

CWP-5369-2014

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

CWP-5369-2014

Date of Decision: 31.05.2016

Karanveer Singh and another

... Petitioner(s)

Versus

Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur 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. Akash Juneja, Advocate for
Mr. D.S.Brar, Advocate for
the petitioners.

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

Mr. Sandeep Khunger, Advocate,
for respondent Nos.3 and 4.

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 quashing the order dated 03.04.2008 (Annexure P-2) passed by respondent No.2-Divisional Canal Officer and the order dated 21.02.2014 (Annexure P-7) passed by respondent No.1-Superintending

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Canal Officer.

In brief, the facts as averred in the writ petition are to the effect that land of the petitioners is being irrigated through outlet No.26300-L Muradwala Minor. The land of the petitioners falls in rect. Nos.79 and 80, as shown with green colour and land of the private respondents falls in rect. Nos.80, 90 and nearby. Outlet No.26300-L has been in existence since the inception of irrigation facilities to the area for over 50-60 years. A watercourse runs parallel to the canal minor. There is main pucca watercourse starting from outlet No.26300-L, marked as point 'A' in site plan (Annexure P-1). The said watercourse has been in operation for the last 30 years. The private respondents filed application for shifting Outlet No.26300-L to downstream on the corner of stone-line (*patharline*) of rect. Nos.80, 81 and 89, marked as point 'B' in site plan (Annexure P-1) on the ground that their land is not getting proper irrigation. Zildar and Sub Divisional Canal Officer recommended the case of the petitioners for shifting the outlet No.26300-L Muradwala Minor to corner stone-line of rect. Nos.80, 81 and 89. After the receipt of proposal/report, command statement was got checked and having been found to be correct, scheme was published. Respondent No.2-Divisional Canal Officer heard the parties and vide impugned order dated 03.04.2008 (Annexure P-2) ordered shifting of outlet No.26300-L Muradwala Minor to stone line of corner of rect. Nos.80, 81 and 89. Feeling aggrieved, father of the petitioners filed appeal before

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respondent No.1-Superintending Canal Officer which has been dismissed vide order dated 25.08.2008 (Annexure P-3). Feeling aggrieved, father of the petitioners filed CWP-16562-2008 before this Court which has been disposed of vide order dated 09.09.2010 with a direction to respondent No.1-Superintending Canal Officer to decide the matter afresh. In pursuance of the order dated 09.09.2010 passed by this Court, respondent No.1-Superintending Canal Officer sought the report (Annexure P-5) from the Sub Divisional Canal Officer, Sirhind Feeder, Sub Division, Gidderbaha. Thereafter, respondent No.1 proceeded with the matter and dismissed the appeal vide order dated 18.11.2011 (Annexure P-6). Thereafter, father of the petitioners filed CWP-24482-2011 which was allowed on 12.11.2012 and case was remanded to respondent No.1-Superintending Canal Officer for fresh decision. In compliance of the order dated 12.11.2012, respondent No.1 proceeded with the matter and again dismissed the appeal vide impugned order dated 21.02.2014 (Annexure P-7). Hence, this writ petition.

In pursuance of notice of motion, respondent Nos.1 and 2 as well as respondent Nos.3 and 4 filed their separate written statements with the averments that the shifting of outlet No.26300-L has been rightly done as most of the shareholders were not getting proper irrigation from the existing outlet. The said demand was opposed by the father of the petitioners only whereas remaining shareholders supported the same. Respondent No.1-Superintending Canal Officer appointed

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Sh. Rajpal Singh Brar, Advocate as amicus curiae who in his report dated 18.11.2011 (Annexure R-3/1) reported that watercourse starting from Outlet No.26300-L was empty by one feet from the top and when it will reach the last shareholder, it will start overflowing. He also reported that from the proposed outlet No.27400-L, the area of petitioners will be 2-2½ ft. lower than the bricklined watercourse and on doing so, the petitioners will not suffer any loss. With a view to safeguard the interest of the petitioners, respondent No.1-Superintending Canal Officer ordered that if there will be any shortage of water for the petitioners, the same shall be compensated by respondent Nos.3 and 4 from their own share. Other averments made in the writ petition have been denied and dismissal of the writ petition has been prayed for.

Replication to written statement of respondent Nos.3 and 4 has been filed reiterating the averments made in the petition and controverting the averments made in written statement.

I have heard learned counsel for the parties and perused the original record produced by Mr. Suman Sood, Superintending Canal Officer and other officials present in Court.

Learned counsel for the petitioners vehemently contended that outlet No.26300-L has been in existence for 50-60 years. It is being changed without any reason. The said outlet should not be shifted to outlet No.27400-L. Both the outlets are downstream and proper irrigation is being done with outlet No.26300-L. If the outlet is changed

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as prayed for by respondent Nos.3 and 4, there will be loss of irrigation to the petitioners. If outlet No.26300-L is not changed, respondent Nos.3 and 4 will not suffer any loss in any manner.

Per contra, learned State counsel vehemently opposed the contentions of learned counsel for the petitioners and supported the impugned orders.

Learned counsel for respondent Nos.3 and 4 vehemently contended that their land is not being irrigated properly through outlet No.26300-L. The irrigation can be done in better way from the proposed outlet.

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

During the pendency of appeal before respondent No.1-Superintending Canal Officer, Mr. Rajpal Singh Brar, Advocate was appointed as amicus curiae who submitted his report dated 31.10.2011 (Annexure R-3/1) after inspecting the site with the help of canal Patwari. In his report (Annexure R-3/1), amicus curiae reported that outlet No.26300-L Muradwala Minor which is functioning at the site is on the one side of the Chakk whereas the remaining area is downstream. It was also reported that when the site was examined, the irrigation was being done from the existing outlet to the area of Gurmel Singh, father of the petitioners. It was also reported that by shifting of outlet No.26300-L to outlet No.27400-L, the area of the petitioners which is upstream would be

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2-2½ ft. lower from the brick lined watercourse and no harm would be caused to the petitioners for irrigation. The matter has been examined by the canal authorities even after remand orders passed by this Court. Vide impugned order dated 21.02.2014 (Annexure P-7), respondent No.1-Superintending Canal Officer has rightly held that on shifting the existing outlet, area of the petitioners which is in the upstream would be 2-2½ ft. lower than the pucca watercourse and area of the petitioners is at lower level than the land of Darshan Singh, therefore, the proposed outlet will provide better irrigation and the petitioners will not suffer any loss of irrigation, rather it will lead to better irrigation. The majority of shareholders is in favour of shifting of the outlet. The impugned orders have been passed after framing the proper scheme. In case the petitioners suffer any loss of irrigation by shifting the outlet, they will be compensated by providing more water for *bharai* by deducting water from the *wari* of respondent Nos.3 and 4 which has been agreed to by respondent Nos.3 and 4, as noticed by respondent No.1-Superintending Canal Officer in the impugned order dated 21.02.2014 (Annexure P-7).

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

Dismissed.

No order as to costs.

31.05.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge