

CWP-25860-2013

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

CWP-25860-2013

Date of Decision: 24.09.2015

Jagshir Singh and another

... Petitioner(s)

Versus

Superintending Canal Officer, Sirhind Canal Circle, Ludhiana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. Ravish Bansal, Advocate,
for the petitioners.

Mr. S.S.Chandumajra, Addl. A. G. Punjab.

Mr. B.S.Sidhu, Advocate,
for respondent Nos.3 to 7.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 03.10.2012 (Annexure P-1) passed by respondent No.2-Divisional Canal Officer and the order dated 21.02.2013 (Annexure P-2) passed by respondent No.1-Superintending Canal Officer, Sirhind Canal Circle, Ludhiana whereby 16.67 acres land has wrongly been transferred from Lift Pump Outlet No.232700-L to Outlet No53331-R Upper Rupana.

CWP-25860-2013

Brief facts of the case as pleaded in the petition are to the effect that private respondents are owners of huge chunk of land measuring more than 30 acres along with other co-sharers. In the year 2010, they moved application for shifting of their land from Lift Pump Outlet No.232700-L to Outlet No.53331-L Upper Rupana which was declined vide order dated 02.11.2010 (Annexure P-3) passed by the Divisional Canal Officer, Faridkot. Against that, appeal was filed which was also dismissed by the Superintending Canal Officer, Ludhiana, vide order dated 27.06.2011(Annexure P-4) with the findings that 30 acres of land of private respondents was being properly irrigated through lift pump as the pipeline of the lift pump reaches upto their field and if the pipeline is broken at some places, it is the responsibility of the concerned co-sharers to get it repaired. The private respondents again moved application in June, 2011 for transferring of 16.67 acres of land from Lift Pump Outlet No.232700-L to Outlet No.53331-L Upper Rupana without mentioning the fact that only about three months ago, case for transfer of that very land had finally been dismissed by the concerned authorities. Thereafter, vide impugned order dated 03.10.2012 (Annexure P-1), respondent No.2-Divisional Canal Officer ordered for shifting of 16.67 acres of land from Mogha Burji No.232700-L Sirhind Feeder Lift Pump to Mogha Burji 53331-R Upper Rupana. Against that, the petitioners preferred appeal before respondent No.1-Superintending Canal Officer which has also been dismissed vide impugned order dated 21.02.2013

CWP-25860-2013

(Annexure P-2). Hence, this writ petition.

In pursuance of notice of motion, respondents put in appearance. Respondent Nos.1 and 2 filed their reply through respondent No.2-Divisional Canal Officer and respondent Nos.3 to 7 have also filed their reply. In their respective replies, respondents averred that earlier, application for transferring of 30 acres of land was moved and now in the present case, only 16.67 acres of land was sought to be transferred from Mogha Burji No.232700-L Sirhind Feeder Lift Pump to Mogha Burji 53331-R Upper Rupana in which the petitioners are co-sharers. The application for transfer of 16.67 acres of land was moved on the ground that the private respondents herein are not getting proper irrigation and they have also levelled the land and it can now be irrigated by flow. Earlier, they were facing difficulties in irrigation, otherwise also, it was more costly. The distance of pipeline was also long. Since the land was levelled and irrigation of the area i.e. 16.67 acres sought to be transferred by flow from Mogha Burji No.232700-L Sirhind Feeder Lift Pump to Mogha Burji 53331-R Upper Rupana. The impugned orders passed by the authorities are well-reasoned.

On similar lines, respondent Nos.3 to 7 have filed written statement.

I have heard learned counsel for the parties and perused the original record produced by the official with their assistance.

Learned counsel for the petitioners vehemently contended

CWP-25860-2013

that earlier respondent Nos.3 to 7 moved application for transfer of 30 acres of land from Lift Pump Outlet No.232700-L to Outlet No.53331-L Upper Rupana which was declined vide order dated 02.11.2010 (Annexure P-3) passed by the Divisional Canal Officer, Faridkot. Feeling aggrieved, appeal was filed which was also dismissed by the Superintending Canal Officer, Ludhiana, vide order dated 27.06.2011 (Annexure P-4). Immediately thereafter, respondent Nos.3 to 7 again moved application for transfer of 16.67 acres from Outlet No.232700-L Sirhind Feeder Lift Pump to Outlet No.53331-R Upper Rupana despite the fact that there was no change of circumstances which may warrant shifting of the area and their claim had already been rejected few months back, therefore, the principle of *res judicata* applies. The impugned orders passed by the authorities are contrary to the provisions of the Northern India Canal and Drainage Act, 1873. Respondent Nos.3 to 7 are getting their irrigation properly by way of lift pump and there is no reason to transfer their area. The impugned orders passed by the canal authorities are unjust, unfair and contrary to the provisions.

Per contra, learned State counsel and learned counsel for respondent Nos.3 to 7 contended that area has been transferred in accordance with law after framing of scheme under Section 30-B (2) of the Northern India Canal and Drainage Act. The scheme was duly published, objections were invited and opportunity of hearing was given to everyone. Respondent Nos.3 to 7 have levelled the fields to the extent

CWP-25860-2013

of 16.67 acres and now irrigation from Outlet No.53331-R Upper Rupana is possible by way of flow. The irrigation from the lift pump is very difficult. The area which has been ordered to be transferred by the authorities is nearer to the Outlet No.53331-R Upper Rupana and reference has been made to the site plan (Annexure R-3/1). Now-a-days, prices of diesel are high and once the irrigation is possible by way of flow, there is no reason at least for the petitioners to oppose the transfer of area for irrigation by flow of water as the same is being made in accordance with law. Learned counsel further contended that proceedings before the canal authorities are summary in nature and the principle of *res judicata* will not apply. There is clear cut change in the circumstances, With the change of area, no prejudice is likely to be caused to the petitioners and their turn will not be affected.

I have given my anxious and thoughtful consideration to the rival contentions of learned counsel for the parties.

The site plan (Annexure R-3/1) annexed with written statement has not been annexed by the petitioners along with the petition. Perusal of site plan (Annexure R-3/1) reveals that two canals known as Sirhind Canal and Rajasthan Canal are running parallel. Rajasthan Canal is a blind feeder which straightway goes upto the area falling within the State of Rajasthan. There is no outlet in the Rajasthan Canal nor it is permitted in view of the agreement between two States. Respondent Nos.3 to 7 are getting irrigation from Sirhind Canal by way of pipeline which is shown in the site plan and irrigation is by way of lift

CWP-25860-2013

pump because it has to cross the Rajasthan Canal. The irrigation of land of respondent Nos.3 to 7 is from Outlet No.232700-L Sirhind Canal that too by way of lift pump and distance of land of respondent Nos.3 to 7 from the said outlet is 12100 ft. and that irrigation is also through pipeline by lifting the water. For the purpose of lifting the water, respondent Nos.3 to 7 have to use diesel engine or tractors for running the lift pump. Otherwise also, this is a close channel of irrigation and pipeline in various fields of respondent Nos.3 to 7 is admitted resulting into loss of water and less irrigation whereas distance of fields of private respondent Nos.3 to 7 from outlet No.53331-R Upper Rupana is in the range of 1738 ft., 1760 ft. and 1890 ft. which is much less than the distance from Outlet No.232700-L Sirhind Canal, at least more than 10,000 ft. less. Otherwise also, irrigation to 16.67 acres of land of private respondents which has been levelled is to be by flow from Outlet No.53331-R Upper Rupana. Once the private respondents have levelled the area and made it a cultural command area by flow, then this is certainly a changed circumstance which has led to the shifting of 16.67 acres from Outlet No.232700-L Sirhind Feeder Lift Pump to Outlet No.53331-R Upper Rupana for better irrigation. The irrigation of private respondent will not only be better by way of flow, but the distance will also be reduced many folds. Otherwise also, there is no legal flaw in shifting of land. The scheme under Section 30-B of the Northern India Canal and Drainage Act has been framed which has not been disputed.

CWP-25860-2013

Even no objection has been raised to the scheme and it was neither assailed on the ground that the scheme is faulty in any manner.

The only ground raised by the petitioners is that since few months back, application for transfer of area moved by respondent Nos.3 to 7 was dismissed by the Divisional Canal Officer, therefore, they could not move fresh application. This objection is not sustainable as proceedings under the Northern Canal and Drainage Act are summary in nature and the principle of *res judicata* is not applicable in summary proceedings. This Court has also held so in CWP No.16139-2011, titled '**Dharambir vs. The Deputy Collector, Adampur Water Services Division, Hisar and others**', decided on 13.10.2014, as under:

*“A perusal of above extracted judgment would show that there was change in circumstances and repeated applications were given by co-sharers for the same purpose. It is settled law that fixing of turns of water is an ad hoc arrangement and the proceedings are summary in nature in view of law laid down by the Hon'ble Supreme Court in **Inder Singh vs. Financial Commissioner, Punjab** 1997(1) PLJ 52 (SC) and **Gram Panchayat, Surewale vs. Commissioner, Ferozepur and others** 1998(1) PLJ 240. In the facts and circumstances of the present case and also the fact that there is a change in circumstances, principles of *res judicata*, *estoppel*, *waiver*, *acquiescence* etc. are not applicable. Even in **Kamlesh (supra)**, it has been held that holding at the fag end of the main watercourse is entitled to the Jhara (residue). The case law cited by*

CWP-25860-2013

learned counsel for the petitioner is not applicable in the facts and circumstances of the present case nor relevant provisions of 'the 1974 Act', 'the 1976 Rules' and Punjab Irrigation Manual have been referred to in those judgments. In view of above, question No.(iii) is answered holding that principles of res judicata are not applicable to the proceedings fixing 'Warabandi' as it is an ad hoc/temporary arrangement."

Otherwise also, there is clear cut change of circumstances as land has been levelled and it can be irrigated by way of flow. Moreover, no prejudice is caused to the petitioners with the transfer of area to Outlet No.53331-R Upper Rupana and irrigation will become better. Similarly, on this ground, the Superintending Canal Officer has passed the following order:

"After hearing both the parties and consultation and perusing the record of file, this Court has found that the decision done by the Divisional Canal Officer, Faridkot Canal Division, Faridkot, dated 03.10.2012, the same is liable to be maintained due to the following reasons:

- 1) The opposite party have lower the level of their land measuring 16.67 acre. In this manner, the position prevailing at that time and position of the land at this time has been changed. Due to this reason, this transferred area will get flow irrigation from Moga Burji 53331-R, Upper Canal Distributory.*
- 2) The area under transfer measuring 16.67 acre Moga Burji No.53331-R is near to the Upper*

CWP-25860-2013

Rupana, Canal Distributory, whereas this area is far away from Sirhind Feeder Lift Pump Burji No.232700-L. Therefore, from Mogha Burji No.53331-R, Upper Rupana Canal Distributory will be better irrigated as compared to Lift Pump Burji No.232700-L.

- 3) *The area under transfer being on the higher side, earlier this area was not being irrigated by canal water from any side.*
- 4) *From Sirhind Field of Lift Pump Burji No.232700-L Canal water is being given through Lift Pump, whereas now on account of lowering the area by the opposite side from Mogha Burji 53331-R flow irrigation will be done from Upper Rupana.*
- 5) *From Moga Burji 53331-R, Upper Rupana for area under transfer the water channel are present at the spot. Therefore, arrangement of other water channel are not required, rather from this present water channel, this area can be better irrigated with canal water from this Mogha.”*

In view of above discussion, I do not find any merit in the present petition.

Dismissed.

Costs made easy.

24.09.2015
parveen kumar

(Paramjeet Singh)
Judge