

Sr. No.218

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-599-2015(O&M)

Date of Decision: 15.11.2016

Jhanda Singh and others

.....Petitioners

VS.

State of Punjab and others

....Respondents

CORAM HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present:- Ms. Jagdeep Bains, Advocate for the petitioners.
Mr. B.M.Vinayak, DAG, Punjab.
M. K.S.Boparai, Advocate for respondents no.4 to 28.

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RAMESHWAR SINGH MALIK, J

Present writ petition is directed against the order dated 16.10.2014 (Annexure P-8) passed by the Superintending Canal Officer, Patiala Circle-respondent No.2 and the order dated 21.5.2014 (Annexure P-7) passed by the Divisional Canal Officer - respondent No.3, whereby land of the private respondents was ordered to be shifted from Rajbaha Shero to Rajbaha Longowal.

Notice of motion was issued and in compliance thereof reply was filed on behalf of official respondents. Separate written statement has been filed on behalf of the private respondents.

When the case came up for hearing before this Court on 18.01.2016, following order was passed by this Court:-

“ Divisional Canal Officer is present. He is directed to file an affidavit giving complete details as to why the watercourse of the respondents has been shifted. The report (Annexure P-4) does not even mention as to why the water to the fields of the respondents is deficient in flow. Petitioners

themselves have stated that water is deficient on account of blocked Khals. The site plan would show that most of the watercourse traverses as a midline from the lands of the respondents. If the Khals are broken then prima facie the Court is of the opinion that the respondents can be permitted a pipeline of the kind which the petitioners have carved out for themselves to gain access to water. However, before any conclusion can be reached it would be important to understand to what extent is the release of water in the watercourse which traverses land of the respondents (indicated as blue in Annexure P-6).

Let the affidavit in this regard be filed on 24.5.2016.”

In compliance of the above-said order passed by this Court, affidavit dated 04.11.2016 of Sh. Gurjinder Singh Bahia, posted as Divisional Canal Officer, Sangrur Division IB, Sangrur (respondent no.3) has been filed along with some documents.

As per the averments taken in paras 5 and 6 of the affidavit dated 04.11.2016, the matter was re-examined. The stand taken on behalf of the official respondents, while supporting the impugned orders, in the affidavit dated 04.11.2016, is that since the quantity of water has also been increased in Rajbaha Longowal, petitioners will not face any kind of difficulty in irrigating their land, nor any kind of prejudice would be caused to them. Further, private respondents shall compensate the petitioners, while paying them proportionate costs, for laying down the underground pipe line.

In this regard, learned counsel for the State as well as learned counsel for private respondents pointed out from impugned orders that this

aspect has already been taken care of by the respondent authorities, while passing the respective impugned orders.

So far as the merits of the case is concerned, a bare perusal of the impugned order would show that neither respondent no.2 nor respondent no.3 have committed any error of law, while passing the respective impugned orders. They have considered each and every relevant aspect of the matter, including the technical aspect thereof, before recording their cogent findings, which have been found based on sound reasons and the impugned orders deserve to be upheld.

Had the quantity of water not been increased from 2.08 cusecs to 2.69 cusecs, at the time of transferring the land of the respondents from Rajbaha Shero to Rajbaha Longowal, petitioner might have some genuine grievance. However, as noticed here-in-above, since sufficient quantity of water has also been increased, at the time of transferring the land of respondents, the impugned orders have not been found suffering from any patent illegality or perversity which deserve to be upheld, for this reason also.

In the canal matters, this court would be slow in exercising its writ jurisdiction, unless the orders passed by the Canal Authorities are found suffering from patent illegality or perversity. It is so said because the canal authorities are experts in their line. This Court will not replace an expert opinion by its general opinion. In the present case, petitioners have not alleged any malafide against any of the respondent canal authorities, nor the impugned orders have been found suffering from patent illegality. Besides this, no prejudice of any kind whatsoever has been pointed out by the learned counsel for the petitioners, which might have been caused to the petitioners, by passing the impugned orders, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Article 226 and 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 opinion that since none of the impugned order has been found suffering from any illegality, the same deserve to be up held. The writ

petition having been found wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

However, keeping in view the peculiar facts and circumstances obtaining on the record and noticed here-in-above, Superintending Canal Officer, Patiala Circle, I.B Patiala, District Patiala – respondent no.2 is directed to get the amount calculated, which might have been spent by the petitioners, for laying down the underground pipeline. After the total amount spent by the petitioners is assessed, strictly in accordance with law, it shall be divided amongst all the beneficiaries of this Rajbaha Longowal, per acre wise.

Thereafter all the beneficiaries, including the petitioners as well as private respondents and all other similarly situated shareholders, who have spent the amount for laying down the underground pipeline, shall pay their contribution, as per acre wise. Since the petitioners have already spent the amount for laying down the underground pipeline, respondents as well as other beneficiaries, who are not party - respondents herein, shall compensate the petitioners, to the extent of their respective liability, which could be arrived at per acre wise.

Let the needful be done under the supervision of Superintending Canal Officer, within a period of two months. The beneficiaries, who have not already contributed, including the private respondents, shall compensate the petitioners, as per their share, however, within two months thereafter, by depositing the said amount with the Divisional Canal Officer, (DCO for short) Sangrur Division, Irrigation Branch, Sangrur. DCO shall pay the said amount to the petitioners and other similarly situated shareholders, who had spent the amount, in laying down the underground pipeline.

Resultantly, with the above said observations made and directions issued, present writ petition stands disposed off.

(RAMESHWAR SINGH MALIK)
JUDGE

November 15, 2016
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No