

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.26185 of 2015
Date of decision: 01.08.2016

Surjit Singh

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Shalender Mohan, Advocate
for the petitioner.

Mr. S.S. Mann, Sr. DAG, Haryana.

Mr. Sandeep Khunger, Advocate
for respondent No.6.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 15.07.2015 (Annexure P-12), whereby the Chief Canal Officer, Haryana-respondent No.2 upholding the orders passed by the Superintending Canal Officer and Divisional Canal Officer, ordering conversion of land measuring 19.69 acres from Unculturable Command Area (UCA) into Culturable Command Area (CCA) and that too for a period of only two years, with a view to provide irrigation facility to the private respondent.

Notice of motion was issued and pursuant thereto, separate written statements on behalf of official and private respondent have been filed.

Heard learned counsel for the parties at considerable length.

Having gone through the record of the case including the impugned orders and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that the impugned orders passed by the respondent canal authorities are based on true facts of the case and have been passed strictly in accordance with law, because of which the same deserve to be upheld. Writ petition is without any merit, which is liable to be dismissed, for the following more than one reasons.

It is a matter of record that the outlet RD 13280-L Gawar Minor was having a pucca water course, which was already having CCA of 744.46 acres. The additional area sought to be converted from UCA to CCA was only 19.64 acres, which was only about 3% of the abovesaid area. In this view of the matter, keeping in view the capacity of the water course, no re-modeling of the same would be required, as rightly held by Chief Canal Officer. Further, Chief Canal Officer, while passing the impugned order, directed the Divisional Canal Officer to increase the size of the outlet, to accommodate the water required for the additional area of 19.64 acres, so that irrigation facility being availed by the petitioner may not get adversely affected. Having said that, this Court feels no hesitation to conclude that petitioner has no case either on facts or in law.

The respondent canal authorities have examined, considered and appreciated all the relevant aspects of the matter, including the technical aspects thereof, before passing the impugned orders. The order passed by Chief Canal Officer is a self-contained and well-reasoned order, operative part whereof deserves to be noticed here and the same reads as under: -

“The khaka plan, revenue missal and other relevant record produced in the court were examined. From the perusal of the khaka plan it is seen that 21.44 acres area from the existing chak and 16 acres area from outside the chak is proposed to be converted from the UCA to CCA. In the command statement attached with the case it has been mentioned that an area of 19.64 acres is higher by 8.41 feet to 11.79 feet from the FSL of the channel. The balance area is having high tibbas and undulated area and is not commandable. The contention of the applicant that the area is high and cannot be commanded is not acceptable as now a days modern technology is available through which the pumps can lift the water upto the desired level i.e. about 11-12 feet. The water course of outlet RD 13280-L Gawar Minor is pucca water course having CCA of 744.46 acres. If this additional area of about 19.64 acres is converted from UCA to CCA then the CCA will become 764.10 acres and the water required for this additional area can be run in the water course as the same will be within 10% of the capacity of the water course and therefore, remodeling of water course will not required. Therefore, 19.64 acres area bearing field Nos.174/2, 9, 1, 10, 12, 11, 19, 20, 21 & 22, 22/9, 10, 12 & 13, 223/3, 4, 5, 6, 7 & 15 of UCA is hereby converted to CCA for two years temporarily thus increasing the existing CCA to 764.10 acres. After completion of two years the respondent will submit an application to this office for conversion of 19.69 acres area from UCA to CCA permanently and

this office will pass an appropriate order after seeking report from the Divisional Canal Officer, Divisional Canal Officer is directed to increase the size of the outlet to accommodate the water required for the additional area of 19.64 acres so that the rights of the existing shareholders are not infringed.”

In addition to the above, an additional affidavit dated 02.06.2016 was filed by the Divisional Canal Officer, in compliance of the order dated 26.05.2016 passed by this Court, directing him to clarify about the alleged higher level of the fields of private respondent and how the additional area was converted from UCA to CCA if there was difference of level. Specific averments taken in the affidavit dated 02.06.2016 referring to the relevant provisions of law as well as the factual and technical aspect of the matter, are as under: -

“That the subject matter in the present writ revolves around the orders passed by the Canal Authorities whereby the area of the private respondent comprising in field Nos.174/2, 9, 1, 10, 19, 20, 21, 22, 222//9, 10, 12 and 13, 223/3 to 7 and 15 total measuring 19.64 acres has been ordered to be converted from Unculturable Command Area (UCA) to Culturable Command Area (CCA) for two years temporarily.

That no doubt, there is a difference of about 7 to 11 feet between the NSL of the land and FSL of the watercourse, however, this difference is easily able to be covered through the lift irrigation which is allowed and permissible in the definition of the CCA itself as envisaged under Section 2 (5) of the Haryana Canal and

Drainage Act itself which includes the lift irrigated area and there is no limit provided for lift system. It is the burden of the irrigator (who intends to get his land declared as CCA) to arrange the device required for lifting of water upto the desired level.

That moreover the conversion of an area from UCA to CCA is a process to encourage and fulfill the goals of 'Grow More Food' policy for which the availability of water to the irrigator is an important question.

That thus keeping in view the basic definition and scope of Section 2 (5) dealing with CCA and also keeping in view the 'Grow More Food' policy, the area of the private respondent was ordered to be converted as CCA temporarily for 2 crops. While allowing so, it was also kept into consideration that area in question can get lift irrigation if water is made available.

That moreover, the private respondent himself had committed before the Divisional Canal Officer that he would never sell or sublet the wari of the area and would arrange the watercourse by himself and water will be lifted by mechanical means either by Diesel engines or electric pump. He also undertook to bear the loss of wari if caused at his hands to the shareholders next to him.

That moreover, it was also carefully taken into mind that conversion of area of the private respondent as CCA will increase the existing CCA from 744.46 acres to 764.10 acres which

is within permissible limit being within 10% of the capacity of the watercourse.

That after two years, the private respondent shall submit an application for conversion of area permanently and simultaneously the subordinate office shall then pass an appropriate order after seeking report from the Divisional Canal Officer, who, in turn, shall increase the size of the outlet to accommodate the water required for the additional area of 19.64 acres so that the rights of existing shareholders are not infringed.

That in the manner stated above the conversion of the area of the private respondent as CCA despite a difference of 7 to 11 feet in NSL of area and FSL of watercourse is within four corners of law and the definition of the CCA, which allows the lift irrigation to be implemented, is sufficient to cover-up such a distance easily. The private respondent will first keep his water collected in reservoir and then lift it for the purpose of irrigation as per his need.”

The abovesaid specific averments taken by the Divisional Canal Officer in his affidavit dated 02.06.2016 have gone unrebutted and uncontroverted on record. During the course of hearing, when confronted with the abovesaid peculiar fact situation obtaining in the present case as well as legal aspect of the matter referred to hereinabove, he had no answer and rightly so, it being a matter of record. Learned counsel for the petitioner also failed to point out any patent illegality or perversity in the impugned orders passed by the

respondent canal authorities. Further, no prejudice of any kind, whatsoever, has been shown to have been caused to the petitioner, by passing the impugned orders, which may warrant interference at the hands of this Court, while exercising its writ jurisdiction under Article 226/227 of the Constitution of India.

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 impugned orders passed by the respondent canal authorities have been found based on true facts and circumstances of the case as well as cogent findings, which have been found duly supported by sound reasons, the same deserve to be upheld. Ordered accordingly. The writ petition having been found wholly misconceived, bereft of merit and without any substance, must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant writ petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

01.08.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No