

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

CWP No.751 of 2009 (O&M)

Date of Decision:30.09.2015

Suraj Bhan and others

. . . .Petitioners

Versus

Chief Canal Officer and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Sanjiv Gupta, Advocate,
for the petitioners.

Mr.Pradeep Prakash Chahar, DAG, Haryana.

RAKESH KUMAR JAIN, J.

The petitioners filed an application under Section 18(2) of the Haryana Canal & Drainage Act, 1974 [for short 'the Act'] for shifting of head from outlet RD 18000/R to RD 21000/R Bhutian Minor, Village Sundana, Tehsil and District Rohtak. The said application was allowed by the Divisional Canal Officer, Rohtak [DCO] on 20.11.2000. The respondents filed appeal before the Superintending Canal Officer, YWS Circle, Rohtak, which was dismissed on 5.4.2001 and further appeal filed before the Chief Canal Officer was also dismissed on 31.12.2002. In the year 2006, the private respondents filed an application under Section 18(2) of the Act for shifting of head from outlet RD 21000/R Bhutian Minor to RD 18000/R Bhutian Minor. It is pertinent to mention that the said shifting had been ordered from RD 18000/R Bhutian Minor to RD 21000/R earlier on the application of the petitioners. A scheme was prepared by the Sub Divisional Canal Officer, Beri Water Services, Sub Division, Beri under Section 17 of the Act and was

submitted to the DCO for his recommendations. After notice and publication of the scheme under the Rules, some shareholders appeared and unanimously stated that the present source of irrigation does not solve the purpose to irrigate their fields which have been reduced to Barani because outlet RD 21000/R Bhutian Minor is very far from their fields, therefore, they wanted that their outlet RD 21000/R Bhutian Minor may be shifted at RD 19500/R on the Western Doll of Killa No.25/17 so that they could irrigate their fields properly. They also stated that the expenditure incurred on the adjustment of watercourse shall be borne by them.

On the other hand, the petitioners had alleged that outlet RD 21000/R Bhutian Minor was shifted from outlet RD 18000/R Bhutian Minor by CCO after site inspection. However, the DCO, after site inspection, observed that the area of downstream is not being properly irrigated from the existing source, therefore, in the interest of better irrigation and keeping in view the grow more food policy of India, the head of the outlet RD 21000/R was shifted to RD 19500/R Bhutian Minor on the Western Doll of Killa No.25/17 under Section 18(2) of the Act with the direction that expenditure incurred on adjustment of the outlets would be borne by the beneficiaries. The order of the DCO dated 20.4.2006 was upheld by the SCO, wherein it was observed that: -

“Revenue missal, Khaka plan and other relevant record produced in the Court examined. The arguments of the appellants as well as respondents were heard and properly considered. An interim orders to resolve the dispute in between them according to the compromise between the appellants and respondents are given on

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28.6.2006 at Rohtak and the period of six month was given to the appellants to reverse the slope of the lined watercourse AB to avoid the shifting of head of outlet but it has not been done by the appellants. Both the parties are again adamant on their stands and have not followed the compromise. From the close perusal of all the decisions given in this case, it is observed that the directions issued by the officers in their decisions have not been followed at the time of shifting of head of outlet from RD 18000-R Bhutian Mr. to RD 21000-R Bhutian Mr. due to which the complicacy in this case arrived. The efforts to resolve the dispute also could not be succeeded. Keeping the above facts in view the case is remanded back to DCO, Sampla W.S. Division, Rohtak to review his decision on merits in the light of the decisions given by the then SCO, YSW Circle, Rohtak and worthy CCO/LCU H.I.D, Panchkula because the directions issued have not been followed by the appellants when the outlet was shifted from RD 18000-R Bhutian Mr. to RD 21000-R Bhutian Mr.”

After the remand by the SCO, the DCO passed a fresh order, which read as under: -

“Revenue Missal, Khaka Plan and other relevant record produced in court examined and the arguments of both the parties were head and properly considered. At the time of hearing it appears that the shareholders interested to get the outlet shifted are ready to get the lined watercourse prepared according to the required level in their own expenditure, hence, they were asked to submit a written affidavit in this regard. They produced the same on 3.1.2008 according to which they are ready to

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prepare/maintained the lined watercourse. AB according to required level passing through the middle line of filed No.14/24-25, 15/21-22-23-25, 25/4-5, 24/1-2-3 their own cost if the head of outlet RD is shifted to RD 19500-R Bhutian Mr. The Plea of the respondents not to shift the outlet has to weight because they failed to change the reverse slope of the required lined watercourse according to commitments made by them and in the absence of the same the irrigation of the aggrieved shareholders is not possible. Keeping the above facts in view the head of outlet RD 21000-R Bhutian Mr. is hereby shifted to RD 19500-R Bhutian Mr. being the middle point of the chak, subject to the condition that the watercourse outlet RD 19500-R Bhutian Mr. to point A will be arranged and reverse slope of lined watercourse A B is prepared according to the required level by the beneficiaries at their own level.

The order of the DCO dated 21.1.2008 was further challenged by the petitioners in appeal before the SCO but lost. The following order was passed by the SCO: -

“Remove missal khaka plan and other relevant record produced in the Court examined. The arguments of the appellants as well as respondents were heard and properly considered. All the decisions given by this office as well as by worthy CCO relating to the case shifting of outlet from RD 18000-R to RD 21000-R were also taken in to consideration. Earnest efforts to resolve the dispute through negotiations were made in the presence of both the parties. The proposals for shifting of the head of outlet to find out

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as proper place admissible to both the parties were discussed. From the close perusal of the whole situation it is observed that either the slope of line watercourse AB may be reversed or the head of outlet may be fixed back either at RD 18000-R Bhutian Mr. from where it was shifted or any proper place acceptable to both the parties unless no arrangement of irrigation of the area of the respondents can be sort out. So far as appellants are concerned were adamant and refused all the above solutions and stated that the head of outlet may not be shifted any where and they will not get the slope reversed of line watercourse AB at their own cost. Which at the time of hearing in the court of the undersigned on dated 28.6.2006 at Rohtak the appellants made the commitment to get the slope of lined watercourse AB reversed/remodeled at their cost within six months. Keeping all the view facts in view the appeal of the appellants is rejected because the area of the respondents which is near about 60 acres cannot be left un-irrigated. The decision dated 3.1.2008 given by the Divisional Canal Officer, Sampla Water Service Division, Rohtak dated 3.1.2008 is maintained.”

Still aggrieved, the petitioners approached the CCO, who had also passed the following order on 27.10.2008: -

“Revenue missal, khaka plan and other relevant record produced in the Court examined. All the decisions given by DCO, SCO and the then CCO to shifting of this outlet from RD 18000-R to RD 21000-R and again to RD 19500 were examined.

Earlier the outlet was shifted from RD 18000-R to RD 21000-R of Bhutian Mr. and

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decision to shift this outlet to RD 21000 was maintained upto the CCO. However, earlier shifting was allowed on the condition that the lined watercourse from A to B would be remodeled for reverse slope by the shareholders at their own cost. However, the shareholders did not get this watercourse remodeled at their cost resulting into loss of irrigation near RD 18000-R. The case was then remanded back by SCO, YWS Circle, Rohtak to review the decision because the directions issued to remodel the watercourse in reverse slope was not followed. DCO, Sampla Water Services Division, Rohtak decided to shift the watercourse midway, i.e. at RD 19500 with the condition that the watercourse from outlet RD 19500-R to the point A on the existing watercourse will be arranged and slope of the watercourse to B would be reversed by the beneficiaries at their own cost.

This decision of the DCO, Sampla Water Services Division, Rohtak was upheld by the SCO, Rohtak vide his decision dated 23.5.2008. The shareholders near RD 21000 filed an appeal against the decision of the SCO, YWS Circle, Rohtak for not shifting the outlet from RD 21000 to RD 19500. Appellants have not honoured their commitments given in the Court of SCO, YWS Circle, Rohtak to reverse slope of the watercourse at their own cost, their refusal to do so is the cause of responding of this case and sanctioning of the shifting of watercourse to midway point i.e. RD 19500. Keeping all these facts in view, appeal of the appellant is rejected because the respondents are not getting proper

irrigation. The decision dated 23.5.08 of SCO, YWS Circle, Rohtak is maintained. ”

Learned counsel for the petitioners has further argued that the amount as ordered, of course was not deposited earlier which was later on deposited and has submitted that the order passed in the present proceedings under Section 18(2) of the Act is *res judicata* to the earlier proceedings, which were also passed under Section 18(2) of the Act.

On the other hand, learned counsel for the respondents has submitted that during the course of hearing, one affidavit dated 26.5.2012 was filed by Dinesh Rathee, Divisional Canal Officer, Sampla W/S Division, Rohtak in which he has averred that the outlet from RD 21000/R of Bhutian Minor has been shifted to RD 19500/RD as per approved design and is still working, but at present the required slope in the watercourse from RD 19500/R towards RD 18500/R of Bhutian Minor is not existing at site.

The respondents have also submitted that when the petitioners did not fulfill their commitment within a stipulated period of 6 months, the DCO, Sampla thereafter maintained his earlier decision to shift the watercourse midway at RD 19500/R as a middle course which has been upheld by the SCO and CCO. It is also submitted that principle of *res judicata* would not apply in this case because the earlier order was passed subject to certain conditions to remodel the watercourse to which the petitioners did not bother to comply as a result thereof, the private respondents were deprived of their right to irrigate their fields properly. In the year 2006, they moved an application as their lands were rendered Barani and as a result thereof, the authorities decided to shift the

watercourse midway i.e. RD 21000/R to RD 19500/R of Bhutian Minor.

I have heard both the learned counsel for the parties and after examining the record, am of the considered opinion that there is no error in the orders passed by the authorities under the Act and also the application filed by the private respondents is not hit by the principle of *res judicata* because earlier when the order was passed for shifting of the head from RD 18000/R Bhutian Minor to RD 21000/R Bhutian Minor, conditions were imposed upon the petitioners, who did not abide by those conditions and ultimately, application was filed by the respondents for shifting of the head from RD 21000/R Bhutian Minor to RD 18000/R in the year 2006 and on the basis thereof a scheme was prepared under Section 17 of the Act by the Sub Divisional Canal Officer, Beri, which has been taken into consideration as a middle course, adopted by the authorities to shift the watercourse midway i.e. from RD 21000/R of Bhutian Minor to RD 19500/R of Bhutian Minor with the condition that watercourse outlet RD 19500/R Bhutian Minor to the point 'A' on the existing watercourse will be arranged and slope of the watercourse to 'B' would be reversed by the beneficiaries at their own cost.

Keeping in view the consistent stand taken by the authorities under the Act, I do not find any merit in the present petition and the same is thus, hereby dismissed.

30.09.2015

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**(RAKESH KUMAR JAIN)
JUDGE**