

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10735-2014

Date of Decision: August 23, 2016

Rajinder Singh and another

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ashish Gupta, Advocate,
for the petitioners.

Mr. Yatinder Sharma, Addl. AG, Punjab,
for respondent Nos. 1 to 4.

Mr. N.S. Chahal, Advocate,
for respondent No. 5.

RAMESHWAR SINGH MALIK, J. (Oral)

Instant writ petition is directed against the order dated 16.1.2014 (Annexure P-2), passed by respondent No. 2, whereby appeal filed by respondent No. 5 was accepted by the Superintending Canal Officer, Ferozepur-respondent No. 2 and the order, dated 19.8.2013 (Annexure P-1), passed by Divisional Canal Officer, Harike Canal Division, Ferozepur-respondent No. 3, was set aside.

Notice of motion was issued and in compliance thereof separate written statements have been filed on behalf of the respondents.

Heard learned counsel for the parties.

Perusal of the order dated 19.8.2013 (Annexure P-1), passed by respondent No. 3, i.e. Divisional Canal Officer, Harike Canal Division, Ferozepur, makes it clear that after considering all the relevant aspects of the matter, Divisional Canal Officer found the grievances raised by the

petitioners to be genuine one and the same was accepted. Accordingly, the scheme was sanctioned under Section 30-B(2) of the Northern India Canal and Drainage Act, 1873. The petitioners have undertaken to pay the requisite amount for the water course.

It has been the consistent stand taken by the petitioners that they have throughout been ready to pay the requisite amount as and when the same is assessed by the competent authority. It is also not in dispute that the amount for water course has not been assessed by any competent authority so far and no demand was put on the petitioners. It is not pleaded or argued case on behalf of private respondent No. 5 that despite the demand, the petitioners did not pay the amount.

The Superintending Canal Officer, Ferozepur, misdirected himself while setting aside the self-contained order, dated 19.8.2013 (Annexure P-1), passed by the Divisional Canal Officer, solely for the reason that the respondents-petitioners herein could not produce any written concrete proof regarding payment of their stipulated share in laying the underground pipe line. Once no authority has ever assessed the amount which would be required for laying down the underground pipe line and did not put any demand on the petitioners, there was no scope for the Superintending Canal Officer, Ferozepur, to find fault with the petitioners.

Having said so, this Court feels no hesitation to conclude that the impugned order, dated 16.1.2014 (Annexure P-2), passed by the Superintending Canal Officer, Ferozepur-respondent No. 2, suffers from patent illegality and the same cannot be upheld.

During course of hearing, when confronted with the aforesaid

peculiar facts and circumstances, learned counsel for the State also could not advance any meaningful argument in support of the impugned order and rightly so, it being a matter of record. In fact, the impugned order passed by respondent No. 2 has been found to be totally non-speaking and cryptic order, in this regard. Respondent No. 2 has committed a serious error of law, while passing the impugned order, which is not as per true facts of the case and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case and coupled with the reasons aforesaid, this Court is of the view that since the impugned order, dated 16.1.2014 (Annexure P-2), passed by the Superintending Canal Officer, Ferozepur-respondent No. 2 has been found to be patently illegal, the same cannot be sustained.

Accordingly, the impugned order is hereby set aside. Consequently, the order dated 19.8.2013 (Annexure P-1), passed by the Divisional Canal Officer, Harike Canal Division, Ferozepur-respondent No.3, is restored. The Divisional Canal Officer, Harike Canal Division, Ferozepur-respondent No. 3 is directed to get the amount assessed which would be required for laying down the underground pipe line, at an early date and he shall put the demand on the petitioners for paying the requisite amount.

It goes without saying that the petitioners shall be bound to pay the requisite amount demanded from them by the Divisional Canal Officer, Harike Canal Division, Ferozepur-respondent No. 3. Thereafter, the Divisional Canal Officer, Harike Canal Division, Ferozepur-respondent No.3

shall ensure that the paid water course is provided to the petitioners, in strict compliance of the order dated 19.8.2013 (Annexure P-1), without any further loss of time and in any case within a period of two months after the payment is made by the petitioners.

Resultantly, with the above said observations and direction issued, the present writ petition stands disposed of. However, there shall be no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

August 23, 2016
Pkapoor

Whether Speaking/Reasoned: ☒ YES / NO

Whether Reportable: ☒ YES / NO