



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-22706-2024 (O&M)
Date of Decision: 09.09.2024

BALTEJ SINGH AND OTHERS

...Petitioners

Versus

SUPERINTENDING CANAL OFFICER AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Sherry K. Singla, Advocate
for the petitioners.

Mr. Prabhdeep Singh Bhandari, A.A.G., Punjab.

HARSH BUNGER, J. [ORAL]

Petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India, *inter alia* seeking a writ in the nature of *certiorari* for setting aside the order dated 10.03.2023 (Annexure P-2) passed by the learned Divisional Canal Officer, Mansa as well as order dated 17.07.2024 (Annexure P-3) passed by the learned Superintending Canal Officer, Patiala.

2. Succinctly, vide order dated 07.01.2022 (Annexure P-4), an area measuring 896 Acres (which included some land of respondent No.3) was transferred from MogaBurji 10535/T.F Minor No.5 Udat Branch, Village Bhamme Kalan to New Moga/Outlet No.71102/L, Udat Branch. Said transfer of 896 Acres of land was made upon the application submitted

by some of the share-holders of the said outlet namely, Sukhvinder Singh, Resham Singh and Amrik Singh etc. of Village Bhamme Khurd.

2.1 It appears that subsequently, respondent No.3 submitted an application seeking transfer of his 41 Kanal – 11 Marla area from the Chak of Outlet Burji No.71102/L, Udat Branch to the Chak of Outlet Burji No.72610/L Udat Branch, on the plea that he has to irrigate his area from two outlets, due to which, he was facing difficulty, accordingly, he prayed that his area may be shifted to one Chak of Burji No.72610/L, Udat Branch and in this manner, his area shall be consolidated on one outlet, which shall result into better irrigation.

2.2 Upon receipt of the afore-said request of respondent No.3, the matter was examined by the Canal Authorities and notices were issued to the other shareholders of the said outlet. It appears that the members of the Water User Committee of Village Bhamme Kalan, in respect of Outlet No.72610/L, Udat Branch, appeared and submitted that they have no objection for the transfer of area of respondent No.3 to the said outlet. Learned Sub-Divisional Canal Officer inspected the spot and also recommended the transfer of area.

2.3 Learned Divisional Canal Officer, after considering the matter in totality and after going through the comparative command statement and also considering 'no objection' given by the shareholders of Water User Committee of Village Bhamme Kalan, ordered shifting of area of respondent No.3 to the outlet No.72610/L, Udat Branch, by observing as under :-

“Decision : *The site inspection was carried out on 07.02.2023. The file was perused. The reports of the field staff were seen. The Sub Divisional Officer inspected the spot on 16.09.2022 and recommended to transfer the area. The site plan was seen.*

The comparative command statement was also seen. Those who came present were heard in detail. During the course of hearing when the case was called, the applicant and the shareholders of Water User Committee, Village Bhamme Kalan came present in the court. The Water User Committee got recorded their statement agreeing with the demand of the applicant.

After seeing the comparative command statement added with the case file, it was found that the length of the watercourse from Outlet Burji No.71102/L Udat Branch is 14716 ft. and water flow is to the extent of 1.30 ft. whereas the length of the watercourse from the proposed Outlet Burji No.72610/L is 9956 ft. and water shall flow with 2.16 ft. from which it is established that there shall be better irrigation from the proposed Outlet and the area of the applicant shall be consolidated on one Outlet.

After carrying out the spot inspection by the undersigned, it was found that the area of the applicant comprised in Killa No.124//11/2, 122, 19/20/1, 125//15/2, 16/1/1 is already included in the Chak of Outlet Burji No.72610/L and watercourse to this area is leading from the proposed Outlet whereas to the other areas concerning to this case, the length of the watercourse is more from the proposed Outlet Burji 71102/L. Therefore keeping the demand of the applicant, comparative command statement and length of the watercourses in view, the scheme for excluding of total 41 Kanal 11 Marla of area comprised in Killa No.18//18/1(7-03), 18/2(2-01), 22(9-10), 23/1(2-08), 23/02(5-06), 24(7-19), 20//4(7-04) (i.e. 5 Acres) from the chak of Outlet Burji 71102/L Udat Branch and including the same in the chak of Outlet Burji 72610/L Udat Branch is hereby sanctioned in the interest of better irrigation. (The area is in accordance with Report No.17A/22 dated 15.12.2022 of the Sub Divisional Officer, Bhaini). The expenses on the dismantling and reconstruction of the Outlets shall be borne by the applicant himself. The

arrangement of the watercourse shall also be made by the applicant himself. The Water Cess shall be deposited in full according to the instructions of the Government. This decision is rendered under Section 30-B(2) of the Northern India Canal & Drainage Act 8 of 1873. Notice 30-C may be issued. According to the Sub Divisional Officer, the position of the area shall be as under after the decision :-

<i>Sr. No.</i>	<i>Name of the Outlet Rajbah</i>	<i>Village name</i>	<i>Existing area in Acres</i>		<i>Proposed area in Acres</i>	
			<i>G.A</i>	<i>CCA</i>	<i>GA</i>	<i>CCA</i>
<i>1.</i>	<i>71102/L Udat Branch</i>	<i>Bhamme Kalan</i>	<i>102</i>	<i>95</i>	<i>102</i>	<i>95</i>
		<i>Bhamme Khurd</i>	<i>794</i>	<i>695</i>	<i>789</i>	<i>690</i>
		<i>Total</i>	<i>896</i>	<i>790</i>	<i>891</i>	<i>785</i>
<i>2.</i>	<i>72610/L Udat Branch</i>	<i>Bhamme Kalan</i>	<i>721</i>	<i>591</i>	<i>726</i>	<i>596</i>
		<i>Total of the Scheme</i>	<i>1617</i>	<i>1381</i>	<i>1617</i>	<i>1381</i>

Date of decision : 10.03.23

Sd/-
Divisional Canal Officer,
Mansa Canal & Ground
Water Division, Water
Resources Deptt. Punjab.”

2.4 The appeal filed by the petitioner against the afore-said order dated 10.03.2023 (Annexure P-2) came to be dismissed by the learned Superintending Canal Officer, vide its order dated 17.07.2024 (Annexure P-3).

2.5 In the afore-mentioned facts and circumstances, the petitioner has filed the present writ petition before this Court, for the relief/s, as noticed here-in-above.

3. Learned counsel for the petitioners submits that respondent No.3 had not come to the Court with clean hands as he had concealed the fact that earlier, his area was transferred from Moga Burji No.10535/T.F.

Minor to Outlet No.71102/L, Udat Branch and now, he had sought transfer of his area to Outlet No.72610/L Udat Branch. It is submitted that with the inclusion of area of respondent No.3 in the new outlet, the petitioners would suffer great loss as their turn of water will be reduced. It is also submitted that the other share-holders, whose land is adjacent to land of respondent No.3, will also make similar requests and thereby, causing further loss to the petitioners.

3.1 With the afore-said submissions, learned counsel for the petitioners submitted that the present writ petition may be allowed and impugned orders *ibid*, may be set aside.

4. Heard.

5. As regards the first contention of the petitioners that respondent No.3 has not come to the Court with clean hands, I do not find any merit in the same as the earlier shifting of 896 areas of land, which included some land of respondent No.3, from Moga Burji No.10535/T.F. minor to New Moga Outlet No.71102/L Udat Branch was made at the instance of some of the share-holders, as noticed here-in-above. Rather the prayer of respondent No.3 was that he had to irrigate his area from two outlets. Apparently, the same has happened on account of transfer of some area of respondent No.3 to the New Outlet No.71102/L Udat Branch. Accordingly, in order to consolidate his area on one Outlet, he has submitted a request for transfer of area to the extent of 41 Kanal 11 Marlas, to the Outlet No.72610/L Udat Branch. The share-holders of the Water User Committee of Village Bhamme Kalan, had given no objection for the transfer of area of respondent No.3. The learned DCO, after considering the matter in totality and after

comparing the command area statements, permitted the transfer of area of respondent No.3 to the New Outlet No.72610/L Udat Branch.

5.1 As regards the contention of the petitioners that with the shifting of area of respondent No.3, their turn of water will be reduced, it is noticed that the said objection was considered by the Superintending Canal Officer and the same was rejected by observing as under :-

“During the course of arguments, the Appellant Party pleaded that their turns of water shall be decreased with the transfer of the area of the Respondent, which is not acceptable because after transferring 05 acres of the Respondent Party, there shall be a negligible effect on the G.A/C.C.A and warabandi of Outlet Burji No.72610/L. In addition to this, both the parties shall get the right in warabandi according to the CCA determined in respect of Outlet Burji No.72610/L as per their respective areas. Thus the decision of the Divisional Canal Officer dated 10.03.2023 being in the interest of better irrigation is hereby maintained and the appeal of the Appellant Party is dismissed.”

6. 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...”

7. 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 that shifting of area of respondent No.3 to new outlet No.72610/L Udat Branch, 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.

8. In view of the above discussion, I do not find any merit in this writ petition; hence, the same is hereby dismissed.

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

September 09, 2024

gurpreet

(HARSH BUNGER)
JUDGE

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