. 18,000 for it and that two persons had offered Rs. 10,000 for it but

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that their predecessor-in-interest had refused to sell the land even for the higher price as he thought it was worth more. We have no difficulty in determining the quality of this plot. The learned trial Judge adopted the sensible course of seeing the plot for himself and has described what it looks like. It is a triangular plot of land in an untidy condition and it is not level. Upon it is standing a mound and the land is full of depressions. There were found upon it five persons, artisans and others, who have constructed their own mud huts where they have been living for a considerable period. For the use and occupation of the land these persons have been paying the following rent :—

Two have paid Rs. 2 a month each.

One has paid Re. 1-12-0 a month.

One has paid Re. 1 a month.

One has paid 12 annas a month.

The total income from this source of the appellants in the past has thus been Rs. 7-8-0 a month equal to Rs. 90 a year. It is to be noted that the Crown has compensated separately these persons for their removal from the site. The appellants, as far as these tenants are concerned, will lose the amount of rent that they received from them. But they further allege that they will lose the value of the services which these persons rendered them without payment as a part consideration for the occupation of the land. The learned District Judge has valued these services at Rs. 20 a year and has accordingly fixed the income at Rs. 110. He has capitalized the compensation on the basis that the income is Rs. 110. The learned Counsel for the appellants questions this decision on the following grounds. His case is that the compensation should be based not on a capitalization of the present income, but on the potential value that the land would have as a building site. We agree with him that the calculation should be made on the potential value. As we understand it the market value,

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which under the provisions of section 23, Act I of 1894, is the value that should be given under the Act, is the potential value of the property at the time of acquisition which would be paid by a willing buyer to a willing seller when both are actuated by the business principles prevalent in the locality at the time. But on this view we find that the potential value has been rightly calculated on an annual valuation of Rs. 110. The suggestion that any sensible person would have paid from Rs. 10,000 to Rs. 18,000 for this site is one which cannot be regarded seriously. After having paid such a sum to remove the mound to level the site and then to construct shops upon it would be to court disaster, for it is clear to us that any such attempt would involve a heavy loss. We do not believe the evidence that suggests that such offers had ever been made. We are convinced that if any man had been foolish enough to make such an offer the offer would certainly have been accepted. We next have to consider whether, taking the land as it is—a piece of irregular bad land containing a few hovels,—there is any reason to suppose that in years to come it is likely to become more valuable than it is at present. We can find no reason to suppose this. There has been considerable development in Lucknow City in the course of last thirty years but this land has remained exactly the same. No attempt has been made to improve it or to utilize it in a more ambitious manner and we are of opinion that if the land were allowed to remain in its present state thirty years hence it would still be containing a few hovels and the occupiers would still pay the same small amount of money for the use of the ground. So we accept two of the views of the learned Judge. One is that the actual income is Rs. 110 a year. We find that this is not only the actual income but the potential income. We further find that the market value should be determined on a capitalization of the annual income. The learned Judge has awarded, applying the principles laid down in paragraph 477, chapter XV of the Board of Revenue Manual,

ten times the gross annual rent. We do not accept these principles and we do not consider that this is a fair capitalization. There is no question here between gross annual rent and net annual rent for the occupiers constructed their own hovels and made their own repairs. Thus Rs. 110 represents the net income of the appellants. It is only fair that they should receive a compensation which will give them in the future Rs. 110 a year. We arrive at the compensation in this manner. In Lucknow at the present moment any man may expect to lend out money at 6 per cent. simple interest annually on good security. He will always be able to obtain that rate. He may obtain more. We consider that the appellants should have no difficulty in investing the compensation they obtain to secure them a return of six per cent. Thus they are entitled to sixteen and two-third years' purchase. Sixteen and two-third years' purchase of Rs. 110 comes to Rs. 1,833-5-4. Fifteen per cent, as compensation for compulsory acquisition on Rs. 1,833-5-4 amounts to Rs. 275. Thus the compensation that we award is Rs. 2,108-5-4. We thus allow this appeal to the extent of Rs. 843-5-4. As the appellants claimed Rs. 5,000 they are not entitled to full costs. As however we consider that they were obliged to come into court we consider that they deserve something more than proportionate costs on which they will lose and we direct that the costs in both courts be borne by the parties.

Appeal partly allowed.

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