

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

CWP No.17419 of 2015
Date of Decision: 21.08.2015

Maina Devi and another

. . . .Petitioners

Versus

State of Haryana and others

. . . . Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.Shalender Mohan, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners have challenged the order dated 21.11.2014 passed by the Divisional Canal Officer, Adampur Water Service Division, Hisar [DCO], order dated 27.5.2015 passed by Superintending Canal Officer, Bhakra Water Service Circle-I, Hisar [SCO] and order dated 13.8.2015 passed by the Chief Canal Officer, Bhakra Water Service Unit [CCO], declining the prayer made by the petitioners.

In short, the petitioners made a request to respondent No.4 for fixing the outlet at point 318//14/2 after splitting the outlet from RD 11000/L and 20900-T.L. Kuleri Minor instead of fixing it at RD 14400-L and inclusion of the area of the petitioners in the proposed split.

It is alleged that the petitioners, private respondents and other shareholders of outlet RD 11000/L and outlet RD 20900 T.L.

of Kuleri Minor were not getting water for better irrigation from the said outlet. The shareholders moved an application to respondent No.4 for splitting the outlet RD 11000/L and outlet RD 20900 T.L. of Kuleri Minor and to fix a new outlet at RD 14400-L at Kuleri Minor. It is further alleged that the petitioners requested respondent No.4 to adjust their area if the outlet is fixed at Rectangle No.318/14/2. Respondent No.4 excluded the area of the petitioners from the said splitting and left it with the old outlet at RD 11000-L. He splitted the outlet RD 11000/L and outlet RD 20900 T.L. of Kuleri Minor and fixed a new outlet at RD 14400-L vide his order dated 25.3.2011. The petitioners challenged that order in appeal. Respondent No.3 partly allowed the appeal and included the area but did not fix the outlet at point 318//14/2 and also laid down three conditions vide his order dated 29.11.2011.

The petitioners further challenged that order before respondent No.2 in appeal, who accepted the appeal vide his order dated 14.3.2013 and remanded the case back to respondent No.4 for fresh decision after site inspection. After remand, respondent No.4 decided the matter afresh on 2.7.2013 but without inspecting the site and the area of the petitioners was considered in new outlet RD 14400-L but the second demand of fixing the outlet at point 318//14/2 was not considered. The order passed by respondent No.4 was again challenged in appeal by the petitioners before respondent No.3. The appeal was allowed and the case was remanded back to respondent No.4 vide order dated 11.11.2013. It is alleged that this time respondent No.4 excluded the land of the petitioners from proposed splitting and also transferred the area back to the old outlet at RD 11000-L without any scheme and notice

to the concerned shareholders. The petitioners challenged that order dated 21.11.2014 in appeal before respondent No.3 which was dismissed on 27.5.2015 and the appeal filed by the petitioners before respondent No.2 was also dismissed on 13.8.2015.

Learned counsel for the petitioners has vehemently argued that respondent No.4 had no jurisdiction to go against the orders of respondents No.2 and 3 but while passing the impugned order dated 21.11.2014, respondent No.4 has virtually reviewed the order passed by respondent No.3 and has ignored the direction issued by respondents No.2 & 3 while remanding the case back to him. It is further argued that demand of the petitioner is genuine and in the benefit of the shareholders if the outlet is fixed at 318//14/2 which is at higher level on upstream of the watercourse because then all the shareholders would get gravity flow and would be able to irrigate their fields and there would be no reverse flow. It is further argued that the learned Courts below have not applied their judicious mind and did not decide the *lis* between the parties within the stipulated time.

I have heard learned counsel for the petitioners and perused the available record.

On 14.3.2013, respondent No.2 remanded the case back to respondent No.4 to decide the case afresh on merit after site inspection. He decided the *lis* again on 2.7.2013 but respondent No.3 again remanded the case back to him on the ground that he had not make proper investigation and did not follow the remaining instructions issued by respondent No.2 as he did not inspect the site. Respondent No.4 was again directed to make fresh investigation after site inspection. This time, respondent No.4 passed a well

considered order. He not only examined the khaka plan but also inspected the site on 10.7.2014 and found that only three shareholders, who are the owner of 128 kanal 3 marla were opposing the scheme of new outlet at RD 14400-L, Kuleri Minor. He observed that only one shareholder Maina Devi, who is the shareholder of 89 kanal 15 marla and also the present petitioner, had opposed the scheme but on her opposition, the demand of rest of the shareholders, who are holding 328 acres can not be held to be in genuine rather it was held that the demand of Maina Devi (present petitioner) that new proposed outlet may be adjusted at point rectangle 318 x 319 middle line was not genuine. This order has been upheld by both respondents No.2 and 3. It has been held by respondent No.3 that *“since the area of Balbir Singh s/o Sh. Nihal Singh Prithvi Singh s/o Sh. Ram Singh owner of 38 kanal 8 marla have been left in the chak of outlet RD 11000-L on the basis of the consent of the land owners. Hence area of the appellant cannot be included in the proposed chak of outlet RD 14400-L, Kuleri Minor as no space is left for linking it from the proposed source. Divisional Canal Officer, Adampur Water Services Division, Hisar has decided the case after his personal site inspection and getting fresh investigation into the matter as per remand direction. Thus, I find no reason to disturb the order. The appeal is rejected and the decision dated 14.11.2014 passed by the Divisional Canal Officer, Adampur Water Services Division, Hisar is upheld with the condition that the cost of the remodeling of the watercourses as well as adjustment of outlets if any, will be fully borne by the beneficiaries.”*

Respondent No.2 also passed a well considered order which read as under: -

VIVEK PAHWA
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I attest to the accuracy and
authenticity of this document

“It is seen that on 9.3.2011 Divisional Canal Officer, Hisar excluded the area of appellants Smt. Maina Devi w/o Late Sh. Om Parkash and Sombir s/o Late Shri Om Parkash from the chak of outlet at RD 14400-L Kuleri Minor. The scheme was heard by Superintending Canal Officer on the basis of an appeal filed by the above said appellants and the area of the appellants was included in the chak with three conditions. The appellants again filed a case with the Chief Canal Officer making a request of fixing outlet from 14400-L to a place on the upstream of channel in killa no.318/14/2. The case was heard by the Chief Canal Officer and observed that the slopes of ground levels are from upstream to downstream of channel and, therefore, the case was remanded to Divisional Canal Officer, Adampur w/s Divn. Adampur to decide the case on merit after site inspection.

The case was again heard by Divisional Canal Officer, Adampur W/S Divn. Adampur and the area of the appellant was included in the outlet at RD 14400-L Kuleri Minor. However, the case was remanded back by Superintending Canal Officer vide his decision of the Chief Canal Officer. The case was heard by Divisional Canal Officer 3rd time and stated in his decision dated 17.11.2014 that Shri Balbir Singh s/o Shri Nihal Singh, Prithvi Singh s/o Shri Ram Singh owner of 38 kanal 8 marla do not want to

remain on outlet at RD 14400-L Kuleri Minor but instead desired that their area may be kept at outlet at RD 11000-L Kuleri Minor. Due to the statement Shri Balbir Singh s/o Nihal Singh, Prithivi Singh s/o Shri Ram Singh the area of the appellants has lost its connectivity from the outlet RD 14400-L and they will not be able to get any water from the proposed outlet. Accordingly Divisional Canal Officer excluded the area of the appellants from the proposed outlet RD 14400-L and kept the area at outlet at RD 11000-L Kuleri Minor. The appeal against the decision of Divisional Canal Officer was filed by the appellants with Superintending Canal Officer who dismissed the same on 22.5.2015.

From the perusal of the comparative command statement it is seen that full supply level of Kuleri Minor at RD 14400-L is 700.51. The spot levels of the chak area of the proposed outlet vary from 690.65 to 696.80 and, therefore, the whole of the area can be easily commanded from this outlet. The levels of the area of the appellants vary from 697.15 to 697.63 whereas the FSL in the Kuleri Minor at RD 11000-L is 701.29 and therefore his acre can also be very well irrigated from outlet at RD 11000-L Kuleri Minor. Due to the statement of Shri Balbir Singh s/o Shri Nihal Singh, Prithvi Singh s/o Shri Ram Singh there is now no connectivity of the area of the appellants from the chak of

the proposed outlet RD 14400-L and, therefore, the area of the appellants cannot get irrigation from the outlet RD 14400-L. Accordingly the decision of Superintending Canal Officer dated 22.5.2015 is upheld and appeal is dismissed.”

In view of the aforesaid consistent view taken by all the authorities under the Act, I do not find any reason to tinker with the concurrent findings recorded by them.

Dismissed.

21.08.2015

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**