

CWP- 6932-2016

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

**CWP- 6932-2016
Date of Decision: 12.04.2016**

Mohinder Singh and others

... Petitioner(s)

Versus

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. G.S.Sidhu, Advocate,
for the petitioners.

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 thereby quashing the order dated 04.01.2016 (Annexure P-6) passed by respondent No.1-Superintending Canal Officer whereby order to carve out canal (link channel) from R.D. No.368200/R of Kotla Branch has been passed and further for issuance of a writ in the nature of mandamus directing the respondents to implement the order dated 22.11.2009 (Annexure P-3) passed by respondent No.2-Divisional Canal Officer

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whereby the scheme from Mogha Burji No.356175 of Kotla Branch was approved.

Brief facts of the present case are to the effect that on receipt of application from some shareholders of villages Yatri, Kot Bhara, Ramgarh Bhunder, Jodhpur Pakhar Maissarkhana and Kot Fatta, case was prepared by Zileadar, Ram Nagar and forwarded to Sub Divisional Officer, Talwandi Sabo, who after carrying out necessary proceedings, referred the same to the Divisional Canal Officer. On receipt of the case by the Divisional Canal Officer, the scheme was prepared and published under Sections 30-A(1) and 30-B (1) of the Northern India Canal and Drainage Act, 1873 (for brevity, 'the Act'). Notice for hearing was issued to the concerned persons for 22.12.2009 and service of notice was effected upon all the concerned shareholders by the Canal Patwari. Approximately 251 persons from various villages appeared and got their statements recorded. The persons mentioned at Sr. Nos.1 to 142 in the order dated 22.12.2009 (Annexure P-3) passed by respondent No.2-Divisional Canal Officer, made joint statement that they are not getting proper irrigation as their area falls on the tails of Moghas of Bhai Bakhtaur Branch and Maur Branch and less water comes on these tails, therefore, a link channel be carved out from the Kotla Branch, which should be added to Maur Branch and link it with the tails of Maur Branch and Bhai Bakhtaur Branch. However, the persons mentioned at Sr. Nos.143 to 224 submitted that scheme has not been published according

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to the rules; notice of the scheme was given on 19.12.2009 in villages whereas prior notice of 21 days was necessary as per law, therefore, service of the scheme was not done well in time. They further stated that new link channel as mentioned in the scheme, cannot be carved out without sanction of the Government and notification under Section 4 of the Land Acquisition Act is required. The compensation for the land be given; till notification under Section 4 of the Land Acquisition Act is completed, the Govt. should not interfere in the area of villages Maur Charat Singh and Mari. Further, the persons from villages Maur Charat Singh and Mari raised objection that if the scheme is sanctioned, outlet of their villages will come on tail as a result of which irrigation to their fields will be reduced and the area will become barren (Banjar); Kotla Branch is about 8 ft. high from their villages and if the scheme is sanctioned, its height would also be required to be raised; earlier due to cuts in this canal, there were floods thrice due to which their villages had submerged in water; the govt. will be responsible for any loss of their lives and property and one scheme has already been sanctioned from village Kotli Kalan. The persons mentioned at Sr. Nos.225 to 229 submitted that they have no objection, if canal is carved out but it should go through the boundaries of villages Jodhapur, Bhunder, Bhai Bakhtaur, Saima and Kot Bhara. The persons mentioned at Sr. Nos.230 to 251 jointly made a statement that their village should not come on the tail and they agreed to the earlier scheme, but the present scheme is not

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acceptable to them. Thereafter, the field staff submitted their reports and recommendations. Vide order dated 22.11.2009 (Annexure P-3), respondent No.2-Divisional Canal Officer came to the conclusion that demand of the applicants is genuine hence accepted it and hold that in place of Mogha Burji No.56090-L Maur Branch, Mogha Branch 56090 will become tail front Maur Branch and in place of Mogha Burji No.18320-R Bhai Bakhtaur Branch, Mogha No.18320 will become tail front. It has also been hold that according to the locations of outlets, situation will be as follows:

Present Situation				Proposed Situation			
Sr. No.	Name of Mogha Burji and Rajwaha	Village		GA/ CCA	Mogha Burji Rajwaha	GA/CCA	
1	56630 L Maur Branch	Mari		293 260	3780-L Maur Minor	293 260	
2.	60092-L Maur Branch	Jodhpur Pakhar Yatri		487 466 46 39	6494-L Maur Minor	487 466 46 39	
		Total		533 505	Total	533 505	
3.	62160-R Maur Branch	Yatri		831 759 +5.75 GA	8562-R Maur Minor	831 759 +5.75 GA	
		Jodhpur Pakhar				29 21	
		Total		860 780 +5.75 GA	Total	860 780 +5.75 GA	
4.	63500 TL Maur Branch	Jodhpur Pakhar		974 942	9912-L	974 942	
5.	63500 TR Maur Branch	Bhai Bakhtaru		716 695	9902-R Maur	716 695	

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		Maissark-hana	510	405	Minor	510	405
		Total	1226	1100	Total	1226	1100
6.	22750-R Bhai Bakhtaur Branch	Kota Fatta	1071	1011	32933-R Maur Minor	1071	1011
7.	22750-L Bhai Bakhtaur Branch	Kota Fatta	66	65	32933-L Maur Minor	66	65
		Ramgarh Bhunder	543	501		543	501
		Total	609	566	Total	609	566
8.	28600 Tail Front Bhai Bakhtaur Branch	Kot Bhasra	606	575	38785-TR	606	575
		Kot Fatta	13	13		13	13
			5	5		5	5
		Total	624	593	Total	624	593
		Gross Total	6190	5757 +5.75 GA	Gross Total	6190	5757 +5.75 GA

Feeling aggrieved against that, Harbans Singh and Jagsir Singh preferred appeal before respondent No.1-Superintending Canal Officer who modified the order dated 22.12.2009 by approving scheme to construct link channel from R.D. No.361200-R Kotla Branch upto R.D. No.22750-L of Bhai Bhahtaur Branch. Against that, CWP No.220 of 2011 was preferred before this Court which was disposed of vide order dated 09.12.2014 whereby the order dated 23.09.2010 passed by respondent No.1 was set aside and matter was remanded to respondent No.1 with a direction to decide the matter afresh after hearing the parties. In pursuance of the order dated 09.12.2014 (Annexure P-5), respondent No.1-Superintending Canal Officer proceeded with the matter afresh and

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heard the parties and approved the scheme to carve out link channel from R.D. No.368200/R of Kotla Branch, under Section 30-B (3) of the Act, vide impugned order dated 10.12.2015 (Annexure P-6). Hence, this writ petition.

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

Perusal of site plan (Annexure P-9) reveals that a canal outlet i.e. sub minor was existing which is shown with yellow colour. This is just near to the abadi of village Jodhpur Pakhar and is passing through killa Nos.130, 123, 103, 93, 70, 59 and 37. In fact, it has been shown as cancelled channel, although it was left at the time of consolidation of holdings. Respondent No.1 has revived this channel by giving it new number as RD No.368200-R and it is further linked with the other channel of Maur Branch. In this manner, it is apparently clear that the channel was already existing but it remained unused. This fact is not disputed. It has been shown with yellow colour in the site plan (Annexure P-9), but in the site plan (Annexure P-10), the same has been given the number as RD No.368200-R, as shown with red colour, which further connects to the already existing Maur Branch which emerges at RD No.6350-TL which is shown with blue colour in the site plan (Annexure P-10). Respondent No.1 after considering all the aspects has passed detailed order and came to the conclusion that the applicants-villages are not getting proper irrigation and as such, the old channel

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which was non-functional, has been made functional by giving it a new number as RD No.368200-R and linked it with other branches and the same will improve the irrigation of these villages. This link channel emerges from main Kotla Branch, shown on south-east side in the site plan. Admittedly, respondent No.1 has passed the impugned order after examining the entire record and getting the reports from the field officials. Otherwise also, the canal authorities are experts in this field. The scheme has been approved after due publication in accordance with law. The link channel will not affect the rights of the petitioners in any manner as this channel is directly linked with the main canal and they will not suffer any loss in any manner, whereas, residents of other villages will also get better irrigation with the linking of channel. Otherwise also, old existing non-functional channel has been made functional by assigning new number.

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

Dismissed in limine.

12.04.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge