

CWP No.15954-2012

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

CWP No.15954-2012

Date of Decision:26.02.2015

Sukhwinder Singh and others

... Petitioner(s)

Versus

Superintending Canal Officer, I.B.Circle, Patiala 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. Vijay Sharma, Advocate,
for the petitioners.

Mr. Rupam Aggarwal, DAG, Punjab.

Ms. Rajwinder Kaur, Advocate for
Mr. Tribhuwan Singla, Advocate,
for respondents no.3 and 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 01.02.2012/08.02.2012 (Annexure P-1) passed by respondent no.2-Divisional Canal Officer, Sangrur Division, Irrigation Branch, Sangrur and orders dated 28.05.2012 (Annexures P-2 and P-3) passed by respondent no.1-Superintending Canal Officer, I.B.Circle, Patiala,

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Punjab in appeal case Nos.7/2012 and 8/2012.

Brief facts of the case are to the effect that respondents no.3 and 4 moved application before respondent no.2-Divisional Canal Officer for shifting 21/18 acres of land from outlet No.60006-L Rajwaha Joga to Outlet No.45029-L Rajwaha Joga. On the receipt of application, Zileadar, Joga made inquiry, perused the record and recorded statements of parties. Zileadar prepared sketch of area, visited the spot, examined the case of applicants-respondents no.3 and 4 and came to the conclusion that land of applicants i.e. respondents no.3 and 4 is not being irrigated properly through outlet No.60006-L Rajwaha Joga because this outlet is 4½ killa far away from the land of applicants and watercourse of outlet No.45029-L Rajwaha Joga reaches upto the land of applicants (respondents no.3 and 4) from which their land can be irrigated properly. The Zileadar forwarded the case to the Sub Divisional Officer, Harigarh, who after examining the same and perusing the comparative command statement agreed with the report of Zileadar and forwarded the case to the Divisional Canal Officer. The Divisional Canal Officer sent back the case for completion of some deficiency. After removing shortcomings, the Sub Divisional Officer, Harigarh again sent the case to the Divisional Canal Officer. Vide impugned order dated 01.02.2012/08.02.2012 (Annexure P-1), the Divisional Canal Officer came to the conclusion that watercourse emerging from outlet No.60006-L is 4½ killa behind the land of respondents no.3 and 4 whereas *kacha* watercourse emerging

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from outlet No.45029-L reaches upto the land of respondents no.3 and 4 and ultimately ordered for shifting of 168 kanals 01 marla (21/18 acres) from outlet No.60006-L Rajwaha Joga to outlet No.45029-L Rajwaha Joga. Against that, petitioners no.1 and 2 and petitioners no.3 and 4 filed two separate appeals before respondent no.1-Superintending Canal Officer, which have been dismissed vide impugned orders dated 28.05.2012 (Annexures P-2 and P-3). Hence, this writ petition.

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

Learned counsel for the petitioners has vehemently contended that the petitioners are the real sufferers. Their land can be irrigated from the other outlet if the same is separately carved out for them from the main canal. They are also not getting proper irrigation and their rights will be affected, if another outlet is not provided. Learned counsel further contended that the impugned orders passed by the canal authorities are illegal, arbitrary and against the law.

Per contra, learned State counsel and learned counsel for respondents no.3 and 4 vehemently opposed the contentions of learned counsel for the petitioners and contended that impugned orders have been rightly passed by the canal authorities. There is no watercourse reaching upto the land of respondents no.3 and 4 from outlet No.60006-L Rajwaha Joga and watercourse emerging from outlet No.60006-L remains 4½ acres behind the land of respondents no.3 and 4 whereas

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watercourse emerging from outlet No.45029-L reaches upto the land of respondents no.3 and 4 and their land can be irrigated from the same. The area which is to be added to the new outlet will be less than 10 per cent which is permissible in accordance with law. The comparative command statements also indicate the level of fields which can be irrigated properly through the new outlet i.e. 45029-L. Otherwise, land of respondents no.3 and 4 will remain barren and will not be irrigated.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties.

In pursuance of order dated 10.02.2015, Mr. Gurjinder Singh, Divisional Canal Officer is present in Court along with original record which has been perused by this Court. The comparative command statements (Annexures R-3 and R-5) have also been perused. Perusal of file, original record and site plan reveals that watercourse emerging from outlet No.60006-L does not go upto the land of respondents no.3 and 4 and it remains 4½ killa away from their land whereas watercourse emerging from outlet No.45029-L reaches upto the land of respondents no.3 and 4. In this way, their land can be better irrigated from the watercourse emerging from outlet No.45029-L. For this reason, the canal authorities have rightly ordered for shifting of area from outlet No.60006-L to outlet No.45029-L. It needs to be mentioned that since the area transferred to outlet No.45029-L is less than 10 per cent, its size was also not required to be increased.

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

Dismissed.

However, the petitioners will be at liberty to approach the canal authorities for redressal of their grievance separately in accordance with law.

26.02.2015

parveen kumar

(Paramjeet Singh)
Judge