

CWP No.9668-1998

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

CWP No.9668-1998

Date of Decision: 27.01.2015

Gurdial Singh and others

... Petitioner(s)

Versus

Superintending Canal Officer, Ferozepur 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. S.S.Bhinder, Advocate,
for the petitioners.

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

Mr. A.K.Kalsi, Advocate,
for respondents no.3 to 13.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 21.01.1997 (Annexure P-2) passed by respondent no.2-Divisional Canal Officer, Eastern Canal Circle, Ferozepur and order dated 22.10.1997 (Annexure P-4) passed by respondent no.1-Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur.

Brief facts of the case are to the effect that respondents no.3, 4 and other shareholders of outlet No.61458-L, Jandwala Distributary,

CWP No.9668-1998

residents of village Jandwala Kharta, moved application that their outlet is on the boundary and in a zig-zag manner; there are many turns in the watercourse and length of watercourse is excessive; their land is not being properly irrigated, therefore, their land be transferred from outlet No.61458-L to outlet No.62500-L, Jandwala Distributary. The application was sent to the Sub Divisional Officer, Fazilka for verification who got the enquiry conducted from the concerned Zileadar and Junior Engineer and got the case prepared for shifting of heads as per request of respondents no.3, 4 and others. Vide impugned order dated 21.01.1997 (Annexure P-2), respondent no.2- Divisional Canal Officer accepted the demand of private respondents-Balwinder Singh etc. and shifted the area and approved the scheme under Section 30-B(2) of the Northern India Canal and Drainage Act. Against that, the petitioners preferred an appeal which has been dismissed vide impugned order dated 22.10.1997 ((Annexure P-4) passed by respondent no.1- Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur. Hence, this writ petition.

In pursuance of notice of motion, respondents no.1 and 2 and respondents no.3 to 12 filed their separate written statements to which replications were also filed.

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

Learned counsel for the petitioners has vehemently contended

CWP No.9668-1998

that impugned orders passed by the canal authorities are non-speaking, cryptic and no reasons have been recorded for transferring the land from outlet No.61458-L to 62500-L Jandwala Distributary. Even no reference has been made to the levels of fields from both the outlets. There is no comparative command statement from which it can be inferred that fields of private respondents can be irrigated in a better manner through outlet No.62500-L. The impugned orders have been passed in a mechanical manner.

Per contra, learned State counsel and learned counsel for respondents no.3 to 13 vehemently opposed the contentions of learned counsel for the petitioners and contended that the impugned orders are legal and valid. Everything has been taken into consideration by the canal authorities. The findings of fact have been recorded by the authorities which cannot be assailed in the writ petition.

I have given my anxious thoughtful consideration to the rival contentions of learned counsel for the parties and with their assistance perused the record.

Perusal of impugned order dated 21.01.1997 (Annexure P-2) reveals that it is cryptic and there is no reference to the comparative command statements of both the outlets in which levels of fields are mentioned. Neither there is any material on record nor there is any reference to record on the basis of which it can be inferred that private respondents, who were initially applicants before the Divisional Canal

CWP No.9668-1998

Officer, will have better irrigation, if their area is shifted to new outlet. Similarly, the impugned order dated 22.10.1997 (Annexure P-4) does not refer to any of the command statements from which situations in respect of the levels of fields could become clear. The order of the Divisional Canal Officer has been upheld by the Superintending Canal Officer merely on the ground that majority of the persons want shifting. It needs to be mentioned that rules are required to be followed and decisions are not to be made on the basis of majority of the parties. Rule of law has its own sanctity and canal authorities while dealing with such cases act as quasi judicial authorities. They are required to pass a speaking order by making specific reference to the levels of fields and the comparative command statements which are relevant before ordering shifting of area from one outlet to another. It has been mentioned that length of watercourse of private respondents is excessive and no length of watercourse has been mentioned. As per Rule_6 of the Northern India Canal and Drainage Rules, 1873, length of a watercourse cannot be more than two miles. It is also pertinent to mention here that since present writ petition was filed in the year 1998 and sufficient time has elapsed, there may be subsequent developments which may have the bearing over the decisions. For this reason also, the case is required to be re-examined.

In view of above, the impugned orders (Annexures P-2 and P-4) are set aside and case is remanded to respondent no.2-Divisional Canal Officer with a direction to pass an order afresh in accordance with

CWP No.9668-1998

law by giving reasons for the decision that may be taken.

Disposed of in the aforementioned terms.

Parties through their counsel are directed to appear before
respondent no.2-Divisional Canal Officer on 16.02.2015.

27.01.2015

parveen kumar

(Paramjeet Singh)
Judge