

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

C.W.P.No.12156 of 2012 (O&M)

Date of Decision: May 09, 2017

Sultan Singh & others

...Petitioners

Versus

The State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ashok Verma, Advocate,
for the petitioners.

Mr.Rajbir Singh, AAG, Haryana,
for the State.

Mr.Ashish Aggarwal, Senior Advocate with
Ms.Aakriti Malik, Advocate,
for respondent No.3.

AMIT RAWAL, J. (Oral)

The petitioners are in the writ petition challenging the order, dated 9.6.2012, Annexures P-5, corrected vide order dated 18.6.2012 (Annexure P-6), whereby, according to Mr.Ashok Verma, learned counsel for the petitioners, without hearing them, water outlet R.D.34500-L, Sherpura Disty., has been erroneously held to be being used for recharging of tube-wells.

Mr.Ashok Verma submits that since the land of the petitioners is situated on a higher altitude having bit sand dunes and no flow of irrigation was possible through the watercourses, they moved an application under Section 17 of the Haryana Canal & Drainage Act, 1974 (for short

“1974 Act”) for preparation of private scheme for the purpose of construction. The aforementioned application, on the basis of the inspection done, was allowed and the scheme was prepared by the Divisional Canal Officer and sent to the Chief Canal Officer through the office of Superintending Canal Officer, which was approved vide Annexure P-2 dated 01/02.08.2002.

It has been stated that the new outlet at R.D.34500-L Sherpura Disty. shall only be provided when all other outlets on Gudha Minor are actually adjusted in field and the beneficiaries shall resort to sprinkler irrigation within one year of the sanction, failing which it would result into cancellation of the sanction automatically and the area of Jhallar outlet was noticed to be 183 acres. The Divisional Canal Officer granted sanction order vide order dated 12.8.2002, Annexure P-3.

He further submits that no time line was fixed with regard to the area of Jhallar outlet for the irrigation through sprinkler sets. He has drawn the attention of this Court to Annexure P-11, the outlet for irrigation from RD 33900-R to 52500-Tail, including that of 34500-L, to show the average for the crops from Kharif, 2011 to Kharif 2014 to be 63.66%. However, when the arrangement was going on, in 2011, the private respondent, i.e., the husband of the Sarpanch, at that time as he then was, moved an application for removal of the outlet and in this regard, Zileadar was appointed, who submitted his report on 1.8.2011, Annexure P-7, and as per the said report, it has been mentioned that the lifting of water Jhallar Jhata prior to sanctioning of the outlet was operated through bullocks/camels etc. and now has been done through electricity/diesel engines, much less generators and sprinkler sets and there is no necessity of

maintaining the watercourse as the beneficiaries have already laid underground pipe lines and proper T.points were provided. The report of the Zileadar was re-affirmed by the Sub-Divisional Canal Officer vide letter dated 5.8.2011, Annexure P-8.

At the instance of the private respondent, the Divisional Canal Officer, vide letter dated 1.9.2011 (Annexure P-4), issued a warning to the petitioners. However, after almost a gap of nine years, passed the impugned order that too at the back of the petitioners with regard to the alleged using of the recharging of the tubewells through the disty. The aforementioned order is not sustainable in the eyes of law as it has been passed at the back of the petitioners. He submits that the Executive Engineer has no power under the Act to pass such orders. Moreover, the respondents-complainants are not at all co-sharers and, therefore, could not possibly have any grievance with regard to the outlet being run since the time immemorial.

Per contra, Mr.Ashish Aggarwal, learned Senior Counsel assisted by Ms.Aakriti Malik, representing respondent No.3 submits that the petitioners have alternative remedy of having approaching the Chief Canal Officer under sub-section (3) of Section 20 of 1974 Act and, moreover, the sanction order was only for a period of one year as is evident from the order dated 1.5.2002 (Annexure R-1). He has also drawn the attention of this Court to Annexure R-3/3, i.e., the irrigation scheme of the aforementioned outlet from crops Kharif 2004 to Rabi 2013-14 to show that the percentage is 29%, whereas the required one is 35%. The spot can be verified through the assistance of a Local Commissioner as the order under challenge would be supported by all such facts and, thus, urges this Court for upholding the order under challenge.

I have heard the learned counsel for the parties and appraised the paper book.

For the sake brevity, orders Annexures P-5 and P-6 read thus:-

“Annexure P-5

Copy of Canal Wire dated 09.06.2012

906

09.06.2012

XEN, SWS Divn.

SDO/SWS S/D, Hisar.

Bhiwani

C/Ravinder Gaur, ASDE

O/o SDO, SWS S/D, Hisar.

C/SE/YWS Circle, Bhiwani.

I have been receiving a number of complaints from field that the water of outlet R.D.34000-R Sherpura Disty.is being used for recharging of Tube-wells since there exist no watercourse at site. The fact that there is no watercourse was also noticed during inspection in the past. It is ordered that this outlet should be removed immediately and compliance be reported.

Sd/-09.06.2012

XEN, SWS Divn.,BWN.”

ANNEXURE P-6

“Copy of Canal Wire No.1803 Dated 18.06.2012

No.1803

Dated: 18.06.2012

From,

XEN, SWS Divn.

SDO/SWS S/D, Hisar.

Bhiwani

C/Ravinder Gaur, ASDE

O/o SDO, SWS S/D, Hisar.

C/SE/YWS Circle, Bhiwani.

In supercession of T/o C/W No.906 of 09.06.2012, the O/L of R.D.be considered as 34500-L, Sherpura Disty.instead of R.D.34000-R Sherpura Disty. Report compliance after

needful at site as directed earlier.

Sd/-18.06.2012

Executive Engineer,

Siwani Water Services Division,

Bhiwani.”

On going through the aforementioned orders, which have been passed at the back of the petitioners, there is no defiance to the provisions of the Act. Once the report of the Zildar (Annexure P-7) and the Sub Divisional Officer in pursuance of the receipt of the complaints of the respondents found that the respondents have laid down underground pipelines, there was no occasion for the officer to give a finding without any spot inspection of having misused the outlet by recharging tubewell, though the complaint was made as indicated above.

Any order without jurisdiction can be assailed by invoking the provisions of Article 226 of the Constitution and even in view of the existence of the alternative remedy. The aforementioned provisions of law are no longer *res integra*. In my view, the orders are bereft of reasoning, much less compliance of natural justice, therefore, the petitioners cannot be relegated to avail the remedy, as indicated above.

I am of the view that both the parties, in case are aggrieved, should have been heard and the authorities below, i.e., the authority assigned under the 1974 Act can pass such order for compliance of the natural justice by offering the parties to put across their matter.

Resultantly, the impugned orders, Annexures P-5 and P-6, are set-aside with the aforementioned liberty granted to the officer assigned under the Act.

All the pleas of the respondents with regard to existence of the

watercourse for one year and percentage would also be looked into by the concerned authorities.

Writ petition stands allowed.

May 09, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No