

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

**LPA No.934 of 2016 (O&M) in
CWP No.6932 of 2016
Date of decision: 31.05.2016**

Jagdeep Singh and others

----Appellants

Versus

Superintending Canal Officer and others

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

**Present: Mr. Gurvinder Singh Sidhu, Advocate
for the appellants**

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 12.04.2016 of the learned Single Judge, whereby, the writ petition filed by the appellants seeking quashing of the order dated 04.01.2016 (Annexure P-6) passed by respondent No.1 - Superintending Canal Officer directing the carving of canal (link channel) from R.D. No.368200/R of Kotla Branch instead of from Mogha Burji No.356175 of Kotla branch as sanctioned by the Divisional Canal officer in his order dated 22.11.2009, has been dismissed.

Along with the appeal, an application seeking condonation of 14 days delay in filing the appeal has also been filed.

For the reasons stated in the application, the delay of 14 days in filing the appeal is condoned subject to just exceptions.

An application was filed by some shareholders of villages

Yatri, Kot Bhara, Ramgarh Bhunder, Jodhpur Pakhar, Maissarkhana and Kot Fatta before the Divisional Canal Officer, Mansa Division, IB Jawahar Ke for taking out a link channel from Burji 356175 of Kotla Branch and connecting it with Maur Branch and further by linking tails of Maur Branch with tails of Bhai Bakhtaur Branch so that canal water may reach their fields for better irrigation. On this application, the concerned Ziledar conducted spot inspection and submitted a detailed report recommending the case of the applicants. On receipt of the report, the Divisional Canal Officer prepared and published the scheme under Sections 30-A(1) and 30-B (1) of the Northern India Canal and Drainage Act, 1873 (for short 'the Act'). After hearing the concerned shareholders, the Divisional Canal Officer vide his order dated 22.12.2009 (Annexure P-3) came to the conclusion that the demand of the applicants was genuine and held 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. Location of outlets in the villages was, accordingly, revised.

On appeal by some aggrieved parties, the Superintending Canal Officer, vide his order dated 23.09.2010 (Annexure P-4), 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 Bhakhtaur Branch. This order dated 23.09.2010, which was a non- speaking order, was set aside vide order dated 09.12.2014 passed by this Court in CWP No. 220 of 2011, and the matter was remanded to respondent No.1 to decide afresh after hearing the parties.

Thereafter, respondent No.1, after hearing the parties, vide his order dated 4.1.2016 (Annexure P-6), approved the scheme to carve out link channel R.D. No.368200/R of Kotla Branch, under Section 30-B (3) of the Act. This order was impugned in the writ petition which has been dismissed.

While dismissing the petition, the Ld. Single Judge noticed that the site plan (Annexure P-9) revealed that a canal outlet i.e., sub minor was already existing which is just near the abadi of village Jodhpur Pakhar and passes through Killa Nos.130, 123, 103, 93, 70, 59 and 37. This channel had been shown as cancelled channel, though it was left at the time of consolidation of holdings. Through his order respondent No.1 had only 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. This fact had not been disputed by the parties. It was further observed by the Ld. Single Judge that Respondent No.1, after considering all aspects had passed detailed order and came to the conclusion that the applicants were not getting proper irrigation and as such the old channel which was non- functional had been made functional by giving it a new number as RD No.368200-R and linked it with other branches and the same would improve the irrigation of those villages. The impugned order had been passed after examining the entire record and getting reports of the field officials. The scheme had been approved after due publication in accordance with law. Finding no illegality in the order, the writ petition was dismissed.

We find no reason to disagree with the observations of the Ld. Single Judge.

Ld. Counsel for the appellants, however, argued that, after

obtaining requisite permissions, Petitioner Nos.1 and 3 along with some other share holders had installed pipelines to carry water from their tubewells to their agricultural land on the other side. These pipelines pass through the passage on which RD 368200 water channel is to be constructed as per the impugned order. It was argued that the new water channel would damage their pipelines, for laying of which they had incurred considerable expenditure.

We are afraid this cannot be a reason to interfere with the impugned order. If, as has been held, the construction of the water channel would improve irrigation and would be in the larger public interest, the interest of few of the appellants will have to make way to this larger public interest.

Accordingly, we find no merit in the appeal and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

May 31, 2016
Atul