

Civil Writ Petition No. 4397 of 1997

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

**Civil Writ Petition No. 4397 of 1997
Date of Decision: 16.12.2016**

Jagdish and others

.....Petitioners

Vs.

The Deputy Collector, Ghaggar Division, Sirsa and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

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

Mr. Vishal Garg, Additional A.G. Haryana.

Mr. Gaurav Singla, Advocate for
Mr. Sanjiv Gupta, Advocate
for respondent No.5.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 6.1.1997 (Annexure P-5), whereby appeal of the petitioners was dismissed and the order dated 13.2.1996 (Annexure P-4) passed by the Divisional Canal Officer-respondent No.2, was upheld.

Notice of motion was issued and operation of the impugned orders was stayed by a Division Bench of this Court vide order dated 1.4.1997. Written statement on behalf of contesting-respondent No.5 was filed. Thereafter, the writ petition was admitted for regular hearing vide order dated 12.10.1998. That is how, this Court is seized of the matter.

Learned counsel for the petitioners, while placing reliance on

Civil Writ Petition No. 4397 of 1997

(Annexure P-1), i.e. warabandi (turn of water) of the parties and site plan (Annexure P-2), submits that in the circumstances of the case, order dated 26.10.1995 (Annexure P-3) passed by the Deputy Collector, Ghaggar W/S Division, Sirsa, was the perfect order and nobody was aggrieved against it. However, respondents No. 4 and 5 unnecessarily racked up the issue before the Divisional Canal Officer who changed the turn of water of the petitioners behind their back, vide impugned order dated 13.2.1996 (Annexure P-4). When the petitioners filed appeal before the Superintending Canal Officer, he also failed to appreciate the factual position obtaining at the site, while passing the impugned order dated 6.1.1997 (Annexure P-5), thereby causing manifest injustice to the petitioners. He prays only for limited modification in the order dated 13.2.1996 (Annexure P-4) to the effect that turn of water of the petitioners may be kept at Sr. Nos. 13 and 14.

Learned counsel for the contesting respondent No.5 submits that if turn of water of respondents No. 4 and 5 at Sr. No. 12, 15 and 16 is kept intact as per Annexure P-1, he would have no objection if the present writ petition is allowed to the extent learned counsel for the petitioner has prayed for.

Having heard learned counsel for the parties at considerable length and after going through the record of the case, this Court is of the considered opinion that owing to the situation depicted in the site plan (Annexure P-2), coupled with the warabandi (Annexure P-1), there was no necessity for the Divisional Canal Officer to change the turn of water of the petitioners.

Similarly, since the Superintending Canal Officer failed to appreciate this factual and material aspect of the matter, while passing the

Civil Writ Petition No. 4397 of 1997

impugned order (Annexure P-5), both the impugned orders cannot be sustained. It is so said, because land of both the parties would be getting adequate irrigation, as per their turn of water as recorded in Annexure P-1. It is also pertinent to note here that no other co-sharer felt aggrieved against the order dated 26.10.1995 (Annexure P-3).

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders (Annexure P-4 and P-5) were superfluous in nature, which had been passed by the respondent canal authorities without appreciating true fact situation, the same cannot be upheld. Accordingly, impugned orders (Annexures P-4 and P-5) are hereby set aside. Writ petition deserves to be accepted.

Consequently, order dated 26.10.1995 (Annexure P-3) passed by the Deputy Collector, Ghaggar Division, Sirsa shall stand restored. Should there be any ambiguity, it is clarified that all the co-sharers shall get their turn of water as per warabandi Annexure P-1.

With the abovesaid observations made and directions issued, present writ petition stands allowed, however, with no orders as to costs.

16.12.2016
Ak Sharma

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No