

CWP No.7774-1999

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

CWP No.7774-1999

Date of Decision:28.01.2015

Baldev Singh

... Petitioner(s)

Versus

Superintending Canal Officer and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Anurag Chopra, Advocate,
for the petitioner.

Dr. Deepa Singh, Addl. A. G. Punjab.

Mr. S.S.Brar, Advocate,
for respondent no.3.

Paramjeet Singh, J.

In pursuance of the order dated 17.12.2014, latest position report dated 27.01.2015 along with site plan has been produced in court and same are taken on record as Ex.CA and CB.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 15.04.1999 (Annexure P-6) passed by respondent no.1-Superintending Canal Officer, Sirhind Canal Circle, Ludhiana.

Brief facts of the case are that respondent no.3 filed

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application before respondent no.2 that watercourse be provided to his land as he is not getting proper irrigation. It was mentioned in the application that watercourse should be provided alongside the '*Rajbaha*' against compensation. The petitioner also moved application stating that he is not getting proper irrigation from watercourse 'CE' (site plan Annexure P-1) as khasra nos.1306 and 1304 are at higher level than the other holdings of the petitioner. It was averred that watercourse 'CAB' is a running watercourse. After holding necessary enquiry, respondent no.2 prepared a draft scheme to provide watercourse claimed by respondent no.3 as well as the petitioner. In the scheme so prepared, watercourse 'ABLM' was provided for the land of the petitioner and respondent no.3. Respondent no.2 provided altogether new watercourse beyond the prayer of respondent no.3 vide order dated 25.09.1996 (Annexure P-2). Against that, the petitioner preferred an appeal before respondent no.1-Superintending Canal Officer which has been dismissed vide order dated 24.06.1997 (Annexure P-3). Feeling aggrieved by the orders dated 25.09.1996 (Annexure P-2) and dated 24.06.1997 (Annexure P-3), the petitioner preferred writ petition in this court wherein the orders (Annexures P-2 and P-3) were quashed and matter was remitted to respondent no.2-Divisional Canal Officer for deciding the matter afresh in accordance with law. Thereafter, respondent no.2 again maintained his earlier order vide order dated 14.10.1998. Against that, the petitioner preferred appeal before respondent no.1-Superintending Canal Officer which has been dismissed vide impugned order dated 15.04.1999 (Annexure P-6). Hence, this writ petition.

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Upon notice, the respondents put in appearance. Respondents no.1 and 2 and respondent no.3 filed written statements separately. In their written statement, respondents no.1 and 2 averred that intention of the petitioner and respondent no.3 is that watercourse to their land should pass through the land of Smt. Sham Kaur widow of Bharpur Singh. The scheme was prepared under Section 30 of the Northern India Canal and Drainage Act, 1873 to provide watercourse to respondent no.3 and petitioner. The scheme was duly published, objection and suggestions were invited in respect of the new scheme while shifting 8.25 acres including 5.25 acres which was converted from uncommand to command. The draft scheme has been approved after inviting objections and factual situation at the spot.

On similar lines, respondent no.3 also filed written statement.

I have heard the learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that levels of killa nos.1307 and 1309 is higher than the land of respondent no.3, therefore, he will get better irrigation from the watercourse sanctioned along these killa numbers. The petitioner is even ready to pay compensation.

Learned State counsel vehemently opposed the contentions of learned counsel for the petitioner and contended that if the watercourse is allowed to pass through the '*tak*' of the petitioner and Smt. Sham Kaur, their land will be divided into two parts and it will create difficulties in cultivating the same. The watercourse can be provided along side the

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'common *wat*' which is shown in site plan (Ex.CB), along the passage on the side of killa No.1303 and 1304, level of watercourse is higher than the land of the petitioner. The level of killa no.1304 belonging to the petitioner is 686.86 whereas level of land of respondent no.3 is 686.40. In this manner, land of respondent no.3 can be irrigated more properly without bifurcating the land of the petitioner and Smt. Sham Kaur. Otherwise also, respondent no.3 can easily approach for watercourse from the place where the outlet exists. The watercourse has rightly been provided on the side of 'ABLM' as shown in the site plan (Annexure P-1). The said watercourse is proper watercourse and land of respondent no.3 can be easily irrigated from the same. Carving watercourse through the land of petitioner would lead to many problems i.e. damage to the crop as well as cause for quarrel. If the claim of respondent no.3 for providing watercourse on payment of compensation to the landowners is accepted, even then there should be minimum problems to the other right holders.

Learned counsel for respondent no.3 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned order.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, the land of respondent no.3 falls in the chak of outlet No.RD 9340-R, therefore, the canal authorities have not provided another outlet to respondent no.3 in accordance with law. As per the report dated 27.01.2015 (Ex.CA), there is no other watercourse in

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existence on the 'common watt' of khasra nos.1307, 1309, 1310 and 1311. Perusal of site plan (Ex.CB) reveals that watercourse has been provided to respondent no.3 on the western side of khasra no.1305 and 1306, southern side of khasra no.1306 along side the road and boundary line of the 'tak' of the petitioner. The site plan (Ex.CB) reveals that endeavour has been made to avoid partition of land of shareholders. The watercourse is not dividing the land of any shareholders, rather it is on the one side. Otherwise also, Smt. Sham Kaur is not a party whose land will be bifurcated. It appears that respondent no.3 and petitioner have connived with to get watercourse through the land of Smt. Sham Kaur.

In view of above, I do not find any illegality or perversity in the impugned order.

Dismissed.

No order as to costs.

28.01.2015
parveen kumar

(Paramjeet Singh)
Judge