

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

**CWP No.20248 of 2016
Date of decision:28.9.2016**

Harbans Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.A.D.S.Jattana, Advocate for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 18.7.2016 (Annexure P-10) passed by Superintending Canal Officer, Ludhiana, Sirhind Canal, Ludhiana-respondent No.2, whereby order dated 3.6.2014 (Annexure P-8) passed by the Divisional Canal Officer, Faridkot Division, Faridkot-respondent No.3, shifting the land measuring 3.43 acres, owned by respondent No.4, from outlet RD 6856-L Kotbhai Minor to outlet RD 38070-TF Kotla Minor, was upheld, dismissing the appeal of the petitioners, they have approached this Court by way of instant writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Facts are hardly in dispute. Respondent No.4 moved an application by way of Annexure P-1, seeking transfer of his land measuring 27 kanals from outlet RD 6856/L Kotbhai minor to outlet RD 38070-TF kotla minor. In support of his application, respondent No.4 submitted his statement (Annexure P-2) and also filed his affidavit Annexure P-3.

Accordingly, the case was prepared by Halqa Patwari. Concerned Zildar submitted his report (Annexure P-4). He reported that concerned co-sharers,

which would include the petitioners herein, refused to get their statements recorded, meaning thereby nobody including the petitioners raised any objection to the demand put by respondent No.4. Accordingly, concerned Zileadar recommended that the demand of respondent No.4 was genuine, it was in the interest of better irrigation to accept the demand of respondent No.4. On the basis of report furnished by the Zileadar, Sub Divisional Officer examined the case, got the comparative command statement from the concerned Junior Engineer. After looking into the relevant aspects including the technical aspects thereof, Scheme under Section 30-A of the Northern India Canal and Drainage Act, 1873 ('the Canal Act' for short) was prepared and accordingly published under Section 30-B (1) of the Canal Act. Notices were issued to the concerned co-sharers which were served through Halqa Patwari. After following the due procedure and granting opportunity of being heard to all concerned, the Divisional Canal Officer, Faridkot Division, Faridkot-respondent No.3 ordered, shifting of land measuring 3.43 acres, owned by respondent No.4 from outlet RD 6856-L Kotbhai minor to outlet RD 38070-TF kotla minor under Section 30-B (2) of the Canal Act, vide his impugned order dated 3.6.2014 (Annexure P-8). Petitioners filed their appeal which also came to be dismissed by the Superintending Canal Officer vide impugned order dated 18.7.2016 (Annexure P-10). Hence this writ petition.

Heard learned counsel for the petitioner.

During the course of hearing, when asked, learned counsel for the petitioners submitted that the land measuring about 380 acres was already getting irrigation from outlet RD 38070-TF kotla minor. The land owned by respondent No.4, which was ordered to be transferred vide

impugned orders, was measuring only 3.43 acres. It has also gone undisputed before this Court that under the relevant provisions of law, the respondent authorities were competent to transfer the land from one outlet to another outlet up-to 10% of the land already getting irrigation from a particular outlet. Thus, it becomes crystal clear that the land owned by respondent No.4 measuring 3.43 acres was less than even one percent of the total land measuring about 380 acres which was being irrigated from outlet RD 38070-TF kotla minor. Having said that, this Court feels no hesitation to conclude that since the matter was closely examined by all the four canal authorities in a row right from Zildar, Sub Divisional Canal Officer, Divisional Canal Officer and finally by Superintending Canal Officer at different stages, including the technical aspects thereof, the impugned orders have not been found suffering from any patent illegality or perversity and the same deserve to be upheld.

In fact, in the totality of facts and circumstances of case, present one seems to be case, wherein petitioners have made it an issue of ego. It does not appeal to reason as to how by addition of land measuring less than one percent, would be adversely affecting the facility of irrigation of the petitioners. When this pointed question was put to the learned counsel for the petitioners, he had no answer and rightly so, it being a matter of record. Once the respondent authorities have ensured strict compliance of the relevant provisions of law and the procedure under the Canal Act before passing the impugned orders and that too in the interest of better irrigation, no fault can be found with the impugned orders, therefore, the impugned orders deserve to be upheld for this reason also.

It is not even pleaded or argued case on behalf of the

petitioners before this Court that respondent No.4 was already getting proper irrigation for his land from earlier outlet RD 6856-L Kotbhai minor . In such a situation, petitioners should have no objection in case respondent No.4 may also get adequate supply of water to his fields, without causing any adverse affect on the facility of irrigation of the petitioners. Under these circumstances, it can be safely concluded that the respondent canal authorities were well within their jurisdiction while passing their respective impugned orders and the same deserve to be upheld for this reason as well.

After passing the self-contained order by the Divisional Canal Officer at Annexure P-8, matter was again considered by Superintending Canal Officer in the appeal filed by the petitioners but their appeal was found without any substance. The relevant observations made by Superintending Canal Officer in operative part of its impugned appellate order, which deserve to be noticed here, read as under:-

“On 18.07.2016 at Ludhiana, this case has been deeply re-considered. After perusing the documents placed in the concerned revenue file and after considering the pleas taken by the parties, this Court has found from the perusal of the Comparative Command Statement placed in the concerned revenue file that the command of the land of the respondent, which is the subject matter of transfer, is better from Mogha Burji 38070-TF Kotli Minor as compared to Mogha Burji 6856-L Kotbhai Minor. Concerned Ziledar and Sub Divisional Officer have also recommended that the land of the respondent be excluded from the area of Mogha Burji 6856-L Kotbhai Minor and be included in the area of Mogha Burji 38070-TF Kotli Minor. The land of respondent bearing 3.43 Acres, which is the subject mater of transfer is small in size, so it will not cause any loss to the appellants if added in Mogha Burji 38070 TF Kotli Minor. Due to these reasons, the demand of

respondent for excluding the 3.43 Acres land from the area of Mogha Burji 6856-L Kotbhai Minor and to including the same in the area of Mogha Burji 38070-TF Kotli Minor is genuine and acceptable. Hence, the appeal of the appellant is rejected and the order dated 03.06.2014 passed by Divisional Canal Officer, Faridkot Canal Division, Faridkot is upheld for better canal irrigation. This order has been passed under Section 30-B(3) of the Canal and Drains Act, 1873.”

Learned counsel for the petitioners could not point out any patent illegality or perversity in either of the impugned orders. Further, no prejudice of any kind, whatsoever, has been pointed out by the learned counsel for the petitioners which might have been caused to the petitioners by passing the impugned orders. Since the impugned orders passed by the respondent canal authorities have been found factually correct and technically sound, the same deserve to be upheld.

The canal authorities are experts in their line. This Court, while exercising its writ jurisdiction, would be slow in interfering in the orders passed by the canal authorities, unless the orders are found suffering from patent illegality or perversity. In the case in hand, neither any of the impugned orders is an order without jurisdiction nor have been found suffering from any patent illegality which may justify interference, at the hands of this Court particularly when no prejudice has been shown to have been caused to the petitioners by passing the impugned orders.

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 the instant 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 present writ petition stands dismissed, however, with no order as to costs.

28.9.2016
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No