

CWP-23460-2014

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

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Date of Decision: 03.06.2016

Mahla Singh and others

... Petitioner(s)

Versus

The Superintending Canal Officer 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. Sandeep Khunger, Advocate,
for the petitioners.

Mr. S.S.Chandumajra, Addl. A. G. Punjab.

Mr. J.S.Sidhu, Advocate,
for respondent No.3.

Paramjeet Singh Dhaliwal, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 27.02.2013 (Annexure P-1) passed by respondent No.2-Divisional Canal officer and the order dated 26.06.2014 (Annexure P-3) passed by respondent No.1-Superintending Canal officer.

In brief, the facts as averred in writ petition are to the effect that respondent No.2-Divisional Canal Officer initiated *suo motu*

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proceedings for declaring 15.94 acres of area of outlet No.44952/50778-TR, Deon Minor, village Burj Mehma from command to uncommand. Respondent No.2-Divisional Canal Officer exercising the powers under Section 20 of the Northern India Canal and Drainage Act, 1873 (for brevity, 'the Act') declared the area measuring 15.94 acres from command to uncommand vide impugned order dated 27.02.2013 (Annexure P-1). Feeling aggrieved, petitioner Nos.2, 3 and 5 preferred appeal (Annexure P-2) before respondent No.1-Superintending Canal Officer which has been dismissed vide impugned order dated 26.06.2014 (Annexure P-3). Hence, this writ petition.

In pursuance of notice of motion, respondent Nos.1 and 2 and respondent No.3 filed their separate written statements with the averments that respondent No.2-Divisional Canal Officer after giving opportunity of hearing to the parties vide notice (Annexure R-1) declared area measuring 12.60 acres of outlet No.RD-44952/50778/TR of Deon Minor as uncommand as the said area now falls in *abadi*/playground. Being dissatisfied, petitioner No.1 and others filed appeal before respondent No.1-Superintending Canal Officer who vide order dated 29.11.2012 remanded the case back with a direction that if more area becomes uncommand/uncultivable, the same be also added. In pursuance of the order dated 29.11.2012, report was sought from the Sub Divisional Canal Officer and Zildar and thereafter respondent No.2 declared 3.34 acres as uncommand in addition to the earlier

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recommendation. The canal authorities have come to the conclusion that the area in question has been declared uncommand to save the canal water as the area in question is no more agricultural land and is a part of *abadi* and playground, therefore, water is not required for the same.

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

Learned counsel for the petitioners vehemently contended that the proceedings have been wrongly initiated under the provisions of Section 20 of the Act. There is no provision for appeal under Section 20 of the Act. The appeal has been heard under the provisions of Sections 30-A and 30-B of the Act by respondent No.1-Superintending Canal Officer. The impugned orders are not sustainable in the eyes of law.

Per contra, learned State counsel and learned counsel for respondent No.3 vehemently opposed the contentions of learned counsel for the petitioners and contended that area in question has become uncommand/uncultivable, as such water sanctioned for the same was being misused. The canal authorities have rightly issued notice for converting the area which now falls in *abadi* as uncommand/uncultivable.

I have given my thoughtful consideration to the rival contentions of learned counsel for the parties.

It would be apposite to reproduce relevant provisions for deciding the controversy in hand. Section 20 of the Act reads as under:

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“Section 20. Supply of water through intervening watercourse. - Whenever application is made to a Divisional Canal Officer for supply of water from a canal and it appears to him expedient that such supply should be given and that it should be conveyed through some existing watercourse, he shall give notice to the persons responsible for the maintenance of such watercourse to show cause, on a day not less than fourteen days from the date of such notice why the said supply should not be so conveyed; and after making enquiry on such day, the Divisional Canal Officer shall determine whether and on what condition the said received supply be conveyed through such watercourse.

When such officer determines that a supply of canal water may be conveyed through any watercourse as aforesaid his decision shall when confirmed or modified by the Superintending Canal Officer be binding on the applicant and also on the persons responsible for the maintenance of the said watercourse.

Such applicant shall not be entitled to use such watercourse until he has paid the expense of any alteration of such watercourse necessary in order to his being supplied through it, and also such share of the first cost of such watercourse as the Divisional or Superintending Canal Officer may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such watercourse so long as he uses it.”

Rule 2 of the Northern India Canal and Drainage Rules reads as under:

“2. Proceedings of the Superintending Canal Officer on

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reference. [Section 20]. - (1) In a case falling under Section 20 the Divisional Canal Officer shall announce his decision to the parties interested, and within 30 days from the date of such announcement any person aggrieved by such decision may file an objection thereto in writing before the Superintending Canal Officer.

(2) The Superintending Canal Officer shall not make any orders in respect of the Divisional Canal Officer's decision, until after the expiry of 30 days, from the date of its announcement, and may then, whether or not any objection shall have been filed, make an order confirming or modifying such decision, or may direct that further enquiry and report be made by the Divisional Canal Officer on specified points, before he makes a final order:

Provided that no such order or direction shall be made in a case, where any objection has been filed, unless not less than 15 days notice has been given to the objector of the date, time and place at which his objection will be heard, and unless the Superintending Canal Officer has heard the objector in support of his objection in case he appears.”

Perusal of Section 20 of the Act reveals that whenever a party makes a request before the Divisional Canal Officer for the first time for supply of water from a canal and it appears to him expedient that such supply should be given and that it should be conveyed through some existing watercourse, he shall give notice to the persons responsible for the maintenance of such watercourse to show cause, on a day not less than fourteen days from the date of such notice, why the said

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supply should not be conveyed. Rule 2 read with Section 20 of the Act makes it clear that the Superintending Canal Officer has power to hear the objections against the decision of the Divisional Canal Officer. In this manner, right to agitate the order passed by the Divisional Canal Officer has been given under the aforesaid provisions.

Admittedly, in the present case, the area in question has now come within the municipal limits and is part of *abadi* and playground and it is not being irrigated and, therefore, water supply for this area is not being used for agricultural purposes. It appears that inadvertently Section 30-B(3) of the Act has been mentioned in the impugned order dated 26.06.2014 (Annexure P-3) instead of Section 20 of the Act read with Rule 2 of the Northern India Canal and Drainage Rules. Mere mentioning of wrong sections, decision cannot be set aside when it is otherwise in accordance with the provisions of the Act. Section 20 of the Act covers the order passed by the Divisional Canal Officer who can personally look into the matter or may relegate to the competent authority for making enquiry. Although the appeal before the Superintending Canal Officer has been wrongly filed under Section 30-B (3) of the Act, in fact the same were objections raised before the Superintending Canal Officer, as permissible under Rule 2 (2) of the Northern India Canal and Drainage Rules. The canal authorities have rightly declared the area as uncommand/uncultivable as the same has come within the municipal limits and is *abadi*/playground and water

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allocation to this area is being misused. The water allocated for agricultural purposes cannot be allowed to be misused.

In view of above, I do not find any illegality or perversity in the impugned order.

Dismissed.

No order as to costs.

03.06.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge