him, was based on wrong assumptions of fact and in that case he can decline the same and leave the matter to be decided by the Wealth-tax Officer himself.

18. For the reasons aforementioned, the questions of law referred to us for our opinion all the references are answered in the negative, i.e., in favour of the assessees and against the revenue. No costs.

Bhopinder Singh Dhillon, J.—I agree.

S. C. K.

Before G. C. Mital, J.

JOGINDER SINGH SAINI,—*Appellant.*

versus

STATE OF HARYANA and another,—*Respondents.*

Regular First Appeal No. 688 *of* 1979.

July 28, 1980.

Land Acquisition Act (1 *of* 1894)—*Section* 23—*Acquired land having orchards—Modes of calculating compensation—Stated—Nursery plants—Whether form part of the acquired land—Compensation for such plants—Whether payable.*

Held, that there are more than one ways of assessing the compensation for an orchard and the claimants would be entitled to ask for the highest compensation to be calculated in those ways. The claimants cannot ask for compensation for the land underneath the orchard plus compensation for the orchard to be calculated on the schedule or formula prepared by the Government for fruit bearing trees because if this is allowed then the claimants would be paid compensation for the land twice. However, the compensation to be calculated for an orchard on the basis of formula prepared by the Government or on the basis of annual value of the produce of the orchard would mean the total compensation for the orchard as a whole i.e. the fruit bearing trees and the land on which they are growing. For an orchard there can be the following ways for assessing the market value :—

1. To find out the value of the annual produce from the orchard and capitalise the same by 20 times. This would

give the total market price of the land under the fruit bearing trees as also the wood in the produce. However, over and above this capitalised value the claimants would not be entitled to market price of the land under the orchard nor for the wood in the trees as the capitalised value would include the price of all those; or

2. Market value of the land underneath the orchard plus the market value for the wood in the trees. (Paras 3 and 4).

Held, that the nurseries are set up to prepare sapplings and to sell them. From that point of view it cannot be said that the nurseries are immovable property. They would be treated as movable property as in the very nature of things they are planted for the purpose of transplantation and therefore they cannot be said to be forming part of the acquired land and the Land Acquisition Collector would be justified in allowing time to the claimants to remove the same. If the claimants themselves do not remove sapplings and allow them to go waste, they cannot make a grievance and ask for compensation for the same. (Para 9).

Regular First Appeal from the order of the Court of Shri I. M. Malik, Additional District Judge, Gurgaon, dated 30th December, 1978, awarding compensation for acquired land at the rate of Rs. 10 per sq. yard. They shall also be entitled to double the compensation for trees and plants as given by the L.A.C., further entitling the petitioner at the rate of 15 per cent on the enhanced amount of compensation on these two items, and also upholding other respects the impugned award made by the L.A.C., and further entitling the petitioners to recover interest at the rate 6 per cent from the date of compensation to the date of the realisation of the enhanced amount to be paid to them.

S. C. Kapoor, Advocate, *for the appellant.*

U. D. Gaur, A.G. (H) and Mr. V. K. Jain, Advocates, *for the Respondents.*

JUDGMENT

Gokal Chand Mital, J. (Oral).

(1) This order will dispose of five claimants' appeals R.F. As. 688 to 692 of 1979 and five cross appeals R.F.As. 1109 to 1113 of 1979, as they arise out of the same acquisition proceedings.

(2) By notification, dated 24th March, 1971 published on 30th March, 1971, the State of Haryana acquired 11.38 Acres of land in

the area of Faridabad for the planned development of Sector 19. The claimants had set up orchard on the acquired land and on open spaces the claimants were carrying on the business of nursery plantation. Before the Land Acuisition Collector the claimants asked for compensation for the land underneath the orchard and the nursery plants. By award, dated 22nd February, 1973 the Land Acquisition Collector allowed compensation for the land at the rate of Rs. 5.95 per square yard. For the orchard the claimants were allowed the following compensation as shown against their respective appeals:—

R.F.A. 688 of 1979	Rs. 44,122.00
R.F.A. 689 of 1979	Rs. 48,019.00
R.F.A. 690 of 1979	Rs. 25,137.00
R.F.A. 691 of 1979	Rs. 59,682.00
R.F.A. 692 of 1979	Rs. 51,141.00.

For nursery plantation nothing was allowed and the claimants were allowed three months time to remove the sapplings. Feeling dissatisfied with the aforesaid award the claimants sought references which came up for consideration before the Additional District Judge, Gurgaon, who on the contest of the parties framed several issues. After the evidence was led, the learned Additional District Judge, Gurgaon, by award, dated 30th December, 1978 allowed compensation for the Land at the rate of Rs. 10 per square yard and doubled the compensation for orchard. As regards the nursery plants, nothing was allowed on the reasoning that the claimants were unable to show that the Land Acquisition Collector could not give direction for removing the nursery plants. Feeling dissatisfied with the award of the Court below, the claimants as well as the State have come up in these appeals to this Court.

(3) Cases of acquisition of orchards have been coming before me for decision and in every case I have taken the view that there would be more than one way of assessing the compensation for an orchard and the claimants would be entitled to ask for the highest compensation to be calculated in these ways. I have also held that the claimants cannot ask for compensation for the land underneath the orchard plus compensation for the orchard to be calculated on the schedule or formula prepared by the Government for fruit bearing trees because

if this is allowed, then the claimants would be paid compensation for the land twice. However, I am of the firm view that the compensation to be calculated for orchard on the basis of formula prepared by the Government or on the basis of annual value of the produce of the orchard would mean the total compensation for the orchard as a whole, i.e., the fruit bearing trees and the land on which they are growing. Different counsels have been appearing and none was able to support that the claimants would be entitled to compensation for the land plus for the orchard either on the basis of the capitalised value of the annual income of the orchard or on the basis of the formula prepared by the State Government.

(4) To my mind for an orchard there can be the following ways for assessing the market value:—

1. To find out the value of the annual produce from the orchard and capitalise the same by 20 times. This would give the total market price of the land under the fruit bearing trees as also the wood in the trees. However, it is made clear that over and above this capitalised value the claimants would not be entitled to market price of the land under the orchard nor for the wood in the trees as the capitalised value would include the price of all these; or

2. Market value of the land underneath the orchard plus the market value for the wood in the trees.

For this view of mine I draw support from the possible methods in which the market value can be fixed for a residential or a commercial built property for which also there would be at least the following two methods:—

1. To find out the market value of the land underneath the construction and to add to it the cost of the super-structure.

2. If the property is let out to a tenant or can be shown to have annual income, then its capitalised value can be found out by multiplying the annual income by 20 years and the value so arrived at would be the market value of the entire property, i.e., for the land and the super-structure standing thereon.

(5) The learned counsel for the claimants were not able to suggest any other possible method of evaluating an orchard or a residential house or a commercial building.

(6) To further elaborate how market value should be assessed for an orchard, the three examples may further throw light in this behalf. Suppose three owners have adjoining plots of the same size and of equal value. One of them merely brings that land into cultivation or does not do anything in it because it is in the vicinity of an urban area and has the potential for being used for residential or commercial purposes. The other one merely plants non-fruit bearing trees on whole of the plot, for instance 'Eucalyptus'; and the third one plants fruit bearing trees on whole of the plot. If acquisition of all the three plots is made at a time when the Eucalyptus trees are fully grown and the fruit bearing trees are giving maximum produce, then the question arises how the market value of all the three plots is to be assessed. The first person who has not planted any trees would be entitled to the market price of the land whereas the second person who has grown Eucalyptus trees would be entitled to market price of the land, which the first claimant would also get, plus the value of the wood in the Eucalyptus trees. The third person who has grown an orchard has been getting the benefit of the produce therefrom till the date of acquisition and if he wants compensation for the same, then the only possible methods would be as shown by me above. If some customer purchases whole of the orchard as it is, then that would be the price for the fruit bearing trees as also the land underneath it. So the State should be considered as such a purchaser, for then the question of evaluating the value would still remain.

(7) To my mind there are two methods out of which the claimant can be allowed to choose the higher of the two values. A purchaser of an orchard would also judge the value of the same on the basis of its annual produce and that is why it would be on the basis of the capitalised value. If that does not suit the claimant then the other reasonable method would be to allow him the price of the land underneath the orchard plus the wood in the trees. Naturally he would like to have the higher value. While the claimant who has only Eucalyptus trees will have one method of evaluating the market value, the owner of the orchard would be entitled to claim market

value on either of the two methods. As already stated, besides the above, no other method has been suggested by either of the sides and whenever an additional method is suggested, that would also be taken into consideration to find out its feasibility. Since the case was not fought in the court below on the lines as suggested above, it is not possible to fix the market value of the acquired property in these appeals and it will be in the interest of justice that after framing the points, a report is called for from the Court below.

(8) Under one of the methods the claimants would be entitled to the price of land and this aspect of the matter deserves to be decided now. The counsel for the parties are agreed that this matter stands already decided by a Division Bench of this Court in (*Radhey Shyam* v. *State of Haryana* (1) wherein compensation for the same acquisition, as in the present appeals, was allowed at the rate of Rs. 16 per square yard and the same deserves to be fixed in this case. I have gone through the *Radhey Shyam's case* (supra) and find that that decision is on all fours with the present case. Accordingly, I fix the market value of the acquired land at the rate of Rs. 16 per square yard. Over and above this amount the claimants would be entitled to the price of the wood in the trees, which matter has yet to be decided. In this regard report would be called for from the Court below. The total of the two values will show the net market value under one method. Under the second method it has to be found out as to what was the annual income of the orchard in each case. This matter is also not decided and the matter would be sent back to the Court below for report. After the report is received the annual income would be then capitalised into twenty years income, which would represent the market value of the orchard and nothing would be payable to the claimants above this value, neither for the land under the orchard nor the amounts which have been awarded by the Court below or the Collector for the orchard, as 20 times value would represent the total value of the orchard. After the market value under the two methods becomes available, whichever is higher would be payable to the claimant as the market value and if it is found that that value is less than the amount already paid or payable under the award of the Additional District Judge read with the award of the Land Acquisition Collector, then to that extent the State appeals would stand allowed and the compensation proportionately reduced. But in case it is found that the amount already paid or payable is less

(1) R.F.A. 1750/77, decided on 2nd May, 1979.

than the market value payable to each one of the claimants on the report received, then for the difference the appeals of the claimants would stand allowed with proportionate costs. Of course on the enchanced amount the claimants would be entitled to 15 per cent solatium and 6 per cent interest per annum from the date of taking possession till payment.

(9) This now leads me to the question of fixation of compensation for nursery plants. As already noticed, the Land Acquisition Collector did not allow compensation for nursery plants on the ground that the claimants had been allowed three months time to remove the sapplings. Even the Court below did not grant any compensation for the same, on the ground that the claimants were not able to show that the Land Acquisition Collector could not give a direction for removal of the nursery plants. The learned counsel for the claimants has strenuously urged that the Court below was wrong in not granting compensation for the nursery plants because they also form part of the acquired land. The nurseries are set up to prepare sapplings and to sell them. From that point of view it cannot be said that the nursery plants were immovable property. I am of the opinion that they would be treated as movable property as in the very nature of things they were planted for the purpose of transplanation and therefore, the Land Acquisition Collector was justified in allowing time to the claimants to remove the same. The award was, dated 22nd February, 1973, which provided three months time to remove the sapplings. But it has come in evidence that although the possession of the property was taken by the State, yet the claimants were allowed further time in June, 1975 to remove the sapplings. This clearly shows that the claimants had more than two years time to remove the sapplings and they never took up the stand during that period that they could not be either asked to remove the sapplings or it was not possible for them to remove the same. Therefore, if the claimants themselves allow the sapplings to go waste, they cannot make a grievance and ask for the compensation for the same. For the aforesaid reasons I uphold the award of the Court below in not allowing compensation for the nursery plants.

(10) In order to decide the case finally, I call for a report from the Court below on the following points:—

1. Find out the market value of the wood in the treess, pertaining to each set of claimants separately.

2. Find out the annual income from the orchard in respect of each set of claimants.

3. Find out whether whole of the acquired land was under the orchard and for purpose subservient to orchard. If not, how much land of each claimant was outside the orchard ?

The cases are remanded to the Additional District Judge, Gurgaon, under order 41, rule 25, Civil Procedure Code, who shall permit the parties to lead evidence on the aforesaid three points and hear arguments thereon and send a report to this Court along with the evidence already recorded and to be recorded, within a period of four months after the appearance of the parties before the Court below. The parties through their counsel are directed to appear before the Court below on 25th August, 1980.

(11) Put up for hearing after the report is received.

S. C. K.

Before S. S. Sidhu, J.

BHAGAT RAM,—*Petitioner.*

versus

GRAM PANCHAYAT and another,—*Respondents.*

Criminal Misc. No. 1598 *of* 1980.

August 1, 1980.

Punjab Gram Panchayat Act (IV of 1953)—Sections 21, 23-*A*, 51 *and* 66—*Code of Criminal Procedure (II of* 1974)—*Sections* 397, 399 *and* 401—*Gram Panchayat imposing fine under sections* 21 *and* 23—*Aggrieved party filing revision under section* 51—*Sub-Divisional Magistrate holding such revision maintainable—Order of the Sub-Divisional Magistrate challenged before the Sessions Judge under sections* 397 *and* 399 *read with section* 401 *of the Code—Sessions Judge—Whether competent to take cognizance of the dispute under the Act.*

Held, that the Sessions Judge is not a competent authority to take cognizance of or to entertain any matter arising under the Punjab Gram Panchayat Act, 1952. The Act is a special law and a complete code by itself. All the authorities which are competent to take