

CWP-12875-2014

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

CWP-12875-2014

Date of Decision: 18.03.2016

Manjit Singh

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 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. N.S.Dandiwal, Advocate,
for the petitioner.

Mr. B.M.Vinayak, DAG, Punjab.

Mr. Vijay Sharma, Advocate,
for respondent Nos.5 and 6.

Paramjeet Singh Dhaliwal, J.

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 the order dated 20.06.2013 (Annexure P-12) passed by respondent No.2-Superintending Canal Officer, I.B.Circle, Patiala and further a writ of prohibition restraining respondent Nos.2 to 4 from implementing/carrying out order dated 14.02.2011 (Annexure P-9).

Brief facts of the case are to the effect that petitioner-Manjit Singh and proforma respondent No.7-Smt. Surjit Kaur moved an application to respondent No.3-Divisional Canal Officer with a request

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that they are irrigating their fields from RD No.94527/TR Rajbaha Mohal Guara, but their certain area remains uncommand and the same will become as command area if shifted to RD No.46700/L Sangrur. The Divisional Canal Officer, Sangrur, vide order dated 28.07.2004 (Annexure P-1), sanctioned the scheme and the same has been approved by the Superintending Canal Officer, Patiala Circle, Patiala vide letter No.5922/R-8(22) dated 23.09.2004. Vide order dated 13.09.2005 (Annexure P-2), the Deputy Collector has also approved the amended *Warabandi* which has been implemented at the spot but the opposite party filed an appeal before the Superintending Canal Officer, Patiala which was dismissed vide order dated 27.04.2006 (Annexure P-3) and the order dated 28.07.2004 passed by the Divisional Canal Officer was upheld. Against that, CWP No.8331-2006 was filed which was allowed vide order dated 07.05.2007 (Annexure P-4) and matter was remitted to the Superintending Canal Officer with a direction to decide the matter afresh. Thereafter, vide impugned order dated 25.06.2007 (Annexure P-6), the Superintending Canal Officer accepted the appeal. Against that, the petitioner filed writ petition before this Court which was allowed vide order dated 08.11.2010 (Annexure P-7) and matter was remitted to the Superintending Canal Officer to decide it afresh. In pursuance of the order dated 08.11.2010 (Annexure P-7), the Superintending Canal Officer accepted the appeal filed by Jang Singh and others vide order dated 14.02.2011 (Annexure P-9). Against that, the petitioner filed CWP No.13530-2011 which was disposed of vide order dated 23.07.2012

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(Annexure P-10) and the matter was again remanded to the Superintending Canal Officer. In pursuance of the order dated 23.07.2012 (Annexure P-10), the Superintending Canal Officer proceeded with the matter and ultimately remanded the case to the Divisional Canal Officer, Sangrur to remove the defects i.e. since area was sought to be transferred from Lehal Division to the Sangrur Division, therefore, hearing should have been done jointly by the Lehal Division and the Sangrur Division; the comparative command statements of both the outlets were required to be attached; the objections regarding bifurcation of land of Jang Singh should also have been examined and statements of shareholders in RD No.46700/L Rajbaha Sangrur should also have been attached. The Divisional Canal Officer after meeting with the deficiencies ordered that area of the petitioner and another will remain at the earlier position at RD No.94527/TR Rajbaha, Mohal Guara, vide order dated 23.01.2013 (Annexure P-11). Against that, an appeal was filed before the Superintending Canal Officer, who dismissed the same vide impugned order dated 20.06.2013. Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner has vehemently contended that area of the petitioner can be better irrigated from RD No.46700/L Rajbaha Sangrur as distance of his fields from this outlet is about 90 karams i.e. 500 ft., whereas distance from RD No.94527/TR

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Rajbaha, Mohal Guara is more than 10,000 ft. Otherwise also, the area is at the tail and the same remains uncommand. If it is transferred to RD No.46700/L Rajbaha Sangrur, then the entire area will become commandable and there will be better irrigation. Respondent No.1-Superintending Canal Officer has wrongly rejected the appeal on flimsy grounds in spite of the fact that it has been noticed that area of the petitioner as per the report dated 13.10.2003, submitted by S.D.O, is at a long distance from RD No.94527/TR Rajbaha, Mohal Guara which has been made pucca. As a result of it, all the outlets have been re-designed and the area of the petitioner can be irrigated from outlet No.94518/TR and its full supply level (FSL) will be 787.86 ft. and level of the fields of the petitioner will be 782.9 ft. Although, there will be long length of watercourse, this area can be irrigated and the impugned orders have been passed without hearing the affected persons who are objecting to the watercourse and also are not agreeing for under-laying the pipes. The canal authorities have come to the conclusion that area of the petitioner can be irrigated from Outlet No.94518/TR and also can be irrigated from RD No.46700/L Rajbaha Sangrur, but the petitioner is required to make arrangement of watercourse.

Per contra, learned State counsel and learned counsel for respondent Nos.5 and 6 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned orders.

I have considered the rival contentions of learned counsel for the parties and perused the record.

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In the impugned order, the Superintending Canal Officer has admitted the fact that area of the petitioner is far away from RD No.94527/TR Rajbaha, Mohal Guara whereas is nearer to RD No.46700/L Rajbaha Sangrur. It has also been admitted by the Superintending Canal Officer that area can be irrigated from both the outlets. The D.C.O, Sangrur has no objection to the transfer of the area. It is an admitted fact that earlier some of the area of the petitioner remained uncommand but the same can be irrigated from RD No.46700/L Rajbaha Sangrur. The claim has been rejected only on the ground that outlets have been lined and reference to the level has been made. The Superintending Canal Officer has come to the conclusion that the outlets have been re-designed and new Outlet No.94518/TR has been created. Perusal of the site plan indicates that distance of fields of the petitioner from RD No.94527/TR Rajbaha, Mohal Guara is more than 10,000 ft. whereas it is only 90 karams from outlet No.46700/L Rajbaha Sangrur. The issue before the Superintending Canal Officer was with regard to transfer of area from RD No.94527/TR Rajbaha, Mohal Guara to RD No.46700/L Rajbaha Sangrur. There is no issue with regard to the creation of new outlet i.e. outlet No.94518/TR. No scheme has been published for the creation of new outlet i.e. outlet No.94518/TR. It is altogether a new outlet. The parties have been litigating since July, 2004 and there is no mention in the impugned order as to when this new outlet has been created. Otherwise also, no finding has been recorded as to what is the effect of the order passed on

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28.07.2004 (Annexure P-1), when the scheme was approved by the D.C.O in accordance with law and was affirmed by the S.C.O and amended *warabandi* was prepared by the Deputy Collector, Sangrur and implemented at the spot. Once the entire formalities have been completed and the authorities have also given consent for transfer of area, the question of undoing all the things, which have been implemented in 2004, after 12 years will not be justified. The scheme was sanctioned on 28.07.2004 and approved by respondent No.1-Superintending Canal Officer vide letter dated 23.09.2004 and amended *warabandi* was prepared. It would be unjust and unfair to amend the *warabandi* after 12 years and revert back the petitioner to get the irrigation from the newly created outlet i.e. outlet No.94518/TR specifically when RD No.46700/L Rajbaha Sangrur is nearer to the fields of the petitioner and entire area of the petitioner will become commandable if his land is irrigated from this outlet. So far as the creation of outlet No.94518/TR is concerned, its coming into existence has not been discussed in accordance with law by the Divisional Canal Officer and the Superintending Canal Officer. Otherwise also, if the shareholders are to be shifted to the newly outlet, they are also required to be given opportunity of hearing. The area of petitioner cannot be transferred to the newly created outlet without following due procedure as prescribed in the Northern India Canal and Drainage Act, 1873. The canal authorities have entirely created a new case without any justification.

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In view of above, the instant petition is allowed and the impugned order dated 20.06.2013 (Annexure P-12) is set aside and respondent Nos.2 to 4 are restrained from implementing the order dated 14.02.2011 (Annexure P-9).

18.03.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge