

In the High Court of Punjab and Haryana at Chandigarh

**C.W.P. No. 18008 of 2015 (O&M)
Date of Decision: September 30, 2015**

Sajjan Kumar and others

... Petitioners

Versus

The Divisional Canal Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Ashok Verma, Advocate,
for the petitioners.

Paramjeet Singh, J. (Oral)

CM-12768-CWP-2015

Civil Misc. application is allowed subject to all just exceptions. Annexures P/7 and P/8 are taken on record.

CWP No. 18008 of 2015

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing order dated 17.07.2015 (Annexure P/6) passed by respondent no.3 – Chief Canal Officer, BWSU, Haryana Irrigation Department, Panchkula.

son of Chandgi Ram moved an application for transfer of his area of 10.50 acres from outlet RD 43970-R to outlet RD 46100-R, Balsamand Sub Branch of village Niana on the ground that area in question was not getting proper irrigation from the existing outlet. The case was got considered by the various authorities. Ultimately, the matter was considered by the Divisional Canal Officer, Hisar Bhakra Canal Division, Hisar. Vide order dated 18.03.1991 (Annexure P/2), the Divisional Canal Officer after considering the merit, came to the conclusion that the area under transfer is 16 killas away from the existing source, but from the proposed source, it is only 6 killas. Against that order, petitioners preferred an appeal before the Superintendent Canal Officer, Hisar Bhakra Canal Circle, Hisar who vide order dated 21.06.1991 (Annexure P/3), set aside the order dated 18.03.1991 passed by the Divisional Canal Officer. Thereafter, respondent nos.4 to 9 preferred a revision before the Chief Canal Officer. The Chief Canal Officer, BWSU, Haryana Irrigation Department, Panchkula vide order dated 27.10.2010 (Annexure P/4) reversed the order of the Superintending Canal Officer. Against that order, petitioners filed C.W.P. No. 23336 of 2010 before this Court. This Court vide order dated 01.12.2014 (Annexure P/5) observed that the order earlier passed by the Chief Canal Officer was sketchy and the case was remanded to the Chief

Canal Officer for fresh decision. After remand, the Chief Canal Officer has passed the impugned order dated 17.07.2015 (Annexure P/6). Hence, this writ petition.

I have heard learned counsel for the petitioners.

Learned counsel for the petitioners vehemently contended that order dated 17.07.2015 (Annexure P/6) passed by Chief Canal Officer is non-speaking and he has not considered all the aspects which were required to be considered while shifting the area from one outlet to another outlet. Reference has been made to the percentage of irrigation from the earlier and the proposed outlets. It is submitted that there is only variation of 5% in this regard. Irrigation from earlier outlet was 176%, now it would be 180%. Even the command levels have not been taken into consideration by the Chief Canal Officer. Learned counsel further contended that it will affect duration of the turns of water of the petitioners. Learned counsel relied upon a judgment of this Court passed in *C.W.P. No. 9069 of 2007 titled as "Jaswant Singh and others vs. Superintending Canal Officer and others"*, *decided on 08.02.2010.*

I have considered the contentions raised by learned counsel for the petitioners and perused the record.

The Divisional Canal Officer after considering the merits,

came to the conclusion that distance of the field which is sought to be

transferred to the new outlet is only 6 killas from the proposed source of irrigation, whereas it was 16 killas from the existing source. The Chief Canal Officer has specifically made reference to the command statement available on record before him that FSL at outlet RD 43970-R is 706.05, whereas, FSL at outlet RD 46110-R of Balsmand Sub Branch is 705.36. It has been specifically mentioned that the command of the area in question varies from 1.37 feet to 2.07 feet from the existing outlet RD 43970-R Balsmand Sub Branch, whereas the command of the area from the proposed outlet at RD 46100-R varies from 0.35 feet to 0.77 feet which is much less. If the FSL is to be considered, when the land is at a low level then irrigation will be certainly better. Besides this, as per the provisions for irrigation, area upto 10% can be added or subtracted from the existing chak. In the present case, only 10.50 acres of area have been added whereas 10% comes to 46 acres.

Learned counsel for the petitioners pointed out that there is a variation in the FSL measurement. There is a slight variation. The reasons for this variation can be with the passage of time which can be only a human error.

So far as the judgment in Jaswant Singh's (supra) is concerned, learned counsel for the petitioners could not point out its applicability to the present case by making any reference to the command

statement, Form-A prepared by the authorities or which the sanctioned plan prepared by the authorities. In the present case, the Chief Canal Officer after referring to all the relevant documents has come to the conclusion that irrigation from the proposed outlet will be much better than the existing outlet. The relevant part of the order dated 17.07.2015 (Annexure P/6) passed by Chief Canal Officer is reproduced below for reference:-

“From the perusal of command statement available in the record it is seen that the FSL in the channel at RD 43970-R is 706.05 whereas the FSL at RD 46110-R of Balsmand Sub Branch is 705.36. The command of the area in question varies from 1.37 feet to 2.07 feet from the existing outlet 43970-R Balsmand Sub Branch, whereas the command of the area from the proposed outlet at RD 46100-R is varies from 0.35 feet to 0.77 feet. Though there is reduction in the command of the area but even then the whole of the area can be irrigated through the proposed outlet and reduction in command will not have any effect as far as the irrigation of the area is concerned. The proposed outlet is about 7 acres away from the fields of the appellant whereas the existing outlet RD 43970-R is about 18 acres away. Thus the loss of water due to seepage to be more when water is applied to the fields of the appellant through the existing source than the loss of water due to seepage from the proposed source. Appellant in his statement has informed that some of his area is already existing in the outlet RD

46110 Balsmand Sub Branch and therefore if his area of 10.50 acres is transferred to this outlet then his wari of water will be consolidated at one place and he will be able to irrigate his area in a better way.

The contention of the Advocate of defendant that the original record is not traceable does not have any weight. As the relevant record i.e. khaka plan, command statement FSL of Balsmand Sub Branch and FSL of water course, the length of water course etc. required for making decision in the case are available in the file. The irrigation of the area in question is 197% at the time of hearing of appeal, however, the appellant has stated in his statement that there are three tubewells in his area and he irrigate his area through tubewells and the irrigation intensity of 197% is inclusive of the irrigation done by tubewells. Some shareholders of outlet RD 46100-R Balsmand Sub Branch also stated that if this area in question is transferred to their outlet then they have no objection.”

The area to be added is less than 10%; addition upto 10% is permissible. The irrigation from the proposed outlet will be better than the irrigation from the old outlet.

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

Dismissed in limine.

September 30, 2015

VIRENDER KUMAR
2015.10.13 12:15 vkd
I attest to the accuracy and
authenticity of this document

**[Paramjeet Singh]
Judge**