IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

RFA 4195 of 2002

Date of Decision: May 27, 2015

Baljinder Singh and others

…..Appellants

Vs.

State of Haryana and anr.

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

-.-

Present:- Mr.Harkesh Manuja, Advocate
for the appellants.

Mr. Rohit Arya, AAG, Haryana.

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M.M.S. BEDI, J.

The present first appeal has been preferred against the award passed by the Addl. District Judge, Panipat vide judgment dated August 31, 2002 determining the amount of compensation payable for the land of the appellants and other similarly circumstanced land owners which was acquired vide notification dated March 2, 1993 under Section 4 of the Land Acquisition Act, 1894, for short 'the Act'.

The State, vide said notification acquired the land in the revenue estates of Villages Taraf Afgan, Malik Ugra Kheri and Ugra Kheri

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for public purpose i.e. for development and utilization of land as residential, industrial and commercial area for Sector 24, Panipat.

After considering the objections in accordance with law, the State Government vide subsequent notification under Section 6 of the Act dated March 1, 1994 declared that the land was needed for the aforesaid purpose. The Land Acquisition Collector awarded compensation for the land acquired at different rates for Chahi, Barani and Gair Mumkin in different villages as follows:-

S.No.	Name of Village	Kind of Land	Rate (per acre)
1.	Taraf Afgan	Chahi	Rs.6,00,000/-
2.	Malik Ugra Kheri	Chahi	Rs.4,00,000/-
		Barani	Rs.3,50,000/-
		Gair Mumkin	Rs.2,75,000/-
3.	Ugra Kheri	Chahi	Rs.4,00,000/-
		Barani	Rs.3,50,000/-
		Gair Mumkin	Rs.2,75,000/-

The appellants alongwith other land owners , dissatisfied with the award filed objections which were finally decided by the Additional District Judge, Panipat, vide judgment dated August 31, 2002 under Section 18 of the Act. The reference was accepted and compensation of the acquired land was assessed at the rate of Rs.178.40/- per sq.yard. In addition to the said amount the appellants-land owners were also held entitled to Rs.5.50 lacs on account of the cost of the plants and trees. The appellants were also given benefit of solatium at the rate of 30% alongwith other statutory benefits under Sections 23 (1-A) 23 (2) and 28 of the Act.

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This appeal alongwith other appeals of owners came up for consideration before a Coordinate Bench of this Court. Rajesh Bindal, J. vide order dated February 3, 2010 assessed the market value at the rate of Rs.206 per sq. yards regarding entire land with all statutory benefits thereon. The appeal of the appellants was also disposed of in the light of the judgment in RFA No. 4778 of 2001, Daljeet Singh Vs. State of Haryana and others, decided on February 3, 2010.

The appellants filed a review application claiming that on account of bonafide mistake at the time of disposal of bunch of case on February 3, 2010, the claim of the appellants for the compensation on account of trees standing on the land acquired could not be effectively persuaded though the enhancement of the compensation regarding trees had been claimed on the basis of the evaluation report Ex.P1. The said review application was allowed vide order dated July 4, 2014 and the order dated February 3, 2010 was recalled by restoring the appeal at its original number. The application for condonation of delay of 685 days was also allowed.

I have heard learned counsel for the appellants and counsel for the respondent and carefully gone through the record. I am of the opinion that for the purpose of determination of market value of the land acquired, the case of the appellants is covered by the assessment of the market value of the land made in RFA No. 4778 of 2001- Daljeet Singh Vs. State of Haryana and another, decided on February 3, 2010. The market value of the

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acquired land has to be determined at the rate of Rs.206 per sq. yards with all statutory benefits thereon.

So far as the claim of the appellants for the enhancement of compensation for fruit bearing trees existing on the land is concerned, the appellants have relied upon report Ex.P1 prepared by Kartar Singh Gill, Deputy Director, Horticulture, Retd., Haryana, as an expert. He had evaluated the fruit trees for the purpose of compensation as per basic principles and methods laid down by Dr. B.K. Wadhwa in the Government publication of State of Haryana, copy of which has been placed on the record as Ex.P-2. Kartar Singh Gill has determined the value of the trees standing on the land for 365 trees of Peach, 6 trees of Guava, 5 trees of Pear and one Jamun. The evaluation report reads as follows:-

> "CALCULATION OF BASIC VALUE OF ORCHARD OF SHRI BAJINDER SINGH, RAMESHWAR SINGH AND RAM PHAL SINGH, VILLAGE UGRA KHERI (PANIPAT).

(a)	**Non-Recurring:-**	**This involves expenditure on :-**
(i)	Preparation of site	Rs.5/-
(ii)	Layout	Rs.2/-
(iii)	Digging and filling of pits	Rs.12/-
(iv)	Use of Manure/Pesticides in pits.	Rs.11/-
(v)	Cost of plants, planting including transportation etc.	Rs.20/-
	TOTAL:	Rs.50/-

On an average the expenses will be Rs.50/-

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(b)	Non-Recurring Cost:	
(i)	Weeding and Hoeing	Rs.15/-
(ii)	Irrigation	Rs.12/-
(iii)	Manures & Fertilizers including transportation	Rs.12/-
(iv)	Plant Protection	Rs.5/-
(v)	Basin Making	Rs.4/-
(vi)	Supervision etc.	Rs.2/-
	TOTAL:	Rs.50/-

These expenses will increase every year with increase in size of tree.

On an average expenses will be Rs.50/-.

Basic Value	Non-recurring Expenditure.	+Age of the fruit tree	X Expenditure per year.
	Rs.50/-	+ 4 years	X Rs.50= Rs.250/-
Peach	Rs.250x365	=91,250/-	
Gauva	Rs.250x6	= 1,500/-	
Pear	Rs.250x5	= 1,250/-	
Jamun	Rs.250x1	- 250/-	
	TOTAL	Rs.94,250/-	

The basic value will increase with the increase in age.

Evaluation of fruit bearing trees as per the formula prepared by Shri Harbans Singh, Ex-Commissioner, Horticulture, Government of India laid down by certain principles and method of khasra no.

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Sr . o.	**Name of the fruit bearing plants**	**No. of plants**	**Age of fruit plant in years.**	**Average bearing life**	**Balance bearing life**	**Approx. Average Yield**	**Latest rate of fruit per kg.**	**Total income from fruit plants.**
	(A)	**(B)**	**(C)**	**(D)**	**(E)**	**(F)**	**(G)**	**(B x E x F x G)**
1.	**Peach**	**365**	**10**	**15**	**5**	**150**	**Rs.9/-**	**24,63,750/-**
2.	**Gauva**	**6**	**10**	**30**	**20**	**150**	**Rs.5/-**	**90,000/-**
3.	**Pear**	**5**	**14**	**45**	**31**	**75**	**Rs.3/-**	**58,000/-**
4.	**Jamun**	**1**	**16**	**60**	**44**	**200**	**Rs.10/-**	**88,000/-**
							TOTAL:	**26,99,750/-**

According to the formula laid down by Shri Harbans Singh, 25% of the evaluation cost of the fruit bearing trees is to be given to the owner. Because the amount is given in lumpsum, the future expenditure is stopped, interest on this amount accrues, all these factors contribute to reduce the amount 1/4th.

The 25% cost comes to as under:-

26,99,750/- x ¼ = 6,74,940/-

This garden is near the Road and good market, therefore, according to the formula 5% premium on the total cost is given to the owner.

5% premium on the total cost = 26,99,750 x 5/100 = 1,34,988/-.

FUEL VALUE AFTER BEARING AGE

Name of fruit tree	No. of plaints	Approx. weight of fuel per tree	Total weight	Rate quintal (Rs.)	Total income (Rs.)
Peach	365	1	365	100/-	36,500/-

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Gauva	6	1	6	100/-	600/-
Pear	5	1	5	100/-	500/-
Jamun	1	10	10	100/-	1,000/-
			TOTAL:		38,600/-

APPROXIMATE TOTAL COMPENSATION FOR OWNER OF THE GARDEN

1. Assessment & Evaluation of Fruit bearing trees: Rs.674940/-
2. 5% premium of fruit bearing trees due to nearness of the market. : Rs.134988/-
3. Fuel value of fruit plants after bearing age : Rs.38600/-

TOTAL : Rs.8,48,528/-

As per the formula the total comes as under:-

Basic Value of the tree	+ (No. of remaining bearing years	x Income per x ¼ year	+ Fuel Value
94250/-	+ 26,99,750 x	¼	+ Fuel Value
94250/-	+ 6,74,940	+ 38600/-	+ 134988 (5%)

Rs.9,42,778/-

(Rs.Nine Lacs forty two thousand seven hundred and seventy eight only)."

I have gone through the report in context to the basic principles in Ex.P2. The Land Acquisition Collector took into consideration the value of the trees and fruit trees and awarded only sum of Rs.5.50 lacs as compensation for plantation and fruit trees observing that Sh.Kartar Singh Gill being retired horticulture expert had given exaggerated report. The

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State counsel has not been able to satisfy this Court as to how the report Ex.P1 prepared by Kartar Singh Gill is not in consonance with the parameters laid down for evaluation of the fruit trees by the Government vide policy Ex.P2.

I have gone through the statement of PW1 Kartar Singh Gill and his cross-examination. His credibility could not be impeached. Statement of PW1 Kartar Singh Gill is corroborated by statement of PW2 Rampal Singh, appellant who has also established that the appellants have planted orchard and fruit bearing trees on the land which had been acquired. The State had produced Narota Ram, RW1, Junior Engineer, Horticulture, who in his cross-examination has specifically admitted that he has got more experience in the plants and not the fruits bearing trees. He admitted that he had no experience in garden.

In view of the above discussion, I am of the opinion that the report Ex.P1 assessing the value of the fruit bearing trees of Peach, Gauva, Pear and Jamun deserves to be believed being in consonance with the notification and guidelines of the State. The appellants are thus held entitled to the compensation for the fruit bearing trees on the acquired land to the extent of Rs.9,42,778/-. The valuation of the Reference Court determining the compensation for the fruit bearing plants assessed at the rate of Rs.5.50 lacs is enhanced to Rs.9,42,778/- in addition to the amount of compensation as determined in RFA No. 4778 of 2001, decided on February 3, 2010 i.e. Rs.206/- per sq. yards with all statutory benefits thereon.

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The appeal is allowed. The appellants are held entitled to –

i) compensation for the acquired land at the rate of Rs.206/- per sq. yards with all statutory benefits under Sections 23 (1-A), 23 (2) and Section 28 of the Act;

ii) In addition to the above said compensation, the appellants will be entitled to compensation of the value of the fruit bearing trees under Section 23 (1) secondly which is assessed as Rs.9,72,448/-.

May 27, 2015 (M.M.S.BEDI)
sanjay JUDGE

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