

CWP-26828-2014

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

**CWP-26828-2014
Date of Decision: 06.04.2016**

Lachman Ram and another

... Petitioner(s)

Versus

Superintending Canal Officer and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

Present: Mr. Peeush Gagneja, Advocate,
for the petitioners.

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

Mr. Sanjeev Manrai, Sr. Advocate with
Mr. Vikas Bishnoi, 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 issuance of a writ in the nature of certiorari for quashing the order dated 24.02.2014 (Annexure P-1) passed by respondent No.2-Divisional Canal Officer and order dated 18.09.2014 (Annexure P-2) passed by respondent No.1-Superintending Canal Officer whereby area of respondent No.3 has been included in Outlet No.55950-R Daulatpura Minor.

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Brief facts of the case are to the effect that respondent no.3-Banwari Lal filed application to respondent No.2-Divisional Canal Officer for transfer of 51 kanals 12 marlas (6.45 acres) from Outlet No.67565-L Panjawa '*Rajbaha*' to Outlet No.55950-R Daulatpura Minor. The Divisional Canal Officer marked the application to Sub Divisional Officer, Abohar for conducting enquiry and sending report. The Sub Divisional Officer, Abohar forwarded the application to Zileadar Jandwala, who conducted inquiry and obtained affidavits of the concerned shareholders. Site plan was also obtained from the concerned Circle Patwari. In the report, it was mentioned that applicant-respondent No.3 is getting water through '*Jhatta*' (lift irrigation device) and his land will be better irrigated by way of '*Torh*' (flow) through the proposed outlet and resultantly Zileadar recommended for shifting of 6.45 acres of land of respondent No.3 from outlet No.67565-L Panjawa Rajbaha to Outlet No.55950-R Daulatpura Minor. The said report was forwarded by the Sub Divisional Officer, in addition to it, the Sub Divisional Officer also obtained the command statement from the Junior Engineer, Abohar who after making the survey of the fields also recommended transfer of the area of respondent No.3 to outlet No.55950-R Daulatpura Minor. After considering the documents on record, report of subordinate officers i.e. Zileadar, Junior Engineer and Sub Divisional Officer, respondent No.2-Divisional Canal Officer ordered transfer of area from outlet No.67565-L Panjawa Rajbaha to Outlet No.55950-R Daulatpura

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Minor, vide impugned order dated 24.02.2014 (Annexure P-1). Against that, the petitioners and others preferred appeal before respondent No.1-Superintending Canal Officer and the same has been dismissed, vide impugned order dated 18.09.2014 (Annexure P-2). Hence, this writ petition.

Upon notice, respondents put in appearance. Respondent Nos.1 and 2 filed their reply with the averments that outlet No.55960-R Daulatpura minor was having 456.52 acres with discharge of 1.56 cusec as on 19.08.1996. Now as per Annexure P-3, discharge capacity of the water is 2.40 cusec (2.00 + 20% additional discharge) meaning thereby that the *khal* can take discharge upto 2.40 cusec. Now, the total area after the inclusion of the area in question is 606.58 acres i.e. discharge equivalent to the area is 2.01 cusec i.e. less than discharge capacity 2.40 cusec. The inclusion of area measuring 6.45 acres is less than 10%, therefore, no change in the size of the outlet would be required. Reference to Form-A has also been made by giving the gross area and the cultural command area.

Respondent No.3 filed his separate written statement with the averments that area of respondent No.3 is at the tail end of the existing outlet i.e. 67565-L Panjawa Rajwaha and irrigation of the land of answering respondent is being carried out by lifting the water and, therefore, keeping in view the recommendations of Zildar, Junior Engineer, Divisional Canal Officer and also considering the objections,

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respondent No.2-Divisional Canal Officer, Abohar has rightly allowed the shifting of area in favour of respondent No.3 to outlet No.55950-R.

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

Learned counsel for the petitioner vehemently contended that Outlet No.55950-R Daulatpura Minor is pucca one and also made reference to the report dated 10.01.2014 (Annexure P-3). As per Annexure P-3, Outlet No.55950-R Daulatpura Minor has been designed with additional discharge of 20% so that watercourse should not overflow. The report of the Punjab Water Resources Management and Development Corporation Limited has been wrongly rejected by the canal authorities.

Per contra, learned State counsel and learned counsel for respondent No.3 vehemently opposed the contentions of learned counsel for the petitioners and supported the impugned orders. They contended that fields of respondent No.3 are not getting proper irrigation from Outlet No.67565-L Panjawa Rajbaha and is getting water through 'Jhatta' (lift irrigation device) as his land is at higher level and at a distance from the said outlet whereas his land is nearer to Outlet No.55950-R Daulatpura Minor and his land will be better irrigated by way of 'Torh' (flow) through Outlet No.55950-R Daulatpura Minor. Therefore, transfer of area is necessary in the interest of better irrigation through Outlet No.55950-R Daulatpura Minor. The levels have been

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done at the spot and command statement prepared by the Junior Engineer has been considered by respondent Nos.1 and 2-Superintending Canal Officer and Divisional Canal Officer, respectively. The area upto 10% can be added.

I have considered the rival contentions of learned counsel for the parties.

There is concurrent finding recorded by respondent Nos.1 and 2 that land of respondent No.3 is being irrigated with difficulty through Outlet No.67565-L Panjawa Rajbaha and he is getting water through '*Jhatta*' (lift irrigation device) whereas his area is nearer to Outlet No.55950-R Daulatpura Minor and will be better irrigated by way of '*Torh*' (flow) through Outlet No.55950-R Daulatpura Minor. Otherwise also, lift irrigation is costly where a farmer is required to either use a tractor or an engine for running the '*Jhatta*' (lift irrigation device) and moreover, the prices of fuel are increasing everyday. When irrigation by flow is possible, then it should be the preferred mode of irrigation. Furthermore, the inclusion of 6.45 acres is less than 10% which is permissible. The report (Annexure P-3) does not refer to the data that area upto 10% cannot be included. The report of Punjab Water Resources Management and Development Corporation Limited has been rightly rejected by the Divisional Canal Officer and Superintending Canal Officer for cogent reasons. The canal authorities have rightly transferred the area of respondent No.3 to Outlet No.55950-R Daulatpura

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Minor from Outlet No.67565-L Panjawa *Rajbaha*.

The concurrent findings recorded by the Divisional Canal Officer and the Superintending Canal Officer do not call for interference.

I do not find any illegality or perversity in the impugned orders.

Dismissed.

Costs made easy.

06.04.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge