

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CWP No. 16737 of 2023 (O&M)

Reserved On: 31.10.2023

Pronounced On: 20.12.2023

Om Parkash and others

..... Petitioners

Versus

The State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Govind Chauhan, Advocate
for the petitioners.

Mr. Arun Beniwal, Senior Deputy Advocate General, Haryana
for respondent Nos. 1 & 2.

Mr. Siddhanth Arora, Advocate for
Mr. Ankur Mittal, Advocate
for respondent Nos. 3 & 4.

HARKESH MANUJA, J.

By way of present writ petition, challenge has been laid to an order dated 27.04.2023 (Annexure P-13) passed by respondent No. 2 (The Land Acquisition Collector, Rohtak) vide which the claim of annuity made by the petitioners, in pursuance of Annuity Policy Notification dated 09.11.2010 (Annexure P-9), has been rejected; and further prayer is for issuing writ in the nature of *mandamus* for directing respondent No. 2 to grant Annuity benefits in their favour as per the Annuity scheme alongwith all consequential benefits.

[2] Brief facts of the present case are that respondent No. 1 vide Notification dated 14.07.2011 issued under Section 4 of the Land

Acquisition Act, 1894 (**hereinafter to be referred as “1894 Act”**) sought to acquire the land measuring 21.73 acers of Village Garhi Bohar in District Rohtak and in the above notification, land measuring 93 kanal 14 marla of the petitioners was also made part. Petitioners filed their objection dated 27.07.2011 under Section 5 of the 1894 Act before the Land Acquisition Collector (for short “LAC”), for releasing of their land from the acquisition proceedings. Thereafter, notification under Section 6 of the 1894 Act was also issued on 28.03.2020.

[2.1] The petitioners being aggrieved on account of their land being acquired approached this Court by filing Civil Writ Petition No. 7295 of 2013 for release of their land. Vide order dated 07.10.2013 (Annexure P-5), this Court directed respondents to consider the desirability to release the land which was not to be utilized. This writ petition was finally decided by this Court vide order dated 19.03.2015 (Annexure P-6), and ultimately, the land measuring 35 Kanals 12 Marlas belonging to the petitioners, from the total acquired land, was released by the respondents, however, the remaining land measuring 58 kanal 02 marlas still remained under acquisition. During pendency of the above said writ petition, the respondents passed an award dated 18.06.2013 (Annexure P-7) in pursuance of the above acquisition.

[2.2] After decision of the aforesaid writ petition, vide representation dated 10.04.2015, petitioners approached LAC for grant of Annuity benefits as per the scheme of the Haryana Government which was issued vide notification dated 09.11.2010. Even after that, petitioners represented on numerous occasions in this regard, but no response was received by them from the respondent-Department.

[2.3] Subsequently, petitioners filed CWP No. 25942 of 2021 before this Court and during pendency of this writ petition, LAC decided the representations of the petitioners, vide order dated 27.04.2023 (P-13), rejecting their claim on the ground that the petitioners did not apply for annuity within six months from the date of passing of award. The above said writ petition was accordingly disposed off, with liberty to the petitioners to file a fresh petition to challenge the order dated 27.04.2023.

[3] It is the order dated 27.04.2023, which has been impugned by way of present writ petition, while seeking additional relief that respondent No.2 be directed to grant Annuity as per the Annuity Scheme along with all consequential benefits.

[4] Learned counsel for the petitioners submits that land of the petitioners was released by this Court vide order dated 19.03.2015, and petitioners within 30 days applied for annuity on 10.04.2015, which is not disputed even in the impugned order passed by respondent No. 2, but without considering the above mentioned facts, respondent No. 2 has outrightly rejected the claim of petitioners. He further submits that scheme introduced by respondent No. 1 being welfare state, after recognizing the fact that the acquisition of land under the statute and alienation of landowners from their source of livelihood could be a painful process, has to be given a liberal scope and petitioners cannot be deprived of their benefit on technical ground of delay, while in the facts of the present case, delay cannot be actually attributed to the petitioners.

[5] On the other hand, learned State Counsel as well as counsel for respondent Nos. 3 & 4 submit that Department of Revenue and Disaster

Management while issuing Notification dated 09.11.2010 regarding revised Rehabilitation and Resettlement Policy, stipulated that application under this scheme has to be made within 6 months and the relevant portion of the said policy of the Government is as follows:

“D: Rehabilitation and Resettlement Policy

4. Annuity Scheme Policy dated 09.11.2010

VIII.) "The Annuity in respect of land acquired during the preceding calendar year would become due for payment during the month of January of the following year. The landowner would be required to submit his Annuity claim in the prescribed form (application form-2), along with the supporting documents, within a period of six months of the Award. The acquiring departments shall be responsible for processing and compilation of the database of all such valid claimants within a period of further six months. The Annuity amount would be paid through Bank transfers".

[6] Relying upon the aforementioned condition, he submits that the petitioners applied for annuity amount after the expiry of period of six months from the date of passing of the award dated 18.06.2013 by the LAC. He further submits that since the petitioners did not submit their application form within six months of the announcement of the award, hence they are not entitled for annuity amount as per the notification dated 09.11.2010.

[7] I have heard learned counsel for the parties and gone through the paper book as well and I find substance in the submissions made by learned counsel for the petitioners.

[8] If we examine the Annuity policy in the facts of the present case, it can be seen that as per sub-clause (viii) of the policy, to avail the benefits, landowners are required to make application as per Application

Form 2.

[9] A perusal of the table in this application form reveals that landowner is expected to provide all the details of his acquired land in this application form along with Jamabandi / revenue records in support of the same, in addition to providing the account and nominee details. Information asked in the tabular format regarding the acquired land in this form is reproduced below:

Sr. No.	Name of Landowner / Applicant	Rectangle No.	Khasra No.	Share of the applicant	Area	
					Kanal	Marla

[10] From the sequence of events in the facts of the present case, it is apparent that till 19.03.2015, the extent of land acquired by the State under the ownership of the petitioners was uncertain, as writ petition bearing CWP No.7295 of 2013, filed by the petitioners, was pending before this Court. Specifically in view of the order dated 07.10.2013 passed by this Court, application for releasing the land was pending before the State / respondent No 1, and this fact gains further significance in view of the final outcome of the case, as per which a substantial portion of the acquired land was subsequently released. In these circumstance, it cannot be conceived as to how it was possible for the petitioners to fill this form and avail the benefits of this policy. After order dated 19.03.2015 passed by this Court, representation / application was filed by the petitioners before respondent No. 2 on 10.04.2015 itself, i.e. within a period of 20 days and so it cannot be held that petitioners approached the respondents belatedly or they were casual in their approach.

[11] Even further, as cases before this Court are being filed on daily basis on account of the rejection of the claims of the landowners under this scheme, on the ground of approaching the LAC after the period of 6 months, application of this Scheme and consequent rejection of the claims of the landowners requires detailed examination.

[12] This scheme was introduced in State of Haryana on account of the fact that the Government of Haryana recognized that acquisition of land under the statute and the alienation of landowners from their source of livelihood was a painful process, and therefore, with the intention to minimize this pain of the affected persons, among other policy initiatives, an annuity was also envisaged to be payable for a period of 33 years as a social security benefit for the landowners. To examine the object and purpose behind this Scheme, Preamble of the Notification dated 09.11.2010 is reproduced hereunder:-

“A. Preamble:

As a welfare state, the Government of Haryana recognises that acquisition of land under the statute and the alienation of landowners from their source of livelihood could be a painful process, notwithstanding the payment of compensation for the same as per law. Therefore, it intends to minimise this pain of the affected persons through a set of policy initiatives that include (a) payment of market value as compensation of land to the landowners with the revision and fine-tuning of minimum floor rates in respect of land situated in different parts of the state; (b) introduction of a special incentive for reducing litigation qua the compensation amount; (c) revision of the rates of Annuity payable for a period of 33 years as a social security benefit for the landowners; and (d) review and introduction of certain additional benefits over and above the one-time compensation paid in accordance with the law so as to provide

for alternate means of sustenance for the landowners and other landless persons/artisans who are dependent on the agricultural land being acquired for non-agricultural purposes.”

[13] An examination of sub-clauses (i) to (iii) of Annuity Scheme, as specified under Clause-4, reveals that there is no exclusion clause in this policy and all the landowners, whose land has been acquired by the State are eligible for the benefits under this policy. In clause (vii), it has been stipulated that landowner would be required to submit the Annuity claim in the prescribed form (application form-2), alongwith the supporting documents, within a period of six months of the Award, though no consequences have been provided, in case a landowner fails to submit his application within 6 months and thus, any such condition, at best, has to be considered and treated as directory in nature.

[14] Even in procedure specified under Clause-16 of the notification, regarding implementation of the scheme, in sub clause (iv), while specifying the implementation of the Annuity scheme, no such stipulation has been made. Sub-clause (iv) of Clause 16 is reproduced hereunder:-

“iv) As regarding the payment of Annuity/ payment of commuted value of the Annuity, the landowner would submit his claim application in the prescribed format (Application Form-2/3) to the designated officer of the Acquiring Department along with all the supporting documents/ verification, whereupon, the Acquiring Department would process the same within a period of next six months and ensure commencement of payment of the Annuity at the earliest;”

[15] This fact gains significance in view of comparative analysis of 'Annuity Scheme' with 'No Litigation Incentive', wherein it has been categorically specified that no such claim would be entertained after a period of 6 months of the announcement of the award, whereas no such consequence have been laid down for the "Annuity Scheme Benefits". Sub clause (i) of Clause 16, which is the procedure specific to 'no litigation incentive' is reproduced hereunder:

*"i) The landowners, opting to accept the amount of compensation and avail of the No Litigation Incentive', would normally be required to make an application to the LAC within a period of 30 days of the announcement of Award and furnish an undertaking to that effect in the prescribed format (Application Form-1). A claim for the 'No Litigation Incentive' could also be entertained if filed after 30 days provided the landowner has not filed a reference under Section 18 qua the compensation amount, or if filed, undertakes to withdraw the same before receipt of the incentive amount. **However, no such claim would be entertained after a period of six months of the announcement of the Award.** It may be noted that once the landowners agree to avail of the said incentive, they would not be entitled to seek a reference under Section 18 of the Act for enhanced compensation and to that extent the Award would be deemed to have announced under Section 11 (2) of the Act. No references under Section 18 of the Act qua the amount of compensation would be competent in these cases;"*

[16] This is also beyond comprehension of this Court that when there is no possible reason for a landowner to exclude itself from the purview of this scheme, there is no necessity for a separate procedure to be adopted for availing the benefits of the same and required formalities associated to

Annuity policy need to be fulfilled by the office of concerned LAC alongwith the main acquisition procedure itself, related to the disbursement of compensation to the landowners. Excluding the landowners from the benefits of this scheme on the ground of their application being beyond period of 6 months, would be equivalent to giving with one hand and taking away with the other.

[17] Recently, a Division Bench of Bombay High Court, vide order dated 30.10.2023, passed in Writ Petition No. 4022 of 2021, titled as **“Manik Chandru Deokar vs. State of Maharashtra & Ors”**, held that imposing of condition which would take away the benefits of such rehabilitation scheme, being arbitrary, unfair, unreasonable and contrary to the object would certainly not stand the test of reasonableness, when tested on the anvil of Article 14 of the Constitution. Relevant para of this judgment is reproduced below:

“ 10. The object and purpose in rehabilitating a person like the Petitioner by allotting him the alternate land in lieu of his land being acquired for a public project is purely on special and humanitarian considerations and not merely to compensate him as in a normal case of land acquisition. It is for such beneficial reason and only with such intention that the person who stands uprooted from his land is rehabilitated by allotment of land, is sought to be achieved. The object being to mitigate the extreme hardship which was faced by such persons whose lands have been taken away. This would certainly not contemplate imposing of a condition which would take away the benefits of such rehabilitation, and in fact would subject such person to a coercive taking away of the alternate land allotted to him. In short, such condition

imposed in allotment of land, to the project affected persons so as to expropriate the land allotted to a person, to rehabilitate him would certainly not stand the test of reasonableness, when tested on the anvil of Article 14 of the Constitution. This apart we wonder as to how it can be reasonable for any person as a mandate to construct a house within one year. This has to be subjective. It may not be possible for everyone to construct a house within one year. Further the State Respondent has not been able to show any policy or any provision under the Rehabilitation Act which empowers the State to impose such condition in the context of rehabilitation. Therefore, imposition of such condition in the allotment order issued by the Collector was without jurisdiction. Moreover, having any such condition and revoking the allotment on such condition would not only be draconian but also arbitrary, unfair, unreasonable and contrary to the object of the Resettlement Act. Thus, in our considered opinion, imposing a condition to foist on the Petitioner to undertake construction within one year of the allotment, would be on the face of it arbitrary and unreasonable condition. In any case, such a condition could not have been implemented after 40 years of allotment of the land and that too on a complaint of Respondent No.5, who in no manner was concerned with the allotment of the land to the Petitioner. Acting on such complaint itself, was a colourable exercise of power, discriminatory, unjust and arbitrary action on the part of the Respondent No.4. In fact by resorting to such action, the very object and purpose of resettlement/rehabilitation would stand defeated and destroyed in the facts of the present case.”

[18] Even procedure regarding implementation of the scheme has been specified in Clause 16 of the notification, as per which, State is obligated to widely publicize these schemes and additional duty has been

casted on LAC that landowners be informed about the policy. Clause-16 of the policy is reproduced below:

“16. Information to the Landowners and implementation of the Scheme

While a copy of this Policy would be available on the web-sites of the Departments of (1) Revenue & Disaster Management, (ii) Town & Country Planning Department, (iii) Industries & Commerce, (iv) HUDA, and (v) HSIIDC for the information of general public, the Land Acquisition Collector may, in addition, also inform the landowners about their entitlements under the R & R Policy along with the notices under Section 9 of the Act as per Appendix-3. However, non-communication of the same by the LAC would not in any manner vitiate any such proceedings by him.”

It is not the case of the State Counsel that landowners, despite of being informed about this policy as per Appendix-3, have not come forward. Rather, no material has been brought on record that notices as per Appendix-3 were even sent to the landowners informing them about their entitlements.

[19] Thus, in the absence of any consequences being provided, if the application with regard to grant of annuity benefits is filed beyond a period of six (06) months of the award; and specifically taking into consideration the fact that it is a beneficial policy implemented by the Government on account of being a welfare State, and the condition being merely related to a procedure, this condition cannot be considered as a mandatory condition. At best, if landowner applies for the benefits under this Scheme after a delay despite of being specifically informed in this regard, State could withhold

the amount of annuity schemes pertaining to specific years only and not for the entire duration of 33 years.

[20] In view of the discussion made above, present writ petition is **allowed** and petitioners are held entitled for the benefit of this Scheme for entire 33 years. It is further directed that petitioners would also be entitled for the interest @ 9% per annum for the delayed disbursement of Annuity amount in their favour from 10.04.2015 till amount is finally disbursed to them.

December 20, 2023
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>