

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.8877 of 2010

Date of Decision:-17.07.2015

Avtar Singh & Ors.

.....Petitioners.

Versus

State of Punjab & Ors.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH

Present:- None for the Petitioners.

Ms. Monica Chhibber Sharma, DAG Punjab.

Mr. Arun Bansal, Advocate for the respondent no.3.

JASWANT SINGH, J.(ORAL)

The instant petition has been filed under Article 226/227 of the Constitution seeking quashing of order dated 23.7.2008 (P-2) passed by the Divisional Canal Officer-respondent no.2 and order dated 27.10.2009 (P-4) passed by the Superintending Canal Officer-respondent no.1 in proceedings under The Northern India Canal and Drainage Act, 1873.

In brief facts are that Tirlok Singh and Hans Raj-respondents herein moved an application that their land falls near outlet no.20562/left, Minor no.5 and water coming from their present outlet no.19360/L passes along with the boundary of three Kilas of their land which destroys the crop by way of seepage whereas he has no benefit of this water course and no water course comes from outlet no.192222 and, therefore, water turn be

shifted to outlet no.20562/L of Minor 5 for better irrigation. It was also claimed by Tirlok Singh that land of his wife also falls on outlet no.20562 and, therefore, requested the authorities to attach his entire land that outlet no.20562.

After investigating and conducting the spot inspection the Divisional Canal Officer excluded the area from outlet no.19360/left and included in outlet no.20730/Left Minor no.5 on the ground that water course of outlet no.19360/left is at a distance from the area of the applicant/respondent and is downstream from outlet no.20730/left. Accordingly, the Divisional Canal Officer transferred the area vide order dated 23.7.2008 (P-2) which has been affirmed in appeal preferred by the petitioners and proforma respondents by the Superintending Canal Officer vide order dated 27.10.2009 (P-4).

Previously the present petition was allowed by the Co-ordinate Bench of this Court vide order dated 14.03.2012 by setting aside the impugned orders. However, in appeal preferred by the contesting respondents in LPA No.1021 of 2012, the Division Bench remanded the matter by setting aside the order dated 14.3.2012 for a fresh decision vide order dated 03.04.2013.

Since, no one is representing the petitioner today, the matter is being decided in his absence after perusing the entire record which shows that grievance raised by the petitioners is that although the prayer of Tirlok Singh etc. was that their area should be attached with outlet no.20562/L but the Authorities have created a new case at their own whereby the area of Tirlok Singh measuring 36 x 36 acres has been excluded from outlet no.19360/Left and included into outlet no.20730/Left affecting the rights of

the petitioners. Thus, the confusion is created regarding the description of the outlet numbers because Tirlok Singh had filed an application for an outlet in no.20562/Left and not in the numbers where he has been granted outlet.

Consequently this Court had vide its order dated 16.02.2015 passed following directions:-

“ Record has been produced by Zileदार.

Zileदार present in Court states that he is not aware of the order under which old outlets were assigned new numbers specifically with regard to old outlet no.20562-L and 19222 as stated to have been mentioned in Form-A.

Respondent no.3-Divisional Canal Officer is directed to file specific affidavit in this regard.

Adjourned to 24.04.2015. ”

Thereafter Divisional Canal Officer, Devigarh Division, Patiala has filed his affidavit dated 09.04.2015 whereby he has explained the position which is reproduced as under:-

“3. That in compliance to the above order dated 16.02.2015 passed by this Hon'ble Court, it is submitted that earlier canal minor 5 was Kacha canal minor and there was wastage of water due to seepage. Therefore, to utilize the water to its capacity, it was decided to lay bricks from RD 52700 to Tail of Choa Link No.2. So, explanatory note was prepared by the Executive Engineer, Samana Canal Lining Division, Patiala on 31.03.1983. Copy of the Explanatory note is attached herewith as Annexure R-2/1.

4. That finally Superintending Engineer, Bhakra Main Line, Circle, Patiala granted final approval vide letter

no.716/R-9 (16) R dated 31.1.1984. Copy of letter is attached herewith as Annexure R-2/2.

5. That after laying the bricks, difference of length came, therefore, Rds number was changed from 20562/L to 20730-L Saidawala and RD No.19222-L was changed to 19360-L Shutrana. Copy of A-form showing old and new Rds numbers are attached herewith as Annexure R-2/3.

6. That the change in the Rds was made by the department due to change of length after laying bricks in Canal Minor No.5, which was in the interest and befits of farmers to use the water of canal minor to its maximum capacity.

7. That it is pertinent to mention where that the applicant filed the application before the Department by mentioning old Rds numbers but at the time of decision of the case, there were new Rds numbers, therefore, the decision was taken by the Department by mentioning new Rds number in the order.”

In view of the explanation given by the Divisional Canal Officer as well as the perusal of the site plan attached with the present petition, this Court is of the opinion that the orders passed by the Authorities below are correct and complete justice has been done to all the co-sharers including the petitioners.

In view of the foregoing discussion, the present petition is completely devoid of merit and the same is hereby dismissed.

**(JASWANT SINGH)
JUDGE**

July 17, 2015
Vinay