

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

**240**

**CWP-12200-2015**

**Date of Decision: July 26, 2016**

ROHTAS

.....PETITIONER

VERSUS

CHIEF CANAL OFFICER/LCU HARYANA AND ANR

.....RESPONDENTS

**CORAM:- HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present: Dr.Naresh Kaushik, Advocate for the petitioner.

Mr.R.S.Doon, AAG, Haryana.

Ms.Rupinder Thind, Advocate for respondent No.2.

**RAMESHWAR SINGH MALIK, J.(Oral)**

Feeling aggrieved against the impugned order dated 22.4.2015 passed by the Chief Canal Officer, Haryana (Annexure P-1), petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Notice of motion was issued and pursuant thereto reply was filed on behalf of contesting respondent No.2.

Very short issue that falls for consideration of this Court is whether a most reasonable offer made by the petitioner for exchange of land with respondent No.2, in lieu of excavating water course for respondent No.2 through the land of the petitioner, ought to have been accepted by the canal authorities as well as respondent No.2 or not. It is the second round of litigation as the parties approached this Court earlier also. When the writ petition filed by respondent No.2 was dismissed, he filed LPA No.1148 of 2012 which was also dismissed by a Division Bench of this Court, vide

Relevant observations made by the Division Bench of this Court are as under:-

“Counsel for the private respondents, on the other hand, submits that he is a co-sharer, to the extent of 1.08 Bighas, whereas the appellant has 10 Bighas of land. In case a water course is excavated through his land, respondent No.4 would not be left with any land. It is further submitted that as the appellant's land adjoins the proposed water course, it would be equitable if the water course is shifted to an appropriate place through land of the appellant or by exchange of land.

We have heard counsel for the parties, perused impugned orders and find no reason to hold that the impugned order suffers from any error of law or of fact, as would require interference. The Canal Authorities were required, not merely to accept the appellant's prayer for providing a water course but also to consider the respondent's plea that in case a water course is excavated through his land, he will not be left with any land. The authority, however, ignored this plea and did not consider the respondent's rights. Even otherwise, the learned Single Judge has merely remanded the case for a fresh consideration.

In this view of the matter, the impugned order is affirmed and the appeal is dismissed. The Divisional Canal Officer is directed to decide the matter, within three months of receipt of a certified copy of this order.”

In compliance of the above said order passed by the Division Bench of this Court, respondent Canal authorities have again reiterated their same earlier stand, without following the above said directions issued by this Court, in true letter and spirit.

Pleaded and argued case on behalf of the petitioner right from

the day one is that he is not averse to provide water course to respondent No.2. However, he only prayed that since he was owning a very small piece of land i.e. 1.08 Bighas, respondent No.2 may be directed to exchange the equal quantity of land required for the water course, with the petitioner, so that petitioner may not become landless. It seems respondent Canal authorities have miserably failed to appreciate this peculiar fact situation which has gone undisputed on record.

The only argument raised by learned counsel for respondent No.2 is that he can not be forced to exchange the land with the petitioner because there was no such provision under the Haryana Canal and Drainage Act 1974. In support of her contention, learned counsel for respondent No.2 places reliance on a judgment of this Court in **Bachan Singh and another vs Superintending Canal Officer and others 1973 PLJ 47**.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that the impugned order dated 22.4.2015(Annexure P-1) passed by the Chief Canal Officer is palpably wrong and the same can not be upheld, as it has been found suffering from the patent illegality and perversity.

So far as the above-said judgment relied upon by the learned counsel for respondent No.2, is concerned, there is no dispute about the observations made therein. However, on a close perusal of the cited judgment the same has not been found of any help to respondent No.2, being distinguishable on facts. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes,

difference of even one circumstance or additional fact can make the world of difference, as held by Hon'ble Supreme Court in **Padmasundra Rao & others (dead) versus State of Tamil Nadu and others 2002 (3) SCC 533**.

A bare reading of the above said observations made and directions issued by the Division Bench of this Court, vide order dated 24.1.2013, would show that the respondent Canal authorities were duty bound to reconsider and decide the case on merits by passing a fresh order, keeping in view the peculiar facts of the case. It is undisputed before this Court that the Haryana Canal and Drainage Act 1974 (for short Act) imposes no bar on the parties, for exchanging the land in lieu of water course, as and when such compulsive necessity arises.

The object of the Act is to provide irrigation facilities to the landowners but it has never been the legislative intent to render some landowners landless, while providing irrigation facilities to others. The stand taken on behalf of respondent No.2 has been found totally unreasonable which cannot be accepted. It is so said because when confronted with as to what was that strong reason for respondent No.2 not to exchange his small piece of land with the petitioner, learned counsel for respondent No.2 had no answer and rightly so, it being a matter of record.

It seems that respondent No.2 is bent upon to render the petitioner landless for his own benefits. Petitioner has not been found at fault in this regard. As noticed herein-above, petitioner is not averse to provide water course to respondent No.2 but made a very reasonable request to direct respondent No.2, to exchange the land with the petitioner which is required for excavating the water course for respondent No.2. However, respondent No.2 is unnecessarily adamant for the reasons best known to

him. It does not appeal to reason. Further, the impugned order runs counter to the basic principles of natural justice. Having said that, this Court feels no hesitation to conclude that neither the unreasonable stand taken on behalf of respondent No.2 nor the impugned order passed by Chief Canal Officer can be upheld, for this reason as well.

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 passed by respondent authorities have been found patently illegal and contrary to the true spirit of the order dated 24.1.2013 passed by the Division Bench of this Court in LPA No.1148 of 2012, the same cannot be upheld. Accordingly the impugned orders are hereby set aside.

Consequently, the respondent authorities are directed to provide the water course to respondent No.2 on the basis of exchange of land between petitioner and respondent No.2, instead of forcing the petitioner to accept compensation in cash. This direction is being issued to the respondent authorities with a view to strike a balance and to do a complete and substantial justice between the parties.

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

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

**July 26, 2016**  
**TSG**

**Whether speaking/reasoned?                      Yes/No**

**Whether Reportable?                                      Yes/No**