

CWP-10869-2013

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

CWP-10869-2013

Date of Decision: 29.10.2015

Suresh

... Petitioner(s)

Versus

Chief 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. Sanjiv Gupta, Advocate,
for the petitioner.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. Ashok Verma, Advocate,
for respondent No.4.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 17.12.2010 (Annexure P-2) whereby appeal filed by respondent No.4-Harnam against the order dated 31.05.2010 (Annexure P-1) passed by respondent No.3-Divisional Canal Officer, has been allowed by the Superintending Canal Officer and the order dated 18.03.2013 (Annexure P-3) passed by respondent No.1-Chief Canal Officer whereby appeal filed by the petitioner has been dismissed.

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Brief facts of the case are to the effect that respondent No.4-Harnam moved application for transfer of 22.79/22.79 acres area from outlet No.RD-19875-L Rampura Minor to outlet No.RD-23980-L Rampura minor of village Jasanania, Tehsil and District Sirsa on the ground that his aforesaid area is not being properly irrigated through outlet No.RD-19875-L Rampura Minor due to its far away place from the head of outlet and in fact the area in question is situated near to the head of outlet No.RD-23980-L Rampura Minor and underground pipe watercourse from the lined watercourse upto the land in question is available. The case was got considered by the various authorities. Ultimately, the matter was considered by respondent No.3-Divisional Canal Officer who dismissed the application filed by respondent No.4 vide order dated 31.05.2010 (Annexure P-1). Being dissatisfied, respondent No.4 preferred appeal before respondent No.2-Superintending Canal Officer, who allowed the appeal and set aside the order dated 31.05.2010 (Annexure P-1) passed by respondent No.3-Divisional Canal Officer, vide impugned order dated 17.12.2010 (Annexure P-2). Feeling aggrieved against the order dated 17.12.2010, the petitioner preferred appeal before respondent No.1-Chief Canal Officer, who dismissed the appeal vide impugned order dated 18.03.2013 (Annexure P-3). Hence, this writ petition.

In pursuance of notice of motion, respondent Nos.1 to 3 and respondent No.4 filed their separate written statements. In their written

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statement, respondent Nos.1 to 3 averred that the impugned orders have been passed taking in consideration the factum of better irrigation, location of the land, existing position and mandatory provisions of the Haryana Canal and Drainage Act, 29 of 1974 (for short, '1974 Act').

In his written statement, respondent No.4 averred that he sought transfer of his area from the existing source to the proposed source because he was not getting proper irrigation through the existing source and his holding is situated at the fag end of the existing outlet whereas it is very close to the proposed source. Respondent No.3 wrongly came to the conclusion that area of respondent No.4 was better commendable from the existing outlet. The watercourse in the shape of pipeline is already available through which respondent No.4 could very well irrigate his area. Otherwise also, it is the responsibility of respondent No.4 to arrange watercourse for his holding and even if any shareholder is not ready to provide watercourse to him, he can apply under Section 17 of the 1974 Act for sanction of watercourse for his land on compensation basis. The impugned orders have been passed after a thorough consideration.

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

Learned counsel for the petitioner vehemently contended that order dated 31.05.2010 (Annexure P-1) passed by respondent No.3-Divisional Canal Officer has been wrongly set aside by respondent No.2-

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Superintending Canal Officer, vide impugned order dated 17.12.2010 (Annexure P-2), without any justification. Respondent No.3-Divisional Canal Officer has recorded a categoric finding that area is better commendable from the existing outlet No.RD-19875-L, Rampura Minor as compared to the proposed source of outlet No.RD-23980-L, Rampura Minor. The Divisional Canal Officer has rightly dismissed the application of respondent No.4 for transfer of area keeping in view the factum of better irrigation. However, the impugned order (Annexure P-2) passed by respondent No.2 is cryptic and it has been passed only on the ground that the land in question is far away from the head of existing outlet and no watercourse is available, however, it is situated near the head of the proposed outlet and lined watercourse is running very close to the same and underground pipe watercourse is existing upto the land in question. Learned counsel further contended that no reasons have been recorded on what basis the order dated 31.05.2010 (Annexure P-1) passed by the Divisional Canal Officer has been set aside and reference to the comparative command statement and site plan has been made by respondent No.2-Superintending Canal Officer while passing the impugned order dated 17.12.2010 (Annexure P-2). The order (Annexure P-2) has been erroneously affirmed by the Chief Canal Officer vide impugned order dated 18.03.2010 (Annexure P-3).

Per contra, learned State counsel and learned counsel for respondent No.4 vehemently opposed the contentions of learned counsel

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for the petitioner and contended that land in question is very near to the proposed outlet; it is at the distance of about 2½ acres from the proposed outlet and there will be better irrigation through the proposed outlet. The petitioner has not been affected in any manner with the transfer of area to the proposed outlet. Reliance on the judgment dated 30.09.2015 rendered in CWP-18008-2015, titled '*Sajjan Kumar and others vs. The Divisional Canal Officer and others*' and 19.10.2015 rendered in LPA No.1523 of 2015, titled '*Sajjan Kumar and others vs. The Divisional Canal Officer and others*' has been placed upon.

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

Admittedly, respondent No.2-Superintending Canal Officer and respondent No.1-Chief Canal Officer have not made any reference to the comparative command statement and site plan. Even distance of the area sought to be transferred from proposed outlet and existing outlet has also not been mentioned. There are specific rules for transfer of area on the basis of distance from one watercourse to the other and the same have not been taken into consideration by respondent Nos.1 and 2 while passing the impugned orders. It was also required to be mentioned by respondent No.2 that how irrigation would be better from the proposed outlet. The impugned orders (Annexures P-3 and 2) passed by respondent Nos.1 and 2, respectively, are non-speaking, cryptic and without consideration of data specifically comparative command

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statement from which it can be easily determined as to how irrigation will be better and will be by way of flow.

In view of above, the impugned orders dated 17.12.2010 (Annexure P-2) and 18.03.2013 (Annexure P-3) passed by respondent Nos.2 and 1, respectively, are set aside and matter is remanded to respondent No.2-Superintending Canal Officer with a direction to decide the matter afresh within a period of one month, from the date fixed for appearance of parties, by recording a finding as to how irrigation will be better and after taking into consideration Rule 13 of the Haryana Canal and Drainage Rules, 1976 with regard to length of the watercourse, comparative command statement etc. Respondent No.2 would also consider the length of watercourse from the proposed outlet.

Parties through their counsel are directed to appear before respondent No.2-Superintending Canal Officer on 19.11.2015.

Till the decision taken by respondent No.2-Superintending Canal Officer, parties shall maintain status quo.

Disposed of in the aforementioned terms.

29.10.2015
parveen kumar

(Paramjeet Singh)
Judge