

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

CWP No.12296 of 2005

Date of decision: February 04, 2015

Joga Singh and others

....Petitioners

versus

The Superintending Canal Officer, Ferozepur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present:- Mr. Baltej Singh Sidhu, Advocate for the petitioners.

Mr. K.K. Gupta, Addl.A.G., Punjab.

Mr. Sandeep Khunger, Advocate
for respondent No.3.

DEEPAK SIBAL, J.

Respondent No.3-Kashmir Singh made an application to the Divisional Canal Officer, Abohar Canal Division, Abohar with a request for transfer of his land measuring 28.24 acres being irrigated from outlet RD 22109-L Karamgarh Minor to RD 22116-R Karamgarh Minor. The application made by respondent No.3 was opposed by the petitioners whose lands were already being irrigated through outlet RD 22116-R Karamgarh Minor. After considering the matter, the Divisional Canal Officer, through his order dated 11.07.2002 rejected the application filed by respondent No.3 while holding as under:-

“Applicants and respondents were heard at length. Applicants have demanded that their area measuring 28.24 acres may be transferred from outlet 22109-L Karamgarh Minor to outlet 22116-R Karamgarh Minor. In other words scheme published may be sanctioned. In

connection with the demand made by the applicants the persons at serial No.4 to 11 made statement that they have no objection in case the area of applicants is transferred to outlet RD 22116-R Karamgarh Minor but persons at serial No.12 to 21 demanded that area of the applicants is getting proper irrigation from the existing source, therefore, this area may not be included in the chak of outlet RD 22116-R Karamgarh Minor because chak of our outlet is of village Sarawan Bodla only whereas the area of applicant is of village Bhagwanpura. Area of the applicant is situated near the head of the outlet RD 22109-L. With the inclusion of this area in outlet RD 22116-R these share holders would steal the water in the beginning of the watercourse and with the inclusion of their area the size of outlet RD 22116-R will not be increased and out turns will be decreased. Therefore, area measuring 28.24 acres of applicants may not be included in the chak of outlet RD 22116-R Karamgarh Minor. The demand of applicants may be rejected and published scheme may not be sanctioned.

Enquiries made. Record perused. SDO Muktsar after enquiries has submitted that the area measuring 28.24 acres of the applicants be transferred from outlet RD 22109-L Karamgarh Minor to outlet RD 22116-R Karamgarh Minor on the basis of command statement as their area would get natural flow of water from the proposed outlet but share holders of outlet RD 22116-R village Sarawan objected to it. Their this demand is acceptable because with the inclusion of the area of the applicant in outlet RD 22116-R the size of outlet will not be increased but their turns would be decreased whereas the area of the applicants is getting proper irrigation from the existing source. The applicant has only stated that the syphon being beneath the minor there is less irrigation. The demand of the applicants does not appear to be

acceptable. Therefore, keeping in view the demand made by the respondents to be genuine, the scheme published under Section 30 B(2) of the Canal Act is hereby rejected. In other words the demand of the applicant is not acceptable.”

The above order was challenged by respondent No.3 before the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur, who through his order dated 08.04.2005, after issuing notice to the petitioners, allowed the appeal, holding as under:-

“Record perused. Site plan perused. Command statement perused. The area in question is situated near to the proposed outlet from the existing outlet and it would be irrigated properly from the proposed source. Reports of field staff have also been perused. They have also recommended for transfer of area in dispute measuring 28.24 acres from outlet RD 22109-L Karamgarh Minor to outlet RD 22116-R Karamgarh Minor. The objection raised by the respondents that the area is getting proper irrigation from the existing outlet and that water-course being brick lined would not tolerate the flow of water, is not admissible because the brick lined water course are made to bear 10 percent extra flow of water. The demand that their brick lined water course goes closed for 15 acres and with the inclusion of this area 200 acres more area would be included. The Ziledar Halqa was asked as to whether any other transfer case on the proposed outlet has been prepared, thus, this demand is also not admissible. Their turns would reduced and the area in dispute is of village Bhagwanpura and outlet has been made for village Sarawan Bodla. The irrigation of the area is not concerned with the village. It is concerned with the better irrigation and cut in the turns of water is fixed under the rules for whole of the outlet. Thus this demand

of the respondent is also not admissible. Area of the appellant is situated on the right side of the Karamgarh Minor and the existing outlet being situated on the left side and the area being irrigated through the syphon beneath the Karamgarh Minor is causing loss to the irrigation and the area being situated near the proposed outlet than the existing source would get better irrigation. Keeping in view these facts the undersigned is agreed with the demand of the appellants. Appeal is hereby accepted under Section 30B(3) of the Northern India Canal and Drainage Act. In other words area in dispute measuring 28.24 acre is hereby ordered to be transferred from outlet RD 22109-L Karamgarh Minor to outlet RD 22116-R Karamgarh Minor.”

The above order passed by the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur, is the subject matter of challenge by the petitioners in the present writ petition.

I have heard learned counsel for the parties and with their able assistance have gone through the record of the case.

Learned counsel appearing on behalf of the petitioners lays a challenge to the order dated 08.04.2005 passed by the Superintending Canal Officer on the ground that through the impugned order an arrangement which had continued for the last over half a century, without any complaint from either side, was sought to be changed at the behest of respondent No.3. Learned counsel for the petitioners argued that it was a specific case set up by the petitioners that the land of the petitioners was being irrigated through outlet RD 22116-R Karamgarh Minor and the land of respondent No.3 was being irrigated from outlet RD 22109-L Karamgarh Minor for the last well over five decades and for all this time

respondent No.3 had never complained of inadequate water supply for the purpose of irrigation of his fields. Learned counsel for the petitioners submitted that once an arrangement had continued to the satisfaction of respondent No.3 for the last over five decades and their being no change in the circumstances the application moved by respondent No.3 was not as a result of any need but was actuated only on account of his whims and his ego. Learned counsel for the petitioners drew my attention to the submissions made by him in paragraph Nos.2 and 7 of the writ petition wherein it had specifically been pleaded by him that the existing arrangement with regard to irrigation of the lands of the parties, without any complaint whatsoever was there for the last over half a century. He then drew my attention to the written statement filed by respondent No.3 wherein this fact had not been specifically denied. Learned counsel for the petitioners further submitted that in the impugned order, the Superintending Canal Officer had not recorded any finding so as to on what basis the existing arrangement was adversely affecting the rights of respondent No.3 with regard to irrigation of his fields. Learned counsel for the petitioners further attacked the impugned order in the light of specific findings recorded by the Divisional Canal Officer to the effect that if the transfer of land, as prayed for by respondent No.3 is made then the turns taken for by the petitioners for irrigating their fields would be reduced. Learned counsel for the petitioners then drew my attention to the revenue record pertaining to the land of respondent No.3 which clearly depicted that for the last several years two crops were being grown and harvested by respondent No.3 i.e. paddy and wheat. It was submitted that the above referred two crops year after year could not possibly have been grown and

harvested by respondent No.3 in case the water supply for the purpose of irrigating his fields was inadequate.

Per contra, learned counsel appearing on behalf of respondent No.3 submitted that through the existing system of irrigation, respondent No.3 was getting water for irrigation of his fields from an under pass syphon and therefore, he was not getting adequate water. He further stated that the petitioners have not shown so as to how the system of irrigation sought through the order impugned by them would affect their rights. According to him, the change sought to be brought about through the order impugned by the petitioners was for an addition of 3% of more land which was already being irrigated by the outlet. He submitted that water courses are usually meant to cater to at least 10% of more land and if the land of respondent No.3 was added to outlet RD 22116-R Karamgarh Minor, it would be well within the permissible 10% margin, and thus, both the lands of the petitioners as also respondent No.3 could get adequate water supply from outlet RD-22116-R Karamgarh Minor for the purpose of irrigation. Learned counsel for respondent No.3 further drew my attention to the reports of the Revenue and Canal Authorities, which were in his favour and on the basis of which the Superintending Canal Officer had passed the order impugned by the petitioners.

It is not disputed before me by respondent No.3, either orally or in writing that the existing system of irrigation which is sought to be changed through the order impugned by the petitioners, has been there for the last over half a century. It is further admitted before me that for over five decades respondent No.3 had never complained of inadequate water supply for the purpose of irrigation of his fields. Further, no change in

circumstance leading to the filing of the application by respondent No.3 has been shown to me. Still further, the Superintending Canal Officer in the order impugned by the petitioners has not recorded any finding so as to why he is ordering change in the system of irrigation, which had stood the test of time for the last over five decades. He has also not recorded any reason on the adverse impact of the existing system of irrigation on the lands of respondent No.3 leading to the change so ordered by him. On the contrary, if the order of the Divisional Canal Officer is perused, he has recorded specific reasons to deny the claim of respondent No.3. It has specifically been recorded by the Divisional Canal Officer in his order that in case respondent No.3 is allowed the change as requested by him, it would result in lesser turns of irrigation to the petitioners. An individual's interest like that of respondent No.3 has to give way to the interest of a large number of persons like the petitioners.

The stand on behalf of respondent No.3 that his land being less than 10% of the total area being irrigated through outlet RD-22116-R Karamgarh Minor and thus could easily be adjusted to the detriment of none is a stand only to be considered to be rejected. Such a submission could have been accepted only if there was any adverse impact of the existing arrangement for irrigating the lands of respondent No.3. On having perused the record and heard arguments, I do not find any need on the part of respondent No.3 to have his land irrigated through outlet RD 22116-R Karamgarh Minor. Had that been so, the existing arrangement would have not been allowed to continue by respondent No.3 for well over 50 years. Had any change in circumstance been pointed out by respondent

No.3 adversely impacting him then the above submission made on his behalf could have been considered by me, but that is not so.

Learned counsel for respondent No.3 has cited before me a judgment of a Division Bench of this Court in **Sahi Ram versus The Superintending Canal Officer, Ferozepur Canal Circle and others,** reported as 1993 PLJ 635, wherein the Division Bench has held as under:-

“8. Equally lacking in merit is the second contention raised by learned counsel for the appellant that the appellant had been enjoying his turn of water since the year 1960 and as such, no alteration was called for. These are matters for consideration by the appropriate authorities under the Act. A writ Court can interfere only if there is a violation of the provisions of the statute. Otherwise, the authorities under the Act are competent to decide the matter. In fact, they are the experts at the spot and the Courts are not competent to interfere unless a palpable violation of any provision of law is shown. No provision of the Act is shown to have been violated. Consequently, no ground for interference with the order passed by the learned Singly Judge is made out.”

The facts in that case were entirely different than the facts of the case in hand. Even otherwise, in the case in hand, it is virtually the admitted position that respondent No.3 had made the present application for change of the existing system of irrigation after the same had been allowed to continue by him without any complaint for well over half a century and further that at the time of making of the application also no change in circumstance was either pleaded or shown.

In view of the above, while allowing the present writ petition,
I order setting aside of the impugned order dated 08.04.2005.
Consequently, the order dated 11.07.2002 passed by the Divisional Canal
Officer, is restored.

No costs.

(DEEPAK SIBAL)
JUDGE

February 04, 2015

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