

DIRECTOR OF LANDS *v.* RAM SINGH.

[Civil Jurisdiction (Corrie, C.J.) March 8, 1944.]

Crown Acquisition of Lands Ordinance, 1940¹—market value of land at date of notice of intention to take such land—whether regard should be had to temporarily inflated prices—methods of valuing considered.

A house property in Suva was acquired by the Crown on a date agreed to by the parties as 1st January, 1943. Evidence of both parties showed that at that date there was a "boom" in house property in Suva and the question arose as to whether, in fixing the value as at 1st January, 1943, the Court should disregard a temporary inflation of prices.

HELD.—The Court has to determine the market value which means "what it would fetch in the market under the state of things for the time being existing."

ORIGINATING SUMMONS under the Crown Acquisition of Lands Ordinance, 1940, s. 9¹ to determine what amount of compensation should be paid to the defendant. The facts are fully set out in the judgment.

A. G. Forbes, for the plaintiff.

R. L. Munro, for the defendant.

CORRIE, C. J.—The question to be determined upon this summons is, what amount of compensation should be paid to the defendant for the property comprised in Title 6533, containing 2 roods 18.5 perches, acquired from the defendant under the Crown Acquisition of Lands Ordinance 1940, the Governor and the defendant not having agreed as to the amount of compensation.

The property, which included a dwelling-house, is situated at the corner of Brown Street and Amy Street, Suva. It was purchased by the defendant in 1940 for £900. In 1941 the defendant spent in repairs to the property, other than those required to make good damage caused by a hurricane, the sum of £106 7s. 6d.

At the time when the defendant purchased, the property was let at a monthly rent of £8, and the tenant remained in possession at the same rent until the property was taken over by the Medical Authorities.

The material sections of the Crown Acquisition of Lands Ordinance are as follows:—

"13.—In determining the amount of compensation to be awarded for land acquired under this Ordinance:

(1) the Court shall take into consideration—

"(a) the market-value of the land at the date of the notice of intention to take such land ;

"(2) But the Court shall not take into consideration—

"(a) the degree of urgency which has led to the acquisition ;

"(b) any disinclination of the person interested to part with the land acquired ;"

¹ *Cap.* 122.

“ 13A.—(1) Where during the war period (whether before or after the commencement of this section) entry on land is made under any provision of the Defence Regulation, 1939, and at any time after the date of such entry and during the exercise of the powers conferred by any such provision the land is acquired for a public purpose under this Ordinance, sub-paragraph (a) of paragraph (1) and sub-paragraph (f) of paragraph (2) of s. 13 of this Ordinance shall read as if the words ‘ date of entry on the land under any provision of the Defence Regulations, 1939,’ were substituted for the words ‘ date of the notice of intention to take such land ’.

“(2) For the purposes of this section—

“ ‘ War period ’ means the period beginning with the third day of September, nineteen hundred and thirty-nine and ending with such date as the Governor may by order appoint, not being later than the date on which the Emergency Powers Defence Regulations, 1939, expire.”

On the 21st July, 1942, notice requisitioning the property under Regulation 52 of the Defence Regulations, 1939, was given to the defendant by the Commandant of the Fiji Defence Force as the Competent Authority under that Regulation. On the 2nd April, 1943, notice was given by the Acting Director of Lands to the defendant under the Crown Acquisition of Lands Ordinance 1940 that the property was required for public purposes. It is agreed, for the purposes of these proceedings, that the date of entry upon the property under the Defence Regulations was the 1st January, 1943. This Court has therefore to determine the market value of the property at that date.

Evidence has been given for both parties that at that time there was a boom in house property in Suva, which began about the middle of 1942 and reached its peak in May, 1943. It has been suggested, on behalf of the plaintiff, that in determining the value of the property the Court should disregard the temporarily inflated prices which were at that time being paid for house property and should fix the value in accordance with what would have been paid at that time by a prudent purchaser. In support of this argument, it is pointed out that one of the witnesses for the defendant, Mr. Patrick Costello, while estimating the market value of the property on the 1st January, 1943, at £2,200, stated that that was a boom price and that he himself would not have paid that sum.

The Court, however, has to determine that market value, and accepts the definition given in *Stroud's Judicial Dictionary* that “ the market value of property means what it would fetch in the market under the state of things for the time being existing ”. It is common knowledge that when anything in the nature of a boom is in progress, whether it be in land or in stock exchange securities, the level of prices is apt to be fixed by the speculative rather than by the prudent purchasers ; and the Court has to determine the price at which the defendant could have found a purchaser, prudent or imprudent, on the 1st January, 1943.

The next question is, therefore : upon what basis is the Court to estimate the price which could have been obtained for the property at that date ? On behalf of the plaintiff, Mr. Buckhurst gave evidence

in which he estimated the value of the property in relation to its cost of construction ; but this method of valuation is open to the objection that it takes no account of increase in price due to the boom.

Again, evidence has been given, both for the plaintiff and for the defendant, as to the prices realized in other purchases of similar properties in the neighbourhood. In applying this evidence, however, the Court is met with the difficulty that, while in relation to some of these transactions the area included in the sale and the condition of the house sold have been stated in evidence, there is no evidence before the Court as to the number or size of the rooms contained in any of these other houses ; and it is clear that the amount of accommodation must be a very important factor in determining price at a time when the demand for housing exceeds the supply.

The same factor would obviously affect the rent obtainable ; and it would seem, therefore, that some indication of value is to be found in the evidence given as to the rents paid for other properties sold.

There is, it is true, a conflict of evidence as to the return which a purchaser would expect to get on his purchase money, the estimates varying from 10 per cent to 5 per cent. This conflict, however, need not disturb us if we take into consideration only actual transactions in respect of which there is evidence both as to rent and purchase money.

On behalf of the plaintiff, evidence has been given as to five houses included in Title 2622, which were sold in one transaction. The sale took place in October, 1942, and it is to be noted that the vendor was acting upon the advice of Mr. P. Costello, one of the defendant's witnesses. For the defendant, evidence as to seven sales during the period from September, 1942, to February, 1943, has been given by Mr. Marks : of these, two must be omitted from consideration—in the one case, because the property was of a different character, namely a business site ; and in the other case, because the rent mentioned in evidence has since, as Mr. Marks stated, been increased.

The figures for the remaining five sales mentioned by Mr. Marks are as follows :—

Rent £111,	price £2,000
„ 78,	„ 1,350
„ 72,	„ 1,100
„ 39,	„ 750

Taking these figures with those for the five houses included in Title 2622, namely :—

Rent £372,	price £3,500
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we find that these ten houses, which were let at rents amounting to £744 per annum, were sold for prices which amounted to £10,050 ; that is to say the purchasers obtained, on an average, 13.5 years purchase of the annual rent. To put the matter in another way, they would receive an average return of £7 8s. od. on their purchase money.

The next question, therefore, is, what was the rental value of the property on the date when it was taken over ? The property had previously been let by the defendant at a rent of £8 a month, and it was agreed between the parties that for the months of November and December, 1942, the plaintiff should pay the defendant the same monthly rent. The defendant himself, however, says that he could easily have

got £11 or £12 a month ; and of the witnesses who gave evidence on his behalf, Mr. Marks estimated the rent at £10 to £11 a month, and Mr. Costello stated that each of the two flats into which the house was divided could have been let at £5 10s. od. a month. Moreover, at one point in his evidence Mr. Buckhurst appeared to take the view that £10 a month might not be an unfair rent for the property.

It is to be noted, too, that the rent of £8 received by the defendant was already being paid when he bought the property in September, 1940, and it is clear that there must have been an increase in rental value between that date and the 1st January, 1943.

I find, therefore, that the rent obtainable on the 1st January, 1943 was £10 a month, that is, £120 a year. At 13.5 years purchase, this would give a market value of £1,620.

Without having evidence as to the size of the other houses sold at that period, it is difficult to compare this figure with prices realized in other transactions, but it would seem to be reasonably in accordance with the figure of £1,775 paid in October, 1942, for Title No. 3776 containing 3 roods 13 perches in Amy Street, and with the price of £1,350 for the adjoining property, Title 4266, containing 1 rood, sold in September, 1942.

I find, therefore, that the market value on the 1st January, 1943, of the property comprised in Title 6533 was £1,620.

HEDSTROM & ORS v. COMMISSIONER OF INLAND REVENUE.

[Civil Jurisdiction (Corrie, C.J.) March 29, 1944.]

Income Tax Ordinance—Preference shareholder an approved fund exempt from income tax—tax deducted from dividends by Company—whether shareholder can recover a refund from revenue.

The plaintiffs were trustees of an approved pension fund which was exempt from income tax. In this capacity they held a number of preference shares in two Fiji Companies. The Companies, in accordance with s. 3—(1) of the Income Tax Ordinance, 1921 and the decision in *Greening v. Morris, Hedstrom, Limited & or* [1943] Fiji L.R.—had deducted income tax from the dividends paid to the plaintiffs. The plaintiffs claimed that the tax so paid should be refunded from revenue.

HELD.—The tax not having been illegally assessed and collected no refund could be obtained under the Ordinance.

[EDITORIAL NOTE.]—The following sections of the Income Tax Ordinance, 1921¹ referred to in this judgment have been affected by amendments since the decision :—

- (a) The section authorising deductions by the Company (previously s. 3—(1) (c)) is now s. 11—(3) of the amended Ordinance (Income Tax (Amendment) Ordinance, 1945, s. 4). S. 11—(3), however, does not make the deduction compulsory as was formerly the case.

¹ Now Cap. 152.