

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

CWP No.12746 of 2014 (O&M)
Date of Decision:30.09.2015

Gurjit Singh and others

. . . .Petitioners

Versus

The Superintending Canal Officer, Ferozepur and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Vinod Kunger, Advocate,
for the petitioners.

Mr.V. Ramswaroop, Addl. A.G. Punjab,
for respondents No.1 & 2.

Mr.J.S. Brar, Advocate,
for the respondent No.3

RAKESH KUMAR JAIN, J.

Respondents No.3 & 4 filed an application to the Divisional Canal Officer, Abohar Division, Abohar (respondent No.2) on 16.6.2011 that an area measuring 130 kanals 0 marla is lying uncommanded in the chak of outlet 121961/R. It is averred therein that the area is levelled and is fit for irrigation. The area is being cultivated at the spot. Outlet No.120115/L is adjoining to their area from where their area can be properly irrigated. The area is low lying and nearer to the outlet. It was requested in the application that the area of 130 kanals 0 marla be commanded from uncommanded, be included in outlet No.120115/L and water be provided to it. The application was marked to the SDO, Muktsar on the same day, who further marked it to Zildar, Dharangwala to investigate and report

and Zileadar, Dharangwala further referred it to Om Parkash N.P. & Lubhaya Ram, N.P. directing them to attach the site plan and details of the area. The enquiry was made by Zileadar regarding total area on outlet No.121961/R, who found that the area is 3ft. high. It was also found that cotton crop was sown and the demand of respondents No.3 & 4 is reasonable. It was recommended that the area is fit for command by lift. The Sub-Divisional Officer, Muktsar, on the basis of report of the Zileadar, recommended the case to the Divisional Canal Officer, Abohar for irrigation by lift from Outlet 121961/R even without looking into the demand of the respondents. The objection was raised by the petitioners before respondent No.2 that they are the shareholders of outlet 121961/R Arniwala Minor and there is always a shortage of water and due to this reason they are not getting the command of 15 acres area of the Gram Panchayat, so no area be commanded from uncommand on the outlet. However, the Divisional Canal Officer, Abohar passed the order for sanctioning command by lift (Jhalari command) from uncommand in terms of Section 20 of the Northern India Canal and Drainage Act, 8 of 1873 [for short 'the Act']. He ordered that the sanctioned lift (Jhalari Command) will get water one time and revenue will be fully charged and the water course would be provided by the applicants themselves. Respondent No.3 accepted the report of the DCO and dismissed the appeal of the petitioners. Consequently, the present petition has been filed.

Learned counsel for the petitioners has vehemently argued that respondents No.1 & 2 have committed a patent error of law in passing the impugned orders on the basis of the complaint filed by respondents No.3 & 4 on 16.6.2011 because in that

complaint respondents No.3 & 4 had only made a prayer that in the chak No.121961/R Arniwala Minor of village Kandwala Hazar Khan, Dharangwala Zilladari, 130 Kanals 0 marla of land is lying uncommand though the area is levelled and fit for irrigation and is being cultivated at the spot which is adjoining to outlet No.120115/L from where their area can be properly irrigated because the area is low lying and near to the said outlet. The prayer made in the application was that the land measuring 130 kanals 0 marla, which is lying uncommand, be included in outlet No.120115/L and water be provided to it. It is argued that though the prayer made by respondents No.3 & 4 was to include the uncommand area in outlet No.120115/L yet it has been ordered to be irrigated by way of lift (Jhalari command) without making any investigation for grant of irrigation from outlet No.120115/L.

On the other hand, learned counsel for the respondents has submitted that there is no error in the orders passed by respondents No.1 & 2 as it has been found that a large chak of area measuring 130 kanals 0 marla is lying uncommand which can be irrigated by lift (Jhalari command) from outlet No.121961/R.

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

There is no dispute that the prayer made by respondents No.3 & 4 in the application dated 16.6.2011 was to include 130 kanals 0 marla of land which is lying uncommand in outlet No.120115/L for which respondent No.2 has initiated enquiry and investigation and asked the SDO, Muktsar to give detailed report but it appears that no investigation has been made by Zildar or the higher authorities to find out the possibility for grant of irrigation of

the land of respondents No.3 & 4 measuring 130 kanal 0 marla from outlet 120115/L which is stated to be adjoining to the uncommand area from which it can be easily and properly irrigated and their area is also levelled and fit for irrigation rather after investigation, recommendation has been made that area is on a high level and fit for command by lift (Jhalari command).

In my considered opinion, there is an error in the approach of respondents No.1 & 2 in passing the impugned orders as no decision has been taken or appears to have been taken in regard to feasibility of commanding the uncommand area of 130 kanal and 0 marla from outlet No.120115/L instead of passing an order of irrigating the said land by way of lift (Jhalari command) and also whether the said command would effect the irrigation of the shareholders of the outlet No.121961/R, Arniwala Minor, who had alleged that there is already shortage of water as a result thereof 15 acre area of the Gram Panchayat is not getting command.

In view of the aforesaid discussion, the impugned orders are thus hereby quashed and the matter is remanded back to the Divisional Canal Officer, Abohar (respondent No.2) to reinvestigate the matter in terms of the application made by respondents No.3 & 4 dated 16.6.2011 (Annexure P-2) and decide the same in accordance with law expeditiously. No costs.

30.09.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**