

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CWP No.13748 of 2016
Date of decision:15.7.2016**

Col.Gurdeepinder Singh Dhillon (retd.)

...Petitioner

Versus

Superintending Canal Officer, PSE-I and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Vijay Sharma, Advocate for the petitioner.

RAMESHWAR SINGH MALIK, J. (Oral)

Present writ petition is directed against the order dated 20.10.2015 passed by Superintending Canal Officer (Annexure P-4), whereby land owned by the private respondents was ordered to be made command area.

Learned counsel for the petitioner submits that instead of providing horizontal outlets/watercourses, the respondent canal authorities should have provided vertical watercourses/outlets. He also pointed out that since the area owned by the private respondents was situated on a higher level, watercourse sought to be provided to them would not work properly. He concluded by submitting that since respondent No.1 was a neighbourer of respondents No. 3 and 4, he should not have passed the impugned order. He prays for setting aside the impugned order, by allowing the instant writ petition.

After hearing the learned counsel for the petitioner at

considerable length and going through the record of the case including the impugned orders, this Court is of the considered opinion that since the impugned orders have not been found suffering from any patent illegality or perversity, the same deserve to be upheld. The writ petition is bereft of merit and the same is liable to be dismissed.

Before proceeding further, it would be appropriate to refer to the operative part of the order passed by respondent No.1 and the same reads as under:-

“File was perused. The arguments of both parties were heard thoroughly. Site map was seen. The reports/command statement of Zileadar, Sub Division Officer Karhali Sub Division Patiala were read. File No.20-30 B/99 decided on 07.01.2000 was seen. Regarding this, spot was inspected the levels at spot were checked and it was seen that the land of respondents can get water. Apart from this, as per order dated 07.01.2000 passed by Division Canal Officer, Devigarh Division Patiala the water courses have been sanctioned under suo-moto scheme. The appellants do not suffer any loss. They and other co-sharers are using all water of the outlet for 400 acre. The appellant do not want to give share of water to other co-sharers and to protect the rights of other co-sharers, the land is required to make command so that more and more co-sharers can get canal water and crops of other co-shares can get water. By making this land command, the appellant do not suffer any loss and appellant have failed to prove that by making the land of respondents command they will suffer any

loss because they will keep on getting their due canal water.

The water of appellants will not be deducted. Therefore, the order dated 15.04.2015 passed by Division Canal Officer, Devigarh Division, Patiala is upheld and the appeal is dismissed. This order is passed u/s 30-B3 of Amended Northern India Canal & Drainage Act 8 of 1973.”

During the course of hearing, learned counsel for the petitioner could not point out any kind of prejudice which might have been caused to the petitioner by passing of the impugned order. It has been specifically recorded in the impugned order by respondent No.1 that water of the appellant-petitioner shall not be reduced, thus, irrigation facility being availed by the petitioner is not going to be adversely affected. Whether the watercourses or outlets are to be provided either horizontally or vertically have to be left to the experts of the Department. Such an arrangement, in the very nature of things, has to be made keeping in view the peculiar fact situation available at the site. For carving out any watercourses or outlets, different relevant factors are to be taken into consideration and the canal authorities are experts in their field. An order based on expert opinion cannot be set aside simply because it is not suitable to one of the parties until and unless said party clearly shows a serious prejudice caused qua his or her interest.

So far as the argument raised by the learned counsel for the petitioner about the propriety of passing the order by respondent No.1 is concerned, the same has been duly considered but has not been found worth acceptance. It is so said because the impugned order passed by respondent No.1 is a well reasoned and self-speaking order, which is supported by

sound reasons including the technical aspect of the matter. Neither respondent No.1 has gone contrary to the facts nor the order is against any of the relevant provisions of law, because of which the impugned order passed by respondent No.1 deserves to be upheld.

Even if the area owned by the private respondents might be on slightly higher level, as alleged by the learned counsel for the petitioner, it will be for the canal authorities to see how to make the watercourse workable. This Court would be exceeding its jurisdiction, while directing the canal authorities to provide any watercourse or an outlet in a particular fashion or in a particular direction. Once the uncommand area owned by the private respondents can be made command area without causing any kind of prejudice to the petitioner including any reduction in the quantity of water of his share, the argument raised on behalf of the petitioner would be nothing but based on technicalities alone.

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 orders passed by the respondent authorities are based on true facts of the case as well as the same have been passed, strictly in accordance with law, the present writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the above-said observations made, the instant petition stands dismissed, however, with no order as to costs.

15.7.2016**mks**

MUKESH KUMAR SALUJA
2016.07.15 17:32
I attest to the accuracy and
authenticity of this document.

(RAMESHWAR SINGH MALIK)
JUDGE