

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.3371 of 2014
Date of decision: 02.08.2016

Karambir and another

... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ajit Sihag, Advocate
for the petitioners.

Mr. R.S. Doon, AAG, Haryana.

Mr. Sandeep Goyat, Advocate
for respondent No.5.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the order dated 10.06.2013 (Annexure P-5) passed by the Chief Canal Officer, Haryana-respondent No.2, whereby he set aside the order dated 19.02.2013 (Annexure P-4) passed by the Superintending Canal Officer and rejected the application of the petitioners for transfer of their land from outlet RD 17820-R to outlet RD 15200-R New Sultanpur Minor.

Notice of motion was issued and in compliance thereof, two sets of written statements were filed. One written statement was filed by the official respondents and other written statement was filed by private respondent No.5.

Heard learned counsel for the parties.

A bare perusal of the impugned order dated 10.06.2013 (Annexure P-5) passed by the Chief Canal Officer, Haryana would show that neither he has considered the material fact that 145% irrigation to the fields of the petitioners was not from canal water alone but from both the sources i.e. canal water as well as the tubewell water. Again, transfer of land measuring about 11 acres from RD 15200-R to RD 17820-R was also altogether ignored. Further, the watercourse from RD 17820-R going to the fields of the petitioners, was having very many 90 angle curves, which is clear from the site plan (Annexure -1A) at page 23 of the paper book.

All these material aspects were examined, discussed and considered in the correct perspective by the Superintending Canal Officer, while passing his order (Annexure P-4), thereby allowing the transfer of the land of the petitioners from RD 17820-R to RD 15200-R. However, since the Chief Canal Officer proceeded on a wholly misconceived approach, while passing the impugned order without even referring to any of the abovesaid material issues, the order passed by him has been found to be a non-speaking order, which runs contrary to the official record as well. Having said that, this Court feels no hesitation to conclude that the impugned order suffers from patent illegality and the same cannot be upheld.

Before proceeding further, the observations made by the Superintending Canal Officer in the operative part of the order dated 19.02.2013 (Annexure P-4) deserve to be noticed here and the same read as under: -

“Revenue Missal, Khaka Plan and other connected records have

been perused. Arguments of both the parties also considered at length.

The perusal of the khaka plan shows that a lined straight w/c is passing through the holding of the appellants where as a unlined w/c is leading to holding of appellant on existing source. A better command is also available on proposed source. The Zildar and SDCO has also recommended the transfer of this area. As far as average of intensity irrigation 145% is concerned is result of 3 no. tube wells installed in appellants area as per statement of appellants counsel. As per argument of the counsel of the appellants that the watercourse is having capacity to accommodate the area in question. The DCO has approved the transfer of 11.93 acres area from outlet RD-15200-R to 17820-R New Sultanpur Minor making the extra discharge. The allegation of the respondents have no weight. Few shareholders are against this transfer of area.

Keeping in view that every irrigator has right to choose the better source of irrigation and other factors above the appeal is accepted. The decision 23.94/23.94 acres comprised in Rect/Killa No.24/42 (0-13), 5 (3K-2M), 6 (8K-0M), 7 (8K-0M), 15 (8K-0M), 16 (8K-0M), 17 (8K-0M), 24/1 (4K-0M), 25// (8K-0M), 23//21/2 (5K-12M), 22 (8K-0M), 23// (8K-0M), 24//4/1 (6K-0M), 18//23// (10K-4M), 23//2 (8K-1M), 3 (8K-0M), 8 (8K-0M), 9 (8K-0M), 10 (7K-10M), 11 (8K-0M), 12 (8K-0M), 13 (8K-0M), 18 (8K-0M), 19 (8K-0M), 20 (8K-0M), 21/1 (2K-8M), 24//14 (8K-0M) is hereby

transferred from outlet RD-17820-R New Sultanpur minor to outlet RD 15200-R New Sultanpur minor in the interest of better irrigation. The decision of the DCO Hansi dated 05.2012 is set aside.”

It is also a matter of record that the subordinate canal authorities including Zileadar and Sub Divisional Canal Officer, after examination of all the relevant aspects, including the technical aspects thereof, have recommended the transfer of the area owned by the petitioners. During the course of hearing, learned counsel for respondent No.5 could not point out any kind of prejudice to respondent No.5 by way of transfer of the land of the petitioners from RD 17820-R to RD 15200-R. Once respondent No.5 was not going to be adversely affected by the transfer of land owned by the petitioners from abovesaid one outlet to another outlet, he should not have opposed the transfer of land owned by the petitioners.

It is also pertinent to note here that after transfer of the land of the petitioners from RD 17820-R to RD 15200-R, their lined watercourse would also become straight. It goes without saying that if any watercourse is having numerous 90 angle curves, substantial wastage of water cannot be avoided in the very nature of things. Water is precious and wastage thereof must be avoided. It is also true that every farmer has a right to select the best source of irrigation available for his fields, however, not at the cost of irrigation facility of his neighbours and other co-sharers.

Since the Chief Canal Officer has miserably failed to consider and appreciate the abovesaid relevant issues in the correct perspective, while passing

the impugned, it has resulted in serious miscarriage of justice, because of which the impugned order cannot be upheld. In fact, the impugned order dated 10.06.2013 (Annexure P-5), has been found a cryptic and non-speaking order, besides being contrary to the relevant record.

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 order passed by the Chief Canal Officer has been found suffering from patent illegality, besides being contrary to the true facts of the case obtaining at the site, the same cannot be upheld. Accordingly, the impugned order dated 10.06.2013 (Annexure P-5) passed by the Chief Canal Officer, Haryana is hereby set aside.

Consequently, the order dated 19.02.2013 (Annexure P-4) passed by the Superintending Canal Officer, is restored.

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

[RAMESHWAR SINGH MALIK]
JUDGE

02.08.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No