one year prescirbed by section 20. This meaningful issue having been decided in favour of the petitioners, the case would now go back to the Division Bench for adjudication on merits.

Prem Chand Jain, J.—I agree.

S. C. Mittal, J.—I agree.

N. K. S.

Before S. S. Sandhawalia, C.J. & I. S. Tiwana, J.

RANJIT SINGH,—*Appellant*

versus

THE UNION TERRITORY OF CHANDIGARH,—*Respondent.*

Regular First Appeal No. 284 of 1980.

February 7, 1983

Land Acquisition Act (I of 1894)—Sections 4 and 23—Orchard land compulsorily acquired—Determination of the quantum of compensation—Market value—Methods to be adopted for ascertaining such value.

Held, that without being exhaustive, some of the methods of valuation to be adopted in ascertaining the market value of the land on the date of the notification under section 4 of the Land Acquisition Act, 1894 are (i) Opinion of experts; (ii) the price paid within a reasonable time in *bona fide* transaction of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (iii) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. These methods, however, do not preclude the Court from taking any other special circumstance into consideration, the requirement being always to arrive at as near as possible an estimate of the market value. In arriving at a reasonably correct market value, it may be necessary to take even two or all of those methods into account in as much as the exact valuation is not always possible as no two lands may be similar either in respect of their situation or the extent of potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined. In the normal course, the sale deeds of lands situated in the vicinity of the acquired land having comparable benefits and advantages, furnish a rough and ready method of computing the market value, but even in those cases potential value thereof has also

to be taken into account. It is a matter of common knowledge that potentiality of the land varies to a very great extent on account of its location It is also likely to vary even if the two pieces of the land—one lying on the outskirts of a city and the other at a distant place and far away from habitation or a growing town—are under similar or same type of fruit trees. Thus to work out the market value of the orchard lands on the basis of the annual value or according to the formula known as capitalisation, is most likely to work to the prejudice of the claimant whose land under the fruit trees has enormous potentiality to be utilised as residential or commercial area. In such a case the value of the fruit trees or the orchard has to be assessed independently of the value of the land or in other words the potentiality of the land to be utilised for residential or commercial purposes. It would be fair to the claimant to assess the market value of his fruit trees and then to add that to the market value of the land as such keeping in view its potentiality. In view of this conclusion it cannot be said that once the claimant has been awarded compensation for his land—in case of acquisition of orchard land—then for the orchard he has only to be paid the timber value of the same or that in the case of orchard lands to the claimants either on the basis of the annual income of the fruit bearing trees by multiplying the same by 15 to 20 years' or by determining value of the land plus the value of timber and the trees growing on that land. There is no justification for treating the fruit trees as timber and to evaluate these on that basis. It is a matter of common knowledge that fruit trees yield comparatively a small quantity of fuel and only a few fruit trees will have any timber value.

1. Nanak Singh and another *vs.* The Union Territory of Chandigarh R.F.A. No. 1375 of 1977, decided on October 15, 1979.

2. Gurcharan Singh and another *vs.* The State of Haryana R.F.A. No. 1137 of 1979 decided on May 21, 1981.

Case referred by Hon'ble Mr. Justice I. S. Tiwana to the larger Bench on 29th October, 1980. The larger Bench consisting of Hon'ble The Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice I. S. Tiwana, while disposing of the appeals, remanded them to the respective Land Acquisition Courts, for redetermining the market price of the trees of the claimants in accordance with law and in the light of the observations made in the case.

Regular First Appeal from the order of the Court of Shri S. S. Kalha, District Judge, Chandigarh, dated 12th March, 1970, dismissing the application made by the applicant for the enhancement of compensation and leaving the parties to bear their own costs.

M. L. Sarin, Advocate and A. S. Chahal, Advocate and P. S. Arora, Advocate, *for the Appellant.*

R. K. Chhibbar, Advocate, *for the Respondent.*

JUDGMENT

I. S. Tiwana, J. (Oral):

(1) In these R.F.As. Nos. 280 and 284 of 1980; 962, 1112 to 1115 and 1397 of 1981; and L.P.As. Nos. 85, 86, 865, 941 and 990 of 1980, the principal question that arises for consideration relates to the market value of claimants' orhcard land acquired under the provisions of the Land Acquisition Act, 1894 (for short, the Act). Answer to this question incidentally also involves the consideration of the correctness of two Single Bench judgements of this Court in (*Nanak Singh and another* v. *The Union Territory of Chandigarh*) (1), and (*Gurcharan Singh and another* v. *The State of Haryana*) (2), wherein a view has been expressed that the fruit trees growing in such land have only to be evaluated as timber. In the first of these two judgments, the learned Single Judge has followed the ratio of his judgment in (*Matu* v. *State of Haryana*), (3), which is now the subject-matter of the above noted L.P.A. No. 865. Ratio of *Nanak Singh's case* (supra) has been followed in *Gurcharan Singh's* case (supra). The learned counsel for the parties are agreed that to resolve the controversy noted above, only records of R.F.A. No. 284 of 1980 need be referred to.

(2) In pursuance of a notification published under section 4 of the Act, certain land of the appellant situated in village Buterla, Hadbast No. 200, was acquired by the Chandigarh Administration for the development of Sector 41 of the City of Chandigarh. For compensating the claimant, the Land Acquisition Collector split us the acquired property in two parts, namely, (i) land as such and (ii) the trees or the fruit bearing trees. *Vide* his award No. 233/LAO, dated April 7, 1975, be determined the market value of the land, that is, the land without trees. The claimant has admittedly been paid that compensation and the matter is no more in dispute before us. The present controversy only relates to the payment of the market price of the trees, that is, the orchard or fruit bearing trees which has been determined by the Collector,—*vide* his award No. 240/LAO, dated December 19, 1975. The reason for not giving

(1) R.F.A. 1375 of 1977 decided on 15th October, 1979.
(2) R.F.A. 1137 of 1979, decided on 21st May, 1981.
(3) R.F.A. 658 of 1978.

one award for the acquired land is mentioned by the Collector in the latter award in the following words:—

> "These trees could not be acquired earlier along with the land because the assessment of the value of the trees had not been received from expert Executive Engineer, Horticulture Division. The fruit value of the trees has been forwarded by the Executive Engineer, Horticulture Division, Chandigarh,—*vide* memo No. 1458, dated March 25, 1975; Memo No. 6400, dated August 29, 1975 and D.O. No. 1044, dated November 4, 1975. The timber value of the trees has been assessed by the expert Divisional Forest Officer, Chandigarh and has been forwarded,—*vide* his memo No. 1465, dated March 24, 1975."

At a later stage he mentioned that the assessment made by the two experts was based upon an accepted expert formula, particulars of which, of course, are not mentioned.

(3) As the claimant did not accept the compensation awarded for the orchard as fair and just, he sought a reference under section 18 of the Act. The Land Acquisition Court, Chandigarh, however, declined to enhance the compensation as according to it the claimant had failed to prove the inadequacy of the compensation granted. This is what led to the filing of this regular first appeal.

(4) Though the conferment of power of compulsory acquisition of immovable property through legislation never presented any difficulty, yet the question of determination of the market value of the acquired property appears to have been a matter of controversy right from the inception of the Act. This aspect is well reflected by paragraph 14 of the report, dated March 23, 1893 of the Select Committee which scrutinised the draft bill, which reads as under:—

> "The section as drafted in the Bill contained a definition of 'market value' to which exception has been widely taken as inapplicable to any part of the country and when applicable, open to much objection. We agree with the Lieutenant Governor of the Punjab and the High Court of Bengal that no attempt should be made to define strictly the term of the Act, and that the price which a willing vendor may be expected to obtain in the market from a willing purchaser should be left for the decision primarily of the Collector and ultimately of the Court."

The Committee further opined that no definition could lay down for universal guidance in the widely divergent conditions of India any further rule by which that price should be ascertained.

(5) Section 23 of the Act undisputably governs the determination of compensation payable on the basis of the market value of the land but as already indicated the statute does not define 'market value'. The matter, however, has not been left to the vagaries of mere opinion and absolute discretion of the Tribunals or Courts and has rather been settled by the final Court in *Prithvi Raj Taneja* v. *State of Madhya Pradesh* (4), where the expression 'market value' has been explained in the following words:—

> "The market value means the price that a willing purchaser would pay to a willing seller for the property, having due regard to its existing condition with all its existing advantages and its potential possibilities when laid down in the most advantageous manner excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired. In considering market-value the disinclination of the vendor to part with his land and the urgent necessity of the purchaser to buy should be disregarded. There is an element of guess work inherent in most cases involving determination of the market value of the acquired land. But this in the very nature of things cannot be helped. The essential thing is to keep in view the relevant factor prescribed by the Act."

In the light of this meaning of the expression 'market value' and the definition of land as provided for in section 3(a) of the Act and also the scheme of the Act, it is not difficult to perceive that the Act envisages one award for one acquisition. We, therefore, see no justification on the part of the Collector to pass two separate awards for (i) land and (ii) fruit trees or trees. This aspect of the matter has again been considered and pronounced upon by their Lordships of the Supreme Court in *The State of Kerala* v. *P. P. Hassan Koya* (5), wherein it has been observed as follows :—

> "When land—which expression includes by S. 3(a) of the Act benefits to arise out of land and things attached to the

(4) (1977) 1 S.C.C. 684.
(5) AIR 1968 S.C. 1201.

earth or fastened to anything attached to the earth—is notified for acquisition, it is notified as a single unit whatever may be the interest which the owners thereof may have therein. The purpose of acquisition is to acquire all interests which clog the right of the Government to full ownership of the land, i.e., when land is notified for acquisition, the Government expresses its desire to acquire all outstanding interests collectively. That is clear from the scheme of the land Acquisition Act.

* * *

In determining compensation payable in respect of land with buildings, compensation cannot be determined by assessing the value of the land and the 'break-up value' of the buildings separately. The land and the buildings constitute one unit and the value of the entire unit must be determined with all its advantage and its potentialities."

At the same time we are of the considered view that the practice or the course adopted by the Collector in determining the market value of the land as such, i.e., without trees and fruit trees, separately, cannot work or operate to the detriment of the claimant. Payment of compensation in matters of compulsory acquisition not being a matter of charity, cannot possibly be left to the sweet will of the Collector to split up the determination of the compensation in the manner he has done and thereby to reduce the orchard or the fruit trees acquired to 'timber' only, as has been done in the judgments noted in the opening part of this judgment. As already indicated, even the Land Acquisition Collector has not,—*vide* his impugned award, determined the value of the fruit trees as timber only. Rather he has depended on the valuation of the fruit trees as assessed by the experts, i.e., the Executive Engineer, Horticulture Division, Chandigarh and the Divisional Forest Officer, Chandigarh. He has noticed and accepted a clear distinction in the valuation of a fruit tree and timber.

(6) In *Chaturbhuj Pande and others* v. *Collector, Raigarh*, (6), wherein the Collector and the Land Acquisition Court too had evaluated the land and the orchard or the fruit bearing trees through two different awards, the Supreme Court, while dealing with the award relating to the market value of trees or the

(6) AIR 1969 S.C. 255.

orchard, observed that though the trees that were standing on the land were a component part of the land acquired, the value of the trees was ascertained only for the purpose of fixing the market value of the land. In that case though the land acquired was an orchard land and the Collector as well as the Land Acquisition Court had passed two separate awards for the trees and the rest, yet their Lordships did not observe anywhere that in that situation the trees had to be evaluated as timber only. Another significant observation made by their Lordships in the judgment is that the value of the trees growing in the acquired land on the date of the notification under section 4 of the Act has not to be assessed under clause (2) of section 23 (1) of the Act and rather has to be determined under clause (1) of that sub-section.

(7) Mr. Chhibbar, Mr. Harbhagwan Singh, A.G., Haryana and Mr. K. P. S. Sandhu, Additional Advocate General, Punjab, appearing for the respondent acquiring authorities, strenously assert that if in the matter of acquisition of orchard or grove lands, the trees and the land have to be treated as one single unit and cannot be split up for purposes of determining compensation, then essentially the only method for such determination is to fix annual value of the produce from such orchard and then to multiply the same with the number of years for which the said orchard can reasonably be anticipated to render income to the owner. According to the learned counsel, any other method of evaluating the acquired land is likely to result in payment of double compensation to the claimant, that is, for the land and the trees which essentially form part of the land. For this submission of theirs, the learned counsel squarely rely upon the ratio of the above judgment of the learned Single Judge in *Nanak's Singh's case* (supra) and the following observations made by the Supreme Court in *Niranjan Singh and another* v. *State of U.P. and others* (7), in the context of acquisition of forest land. In that case too compensation has been allowed to the claimants for the land and the forest trees separately:—

> "It is unnecessary in view of this factual position to consider the legal submission of the appellant's counsel that the land and the trees should have been valued separately by reason of the provisions of the Land Acquisition Act cited by him. Were it necessary to consider this contention we would have preferred to hold that since the

(7) AIR 1979 S.C. 1547.

land was acquired as a forest, it would have to be valued as a forest and that value would depend upon the kind of trees and the number of trees standing in the forest on the date of acquisition. If the value of trees is taken into consideration while valuing the forest, the trees cannot be valued once again for arriving at the total compensation payable to the owners of the forest."

In fact on these very observations the learned Single Judge in his above noted three judgments relating to the acquisition of orchard lands has primarily based his conclusion. A close reading of the above noted judgment of the Supreme Court and even the observations quoted above, clearly indicates that it was on the given facts and circumstances of that case that their Lordships held that land and forest trees could not be evaluated separately. The following facts noticed by their Lordships in paragraphs 3 and 4 of the report furnish the clear background for the above noted observations:—

"3. In the first place, the forest land which has been acquired was mostly situated in ravines caused by the erosive action of the rivers Kuari, Chambal and Jamuna. With a view to preventing erosion of the land, the Government of Uttar Pradesh embarked upon a scheme of afforestation of the land in pursuance of which agreements were entered into between the appellant and the Government in 1918 and 1923. By these agreements, the Government became entitled to manage the forests as 'reserved forests'. These agreements were terminated subsequently and on October 27, 1934, a fresh agreement was arrived at between the appellants and the Secretary of State for India. That agreement was to remain in force for a period of 10 years and it was immediately on the expiry of that agreement that the land was acquired under the notification, dated October 28, 1944. Under the agreement of 1934, an annual sum of Rs. 899 only was payable by the Government to the appellants. The Government had to incur the entire expenditure, for protecting, preserving and managing the forest but it was entitled to collect and credit to itself the entire income accruing from the forest. The only right reserved to

the appellants, apart from the annual payment of Rs. 899 was the right of shooting for himself, his family and friends, to take the grass growing on the land and to graze his cattle on the land.

(4) The evidence in the case, particularyl that furnished by the various agreements between the parties, shows that the trees which stood on the land were planted by the Government itself in pursuance of its scheme of afforestation of the lands and that the entire income of the trees was appropriated by the Government. There is no evidence to show that any trees were planted by the appellants and indeed there is hardly any reliable evidence to show that the appellants were receiving any particular income by selling the wood or timber of the felled trees. In fact, there is not even credible evidence to show that the appellants were receiving any regular income by letting out the land or any part of it for grazing purposes. Even assuming, therefore, for the sake of argument, that the appellants would be entitled not only to the value of the land but to the value of the trees standing thereon also, the High Court was justified in deleting from the award the compensation granted by the District Court for value of the trees.

(8) On the other hand, the method of evaluating the acquired land on the basis of the annual value of the produce thereof or in accordance with the formula generally known as ' capitalisation' has precisely been disapproved by their Lordships of the Supreme Court in cases of acquisition of grove lands in *Raghubans Narain Singh* v. *The Uttar Pradesh Government.* (8), for at least two reasons :—

(i) That the owner may not have so far put his property to its best use or in the most lucrative manner; and

(ii) in a case like the present one, grove may not have yet started giving maximum yield.

It was further observed that such a method of valuation by ascertaining the annual value of the produce can and should be resorted to only when no other alternative method is available. As already

(8) AIR 1967 S.C. 465.

pointed out in *Chaturbhuj Pande's case* (supra), the Supreme Court accepted the separate valuation of the fruit trees to determine the compensation payable for the acquired land. In the light of the weighty observations in these two judgments we have no hesitation in rejecting the above noted submission of the learned counsel for the respondent authorities that in these cases the only reasonable method for determining the amount of compensation is on the basis of the annual crop value or as is commonly known, the method of capitalisation.

(9) Without being exhaustive and as has been pointed out by the Supreme Court in *Smt. Tribeni Devi and others* v. *The Collector, Ranchi* (9), some of the methods of valuation to be adopted in ascertaing the market value of the land on the date of the notification under section 4 of the Act are :—

(i) Opinion of experts.

(ii) The price paid within a reasonable time in bona fide transaction of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and

(iii) a number of year's purchase of the actual or immediately prospective profits of the lands acquired.

These methods, however, do not preclude the Court from taking any special circumstance into consideration, the requirement being always to arrive at as near as possible an estimate of the market value. In arriving at a reasonably correct market value, it may be necessary to take even two or all of those methods into account in as much as the exact valuation is not always possible as no two lands may be similar either in respect of their situation or the extent of potentiality nor is it possible in all cases to have reliable material from which that valuation can be accurately determined. In the normal course, the sale deeds of lands situated in the vicinity of the acquired land having comparable benefits and advantages, furnish a rough and ready method of computing the market value, but even in those cases potential value thereof has also to be taken into account. It is a matter of common knowledge that potentiality of

(9) AIR 1972 S.C. 1417.

the land varies to a very great extent on account of its location. It is also likely to vary even if the two pieces of the land one lying on the outskirts of the city of Chandigarh as in the case in hand and the other at a distant place and far away from habitation or a growing town-are under similar or same type of fruit trees. Thus to work out the market value of the orchard lands on the basis of the annual value or according to the formula known as capitalisation, is most likely to work to the prejudice of the claimant whose land under the fruit trees has enormous potentiality to be utilised as residential or commercial area. In such a case the value of the fruit trees or the orchard has to be assessed independently of the value of the land or in other words the potentiality of the land to be utilised for residential or commerical purposes. It appears it is in the light of this principle that even the Land Acquisition Collector in the case in hand chose to evaluate the land and the fruit trees separately, though to our mind he wrongly gave two separate awards for the same acquisition. It would have been fair to the appellant to assess the market value of his fruit trees and then to add that to the market value of the land as such keeping in view its potentiality. In view of this conclusion of ours, we find it difficult to reconcile with the ratio of the above noted judgements referred to in the opening part of this judgements that once the claimant has been awarded compensation for his land-in case of acquisition of orchard land-then for the orchard he has only to be paid the timber value of the same or so for as these lay down that in the case of orchard lands the compensation can be paid to the claimants either on the basis of the annual income of the fruit bearing trees by multiplying the same by 15 to 20 years or by determining value of the land plus the value of timber and the trees growing on that land. We see no justification for treating the fruit trees as timber and to evaluate these on that basis. It is a matter of common knowledge that fruit trees yield comparatively a small quantity of fuel and only a few fruit trees will have any timber value. Thus we respectfully find it difficult to reconcile with the view expresed by the learned Single Judge in *Nanak Singh's* and *Gurcharan Singh's* cases (supra) and overrule the same.

(10) Luckily the learned counsel for the claimants have referred to us a publication (Ehibit P. 4 in R. F. A. No. 280 of 1980) dealing with the 'Basic Principles and Methods' of evaluation of fruit trees. published by S. Harbans Singh, formerly Director of Horticulture,

Himachal Pradesh, and now holding the high office of Chief Agriculture Expert and Agricultural Production Commissioner in the Ministry of Agriculture, Government of India. As per this publication, published in the year 1966, after realising that in matters of awarding compensation for acquired lands, the evaluation of trees was being done without any scientific basis, it was felt necessary to lay down a scientific formula to make the determination of value of orchards or fruit bearing trees as fool proof and perfect as possible so that it could be understood and applied with ease by the acquiring authorities. According to this publication the evaluation of a fruit tree depends upon many factors like the expenditure incurred by the grower till it comes into bearing, the capacity of the tree to earn profits for the owner during the remaining years of its life and the amount which the wood is likely to fetch at the time of assessment. For the purposes of evaluation, the fruit tree is generally divided into two stages-firstly, the pre-bearing of sapling stage and secondly, the bearing stage. Under the conditions prevalent at the time of the publication of this formula, non-recurring expenditure upto the plantation or sapling stage was determined at Rs. 5 per plant,keeping in view the expenditure on preparation of site, layout, digging and filling of pits with manure, cost of plant, including transport and planting, etc. Similarly, after noticing the cost of maintenance and expenditure on hoeing, irrigation manures and fertilizers, protection operations, supervision etc. it was determined that the average expnditure will be about Rs. 5 per plant, per year till it starts bearing under normal conditions. The valuation in the pre-bearing stage is, therefore, to be determined by the non-recurring expenditure (Rs. 5) plus the recurring expenditure at the rate of Rs. 5 per year of age. Thus the market value of a four years' old non-bearing tree comes to Rs. 25 (Rs. 5 as non-recurring expenditure plus Rs. 20 i. e. expenditure for four years at the rate of Rs. 5 per year, as recurring expenditure). This has been termed as 'Basic Valuation' in this formula. Once the fruit tree has reached the bearing age, then many factors need to be considered while determining its market value. These include kind and variety of fruit, conditions of management, growth and productivity of the trees, age of the trees, etc. Average income over a number of years from a good commercial variety planted under favourable conditions of growth and productivity and under good management conditions has been given in column No. 7 of the Appendix to this publication. After noticing and taking into consideration all factors effecting the income of trees-per tree per year-it has been tabulated in the following manner. We feel it is not necessary to reproduce

the entire table here and have thus confined its reproduction to the trees which normally grow in this part of the country:—

S. No.	Kind of fruit	Prebearing or sapling stage or basic value		Bearing Stage		
		Non-recurring (in rupees)	Recurring per year age	Age at which the tree comes into bearing	Averge berring life in years	Yearly income from a Class I tree (in rupees).
1	2	3	4	5	6	7
1.	Mango grafted	5·00	5·00	5th	50	60·00
2.	Litchi					
3.	Jack fruit	5 00	5·00	8th	50	40·00
4.	Mango seedlings	5·00	5·00	8th	60	40·00
5.	Jaman	5·00	5·00	8th	60	25·00
6.	Loquat	5·00	5·00	6th		
7.	Chiku				40	40·00
8.	Grape	5·00	5·00	3rd	30	10·00
9.	Guava	5·00	5·00	4th	30	25·00
10.	Malta					
11.	Sangtra	5·00	5·00	5th	25	60·00
12.	Grape fruit					
13.	Fig superior	5·00	5·00	5th	20	35·00
14.	Lemon	5·00	5·00	4th	20	40·00
15.	Kagzi lime	5·00	5·00	5th	30	50·00
16.	Galgal	5·00	5·00	4th	25	35·00
17.	Ber	5·00	5·00	5th	45	25·00
18.	Falsa	5·00	—	2nd	10	5·00
19.	Banana	2·00	5·00	2nd	1	10·00
20.	Papaya	5·00	5·00	5th	45	60·00

It deserves to be noticed here that this formula had duly been approved by the Directors of Agriculture, Punjab and Himachal

Pradesh for assessment of the market value of fruit trees. We thus have no hesitation in relying upon the above noted formula published by S. Harbans Singh for determining the market value of the fruit trees of the claimant.

(11) Another matter which is manifestly clear from this publication is that while evaluating the fruit trees, the price or the cost of land underneath has not been taken into consideration. This is obviously for the reason that the price of the land underneath an orchard or plantation of trees is bound to vary from place to place on account of various factors, including the location of the land. It is, therefore, not true that while working out the market value of the orchard or grove land either the price of the land as such (without the fruit trees) and timber value of the trees has to be taken into account or the same has to be determined on the basis of the formula known as 'Capitalisation'. It is further clear from this publication that value of fuel or timber is only one of the consideration in determining the market vaule of the orchard or fruit bearing trees. In all probability, it was in the light of some such formula that the Land Acquisition Collector has tried to work out the evaluation of the acquired trees but he has neither made the details of that formula clear anywhere nor have the experts referred to in his award disclosed in their report as to on what basis they had determined the market value of the trees.

(12) The learned counsel for the claimants, however, pointed out that this formula was published in the year 1966 and was based on the market conditions prevalent then and, therefore the claimants are entitled to claim a substantial increase in the price of the fruit trees to be assessed on the basis of this formula. They point out that since the publication of this formula in the year 1966, the wholesale price index of that year (144.3) had risen to 309.1 in the year 1975 as per the bullatins published by the Economic Adviser, Ministry of Industry and Civil Supplies, Government of India, New Delhi. It deserves to be mentioned here that in this case the notification under section 4 of the Act was published on December 28, 1974. Thus according to the learned counsel, the appellant is entitled if not to 114.2 per cent of increase over the price of fruit trees worked out on the basis of this formula, then at least to 100 per cent of the price of the fruit trees workable on the basis of the said formula. The learned counsel for the acquiring authorities are neither in a position to challenge the correctness of the wholesale price index as publishd by the Government of India nor do

they dispute that since the year 1966 the price of land as also of the fruit trees has seen a tremendous increase. They, however, maintain that it is difficult to determine that increase with any precision. That is true yet in these matters in the very nature of things the market value of the acquired property cannot be determined with any exactitude and has essentially to be fixed on the basis of some reasonable method. In the light of that we are of the considered opinion that the claimant at least is entitled to an increase of 100 instead of 114.2 per cent over the price of fruit trees workable on the basis of the above noted formula published by S. Harbans Singh. We are unable to accept the argument of the learned counsel for the respondent that it was primarily for the claimant to prove the inadequacy of the compensation awarded to him and the Government or the acquiring authorities had no duty in the matter and they could wait the proof of claim in complacency like a defendant, and without assisting the Court by all the materials at their command. The mere dismissal of the claim of the appellant as unsubstantiated by evidence would certainly not imply that the Court has no duty to fix the quantum of compensation payable under the Act independently and upon materials available and by all means in its power.

(13) In the light of the above we allow these appeals and while setting aside the judgments under appeal, send the cases back to the respective Land Acquisition Courts to redetermine the market price of the trees of the claimants in accordance with law and the observations made above. It is made clear that since we feel that there has been no proper or regular trial in as much as the parties to this litigation were not aware of the principles noticed above for the determination of the market value of the trees, they would be permitted to lead further evidence if they so choose. The appellants are also held entitled to the costs of these appeals throughout.

S. S. Sandhawalia, C.J.—I agree. ...

N. K. S.

Before R. N. Mittal, J.

GURDEV RAM,—*Petitioner.*

versus

Food Corporation of India and others,—*Respondents.*

Civil Revision No. 1875 *of* 1981.

February 8, 1983.

Arbitration Act (*X of* 1940)—*Section* 20—*Limitation Act* (*XXXVI of* 1963)—*Article* 137—*Agreement containing an arbitration clause—Application made under section* 20—*seeking reference of the disputes to an arbitrator—Limitation for such an application—Whether governed by Article*