

**249 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-34143-2019 (O&M)

Decided on:-11.08.2023

Jagdish Singh (since deceased) thr. his LRs and othersPetitioners..

vs.

State of Haryana and othersRespondents.

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Chanderhas Yadav, Advocate for the petitioners.

Mr. Rajbir Singh Malik, AAG, Haryana.

HARKESH MANUJA J. (Oral)

1. By way of present writ petition, prayer has been made for issuance of directions to the respondent authorities to release the amount of “No Litigation Incentive” in their favour, in terms of the policy dated 09.11.2010 issued by the State government, along with interest thereupon @ 15% per annum for the delayed payment.

2. Briefly stating, the land owned by the petitioners, situated in the revenue estate of Village Jakhoda, Tehsil Bahadurgarh, District Jhajjar, was acquired vide notifications dated 21.11.2011 and 06.02.2012, issued under Sections 4 and 6 respectively, of the Land Acquisition Act, 1894 (hereinafter to as “1894 Act”), for the purpose of widening and strengthening of National Highway-10. Award under Section 11 of the 1894 Act was announced on 27.07.2012 and the amount of compensation was disbursed in favour of petitioners immediately thereafter, though without payment of ‘No Litigation Incentive’ despite the petitioners having opted not to challenge

either the acquisition of land or even the determination of compensation in terms of “No Litigation Incentive” dated 09.11.2010 issued by respondents.

3. As the claim in the present petition pertains to the “No Litigation Incentive” policy introduced by the Government, at this stage, it would be relevant to have a brief look at the same; being cognizant of the fact that the acquisition of land and the alienation of landowners from their source of livelihood could be a painful process, therefore, with an intention to minimize the same, Haryana Government vide gazette notification dated 09.11.2010, introduced a set of policies, one of them being “No Litigation Incentive”. The purpose of “No Litigation Incentive” was to curtail litigation for such of the landowners who opt to accept the compensation award. Acknowledging the need for reducing litigation where reference u/s 18 of the 1894 Act was sought only for higher compensation, the Government decided to introduce an incentive for 'No Litigation' so as to move towards the domain of consent acquisition qua the 'compensation amount'.

4. In brief, while the government was obligated to provide some additional compensation to the land owners, in turn, land owners were obligated to forgo their statutory rights available under Section 18 of the Act. Exact terms of the policy are as below:

“Accordingly it has been decided to pay an additional amount equal to 20% of the basic rate of land determined by the Land Acquisition Collector (excluding the interest and the solatium components) as an incentive for No Litigation' to such of the landowners who opt (a) not to challenge the acquisition of their land, and (b) to accept the compensation amount as awarded and undertake not to seek a reference under Section 18 of the Act qua the amount of compensation. This incentive would still be

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available in cases where a reference is sought with respect to other issue i.e. (a) the measurement of land, (b) the persons to whom it is payable or (c) the appointment of the compensation among the persons interested.”

5. The procedure for availing the benefits of the scheme was specified as below:-

*“The landowner opting to avail of this incentive would have to submit an undertaking as per Application Form-1 to the effect that he accepts the compensation amount as Awarded and, that once he opts to avail of the incentive, he would not be entitled to seek a reference under Section 18 of the Act. **The Award would be deemed to have been made under Section 11(2) of the Act to that extent qua those who opt for this incentive.**”*

6. In pursuance to gazette notification dated 09.11.2010, enabling the landowners to apply for “no litigation incentive”, the petitioners instead of invoking Section 18 of the 1894 Act, applied under the aforesaid policy vide their representation dated 21.08.2012 (Annexure P-3), which was received in the office of Land Acquisition Collector, Bhiwani. Though, having applied for the aforesaid policy of “No Litigation Incentive”, the matter remained pending consideration with the respondents for long, faced with this, the petitioners even got served legal notice dated 25.02.2019 (Annexure P-6) through their counsel, trying to impress upon the respondents for release of their entitlement towards “No Litigation Incentive” along with the interest for the delayed period, however, to no effect except for shifting of onus.

7. Faced with the aforesaid, the petitioners approached this Court by way of present writ petition, praying for direction to the respondent authorities to release “No Litigation Incentive”, along with delayed interest

thereupon.

8. Learned counsel for the petitioners submits that once the petitioners opted for award of “No Litigation Incentive” in pursuance to the policy/notification dated 09.11.2010, the benefit under the same was required to be released in favour of the petitioners, immediately without causing any delay, in order to achieve the object & purpose set-up under the policy and in case, there was some delay, the respondents were supposed to pay interest thereupon.

9. On the other hand, learned counsel for the respondents submits that the benefit of “no litigation incentive” policy as regards 20% over and above the amount of award in favour of the petitioners-landowners was sanctioned by the respondents on 01.12.2020, however, thereafter despite having made repeated requests for release of the same in favour of the petitioners, they did not come forward to accept it under the garb of pendency of present writ petition and thus, there was no delay on the part of the respondents in release of the benefit.

10. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioners.

11. In the present case, award under Section 11 of the 1894 Act, was made on 27.07.2012. The main objective of the policy issued vide gazette notification dated 09.11.2010, was to avoid unnecessary litigation with the landowners by providing them incentive to the extent of 20% over and above the market value of the land assessed under the award.

Admittedly, having applied under the policy vide application dated

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21.08.2012, the petitioners foreclosed their statutory rights under Section 18 as well as Section 54 of the 1894 Act, still the respondents took more than 7½ years to decide their claim under the policy/notification dated 09.11.2010. When the landowners dutifully performed obligation casted upon them by either challenging the acquisition or even seeking enhancement of compensation assess under the award, there possibly cannot be any excuse for a welfare State to act in a manner which belies the underlying object of the policy, framed by the State itself.

12. A perusal of the additional affidavit dated 22.05.2023, shows that no explanation at all has been rendered by the respondents for this inordinate delay in deciding the claim of the petitioners as regards “No Litigation Incentive”, which was in fact required to be carried out immediately on the making of application in August 2012 itself. In a way, delay on the part of respondents in deciding the claim submitted by the landowners against the “No Litigation Incentive” defeats the very object of the policy framed by themselves and rather, acts as a compelling agent for the landowners to think about invoking their rights under Section 18/28-A of the 1894 Act instead of opting under the policy.

13. A perusal of affidavit dated 22.05.2023, further shows that having sanctioned the amount of compensation towards “no litigation incentive” on 01.12.2020 in favour of the landowners, the efforts to release the same commenced in February, 2021 and thus, in the facts and circumstances of the present case, the petitioners, who have been deprived of their legitimate dues for long and that too without there being any fault on their part are duly entitled for interest on their claim of “No Litigation

Incentive” regarding which they became entitled immediately on having made the application in August 2012 itself.

14. Further, as per clause 2(iv) of the policy, it has been specified that **"The Award would be deemed to have been made under Section 11(2) of the Act to that extent qua those who opt for this incentive."**, therefore, calculation of interest has to be governed by Section 34 of the 1894 Act, which regulates the release/disbursement of compensation assessed under the Award.

15. Thus, in view of the discussion made herein-above, the present petition is allowed and the respondents are directed to pay interest to the petitioners on the delayed release of “No Litigation Incentive” w.e.f. 21.08.2012 till 01.02.2021 in accordance with the provision of Section 34 of the 1894 Act. Considering the fact that the petitioners are waiting for their dues under the policy dated 09.11.2010, for the last almost 09 years, the respondent No.4 is directed to release the dues along with interest as directed herein-above, with in a period of two months from today.

16. Pending application(s), if any, shall stand(s) disposed of.

11.08.2023

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(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No