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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-22442-2024
Date of Decision: 11.09.2024

Tara Singh and another
..... Petitioners

Versus

State of Punjab and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Mehtab Singh, Advocate
for the petitioners.

Mr. Nirmaljit Singh Diwana, Senior DAG, Punjab.

Mr. Sherry K.Singla, Advocate
for respondents No.4 to 15.

HARSH BUNGER J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside order dated 07.03.2024 (Annexure P-2) passed by the learned Divisional Canal Officer, Lehal Canal Division, Water Resources Department, Patiala (for short ‘the learned D.C.O.’) and order dated 06.05.2024 (Annexure P-3) passed by the learned Superintending Canal Officer, Patiala Canal Circle, Water Resources Department, Punjab, Patiala (in short ‘the learned S.C.O.’).

1.1 A further prayer has been made for issuance of a writ in the nature of Mandamus to direct the official respondents to not demolish, change, shift or tamper with the *khal* at Mogha Burji No.63860/Right Rajwaha, Laad Banjara to Mogha Burji No.63000/Right Laad Banjara.

2. Briefly, respondents No.4 to 15 filed an application before the learned D.C.O., praying that their Mogha Burji No.63860/Left, Rajwaha Laad Banjara be shifted to the boundary of Laad Banjara Kalan and Village Kakuwala; as the petitioners had broken Mogha Burji No.63860.

2.1 Upon receipt of the said application, it was forwarded to the field staff; wherein the Sub Divisional Officer, Nabha reported that a complaint regarding tampering of the Mogha Burji in question has earlier also been received.

2.2 Thereafter, notice under Section 30-B of the Northern Canal and Drainage Act, 1873 (for short 'the 1873 Act') was issued to the other share holders/concerned parties, whereupon, petitioner No.1 (Tara Singh) appeared before the learned D.C.O. During the course of hearing, statements of respondents No.4 to 15 were got recorded, whereby they claimed that certain share holders were repeatedly stealing canal water after tampering with the aforesaid Mogha Burji; and accordingly, action was taken against them. It was further prayed by respondents No.4 to 15 that their Mogha Burji be shifted to Mogha Burji No.63000/Left Rajwaha Laad Banjara.

2.3 On the other hand, the petitioners, while recording their statements before the learned D.C.O., stated that neither they have tampered with the Mogha Burji in question nor they will ever do so. It was further claimed that after shifting of the Mogha Burji, petitioners will face difficulty in using the canal water; and accordingly they prayed that the Mogha Burji may not be shifted.

2.4 The demand of respondents No.4 to 15 was rejected by the learned D.C.O. vide order dated 01.09.2023 (Annexure P-1).

2.5 Feeling aggrieved against the aforesaid order (Annexure P-1), respondents No.4 to 15 preferred an appeal before the learned S.C.O.; which was allowed vide order dated 06.11.2023, whereby the matter was remanded to the learned D.C.O., apparently on the ground that field staff had not annexed any document or record of tampering; and even the notices were not issued to all the concerned parties. The learned D.C.O. was further directed to attach the relevant record pertaining to the matter and pass a speaking order, after issuing notices to all the concerned parties.

2.6 Upon remand, learned D.C.O. allowed the demand of respondents No.4 to 15 vide order dated 07.03.2024 (Annexure P-2) and accepted the claim of shifting of Mogha Burji No.63860/Right Rajwaha, Laad Banjara to Mogha Burji No.63000/Right Laad Banjara; under Section 30-B of the 1873 Act.

2.7 Being dissatisfied with the aforesaid order (Annexure P-2), petitioners preferred an appeal before the learned S.C.O., which was dismissed vide order dated 06.05.2024 (Annexure P-3).

3. In the aforementioned circumstances, the petitioners have filed the present writ petition before this Court seeking relief(s), as noticed hereinabove.

4. Learned counsel for the petitioners submits that the learned canal authorities below have erred in law and fact in passing the impugned order(s), without considering the fact that with the shifting of Mogha Burji No.63860/Right Rajwaha, Laad Banjara to Mogha Burji No.63000/Right Laad Banjara; the land of petitioners will not be properly irrigated as it falls towards the downstream side from the proposed Mogha. It is submitted that

the canal authorities have failed to consider the reports of Zileadar, available on record, and have wrongly accepted the demand of respondents No.4 to 15. It is further submitted that the authorities below, while passing the impugned order(s), have failed to follow the provisions of Sections 30-A and 30-B of the 1873 Act; accordingly, the impugned order(s) are unsustainable in the eyes of law.

4.1 With the aforesaid submissions, learned counsel for the petitioners have prayed for setting aside of the impugned order(s).

5. Heard.

6. In the present case, respondents No.4 to 15 submitted an application before the canal authorities seeking shifting of Mogha Burji No.63860/Right Rajwaha, Laad Banjara to Mogha Burji No.63000/Right Laad Banjara; which was allowed by the learned D.C.O. vide order dated 07.03.2024 (Annexure P-2). Relevant extract thereof reads as under:-

“ - x - x -

In compliance of the above said orders, the file was sent to Sub Divisional Officer, Nabha and the said file was sent to the Zileadar Laad Banjara by the Sub Divisional Officer, Nabha. Zileadar Laad Banjara has written in his report that on receiving the information from J.E. Laad Banzara through his telegram No.22 dated 20.07.2022 in respect of tampering of Mogha, the Halqa Patwari has visited the spot and found the persons as well as area, which had benefited from tampering of Mogha. After preparing case against them, the same was sent to Higher Officers. Collector Lehal Division imposed 25 times penalty upon the culprits vide order No.26T/2022 dated 26.10.2022. The relevant papers were attached with the case and the same were sent to Sub Divisional Officer, Nabha. Then the whole case, according to the report made by the Zileadar, Laad Banjara, Sub Divisional Officer, Nabha sent the case to this Divisional Office for further action.

- x - x -

The case was called. All were heard who came present. All the facts were considered. It has been proved from all the documents brought and placed on record that Tara Singh S/o Mahinder Singh, Lakhwinder Singh, Rajwinder Singh Sons of Gamdoor Singh, Ram Singh S/o Gurdial Singh, Amarjeet Singh Son of Gora Singh have illegally irrigated their field areas after tampering the Mogha. Both the parties present, told that the area falling under the chakk of this Mogha has been purchased by residents of Village Khetla and Laad Banjara. As per rules, the co-sharers of Village Laad Banjara and Kakuwala were informed well in time. The present Mogha is on one side of the Chakk, where pipeline has been installed. This pipeline is near the proposed Mogha and the share of any share holder will not decrease. After shifting of Mogha, the irrigation of land will be in a better manner. It is clear from the above facts that the prayer of the applicants for shifting of Mogha is justified. So, the scheme of shifting of Mogha Burji 63860/Right Rajwaha Laad Banjara, to Mogha Burji 63000/Right under Section 30-B of Amended Canal and Drainage Act no.8 of 1873 is accepted. The applicants will themselves arrange for khal/pipeline from the proposed Burji to their fields. After passing of A-Form, the applicants will also make expenses in regard to breaking and construction of the said Mogha. They will deposit full water cess punctually. After the decision, the position of the areas pertaining to ‘Mogha’ will be as under:-

S. N.	Mogha Burji Rajwaha	Village	Present JE/CCA	Proposed JE/CCA
1.	63860/Left Rajwaha Laad Banjara	Laad Banjara Kalan	48/45	00/00
		Kakuwala	106/103	00/00
		Total	154/148	00/00
2.	63000/Left Rajwaha (proposed new Mogha)	Laad Banjara Kalan	00/00	48/45
		Kakuwala	00/00	106/103
		Total	00/00	154/148

”

7. The aforesaid order (Annexure P-2) has further been upheld by the learned S.C.O. vide its impugned order dated 06.05.2024 (Annexure P-3), by observing as under:-

“ - x - x -

The record available on the file shows that the respondents' side had made a prayer for transfer of the mogha while giving reference to tampering of mogha. After remand of the case, the canal telegram by J.E. Laad Banjara, Site plan No.2, Tarteema regarding illegal irrigation, report of Ziledar, it is clear that on tampering of mogha burji 63860/Left, the filed staff had prepared the penalty case in regard to the mogha, wherein the name of the appellants party is also there. Apart from it, as per the demand of the respondents' side, on shifting of mogha burji 63860/Left towards burji 63000/Left towards upstream of Laad Banjara Rajwaha, as the land area of appellants side is down stream from the proposed mogha, then the irrigation of appellants' land will be in proper manner because the underground pipe line is there adjacent to the proposed mogha. The Divisional Canal Officer has also referred to better irrigation from the proposed mogha to the land of the appellants. It is apt to mention here that it is clear from the field reports that only the appellants' party is demanding keeping the mogha on the present place whereas most of the co-sharers of the mogha wants to get the same shifted. In view of all the circumstances, the order dated 7.3.2024 passed by the Divisional Canal Officer, is upheld in view of the situation on the spot and in interest of increase of irrigation land and as such, the appeal of the appellants is ordered to be dismissed.

This order has been passed under Section 30(b) 3 of Canal and Drainage Act No.8, 1873. Both the parties be apprised of the order, as on the date of hearing i.e. 03.05.2024, the order was kept reserved.”

8. A perusal of the above extracted order(s) passed by the learned canal authorities clearly indicates that a categorical finding has been returned regarding tampering of Mogha Burji No.63860/Right Rajwaha, Laad Banjara by its share holders, including petitioner No.1 (Tara Singh); on account of which, the Collector, Lehal Division had imposed 25 times penalty upon the delinquents vide order dated 26.10.2022. Besides, the demand of respondents No.4 to 15 was considered by the canal authorities, who after spot inspection and having examined all the technical aspects, have come to a conclusion that shifting of Mogha Burji would be in the interest of better irrigation. It has also come on record that except petitioners, majority of other shareholders are interested in shifting of Mogha.

9. As regards the claim of petitioners that with the shifting of Mogha Burji, their area will not be properly irrigated; a categorical finding has been made by the learned S.C.O. that from the proposed Mogha, even the land of petitioners would get better irrigation as their area is downstream from the proposed Mogha.

10. As regards the submissions of learned counsel for the petitioners that provisions of Sections 30-A and 30-B of the 1873 Act have not been followed by the learned canal authorities; it is observed that apart from the aforesaid bald assertion, nothing has been indicated as to in what manner the provisions of Sections 30-A and 30-B *ibid* have not been followed. Accordingly, the said plea is also rejected.

11. 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...”

12. 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, have concluded that shifting of Mogha Burji 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.

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

14. All the pending application(s), if any, shall also stand closed.

11.09.2024

Apurva

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No