

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on :-27.02.2024
Date of Pronouncement:- 05.03.2024

1. CM-2674-CWP-2024 in/and
RA-CW-59-2024 in
CWP-9820-2023

Suresh ChanderPetitioner

vs.

State of Haryana and othersRespondents

2. CM-2702-CWP-2024 in/and
RA-CW-63-2024 in
CWP-9839-2023

Kuldeep SinghPetitioner

vs.

State of Haryana and othersRespondents

3. CM-2443-CWP-2024 in/and
RA-CW-52-2024 in
CWP-9846-2023

Jagbir Singh through LR.s. & ors.Petitioners

vs.

State of Haryana and othersRespondents

4. CM-2454-CWP-2024 in/and
RA-CW-53-2024 in
CWP-9840-2023

Dheeraj Malik and ors.Petitioners

vs.

State of Haryana and othersRespondents

5. CM-2704-CWP-2024 in/and
RA-CW-64-2024 in
CWP-9912-2023

Chandan Singh through His LR.s and ors.Petitioners

vs.

State of Haryana and othersRespondents

6.

CM-2651-CWP-2024 in/and
RA-CW-58-2024 in
CWP-9867-2023

Kanwal Singh through His LRs. and ors.

....Petitioners

vs.

State of Haryana and others

....Respondents

7.

CM-2436-CWP-2024 in/and
RA-CW-51-2024 in
CWP-9878-2023

Dalbir Singh and ors.

....Petitioners

vs.

State of Haryana and others

....Respondents

8.

CM-2700-CWP-2024 in/and
RA-CW-62-2024 in
CWP-9829-2023

Savitri Devi

....Petitioner

vs.

State of Haryana and others

....Respondents

9.

CM-2731-CWP-2024 in/and
RA-CW-65-2024 in
CWP-9844-2023

Jitender and ors.

....Petitioners

vs.

State of Haryana and others

....Respondents

10.

CM-2650-CWP-2024 in/and
RA-CW-57-2024 in
CWP-9830-2023

Khajani through LRs and ors.

....Petitioners

vs.

State of Haryana and others

....Respondents

11.

CM-2684-CWP-2024 in/and
RA-CW-61-2024 in
CWP-9884-2023

Ram Niwas through LRs. and ors.Petitioners

vs.

State of Haryana and othersRespondents

12. CM-2680-CWP-2024 in/and
RA-CW-60-2024 in
CWP-9821-2023

Om Parkash and ors.Petitioners

vs.

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Chetan Mittal Sr. Advocate with
Mr. R.S. Madan, Advocate,
Mr. Mayank Aggarwal, Advocate
and Mr. Mahender Joshi, Advocate
for applicant/respondent No 5/NHAI.

HARKESH MANUJA J.

CM-2674-CWP-2024 & 11 other applications

These are the applications seeking condonation of delay
in filing the abovementioned review applications.

For the reasons mentioned in the applications, which are
supported by an affidavit, sufficient cause has been shown for
condoning the delay on account of earlier filing LPA in the present
cases and then subsequently on account of winter vacations, thus,
the same are allowed and delay in filing the review applications is
hereby condoned.

MAIN CASE:

This order of mine shall dispose of abovementioned 12 review applications, as all have arisen out of the same impugned order. For convenience, facts are being taken from RA-CW-59-2024 in CWP-9820-2023.

2. By way of present review application(s) filed under Order 47 Rule 1 read with Section 151 of CPC, prayer has been made for review of the judgment dated 11.10.2023 in the light of order dated 20.12.2023 passed by the Division Bench of this Court in LPA No. 2090 of 2023 titled as **“National Highway Authority of India Vs. Suresh Chander and Others”**.

3. Briefly stated, facts of the present case are that writ petitions were filed before this Court by few landowners/petitioners for directing the respondent-authorities to release the amount of annuity due towards them on account of acquisition of their land in terms of Policy Notification dated 09.11.2010 (hereinafter referred as 2010 policy). These writ petitions were allowed by this court vide order dated 11.10.2023, concluding part of which is reproduced below:

“In view of the discussion made hereinabove, I find substance in the submission made on behalf of the petitioners- landowners. Accordingly, the petitioners-landowners are held entitled for disbursement of their arrears of annuity along with interest @ 9% per annum from the date of award till the date of payment and the aforesaid exercise shall be completed within a period of two months from the date of receipt of certified copy of this order. Further,

it is ordered that in the peculiar facts and circumstances of this case and in order to avoid any more delay in the effective redressal of the grievance of the petitioners-landowners, at the first instance, respondent Nos.1 to 4 are directed to release the benefits due towards the petitioners within the aforementioned period, with right to recover the same from respondent No.5 in due course.”

3.1 Aggrieved from the same, respondent No 5-NHAI filed intra Court appeal before Hon’ble Division Bench and the same was disposed of being withdrawn vide order dated 20.12.2023 with liberty to seek review of the judgment dated 11.10.2023.

3.2 By way of present review application, prayer has been made for review of the judgment dated 11.10.2023.

4. Learned Senior Counsel appearing for the applicant / respondent No 5-NHAI submitted that specific contentions qua delay and laches on the part of petitioners/ landowners; acquiescence on their part, not having raised the claim of annuity in their reference petition under Section 18; not having made application for release of annuity within six months as well as the enforceability of the policy dated 09.11.2010, were raised by the respondent/applicant in its written statement, were not taken into consideration while passing the impugned order dated 11.10.2023 and accordingly the judgment was vitiated by manifest errors apparent on the face of the record. Thus, it is urged that these submissions may also be taken into consideration before passing the final order.

4.1 Detailing those submissions, Ld. Counsel placed reliance upon Clause 19(i) of Policy dated 09.11.2010, which is reproduced as hereunder:-

"This policy shall also be applicable for any land acquisition for the Central Government (including the Ministry of Defence)/ its PSUs, the NHAI/ Railways in the State of Haryana and an undertaking to this effect would be obtained in advance from such indenting agencies before initiating any land acquisition proceedings. The amount of Annuity Policy will be charged upfront from such agencies in addition to the compensation paid to the landowners."

In view of this clause, Id. Senior Counsel submitted that no undertaking as per Clause 19(i) of Policy dated 09.11.2010 was ever obtained by the State Government from the office of the applicant before initiating the land acquisition proceedings, and therefore, the Policy dated 09.11.2010 cannot be made applicable to the Applicant.

4.2 It is further submitted by Ld. Senior Counsel that petitioner has not attached any document to show that he had submitted his annuity claim within the prescribed period of six months from the date of the announcement of the award as mandated in Clause 4(viii) of the Policy dated 09.11.2010 and so his claim could not be taken into consideration.

4.3 It is also submitted that the writ petition is not maintainable on the grounds of delay and laches as the policy was introduced by the State Government on 09.11.2010, whereas the

petitioner remained silent for a period of 13 years and has filed the writ petition in the year 2023.

4.4 Lastly, It is submitted that the petitioner has waived off his right to claim the annuity before the appropriate forum because a perusal of the reference under Section 18 of the Act of 1894 made by the petitioner before the LAC reveals that he did not raise any claim whatsoever in relation to the annuity and therefore, he was not entitled to raise this claim at this stage.

5. I have heard learned Senior counsel representing the applicant and gone through the paper book. I do not find much substance in the submissions made on behalf of the applicant.

6. A perusal of notification dated 09.11.2010 reveals that this scheme was brought in super-session of a earlier scheme bearing Memo. No. 1298-R-5-2007/4174 dated 06.04.2007 through memo bearing No. 5451-R-V-2007/13258 dated 07.12.2007 (hereinafter referred as 2007 policy). In these circumstances, the present scheme only revised rates of annuity, benefits of which was available to the land owners earlier as well. This is also apparent from the title of the scheme as shown in Clause 4, which reads as **“4. Annuity Scheme revised rates and features”**.

6.1. In that eventuality, it is apparent that even at the time when proceedings for the acquisition in the present case were initiated, 2007 policy was in force and the applicant was bound to compensate the landowners in accordance with the extant policy. It is apposite to mention here that in 2007 policy, there was no

requirement of undertaking and relevant clause from the same is reproduced hereunder:-

“iv. The policy of paying annuity will be applicable to all cases of land acquisition by Govt. except land acquired for defence purposes.”

Thus, 2010 policy was only in continuation of the earlier policy, wherein, primarily the amount of annuity was revised from Rs.15000/- per annum per acre to Rs.21000/- per annum per acre and the annuity amount was also increased from Rs.500/- to Rs.750/-. There is no doubt that as per clause 19(i) of the 2010 policy, undertaking has been envisaged from the indenting agency before initiating any land acquisition proceeding, but it is merely a procedural step. Since the steps in the present acquisition has already been initiated vide notification dated 18.06.2010 u/s 4 of Land Acquisition Act, 1894, prior undertaking in accordance with 2010 policy which was notified on 09.11.2010, was not possible. Since 2010 Policy was made applicable with effect from 07.09.2010 and the award in the present case was passed on 21.10.2010, landowners were entitled for revised annuity as per the 2010 policy. Additionally, there was no specific counter to the statement made by Ld. State counsel that a meeting dated 16.01.2010 was held between the representatives of the State and respondent No.5, well before the passing of the award dated 21.10.2010, wherein they were made aware of the Annuity Scheme in anticipation, which was recorded in the impugned order as well.

6.2. With respect to the liability of the applicant, there are clauses in the 2010 policy which categorically specify that the liability of annuity would be on the beneficiary/ indenting agency which are reproduced as below:-

“4. Annuity Scheme revised rates and features

iv) The scheme of Annuity payment will be applicable to all cases of land acquisition by the Government irrespective of the same being acquired for the State Government and its agencies or the Government of India/ its agencies, including the NHAI, the Railways, and the Defence purposes;

v) The Government Departments acquiring land under a statute shall recover the amount required for discharging the Annuity obligations along with the compensation amount from the concerned agencies (for whom land is acquired) and shall ensure that the 'Instrument of Annuity' creating a right in favour of the erstwhile landowner is issued at the earliest;”

6.3. As stated earlier, asking for undertaking is merely a procedural step, not having any mandatory nature so as to bind the state with the liability in case of non-compliance. The purpose of undertaking as can be seen from the policy is only to make the beneficiary/indenting agency explicitly aware and understand its liability under the policy. This clause cannot be held to be mandatory in nature for the reason that even in 2007 policy the burden of Annuity has to be borne by the beneficiary/ indenting agency and there was no such clause in that policy. Secondly, this scheme was

notified on 09.11.2010 making it effective from 07.09.2010, while backdated undertaking in land acquisition proceedings already initiated was not possible; showing the requirement of undertaking was only procedural and not mandatory. Additionally, when the state has brought a beneficiary policy, its benefits have to be given to the landowners and the liability until shown to be contrary, has to be borne by the beneficiary of the land acquisition.

7. Other arguments raised by learned Senior Counsel regarding compliance of Clause 4(vii), delay and laches as well as acquiescence, have been discussed at length by this court and rejected in **"Om Parkash and others vs The State of Haryana and others"** in CWP No. 16737 of 2023 bearing Neutral Citation No:=2023:PHHC:165069, wherein it was held that until it is shown that a landowner has been specifically informed in this regard, delay and laches or other technical grounds cannot be made applicable to him as 2010 policy is a beneficial legislation . Relevant para from this judgment is reproduced hereunder:-

"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.”

8. On these counts, there is an internal inconsistency as well in the arguments raised by the applicant. As recorded in the impugned order, it was submitted that respondent No.5 was never informed by the state representatives about the applicability of the above said notification, though a similar 2007 policy has been in existence at that time. While on the one hand, the applicant/respondent No.5 expects the landowners, who are already distressed on account of forced dispossession and looking for alternatives to settle in their lives, to know as and when a policy/law/notification is passed, whereas on the other, authorities of the NHAI, which are involved in land acquisition process day in and day out, feign ignorance of such notifications and policies.

9. Last but not the least, the objection raised by applicant/respondent No.5 that the landowners by their act and conduct were estopped from claiming the benefits of annuity policy as no such prayer was made in their reference under Section 18 of the Land Acquisition Act, 1894, was liable to be rejected being unsustainable as under the reference under Section 18 of the Act, the only claims which can be made are the one which are regulated by Section 23 thereof which nowhere contemplates the grant of benefit of annuity. Thus, there was no acquiescence on the part of landowners/petitioners.

10. Accordingly, in view of the discussion made above, even after taking into consideration the submissions made by respondent No.5 in the written statement and without commenting upon whether these issues were even raised at the time of final hearing of the writ petition(s), no reason is made out for interference in the impugned order dated 11.10.2023 and therefore, the present review applications are dismissed.

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

05.03.2023
sanjay

(HARKESH MANUJA)
JUDGE

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