

PETITIONER:
JOGINDER SINGH SAINI ETC. ETC.

Vs.

RESPONDENT:
STATE OF HARYANA & ANR.

DATE OF JUDGMENT 16/02/1990

BENCH:
RAY, B.C. (J)
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RAY, B.C. (J)
RAMASWAMY, K.

CITATION:
1990 AIR 1219 1990 SCR (1) 417
1990 SCC (3) 276 JT 1990 (1) 232
1990 SCALE (1) 204

ACT:

Land 'Acquisition Act, 1894: S. 23--Nursery plants existing on land at time of acquisition--Whether entitled to compensation--Valuation of mother trees as wood--Validity of.

HEADNOTE:

The appellants' land was acquired under the Land Acquisition Act on March 24, 1971 for planned development as residential area. They were then running a plant nursery on the said land. A large number of potted plants, mother plants and trees also existed there. They demanded compensation for the land at the rate of Rs.35 per sq. yd. They also claimed compensation for nursery plants, potted plants mother plants and trees.

The Land Acquisition Collector awarded compensation in respect of the land at the rate of Rs.900 per Biswa. He held that the mother plants and trees were irremovable and as such assessed the value thereof at Rs.2,41,576. He also awarded charges for the shifting of potted plants. In respect of the nursery plants he took the view that the appellants were not entitled to any compensation as these could be removed from the land and sold.

The District Judge enhanced the rate of compensation for the acquired land at the rate of Rs. 10 per sq. yd. and also doubled the compensation for trees and mother plants.

The High Court considering the potentiality of the acquired land fixed its value at the rate of Rs. 16 per sq. yd. It took the view that the court below was in error in doubling the value of the trees as no case was made out in the evidence recorded and therefore set aside the enhancement.

In these appeals by special leave it was contended for the appellants that the nursery plants if taken out of the land would die after two-three days and the appellants had got no other land where they could plant them and keep them alive. It was further contended that the compensation with regard to mother trees had been awarded with-

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out reference to their market price and that the High Court had arbitrarily rejected the enhancement in the said compen-

sation granted by the District Court.

Dismissing the appeals, the Court,

HELD: 1. The finding of the Land Acquisition Collector that the nursery plants could be taken out of the land and sold to the customers like potted plants and as such no compensation could be awarded was quite in accordance with law. Sufficient time had been granted by the State by permitting the appellants to remove these plants from the acquired land. Their claim was, therefore, rightly rejected by the High Court. [422G-H, D-E]

2. The land acquired though agricultural land was taken. for assessment of its market value @ Rs. 16 per sq. yd. not as agricultural land but as land with high potentialities i.e. as urban land. The appellants did not at all dispute this value. On the other hand they withdrew the entire compensation award for the value of these lands. In these circumstances, it could not be said that the value of mother trees has been wrongly assessed as wood. The appellants were, therefore, not entitled to enhancement in the value of trees. [422F-G]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1274 to 1278 of 1984.

From the Judgment and Order dated 27.5.81 of the Punjab and Haryana High Court in R.F.A. Nos. 688 to 692 of 1979. Rajinder Sachar and K.C. Dua for the Appellants.

S.P. Goel, Rana Ranjit Singh and Mahabir Singh for the Respondents.

The Judgment of the Court was delivered by

RAY, J. These appeals on special leave are directed against the judgment and order dated May 27, 1981 passed in R.F.A. Nos. 688 to 592 of 1979 and 1112 of 1979 by the High Court of Punjab and Haryana at Chandigarh. The short question raised in these appeals is whether the appellants are entitled to any compensation for nursery plants existing on the land at the time of acquisition as well as at the time of notification published under Section 4 of the Land Acquisition Act, 1894.

Secondly, whether the valuation made in respect of the mother plants is low and the same needs to be increased in accordance with the report of the Horticulture Expert. The facts of these appeals in short, are as follows.

A notification under section 4 of the Land Acquisition Act, 1894 was published on March 24, 1971 for acquisition of the lands in question in village Faridabad, Haddu No. 123, Tehsil Ballabgarh, District Gurgaon for a public purpose viz. for planned development of residential sector No. 19 by the Haryana Government. Thereafter, a declaration under Section 6 of the said Act was published vide Notification No. LAC-71/NTLA/376 dated January 18, 1972 in Haryana Government Extraordinary Gazette. The Government declared that the Government was satisfied that the said land was needed at public expenses for a public purpose namely for the planned development in the area of this village Faridabad. Thereafter a notice under Section 9 and 10 was issued calling upon the owners and other interested persons to file their claims in respect of the interest in the land and also other particulars as regards their claims for compensation for such interest. The owners of the land and other interested persons filed their claims demanding compensation for the land @ Rs.35 per sq. yd. and also claimed compensation

for the nursery plants and potted plants in the land acquired. The Land Acquisition Collector awarded compensation in respect of the land acquired @ Rs.900 per Biswa. The Land Acquisition Collector held that the mother plants and trees were irremovable and as such he assessed the value thereof at Rs.2,41,576. He also awarded the shifting charges for the shifting of potted plants amounting to Rs. 1,773.20 paise together with compulsory charges @ 15% of the amount awarded. This award was made by the Land Acquisition Collector on February 22, 1975. The possession of the acquired land was taken by the Government. The Land Acquisition Collector also granted six months' time or any such further period as extended by the Government to enable the appellants to remove the nursery plants as well as the potted plants from the acquired land. The Collector further stated in the award that the nursery plants can be removed from the land and the same be sold by the owners to the customers. So no compensation was awarded in respect of these plants as well as in respect of the potted plants.

The appellants filed five claim petitions being Petition Nos. 191/85 to 195/85 of 1973/78 in the Court of the Additional District Judge, Gurgaon. The 2nd Additional District Judge, Gurgaon after hearing

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the parties and also considering the evidences enhanced the rate of compensation of the acquired land (C) Rs. 10 per sq. yd. It has also been held that the appellants will be entitled to double the compensation for trees and plants as given by the Land Acquisition Collector. He also ordered that the appellants shall be entitled to solatium at the rate of 15% on the enhanced amount of compensation on these two items. In all other respects the impugned order made by the Land Acquisition Collector was upheld. He further ordered that the appellants will be entitled to recover interest @ 6% from the date of compensation to the date of realization of the enhanced amount to be paid to them and the appellants shall also be entitled to recover the proportionate costs of the petitions from the Government.

The appellants filed R.F.A. Nos. 688 to 692 of 1979 in the High Court of Punjab and Haryana. The High Court fixed the value of the acquired land considering the potentiality of the land @ Rs. 16 per sq. yd. The total area of the land acquired in these appeals being 11.38 acres, at the rate of Rs. 16 per sq. yd. the value of the land acquired comes to Rs.8.8 lakhs. The Land Acquisition Collector awarded a sum of Rs.2,41,576 for the trees, which value had been doubled by the Court below. The High Court held that no case was made out for doubling the value of the trees in the evidence recorded before remand. It has been further observed by the High Court that the appellants' own case was that most of their income was from potted plants, flowers and nursery plants, the potted plants gave the maximum income, as was shown by the vouchers produced by the appellants on record. The potted plants had been taken away by the appellants after acquisition. Similar was the position of nursery plants. The High Court, therefore, held that the value awarded by the Land Acquisition Collector would be for the trees and since no justification was made, the Court below was in error in doubling the value of the trees. The High Court, therefore, valued the acquired land at the enhanced rate of Rs. 16 per sq. yd., for the trees the compensation awarded by the Land Acquisition Collector was directed to be paid to the appellants and the enhancement awarded in respect of trees by the Court below was set aside. It was further ordered that the appellants would be entitled to

solatium at the rate of 15 per cent and interest at the rate of 6% per annum from the date of taking of possession till payment thereof. The appeals were thus disposed of.

Against this judgment and decree passed in R.F.A. Nos. 688 to 692 of 1979, the appellants filed five Special Leave Petitions before this Court. On February 27, 1984 this Court granted Special Leave

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confined only to the compensation for mother plants and nursery plants.

Mr. Rajinder Sachar, learned counsel appearing on behalf of the appellants has made two-fold submissions before this Court. His first submission is that the Land Acquisition Collector as well as the Courts below were wrong in not granting any compensation for the nursery plants. Nursery plants were grown in the nursery on the acquired land for the purpose of rearing them for a certain period and thereafter selling those plants to the customers on taking out the same from the nursery. There has been an inspection and a list was prepared of the various varieties of fruits and flower plants existing on the acquired land at the time of acquisition. He further submitted that the value of these various plants has been assessed by Shri Som Dutta Diwan, Deputy Director, Horticulture/Vegetable, Haryana, Chandigarh, who was requested to assess the value of all sorts of trees. Copies of the assessment made by him had been filed before the Land Acquisition Collector and it will be evident from the said assessment lists that each variety of trees has been assessed separately with reference to the total number of those trees. It has been submitted by Mr. Sachar in this connection that these nursery plants if taken out of the land will die after two-three days. The appellants have got no other land where they could plant these plants and keep them alive. It has, therefore, been submitted by him that the High Court was wrong in refusing to assess the value of the nursery plants and to award compensation in respect of the same. Mr. Sachar next submitted that the compensation awarded with regard to the mother trees by the Land Acquisition Collector has been made arbitrarily without reference to the market price of these trees. It has been further submitted by referring to the judgment and order of the 2nd Additional District Judge, Gurgaon that the 2nd Additional District Judge held that the appellants were entitled to double the compensation under the head 'value of trees and plants' as assessed by the Land Acquisition Collector. The High Court arbitrarily and wrongly rejected this on the mere ground that there was no justification for doubling the compensation as awarded by the Land Acquisition Collector in respect of the mother trees and plants. It has, therefore, been submitted by Mr. Sachar that the amount of compensation awarded by the Land Acquisition Collector in respect of the mother trees should be doubled and the compensation for the nursery plants should also be assessed on the basis of the value of the plants as assessed by the Deputy Director of Horticulture.

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Mr. S.P. Goel appearing for the respondent State has submitted that the land acquired was not treated as an agriculture land in assessing the market value of the same. It has been taken as urban land and considering its potentialities, the High Court assessed the value of the land @ Rs. 16 per sq. yd. In such circumstances, the value of the land being assessed on considering its potentiality, the question of valuation of the mother trees as well as of the nursery plants does not at all arise. The valuation of the mother

trees can at best be assessed at the value assessed by the Land Acquisition Collector. There is, therefore, no ground for interference with the amount of compensation awarded by the Land Acquisition Collector and upheld by the High Court. It has been next submitted by the learned counsel for the State that the nursery plants are planted and grown for the purpose of selling the same to the customers after taking them out from the land. These nursery plants are never planted for the purpose of growing them into big trees or mother plants. The High Court has rightly held that like the potted plants these nursery plants can easily be removed from the nursery as the purpose of growing these plants is to sell the same to the customers. These plants can be removed and sufficient time had been granted by the State by permitting the appellants to remove these plants from the acquired land. It has, therefore, been submitted that the High Court has rightly rejected the claim of the appellants for compensation in respect of the nursery plants.

We have considered in depth the arguments advanced by the learned counsel for both the parties and we have also considered very carefully the weighty reasonings given by the High Court as well as by the Land Acquisition Collector. It is obvious that the land acquired though agriculture land was taken for assessment of its market value not as agriculture land but as land with high potentialities i.e. as urban land and, therefore, the market value of these lands has been fixed after considering its potential value @ Rs. 16 per sq. yd. The appellants did not at all dispute this value and on the other hand they withdrew the entire compensation award for the value of these lands. In these circumstances, we find that there is much substance in the submissions made on behalf of the State that the mother trees should be valued as wood and the value has been rightly assessed as such by the Land Acquisition Collector in his award and the same has been upheld by the High Court. Moreover, the findings of the Collector that the nursery plants can be taken out of the land and sold to the customers like potted plants and as such no compensation can be awarded is in our considered opinion quite in accordance with law. In these cir-

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cumstances, we do not find any infirmity or arbitrariness in the findings arrived at by the High Court and as such there is no merit in the contentions made on behalf of the appellants in these appeals. We, therefore, uphold the findings of the High Court and dismiss the appeals without any costs.

P.S.S
missed.

Appeals dis-

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