

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.14855 of 2010
Date of decision:16.02.2017

Gurtej Singh and another

... Petitioners

Vs.

Superintending Canal Officer, Sarhind Canal Circle and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Rajeev Godara, Advocate
for the petitioners.

Mr. Yatinder Sharma, Addl.A.G.Punjab.

Mr. R.S.Pandher, Advocate
for respondents No.3 and 4.

AMIT RAWAL J. (Oral)

The petitioners being co-sharers of the land measuring 80.22 acre declared from un-command to command area in Mogha Burji 36044-L Killiawali Sub-minor are aggrieved of the orders dated 28.01.2009 (Annexure P-1) and 25.03.2010 (Annexure P-3) passed by respondent No.2 and respondent No.1, respectively.

Mr. Rajeev Godara, learned counsel appearing on behalf of the petitioners submits that the orders under challenge alleging the recording of the statement is totally off the record as no such statement was ever recorded. The SDM inquired into the entire matter and sent the report dated 19.02.2008 to the Commissioner specifying the land of *Jumla Mushtarka Malkan*. The aforementioned exercise was done without consent of all the

co-sharers. He further submits that the impugned orders are illegal, null and void. The order dated 28.01.2009, (Annexure P-1) was passed at the back of the petitioners. All these factors were required to be governed by the authorities below. It is in this aspect of the matter, the matter was assailed before the higher authorities but it also met with the same fate.

Mr. R.S.Pandher, learned counsel appearing on behalf of the private respondents No.3 and 4 submits that the application was submitted by taking into consideration the fact that the aforementioned area was not being utilized and was ordered as un-command area. After having declared to be un-command area, it is held to be un-cultivable. Even the volume of the outlet has also been increased which fact is evident from Annexure A-1 annexed with the application bearing No.16603 of 2012. The entire process of inspection and other factors were taken into consideration by the concerned officer, in essence, the co-sharers are benefitted, therefore, no prejudice was caused to the petitioners and thus, urges this Court for dismissal of the writ petition.

Similar is the arguments of Mr. Yatinder Sharma, learned Additional Advocate General, Punjab.

I have heard learned counsel for the parties, appraised the paper book and of the view that once it has been found that the area in dispute has been held as un-command area, in essence, volume of the outlet has also been increased, the petitioners being co-sharers, no prejudice or any consequential fall out of the orders has been pointed out either before the authorities below or before this Court. In this process, even the petitioners

would also be benefitted and the remaining area can always be used by the shareholders.

In view of the aforementioned, no ground is made out for interference in the impugned orders.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

February 16, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No