



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

CWP-17683-2024 (O&M)
Date of decision :30.07.2024

GURPREET SINGH AND OTHERS

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Lajwant Singh Virk, Advocate
for the petitioners.

Mr. PeeushGagneja, Advocate
for the respondents/caveator.

HARSH BUNGER, J. [ORAL]

Petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India, seeking setting aside of an order dated 13.02.2024 (Annexure P-2) passed by the Divisional Canal Officer, Abohar Canal Division, Abohar (respondent No.3) and also the order dated 18.06.2024 (Annexure P-1) passed by the Superintendent Canal Officer, Ferozepur Canal Circle, Ferozepur.

2. Briefly, the private respondents filed an application before the Divisional Canal Officer, Abohar, seeking shifting of their land to new outlet/mogha for better irrigation, primarily on two grounds; firstly, that the outlet point at Midda Minor is far away from their land and;secondly, that the condition of the water course from outlet/mogha No.31315/R, is not good enough to support the requisite irrigation water for their land; whereupon, a report was called for from the Sub Divisional Canal Officer.

Thereafter, the report of Zildar, Dharangwala and Sub Divisional Canal Officer, was received, recommending shifting the land of the private respondents to the new outlet/mogha No.22200/L at Kundal Minor.

3. It transpires that a scheme was prepared and published in terms of Sections 30-A and 30-B of the Northern India Canal and Drainage Act, 1873 (for short 'the 1873 Act') and the objections thereto were called for. The Divisional Canal Officer, Abohar, vide impugned order dated 05.02.2024/13.02.2024 (Annexure P-2) allowed the shifting of outlet by approving the scheme published under Section 30-B(2) of the 1873 Act, by observing as under :-

“The case was reserved for judgment. Record perused. The reports received from the following staff and the accompanying documents were considered. On reading the command statement attached with the case, it was found that the distance of the area from new Mogha is less than the existing Mogha, which will improve the irrigation. This is confirmed by the report of Sub-Divisional Officer Muktsar and Zildar. A lot of land was taken out from Kundal Miner’s hands and went to other miners. Due to which there will not be any affect to the capacity and the safety of the Kundal Miner. There is sufficient discharge for new Moghe in Kundal Minor as confirmed by Sub Divisional Officer, Muktsar in his report. Midda Minor is kacha from Burji 9642 to Burji 11852. Due to which the flow of water is not better throughout the year because the miner is raw and there is a lot of rotting and weeding. Due to which the flow of water is affected. Due to which the livelihood of the stakeholders of Mogha Burji 31315-R Midda Miner is affected. The proposed plot shown in the map is of course fragmentary, but if there is a need for pits/underground pipe line for the surrounding of their areas, then a self-

declaration letter has been given by the applicants to arrange it at their own level, which is attached with the case. Due to the purposed areas of the existing Midda Miner's Mogha no.31315-R which is diverted to Kundal Miner's through new Mogha Burji No.22200-L, there will be reduction in the length of khal of Mogha Burji 31315-R at Midda Miner, so the remaining area will be better irrigated. As the current Mogha 31315-R is older so at Midda Miner, the land at the end of the Mogha is affected while from the new mogha at the Kundal Miner's area of the applicants is at the level of these areas and accordingly better commandable. Because in the year 2014, some area from Kundal miner's tail was shifted to new Dhrangwala minor and so sufficient water is available to command the area. The khals are started far away from the point of bifurcation of tail of burji mogha 31315/R of Midda minor, due to which the flow of water decreases. Due to the long length of khals at the existing moghas, silt accumulates there. Due to which the flow of water is affected and the irrigation also. 108.47 acres and 6.50 acres of orchard are to be transferred from Midda Minor (Arniwala Rajbaha System) to Kundal Minor (Arniwala Rajbaha System) and 18.28 acres are to be transferred to Kundal Minor only, so the area of new purposed mogha will remain in one canal system. So regarding the objection raised by some stakeholders of village Ratta Tibba for Mogha No.23800-R at Kundal Miner, it is said that this proposal will not cause any harm to the interests of the stakeholders because Kundal Miner and Midda Miner, both originate from Arniwala Rajabaha. Keeping in view the above facts and circumstances and keeping in mind the extent of the applicant's area, the scheme published under section 30B(2) of the Northern India Canal and Drainage Act 8 of 1873 amended 23 of 1965 is approved. In other words, according to Chakbandi, 8.91 acres from Mogha

No.20800-R Kundal Minor, 108.47 acres and 6.50 acres of orchard from Mogha Burji 31315-R Midda Minor and 18.28 acres from Mogha 19920-L Kundal Minor, are to be taken out for New Mogha at Kundal Minor's Burji 22200-L Kundal Minor is accepted. But the decision will be implemented only after the water cess submitted by the applicants. The management of the underground or underground pipe line will be done by the applicant himself. In case of change of area, the government expenditure will be incurred on demolition or reconstruction of both the moghas, the expenses will be paid by the applicants as requested. The department will be bound to comply with all the conditions of the canal. This decision shall come into force after the approval of the competent Officer or any change in it (which he deems appropriate). While preparing the A-Form, the area details should be taken from the last approved A-Form. The case was reserved for judgment. Zileadar Dhrangwala is instructed to inform the concerned parties about the decision."

4. Being dissatisfied with the afore-said order dated 05.02.2024/13.02.2024 (Annexure P-2), the present petitioners preferred an appeal before the Superintendent Canal Officer, Ferozepur Canal Circle, Ferozepur, who vide its order dated 12.06.2024/18.06.2024 (Annexure P-1) dismissed the appeal and upheld the order dated 05.02.2024/13.02.2024 (Annexure P-2) passed by the Divisional Canal Officer, Abohar, by holding as under :-

"Re-examination of the case at Ferozepur on 12-06-2024. The arguments given by the appellant and respondents and their counsel have been considered. The record was scrutinized. After considering the case by this court it was found that the decision of the Court of Divisional Canal Officer, Abohar is appropriate and

based on facts. According to the information submitted before this Court by Divisional Canal Officer, Abohar, in Kundal Miner, there tails are not going to be affected by the addition of more area. There is capacity in the kundal miner for desired discharge. While Midda Minor Burji 9642 to 11852 being kacha (unaligned) leads to reduction in water flow. Midda miner is likely to take more time to settle as pakka, so there is an adverse effect on the shareholder's irrigation from midda miner. Approval for Area above of Midda Minor to Kundal Minor conversion has already been obtained from the Chief Engineer/canal. Therefore permission has already been received from Chief Engineer/Canals. Therefore, the court agrees with the contested decision of Divisional Canal Officer Abohar. Therefore, after considering the case, the appeal of the appellant under Section 30B(3) of the Northern Indian Sewage and Drainage Act 8-1873 Punjab Amendment Act 23-1965, is rejected/rejected. And the decision of the Divisional Canal Officer Abohar dated 05-02-2024 is upheld. This decision was reserved on 26-04-2024 and it was pronounced today on 12-06-2024. This decision should be communicated to the concerned party/parties as per rules."

5. In the afore-mentioned circumstances, the petitioners have filed the instant writ petition before this Court.

6. Learned counsel for the petitioners submits that the Canal Authorities below have erred in law and fact in passing the impugned order. It is submitted that the plea taken by the private respondents for shifting of outlet i.e. their land is at a distance from the midda minor, is not made out as both the minors namely, kundal minor and midda minor, are originating from the common canal i.e. Arni Wala Rajbaha. It is further submitted that the volume of water in midda minor is much more than the volume of water in the kundal minor. It is next submitted that two water work pipes have

been installed on kundal minor for village Mohllan, whereas, only one water pipe has been approved for the said village but no action has been taken against the wrong doers, who have burdened the kundal minor with extra water work pipes. Petitioners have further placed reliance upon letter dated 20.12.2023 (Annexure P-6) to contend that the Office of Chief Engineer, Canal, had stated that proper volume of water is being supplied for irrigation purposes and there was no justification for shifting one area to the other. It is also submitted that in the eventuality of shifting of new outlet, it would badly affect the petitioners, whose land falls in the tails of the minor; therefore, there was no occasion for the official respondents to shift the land of the private respondents to the new outlet at kundal minor.

6.1 With the afore-said submissions, learned counsel for the petitioners prayed that the impugned order/s be set aside.

7. Per contra, learned counsel appearing for the caveator-private respondents, opposes the submissions made on behalf of the petitioners, by submitting that the Canal Authorities had considered all the matters and after following due procedure as prescribed by law, the shifting of out-let of the area of the private respondents had been allowed and therefore, no interference is required to be made by this Court. Accordingly, prayer for dismissal of the writ petition has been made.

8. I have heard learned counsel for the respective parties and perused the paper-book with their able assistance.

9. Here, it would be apposite to refer to Sections 30A and 30B of the 1873 Act, which read as under:-

30A. Preparation of draft scheme. - (1)
Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf the Divisional Canal Officer

may on his own motion or on the application of a shareholder prepare a draft scheme to provide for all or any of the matters namely:-

(a) the construction, alteration, extension and alignment of any water-course or re-alignment of any existing water-course;

(b) re-allotment of areas served by one water-course to another;

(c) the lining of any water-course;

(cc) the occupation of land for the deposit of soil from water- course clearances;

(d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a water-course.

(2) Every scheme prepared under sub-section (1) shall amongst other matters, set out the estimated cost thereof, the alignment of the proposed water-course or re-alignment of the existing water-course, as the case may be, the site of the outlet, the particulars of the share-holders to be benefited and other persons who may be affected thereby and a sketch plan of the area proposed to be covered by the scheme.

30B. Publication of a scheme. - *(1) Every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions with respect thereof within twenty-one days of the publication.*

[(2) The Divisional Canal Officer may after considering the objections and suggestions, if any, approve, modify or reject scheme.

(3) The Superintending Canal Officer may suomotu within a period of thirty days from the date of publication under section 30-C or on an application, by a person aggrieved by the approval, modification or rejection of the scheme, made within a like period, call

for the record of the scheme from the Divisional Canal Officer and may after examining the same, confirm the action taken by the Divisional Canal Officer or may, after affording to the person affected an opportunity of being heard, approve or modify the scheme in such form as he may deem fit or may reject the same.]

10. In ***PiyareLal and others v. The State of Punjab and others, 1966 Cur, L.J. (Pb:) 3***, this court had expressed the view that clause (d) of section 30A(1) of the Act was wide enough to cover "any other matter" not specified in clauses (a), (b) and (c) of sub-section (1) of section 30-A which might be considered necessary for the proper maintenance and distribution of supply of water. The closure or the opening or the shifting of an existing outlet would certainly be such a matter in appropriate cases.

10.1 The above extracted provisions were further dealt with by this Court in case of “***Kulwinder Kaur v. Superintending Canal Officer, Ferozepur***”, ***2017(5) RCR (Civil) 186***; wherein it was held as under:-

“...Section 30A gives ample power to the canal authorities for the matters mentioned therein. Section 30A (1) (a) includes the construction, alteration, extension and alignment of any water-course or re-alignment of any existing water-course. The term 'watercourse' in clauses (a) and (d) of Section 30A(1) and expression 'any other matter' in clause (d) would necessarily include further extension of existing sub-minor. I have already come to the conclusion that watercourse as defined in Section 3(1) (c) of the Act also comes within the definition of canal. The aforesaid terms indicate that legislature had intended that a draft of scheme should be prepared for matters, not specifically mentioned in clauses (a), (b) and (c). The expression 'construction of any watercourse' in Section 30A(1) (a) includes the construction of new outlet to

feed a watercourse and the expression 'watercourse' in clause (d) of the same sub-section includes a new watercourse proposed in the scheme. It would necessarily include a new outlet as also the outlet on the watercourse, itself, from which further channel shoots off. The expression 'any other matter' in clause (d), which is necessary for the proper maintenance and distribution of supply of water, is larger enough to include the matters which are not specifically mentioned in this section. This apparently appears to have been provided by the legislature in order to ensure proper maintenance and distribution of supply of water from a watercourse. It cannot be held that extension of water channel or sub minor cannot be done by framing a scheme under Section 30A of the Act. As per the definition, all watercourses are included in the term of 'canal' and it certainly includes the channel which is to be extended and to be fed from canal..."

10.2 It is thus apparent that as far as competence of Canal authorities to shift the outlet is concerned, there is no dispute.

11. In the present case, it is not disputed that the scheme was duly prepared and objections thereto were called and after following the procedure prescribed, the scheme was published. Thus, as far as scheme is concerned, there is a compliance of Section 30B etc.

11.1. I have also gone through the impugned order dated 05.02.2024/13.02.2024 (Annexure P-2) whereby the Divisional Canal Officer, Abohar has allowed shifting of outlet on following considerations:

- i. Due to the purposed areas of the existing Midda Miner's Mogha no.31315-R which is diverted to Kundal Miner's through new Mogha Burji No.22200-L, there will be reduction in the length of khal of Mogha Burji 31315-R at Midda Miner, so the remaining area will be better irrigated.

- ii. As the current Mogha 31315-R is older so at Midda Miner, the land at the end of the Mogha is affected while from the new Mogha at the Kundal Miner's area of the applicants is at the level of these areas and accordingly better commandable.
- iii. Because in the year 2014, some area from Kundal Miner's tail was shifted to new Dhrangwala Miner and so sufficient water is available to command the area.
- iv. The khals are started far away from the point of bifurcation of tail of Burji Mogha 31315/R of Midda Miner, due to which the flow of water decreases.
- v. Due to the long length of khals at the existing moghas, silt accumulates there. Due to which the flow of water is affected and the irrigation is also affected.

11.2. The said order has been further upheld in appeal by the Superintendent Canal Officer, Ferozepur Canal Circle, Ferozepur, vide its order dated 12.06.2024/18.06.2024 (Annexure P-1).

12. In ***Sham Sunder v. Superintending Canal Officer, Ferozepur, 2001(4) RCR (Civil) 35***; a Division Bench of this Court observed as under:-

“5. Even otherwise, we find no ground to interfere. The Canal Authorities are the best judges for the situation at the spot. If on a consideration of the matter it has been found that the fields of the petitioner can be properly irrigated from the existing outlet, this court cannot interfere in proceedings under Article 226 of the Constitution unless it is shown that the order is patently illegal and arbitrary. Nothing of the sort has been pointed out...”

13. In ***Mohinder Singh v. State of Punjab, 2012(67) RCR (Civil) 760***; a Division Bench of this Court observed as under:-

“...We are of the opinion that the matter of transfer of an area from one outlet to another by the canal authorities should be seldom interfered with in the writ

jurisdiction, particularly when the canal authorities had taken the decision after hearing the interested parties and in the interest of better irrigation, and also considering that while making such transfer, the maximum land will be properly irrigated...”

14. Considering the aforementioned facts and circumstances, once the procedural requirements have been complied with and the canal authorities upon consideration of the matter and having examined all technical aspects and coming to a conclusion that shifting of outlet would be in the interest of better irrigation, it would not be in the fitness of things for this Court to substitute the said conclusion. Furthermore, it has not been pointed out as to how the impugned orders are patently illegal or arbitrary. Therefore, the impugned orders cannot be faulted with.

15. In view of the above discussion, there is no error in the impugned order(s) passed by the Canal authorities under the Act, which may call for an interference by this Court in this petition and hence the same is hereby dismissed.

16. All pending applications (if any) shall also stand closed.

July 30, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No