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In conclusion, although I consider that there is no ground for interfering with the order in revision I would not have the Magistrate to understand that defects in procedure are of no importance. Slipshod procedure is to be condemned even though it does not necessarily result in vitiating the whole proceeding.

Application dismissed.

APPELLATE CIVIL

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March, 12

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice Ziaul Hasan

NAWAB ROSHAN JAHAN BEGAM (APPELLANT) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (RESPONDENT)*

Land Acquisition Act (I of 1894), section 23—United Provinces Town Improvement Act (VIII of 1919), section 58 and Schedule I, section 10(3)—Acquisition of bazar for Town Improvement—Compensation, awarding of—Market value—Compensation, if to be calculated on basis of gross income or net profits—Collection expenses, if to be deducted in determining market value.

In determining the compensation to be awarded in the case of acquisition of land under the U. P. Town Improvement Act, it is not possible to lay down any general method of valuation as it is necessary to take the circumstances of each property into consideration in determining the suitable basis of compensation. Where the property sought to be acquired is a bazar the income of which by its nature is of a fluctuating character and it is necessary to employ a costly staff for making realizations from day to day from the various stall-keepers in the bazar and considerable vigilance is required on the part of the collection staff to prevent evasion of payments and close supervision is also necessary in order to prevent embezzlements by the staff entrusted with the realization of these dues, in such a case, taking into consideration the use to which the land is put at the time of the acquisition, it is difficult to think that any buyer would be prepared to purchase the property on the basis of the gross collections with-

*First Civil Appeal No. 82 of 1933, against the decree of M. Humayun Mirza, President of the Lucknow Improvement Trust Tribunal, Lucknow, dated the 1st of June, 1933.

out making an allowance for the expenditure necessary for making collections. *Birjrani* v. *Deputy Commissioner, Sitapur* (1), *Official Trustee of Bengal* v. *The Secretary of State for India in Council* (2), and *Ali Akbar* v. *The Secretary of State for India in Council* (3), referred to and relied on.

Messrs. *Hyder Husain, Makund Behari Lal* and *Abid Husain,* for the appellant.

The Government Advocate (Mr. *H. S. Gupta*), for the respondent.

SRIVASTAVA and ZIAUL HASAN, JJ.:—This is an appeal against the award of a Tribunal constituted under section 59 of the Town Improvement Act (U. P. Act VIII of 1919).

The appellant Nawab Roshan Jahan Begum and one Nawab Iqbal Jahan Begum owned an area of land lying on two sides of Canning Street and known as Rakabganj Bazar. On the 16th of April, 1921, a notification was published in the U. P. Government Gazette in respect of a scheme regarding the aforesaid land framed by the Lucknow Improvement Trust under section 36 of the Town Improvement Act, but actual proceedings for acquisition of the property were not taken until about six years later. Notices under section 9 of the Land Acquisition Act were served on the owners on the 11th of November, 1927, and after trying the objections and claims made before him, the Land Acquisition Officer on the 29th of March, 1928, made an award declaring Nawab Roshan Jahan Begum and Nawab Iqbal Jahan Begum entitled to Rs.16,142 as compensation for the property under acquisition. The two ladies objected to the amount of the award and the Collector made a reference under section 18 of the Land Acquisition Act to the District Judge. The reference was heard by the Tribunal constituted under the Town Improvement Act.

It is common ground between the parties that for about the last thirty years, the bazar in dispute has been

(1) (1919) 57 I.C., 301. (2) (1917) 39 I.C., 619.
(3) (1926) 3 O.W.N., Supp. 19.

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leased out to contractors. The last lease in force at the time of the proceedings for acquisition was given to three persons, Manni Lal, Thakur Din and Anant Ram in 1920 and the rent reserved in it was Rs.1,850 per annum. The Land Acquisition Officer had taken the rent reserved under the lease as the basis of the compensation awarded by him but had reduced its amount on the ground of the *theka* being a collusive transaction. As the entire land included in the *theka* did not form the subject of acquisition, he had also made a further reduction in the proportion which the non-acquired area bore to the acquired one. He had thus fixed Rs.1,153 as the annual income of the acquired property and awarded compensation at fourteen times of this amount. The majority of the Tribunal did not agree with the opinion of the Land Acquisition Officer. They held that the *theka* money alone should not be the basis of determining the actual value of the land. On the other hand they were of opinion that compensation at the rate of $16\frac{2}{3}$ times of the profits should be calculated on the aggregate net yield of the property worked out on the basis of the actual collections made by the *thekedar*. They also made reference to the award of an arbitrator which had been made a rule of court in a dispute which existed between the three *thekedars* by which it was settled that each of the three *thekedars* shall manage the *theka* in rotation for one year and that the managing *thekedar* shall pay the lessors the rent for the year and Rs.13 per month to each of the other two *thekedars*. They came to the conclusion that the net profits of the bazar were not far different from the amount which has been settled by the arbitrator. Accepting this as the basis of their calculation and making necessary deduction for the land included in the lease which did not form the subject of acquisition, they fixed the amount of the net annual profits at Rs.2,240-12-0 and awarded a sum of Rs.37,335 as compensation at the rate of $16\frac{2}{3}$ years' purchase. They

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further awarded the ladies interest at 6 per cent. per annum on the difference between this amount and the amount awarded by the Land Acquisition Officer from the 17th of September, 1928, the date on which the Lucknow Improvement Trust entered into possession of the property up to the date of the award and future interest on the same amount till realisation.

The United Provinces Town Improvement (Appeals) Act of 1920 provides that appeals from awards of the Tribunal shall only lie on one or more of the following grounds, namely:—

(i) the decision being contrary to law or to some usage having the force of law;

(ii) the decision having failed to determine some material issue of law or usage having the force of law;

(iii) 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.

The learned counsel for the appellant in view of this provision has not disputed the findings of the Tribunal as regards the actual income derived by the lessors under the *theka* or as regards the net profits from the bazar. He has confined his arguments to the question as regards the principle to be followed in awarding compensation in the case of property of the nature of the bazar in suit. He has contended strongly that the value of the property should have been determined on the basis of the gross collections without making any deductions for the costs of collections, etc. In other words his argument is that the appellants should have been allowed compensation at $16\frac{2}{3}$ years purchase on the amount of Rs.3,017-9-0 and not on the amount of Rs.2,240-12-0. Section 23 of the Land Acquisition Act provides that in determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration, *inter alia* the market value of the land

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at the date of the publication of the notification under section 4, sub-section (1). It is not disputed that this date with reference to which the market value is to be determined is the 16th of April, 1921. Section 58 of the Town Improvement Act provides that for the purpose of acquiring land under the Land Acquisition Act for the Improvement Trust, the provisions of the Land Acquisition Act shall be subject to the modifications indicated in the schedule. One of these modifications laid down in section 10, sub-section (3) of the schedule referred to in section 58, is that the market value of the land shall be the market value according to the use the land was put at the date with reference to which the market value is to be determined under that clause. The evidence of Manni Lal, P. W. 4, one of the *thekedars* shows that the sources of income in respect of the bazar in suit were rent realised daily from the tenants, tax on *bhusa* at the rate of one pice per bundle, *chungi* in kind on grass, leaves of trees, tax on season fruits such as mangoes and *kharboozas*, tax on grain carts, *gur* carts, earthenware carts, *pattal* carts, vegetable carts especially cauliflowers and other miscellaneous income. He further stated that he used to realise three annas per cart load of grain, one anna for a *thela* load of grain, nine pies per camel and two pice per pony. The grass taken by way of *chungi* used to be sold by him in the market. Besides this there were three shops which were let out on a monthly rent. Thus it will appear that realisations had to be made in kind and in cash and that the realisations made in cash ranged from one pice to four annas per dealer. In *Musammat Birjrani* v. *Deputy Commissioner, Sitapur* (1), Mr. STUART, J.C., held that market value means the price that would be paid by a willing buyer to a willing seller when both are actuated by business principles prevalent at the time when the transaction takes place in the locality in which it takes

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place. The question in the case was as regards the market value of five shops in the Khairabad bazar. In determining whether the compensation awarded by the Land Acquisition Officer was adequate or not, he directed his attention to finding out "the nett income from the shops" and in doing so remarked that allowance should be made for "repairs, bad debts and the shops standing empty". Again in *Mirza Ali Akbar* v. *The Secretary of State for India in Council* (1), a Bench of this Court remarked that the words "market value" have never been defined by statute or enactment and that different methods must obviously be employed in obtaining the market value in each particular instance. They further observed that in all cases the Tribunal should look to the use to which the proprietor was putting the property, the limitations that attached to that use and the income if any he was making out of it. In this case also the learned Judges tried to find out the nett income of the property after deducting the expenses of making collections. In the case of the *Official Trustee of Bengal* v. *The Secretary of State for India in Council* (2) which was a case of acquisition of a bazar, the special land acquisition Judge had based the valuation upon nett income of the market and allowed $18\frac{2}{11}$ years purchase on that amount. This award was finally upheld by a Bench of the Calcutta High Court. In the present case the income of the property by its nature was of a fluctuating character and it was necessary to employ a costly staff for making realisations from day to day from the various stall-keepers in the bazar. Considerable vigilance was required on the part of the collection staff to prevent evasion of payments. Close supervision was also necessary in order to prevent embezzlements by the staff entrusted with the realisation of these dues. Thus taking into consideration the use to which the land was put at the time of the acquisition, it is difficult to think that any buyer would have been prepared to purchase

(1) (1926) 3 O.W.N., Supp. 19. (2) (1917) 39 I.C., 619.

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the property on the basis of the gross collections without making any allowance for the expenditure necessary for making collections. The case of agricultural lands stands on a different footing from property of the nature of the bazar in dispute. We are of opinion that while it is not possible to lay down any general method of valuation as it is necessary to take the circumstances of each property into consideration in determining the suitable basis of compensation, yet we are quite clear that the circumstances of the property in dispute were such that it is impossible to say that the Tribunal was wrong in awarding compensation on the basis of the nett profits. We have no hesitation in agreeing with the Tribunal that in such a case it would be most unfair to calculate compensation on the basis of gross collections.

We are therefore of opinion that no ground has been made out for interference with the award of the Tribunal. The appeal must therefore fail and is dismissed with costs.

Appeal dismissed.