

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

**CWP-17122-2012 (O&M)
Date of decision : 08.05.2017**

Gurtej Singh and another

... Petitioner(s)

Versus

Superintending Canal Officer and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. P.S. Brar, Advocate
for the petitioners.

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

Mr. A.S. Gill, Advocate
for respondent Nos.3 to 5.

AMIT RAWAL, J. (ORAL)

Mr. P.S. Brar, learned counsel appearing on behalf of the petitioners submits that the land of the petitioners situated close to the outlet No.RD 32390/L Rajbaha Bangi, as indicated in the site plan shown in orange colour, had been getting irrigation through outlet Nos.27450/R & RD 25736/L and it is coming in a very zigzag manner, as indicated in the site plan i.e. through the watercourse shown in orange colour, whereas there is a direct canal in blue colour which is Outlet No.32390/left Rajbaha Bangi, adjacent to the land of the petitioners. It is, in this backdrop of the matter, an application was moved and the scheme was prepared and published under Sections 30-A (1), 30-B and 30-B(1) of the Northern Canal and Drainage Act, 1873. Many people had appeared, however, Divisional

Canal Officer after examining all the objections of the parties including that of the private respondent(s) found the request of the applicant(s)/petitioner(s) to be genuine and accepted the scheme with a condition that the same is approved by the Superintending Canal Officer. The area of the land of the petitioners would not affect the irrigation of the land of the other persons situated close by the concerned outlet as it is less than 10%. Respondent Nos. 3 to 5 have challenged the aforementioned order by filing the appeal, which has erroneously been allowed, thus, urges this Court for setting aside the impugned order.

On the contrary, Mr. A.S. Gill, learned counsel appearing on behalf of the respondent Nos.3 to 5, submits that the order of the Superintending Canal Officer is perfectly legal and justified and do not call for interference. The irrigation of the land of the private respondent(s) qua their claims would be considerably reduced and it seriously affects the agricultural produce. The Divisional Canal Officer has not taken into consideration the yield aspects, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the the order of the Superintending Canal Officer is not sustainable in the eyes of law as he has not taken into consideration the site plan (Annexure P-3) for the land of the petitioners shown in orange colour, is close to the Outlet No.32390/left Rajbaha Bangi, whereas the other outlet Nos.27450/R & RD 25736/L, are situated at far of places. It would be less wastage of time, much less, the petitioners would be able to irrigate the land as Outlet No.32390/ is adjacent to the land of the petitioners. Since the holding of the petitioners is 72 kanals 1 marla, the

irrigation is not increased from more than 10%, therefore, there would be no necessity for remodelling of the outlet. If at all, at any point of time, the demand from the concerned outlet is increased and likely affects the neighbourers, they shall be at liberty to move an application for remodelling, but not in the manner and mode as indicated above.

Keeping in view the aforementioned facts, the order dated 28.05.2012 (Annexure P-1) passed by the Superintending Canal Officer is not sustainable in the eyes of law being opaque, much less, arbitrary and the same is hereby set aside and that of the Divisional Canal Officer i.e. order dated 21.09.2011 (Annexure P-2), is restored.

Resultantly, the present writ petition stands allowed in the aforementioned observations.

08.05.2017 Yogesh Sharma	(AMIT RAWAL) JUDGE
	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No