

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

CWP No.1055 of 2015
Date of decision : 08.02.2017

Nachhattar Singh

...Petitioner

Versus

The Superintending Canal Officer and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Malkeet Singh Balianwali, Advocate for the petitioner.

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

Ms. Jasmine, Advocate for
Mr. B.S. Bhalla, Advocate for respondent No.3.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the impugned order dated 30.09.2014 (Annexure P-3) of Superintending Canal Officer, whereby order of Divisional Canal Officer, rejecting the application of private respondent- Dalbara Singh altering the existing water course ABE to ACB, has been allowed.

Mr. Malkeet Singh Balianwali, learned counsel appearing appearing on behalf of the petitioner submits that water course at point A and B is in existence for the last 30 to 40 years, in essence, it is conforming from one of the following three ingredients:-

1. sanctioned one or

2. Prescription or
3. Agreement

No change of circumstances exist for Dalbara Singh to move application in the year 2013 and prayer of water course has been accepted by Superintending Canal Officer and Divisional Canal Officer. No feasible report or expert report has been sought for altering the water course. It was incumbent upon the respondent No.3 to place on record the material with regard to the less supply or a lesser crop being yielded. All these points have not been pondered upon. In fact, it would be resulting into bifurcation of the land of the private respondent and thus urges this Court to remand back the matter to follow procedure as indicated above, thus order is not sustainable.

Ms. Jasmine, learned counsel appearing on behalf of Mr. B.S. Bhalla, Advocate for respondent No.3 submits that on perusal of site plan Annexure P-1, existence water course at point A and B ex facie reveal that portion of the land in yellow colour belonging to her client is in a triangular shape, thus, irrigation catering to khasra no.1376 is not possible. Order is perfectly legal and justified. No harm would be caused as altering water course is already connected to the existing one i.e. from B to E. Same is the arguments of Mr. Yatinder Sharma, Addl. A.G. Punjab.

I have heard learned counsel for the parties and appraised the paper book and of the view that the order of Superintendent Divisional Canal Officer is without following the procedure as indicated above, thus, uncalled for since particularly when Divisional Canal Officer rejected the application of Dalbara Singh. Water course shown in site plan (Annexure P-1) as A to B is in existence for the last 35 years. No substantial document

had been placed on record to make out the case of inconvenience or loss of crop or otherwise. There has to be spot inspection by Zileadar, alignment, level of field etc. are required to be seen. In the absence of same, Superintending Canal Officer could not have accepted the application by setting aside the order of Divisional Canal Officer while altering the water course.

Resultantly, order dated 30.09.2014 (Annexure P-3) of Superintending Canal Officer is not sustainable and is hereby set aside.

Matter is remitted back to Superintending Canal Officer to take into consideration all these facts in accordance with law i.e. in essence in terms of observation given herein above.

Writ petition stands disposed of in aforementioned terms.

08.02.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No