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garage) was being used for her residence, and that the bags of grain lying in the premises marked "B" belonged to firm Hari Singh Bachan Singh. It is well known that it is not easy to prove sub-letting, as direct evidence is seldom available. The inference of sub-letting has to be drawn from the circumstances of the case. Before the Rent Controller, the firm Messrs Hari Singh, Bachan Singh denied that they were in possession of the garage or any portion of the building of which the petitioners were the tenants. This statement was contrary to the facts found on the spot by the local commissioner. The learned Appellate Authority did not place reliance on other oral evidence led in the case on the issue of sub-letting by either party. But it is difficult to understand how he came to the conclusion that the evidence of Shri Gulzari Lal Sharma did not prove sub-letting. I, therefore, hold that the finding on issue No. 1 arrived at by the learned Rent Controller was correct and its reversal by the learned Appellate Authority is wholly unjustified. I accordingly reverse the finding of the Appellate Authority and restore the finding of the Rent Controller on that issue.

(9) For the reasons given above, there is no merit in this petition which is dismissed, but the parties are left to bear their own costs. Since six out of seven petitioners are minors, I allow them two month's time to vacate the premises.

K.S.K.

CIVIL MISCELLANEOUS.

Before Prem Chand Jain, J.

SHAM DASS *alias* SHAM LAL,—Petitioner.

versus

THE FINANCIAL COMMISSIONER ETC.,—Respondents.

Civil Writ No. 1636 of 1965.

May 26, 1972.

Punjab Security of Land Tenures Act (X of 1953)—Section 18(2)—Determination of the value of land sought to be purchased—Basis of—Whether the average of the prices obtaining for 'similar' land in the locality—Word 'similar'—Whether has any reference to the future use of the land—Prices of plots sold by the Government after acquiring agricultural land—Whether can be taken into consideration.

Held, that before determining the value of the land sought to be purchased under section 18 of the Punjab Security of Land Tenures Act, 1953, the Assistant Collector is required to find out under sub-section (2) thereof the average of the prices obtaining for 'similar land' in the locality during the ten years immediately preceding the date on which the application is made. The average of the prices has to be of 'land' as defined in the Act, that is of agricultural land, and that too which is 'similar' which means somewhat like or resembling in many respects. The word 'similar' has no reference to the future use of the land. The price of plots sold by the Government after acquiring the agricultural land cannot be taken into consideration because such plots do not fall in the definition of land, nor can they be termed similar to the land as by converting the user, the nature of the land has changed and it ceases to have any resemblance or likeness with the land sought to be purchased. Vicinity or locality in which the land is situated is only one of the factors but it is not the only consideration. Hence, while determining the value under section 18(2) of the Act, the average price to be taken into consideration has to be of the land as defined in the Act and land has to be somewhat like or resembling in many respects with the land sought to be purchased. (Para 4).

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari or any other appropriate writ, order or direction be issued quashing the impugned order dated 4th May, 1955 passed by the learned Financial Commissioner and directing respondent No. 4, the Assistant Collector Ist Grade Hissar not to proceed further in the malice but when the prosecution is found to be based on a reason- initiated by him be stayed till the final disposal of the writ petition.

B. S. Gupta, Advocate, for the petitioners,

B. S. Mittal, Advocate, for Respondents 5 to 12,

JUDGMENT

JAIN, J.—This order of mine would dispose of Civil Writs Nos. 1636 and 1637 of 1965, as common question of law arises in both these petitions.

(2) The only point involved in these petitions relates to the valuation of the land sought to be purchased under section 18 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act). The valuation of the land is to be determined under sub-section (2) of section 18 which reads as under:—

“18(2) A tenant desirous of purchasing land under sub-section (1) shall make an application in writing to an Assistant Collector of First Grade having jurisdiction over

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the land concerned, and the Assistant Collector, after giving notice to the land-owner and to all other persons interested in the land and after making such inquiry as he thinks fit, shall determine the value of the land which shall be the average of the prices obtaining for similar land in the locality during 10 years immediately preceding the date on which the application is made."

The Assistant Collector First Grade allowed the purchase application of the petitioner-tenant and determined the value of the land at Rs. 280.60 Paise per *Bigha* and the purchase price as Rs. 210.40 Paise per *Bigha*, being $\frac{3}{4}$ th of the value of the land. This decision of the Assistant Collector was affirmed on appeal by the Collector and a revision before the Commissioner also failed. On a further revision by the landowners—private respondents, the learned Financial Commissioner observed thus:—

"The accepted method for the assessment of market price is to take into account sales of similar land in the locality for the last 10 years. According to section 18(2), the value of the land shall be the average of the prices obtaining for similar land in the locality during the 10 years immediately preceding the date on which the application is made. The word 'similar' has no reference to the future use of the land. It means the same kind of land, and the same kind of land may be put to different uses in the future. The use to which an owner puts the land will depend on various conditions and circumstances, but unless the owner happens to be imprudent or a philanthropist, he may be expected to choose the use which will bring him the maximum benefit. With the establishment of a Mandi next door to the lands in question, urban development will necessarily follow and there will be a keen demand for plots by people who want to settle in the locality. This fact must be taken into account while assessing the market value of the land and the obvious manner in which this can be achieved is to take note of the prices fetched for the plots sold by Government. I am, therefore, constrained to accept both petitions and to remand the cases to the Assistant Collector for a fresh determination of the value of the land in the light of the above observations."

On the basis of the above-mentioned finding, the revision was allowed and the case was remanded to the Assistant Collector for a fresh determination of the value of the land. It is in these circumstances that these petitions have been filed by the tenants calling in question the legality and propriety of the order of the Financial Commissioner, dated 4th May, 1965, (Copy Annexure 'D' to the petition).

(3) Mr. Gupta, learned counsel for the petitioner, contended that while determining the value of the land the average of the prices obtaining for similar land in the locality was to be taken into consideration. According to the learned counsel, the word 'land' indicated the various kinds of land, for example, Nehri, Chahi, Barani, etc., and that it connoted only agricultural land. According to the learned counsel, the average price of land which was agricultural in nature, and was somewhat like the land to be purchased, could be taken into consideration for determining the value. It was also contended by the learned counsel that the learned Financial Commissioner erred in law in observing that while assessing the value of the land, the value of the plots sold by the Government was also to be taken into consideration. On the other hand, Mr. Mittal, learned counsel for the private respondents, contended that value of any land situated in the locality could be taken into consideration while determining the value under sub-section (2) of section 18 of the Act irrespective of the quality or kind of the land. In support of his contention, the learned counsel placed reliance on a single Bench decision of this Court in *Ram Ditta v. Financial Commissioner and others* (1).

(4) After giving my thoughtful consideration to the entire matter, I am of the view that there is considerable force in the contention raised by the learned counsel for the petitioner. Under sub-section (2) of section 18, the Assistant Collector, before determining the value of the land, is required to find out the average of the prices obtaining for similar land in the locality during the ten years immediately preceding the date on which the application is made. The important words which would help in finding out the correct answer are 'similar land'. The definition of the word 'land' as given in the Act, reads as under:—

“ 'land' and all other terms used, but not defined in this Act, shall have the same meaning as are assigned to them in the Punjab Tenancy Act, 1887 (XVI of 1887)”.

(1) 1964 P.L.J. 196.

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From this definition it is clear that the definition of 'land' as given in the Punjab Tenancy Act of 1887, has been adopted. 'Land' in that Act has been defined thus:—

“'Land' means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land”.

The word 'similar' has not been defined in the Act. However, its meaning as given in the Oxford English Dictionary, Volume IX, of the definition, reads as under:—

“Having a marked resemblance or likeness of a like nature or kind.”

In Words and Phrases, Volume 39, this word has been defined as under:—

“'Similar' means nearly corresponding; resembling in many respects; somewhat like; having a general likeness. *Royer v. Brown*, (2). The word 'similar' in its primary sense means nearly corresponding, resembling in many respects, somewhat like, having a general likeness. *Rubenstein v. Firemen's Fund Ins. Co.* (3).

The term 'similar' does not mean 'identical' as respects degree of similarity that must exist between property sold and that condemned to make evidence of the sale admissible but means having a resemblance and property may be similar though each possesses various points of difference. *City of Chicago v. Vaccarro* (4).”

As earlier observed, the average of the prices has to be of land and that too which is similar. From the above reproduced definitions of the word 'similar' it is clear that the land has to be somewhat like or resembling in many respects. In the instant case, according to the decision of the learned Financial Commissioner, the price of the plots sold by the Government after acquiring the agricultural land, has also to be taken into consideration, though in the earlier part of

(2) N. H. 93 A. 2d 667, 668.

(3) N. E. 2d 289, 291, 339 III App. 404.

(4) 97 N.E. 2d. 766, 773, 408 III. 587.

the judgment it is observed by him that the word 'similar' has no reference to the future use of the land and correctly so. That being the position, I fail to see how in the concluding part of his judgment he gave the following direction:—

“With the establishment of a Mandi next door to the lands in question, urban development will necessarily follow and there will be a keen demand for plots by people who want to settle in the locality. This fact must be taken into account while assessing the market value of the land and the obvious manner in which this can be achieved is to take note of the prices fetched for the plots sold by Government.”

This direction is in direct contradiction with the legally right observation in the earlier part of the judgment that the word 'similar' has no reference to the future use of the land. When the word 'similar' has no reference to the future use of the land, then the value of the plots sold by the Government could not legally be taken into consideration because the plots sold apparently do not fall in the definition of land, nor can they be termed similar to the land in dispute. By converting the user, the nature of the land has changed and it ceases to have any resemblance or likeness with the land sought to be purchased. If the value of the plots sold by the Government is taken into consideration while determining the price of the land, then that would mean taking into consideration of the price of such plots as have no resemblance with the land sought to be purchased. I do not agree with Mr. Mittal, learned counsel for the private respondents that it is only the vicinity of the land which has to be taken into consideration. Vicinity or in other words locality is a factor to be taken into consideration; but the average price has to be determined taking into consideration the price of the land which is similar in that vicinity. The decision in *Ram Ditta's* case (1) on which reliance was placed by Mr. Mittal, learned counsel for the private respondents, is distinguishable as it proceeded on its peculiar facts and the learned Judge after accepting the finding of the Commissioner and the Collector that the land in dispute was similar to the land on the basis of which the value was determined, refused to interfere in exercise of his power under Article 226 of the Constitution. In this view of the matter, I hold that while determining the value under sub-section (2) of section 18, the average price to be taken into consideration has to be of the land as defined

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in the Act and that the land has to be somewhat like or resembling in many respects with the land sought to be purchased.

(5) No other point was urged.

(6) For the reasons recorded above, I allow these petitions and quash the impugned order of the learned Financial Commissioner dated 4th May, 1965 (copy Annexure 'D' to the petition). In the circumstances of the case I make no order as to costs.

B. S. G.

APPELLATE CIVIL

Before S. S. Sandhawalia and M. R. Sharma, JJ.

MAJOR GIAN SINGH,—Appellant.

versus.

SHRI S. P. BATRA,—Respondent.

Regular First Appeal No. 46 of 1970.

May 26, 1972.

Law of Torts—Damages for malicious prosecution—Suit for—Defendant setting the machinery of police in motion for prosecuting the plaintiff, resulting in his acquittal—Whether not a prosecutor and not liable for damages for malicious prosecution—Acquittal of a person—Whether necessarily leads to the conclusion that the prosecution was without reasonable or probable cause—Facts of a criminal complaint constituting civil action—Whether leads to the inference of malice on the part of the prosecutor.

Held, that a defendant in a suit for damages for malicious prosecution can escape liability only if he places true and correct information before the Police or a Magistrate having jurisdiction to take cognizance of the offence charged against the plaintiff. Where a defendant conceals the material facts or distorts them to an unreasonable extent, he cannot be allowed to urge that he was not the prosecutor. If the other conditions of his liability for damages are satisfied, then he cannot escape the consequences of his action because the agency of the Magistrate or the Police also happened to intervene. (Paras 13 and 14)

Held, that in a suit for malicious prosecution, the burden of proving that the proceedings were initiated without any reasonable and probable cause lies on the plaintiff who seeks damages. It