

CWP-8094-2013

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

CWP-8094-2013

Date of Decision: 12.05.2016

Parampal 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. Vinod Khunger, Advocate,
for the petitioners.

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

Mr. Sandeep Jasuja, Advocate,
for respondent Nos.6 and 8.

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 orders dated 11.02.2013 (Annexure P-6) passed by respondent No.1-Superintending Canal Officer and dated 03.07.2003 (Annexure P-4) passed by respondent No.2-Divisional Canal Officer.

Brief facts of the present case are to the effect that the

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petitioners and respondent Nos.3 to 10 were irrigating their land from outlet No.16670-R, Moolian Wali Minor, which was common for villages Banna Wali and Baam. Respondent Nos.3 to 10 moved application dated 03.08.2002 (Annexure P-1) before respondent No.2-Divisional Canal Officer, Ferozepur stating that outlet No.16670-R Moolian Wali Minor is joint for villages Banna Wali and Baam, therefore, dispute remains regarding irrigation from this outlet and a prayer was made for providing separate outlet at 17775-R. Respondent No.2-Divisional Canal Officer referred the matter to the field staff for inquiry. Zildar and Sub Divisional Officer conducted inquiry and recommended for separate outlet at 17775-R. It is also relevant to mention here that one Balwinder Singh son of Jeet Singh made a statement before the Zildar that he is ready to give land for the outlet alongside intervening line of killa Nos.151//4 and 5 which is in the name of his father. The Divisional Canal Officer after considering reports of field staff published the scheme for providing separate outlet at 17775-R for village Banna Wali. The petitioners submitted their objections stating that outlet No.16670-R is at a lower level whereas land of the petitioners is at higher level and by providing new outlet, if area of about 298.82 acres is taken out from the outlet, flow of water will decrease and will result in loss of irrigation for the petitioners. Earlier also, a separate outlet was created for the residents of village Banna Wali but the area was not properly irrigated by the new outlet so the residents

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again got shifted to the outlet No.16670-R. The Divisional Canal Officer after considering the relevant factors ordered creation of a new outlet No.17775-R vide impugned order dated 03.07.2003 (Annexure P-4), however, it was mentioned that it will be implemented after approval from the Chief Canal Officer. Being dissatisfied, the petitioner preferred appeal before respondent No.1-Superintending Canal Officer, who dismissed the same vide impugned order dated 11.02.2013 (Annexure P-6). Hence, this writ petition.

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

Learned counsel for the petitioners vehemently contended that the impugned orders are cryptic and non-speaking and no reasons have been assigned. The canal authorities have not taken into consideration the effect of creation of new outlet specially when watercourse is brick-lined (pucca) and flow of water will be reduced by shifting of said area to a new outlet and as a result, it will take more time to irrigate the fields. Even the level of land of the petitioners has also not been taken into consideration.

Per contra, learned State counsel and learned counsel for respondent Nos.6 and 8 vehemently opposed the contentions of learned counsel for the petitioner and supported the impugned orders which have been passed by the competent authorities after due notice and publication of scheme as per provisions of Sections 30-A and B of the

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Northern India Canal and Drainage Act, 1873. The private respondents were not getting proper irrigation due to common outlet for two villages i.e. Banna Wali and Baam. There used to remain dispute regarding irrigation. Otherwise also, area of the private respondents falls in separate revenue estate and with the creation of outlet No.17775-R, no loss would be caused to the people of village Baam. The size of outlet can be varied according to the needs.

I have given thoughtful consideration to the rival contentions of learned counsel for the parties and perused the record of the case.

Perusal of impugned orders (Annexures P-4 and P-6) reveals that the Divisional Canal Officer and the Superintending Canal Officer have not dealt with the contentions of the petitioners specifically with regard to the fact that their land is at a higher level and if area of about 300 acres is shifted out from outlet No.16670-R, flow of water will be reduced. There is no reference to the command statement and level of fields of the petitioners in the impugned orders. It has also not been considered that if area is taken out from the existing outlet and transferred to the new outlet, there is certain possibility of reduction in flow of water. It has also not been mentioned in the impugned orders as to what extent, flow of water will be reduced if size of old outlet is not changed, if changed will it make a difference specifically when watercourse has been designed and brick-lined with reference to earlier

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size of the outlet and discharge of water.

In view of above, the impugned orders dated 11.02.2013 (Annexure P-6) and 03.07.2003 (Annexure P-4) being non-speaking, cryptic and without reference to the documentary evidence, are set aside and case is remanded to respondent No.2-Divisional Canal Officer with a direction to decide the matter afresh. Parties are directed to appear before respondent No.2 on 07.07.2016. It is made clear that the petitioners will be at liberty to submit their written submissions and raise all types of objections before respondent No.2 who shall deal with the same and contentions of other parties also and pass a speaking order by making reference to various documents including effect of withdrawal of area from outlet No.16670-R and creation of new outlet No.17775-R etc.

Disposed of in the aforementioned terms.

12.05.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge