

CWP No.11063 of 2015

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

CWP No.11063 of 2015
Date of decision: 09.12.2015

Gursahib Singh and others

....Petitioners

Versus

The Superintending Canal Officer, Ferozepur Canal Circle and others

....Respondents

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. Baltej Singh Sidhu, Advocate, for the petitioners.
Mr. S.S. Chandumajra, Addl. A.G., Punjab.
Mr. J.S. Brar, Advocate, for respondents No.2, 5 and 8.

PARAMJEET SINGH, J. (ORAL)

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of *certiorari* quashing the order dated 18.05.2015 (Annexure P-7) passed by respondent No.1 – Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur.

Brief facts of the case are that Bakshish Singh and others petitioners residents of Village Seerwali moved an application for transfer of 91/85 acres of area from outlet No.RD 64266/L1-R Mudki Minor to RD No.61700/L1-R Mudki Minor. On receipt of application, matter was enquired through SDO Rajuwala and Zildar. Authorities

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below made recommendation for transfer of the aforesaid area. Before transfer of the area, command statement was prepared by Junior Engineer, which was also taken into consideration. Divisional Canal Officer, after considering the evidence on record came to the conclusion that existing outlet is downstream and water does not flow towards upper side and watercourses are also in dilapidated condition due to which applicants/petitioners were not getting proper irrigation and damage was also being caused to their crops. Thus ordered the transfer of area measuring 91/85 acres from outlet No.RD 64266/L1-R Mudki Minor to RD No.61700/L1-R Mudki Minor vide order dated 28.01.2009 (Annexure P-2). Aggrieved against the order dated 28.01.2009 (Annexure P-2) respondent No.2 and others preferred appeal before the Superintending Canal Officer. Superintending Canal Officer without dealing with the findings recorded by Divisional Canal Officer remanded the case back to Divisional Canal Officer vide order dated 17.09.2012 (Annexure P-5). After remand, Divisional Canal Officer after considering all the aspects passed elaborate order dated 31.01.2013 (Annexure P-6) and ordered transfer of area measuring 91/85 acres from outlet No.RD 64266/L1-R Mudki Minor to RD No.61700/L1-R Mudki Minor. Again aggrieved against the order of the Divisional Canal Officer, respondent No.2 and others preferred appeal before the Superintending Canal Officer. Vide order dated 18.05.2015 (Annexure P-7) virtually remanded the case back to Divisional Canal Officer on the

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ground that if the petitioners agree to the opening of new outlet for their area by laying a separate pipeline alongside the road, proceedings be initiated accordingly. Hence, this writ petition.

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

Order dated 18.05.2015 (Annexure P-7) passed by Superintending Canal Officer is non-speaking and has been passed without dealing with the reasoning given by Divisional Canal Officer in order dated 31.01.2013 (Annexure P-6), as such not sustainable in the eyes of law. In the order dated 31.01.2013 (Annexure P-6) Divisional Canal Officer has given complete details with regard to flow of water and total area of land to be irrigated. It has also been mentioned in the order of DCO that increase or decrease will fall within the range of 10%. Superintending Canal Officer has not touched the reasoning given by Divisional Canal Officer. Superintending Canal Officer should have dealt with the reasoning given by the Divisional Canal Officer and thereafter order should have been passed in accordance with law.

In view of above, writ petition is disposed of with a direction to the Superintending Canal Officer to pass fresh order after dealing with the reasoning given by the Divisional Canal Officer. Parties through their counsel are directed to appear before the Superintending Canal Officer on 21.12.2015. Superintending Canal Officer shall decide the case before 06.01.2016. Parties will be at liberty to give written

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arguments to the Superintending Canal Officer and Superintending Canal Officer shall deal with all the arguments, if any, given by the parties being first appellate Court.

(Paramjeet Singh)
Judge

December 09, 2015
R.S.