

CWP No.22962 of 2013

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

CWP No.22962 of 2013 (O&M)

Date of decision: 26.05.2016

Shri Sukhwinder Singh and others

....Petitioners

Versus

Superintending Canal Officer, Sirhind Canal Circle, Ludhiana and others

....Respondents

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. G.S. Nagra, Advocate, for the petitioner.

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

Mr. Paramjit Batta, Advocate, for respondents No.3 to 7.

PARAMJEET SINGH DHALIWAL, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of *certiorari* for quashing the order dated 14.08.2013 (Annexure P-4) passed by Superintending Canal Officer, Sirhind Canal Circle, Ludhiana and order dated 15.04.2013 (Annexure P-3) passed by Divisional Canal Officer, Bathinda Canal Division, Bathinda.

Brief facts of the case are that respondents No.3 to 7 filed an application for shifting of their land to a new outlet, before the Divisional Canal Officer that they are residents of Village Adampura. About 100 acres of their land is attached with outlet No.49278/R Rajbaha Bhadour; 185 acres attached with Alkara Minor Burji No.7230/R and 600 acres attached with outlet Burji No.150810/TL Rajbaha Raikot. It was averred in the

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application that their area is at the tail, therefore, the same may be shifted and included in new outlet Burji No.28000 Bhadour. The Divisional Canal Officer taking into consideration the recommendation of field staff i.e. Zileadar and S.D.O. ordered framing of the scheme and thereafter sanctioned new outlet Burji 28000/R Bhadour vide order dated 15.04.2013 (Annexure P-3). Against the order passed by Divisional Canal Officer, petitioners filed appeal before the Superintending Canal Officer, which has been dismissed vide order dated 14.08.2013 (Annexure P-4). Hence, this writ petition.

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

Learned counsel for the petitioners vehemently contended that underground pipe will damage their property and will also harm their constructions. Learned counsel further contended that the proposed outlet is at a distance of about 7 kms from the said area.

On the other hand, learned counsel for respondents No.3 to 7 defended the orders passed by the authorities below. Learned counsel further submitted that their area is at various outlets at the tail end, as a result of which they are not getting proper irrigation of their land. Learned counsel for respondents No.3 to 7 submitted that the present petition deserves to be dismissed.

I have given my thoughtful consideration to the arguments raised by learned counsel for the parties.

Admittedly, private respondents (applicants before the Divisional Canal Officer) are at the tail end. A finding has been recorded by Divisional Canal Officer, Bathinda Canal Division, Bathinda, that there is a

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difference of 2.30 feet in the levels of outlet Burji 49278-R Bhadour-Rajbaha from the level of proposed outlet Burji 28000-R Bhadour-Rajbaha. The area of private respondents is at an uncommanded height. If the area is transferred to new outlet, area of the respondents will be better irrigated from the proposed outlet Burji 28000-R Bhadour Rajbaha instead of Burji 49278-R Bhadour Rajbaha. The Divisional Canal Officer in his order has come to the conclusion that entire area of private respondents is at a higher level as a result of which their irrigation is suffering. It is further recorded by the Divisional Canal Officer that petitioners (herein) have no objection with regard to sanction of new outlet, however, they raised objection only regarding installation of underground pipes along the road. It is not the concern of petitioners rather it is the concern of the department of PWD (B&R). Divisional Canal Officer held that it will not affect the irrigation of the petitioners in any way, therefore, the objections were not maintainable. After considering the arguments, Divisional Canal Officer passed a legally valid order. In the order dated 15.4.2013 (Annexure P-3), Divisional Canal Officer has mentioned Sections 20 and 30-B(2) of the Northern Canal and Drainage Act, 1873 instead of Sections 30-A and 30-B. Mere wrong mentioning of Section in the order does not affect the merits of the case. It appears to be a typographical error on the face of record. The order of Divisional Canal Officer has been upheld by the Superintending Canal Officer by passing a speaking order.

In view of specific finding that land of the respondents is at a higher level and at tail end and is not being irrigated, new outlet has been rightly carved out having 2.30 feet higher level, as a result of which the

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private respondents would have better irrigation of their land. Petitioners have not been affected in any manner and no loss will be caused to them.

Dismissed.

(Paramjeet Singh Dhaliwal)
Judge

May 26, 2016
R.S.