

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

**CWP No.11835 of 2015
Date of Decision.17.03.2017**

Kartar Singh and another

.....Petitioners

Vs

Superintending Canal Officer, Patiala Circle and othersRespondents

Present: Mr. G.S. Sidhu, Advocate
for the petitioner.

Mr. Vijay Sharma, Advocate
for respondent Nos.3 to 36 and 38 to 50.

Mr. L.S. Lakhanpal, Advocate
for respondent Nos.27 and 48.

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

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The petitioner is seeking issuance of writ in the nature of certiorari for setting aside the order dated 31.03.2015 (Annexure P-2) passed by respondent No.1, 27.10.2014 (Annexure P-1) passed by respondent No.2 being erroneous and against the mandatory provisions of Northern Indian Canal & Drainage Act, 1873, as no scheme, as required under Section 30-A, B, C and D, has been prepared.

Learned counsel appearing on behalf of the petitioners submitted that the petitioners being resident of Rureke Kalan getting canal irrigation water from outlet no.77008/Right Rajwaha Dhanola, as their land is situated at up stage of the water course. Respondent No.5 and other private respondents moved an application before the irrigation department for bifurcation of the outlet by carving out new outlet, for, their land was

the petitioners raised objection of having not adhered to the aforementioned provisions of the Act yet the Divisional Canal Officer, Sangrur Mandal, Irrigation Branch, Sangrur (hereinafter called as “DCO”) vide impugned order dated 27.10.2014, carved out a new outlet bearing No.78228/Right Rajwaha Dhanola.

Against the aforementioned order, an appeal was preferred to the Superintending Canal Officer (hereinafter called as 'SCO’) which was dismissed vide order dated 31.03.2015. The site plan prepared by Irrigation Department reveals that the petitioner and other co-sharers have been left with 99 acres and 37 barren acres land, which fact is evident from the orange colour in the site plan (Annexure P-3).

The petitioner and respondent No.3 to 51 are irrigating their fields from the last 40 years from outlet No.77008/Right Rajwaha Dhanola and therefore, the bifurcation has seriously prejudiced their rights. Even the publication of the notice of intention to acquire land under Section 30-D has not been done, thus, the orders under challenge are not sustainable in the eyes of law and hereby liable to be set aside.

Per contra, Mr. Vijay Sharma, learned counsel appearing for respondent Nos.3 to 36 and 38 to 50 submitted that the orders under challenge are perfectly legal and justified. All the parties as indicated in the impugned order had made statements jointly that their area is not getting proper irrigation from the existing outlet No.77008/Right Rajwaha Dhanola. Even the persons mentioned in the order of the DCO at Sr. No.42 to 49 also made statement jointly. The petitioners are having land of 3.5 acres and none of the other co-owners who are irrigating their lands through the aforementioned outlet have approached this Court. The filing of the writ

petition is nothing but an attempt to tire out the private respondents, much less, an act of self aggrandizement.

He further submitted that petitioners are also not co-sharers with regard to the private respondents whose land is now being irrigated through newly carved out outlet No.78228. The outlet No.77008 is upwards whereas the newly carved out outlet is downwards and the petitioners' land is closely situated to outlet No.77008 and therefore, they would not be affected as the canal is quite wide and it cannot be case of carving out outlet before their outlet, which would take away their right, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper book, site plans and of the view that the orders under challenge are perfectly legal and justified. Prima facie, no ground has been established as to how and in what manner the petitioners would be affected as no other co-owner in respect of land shown in the orange colour, except the petitioner Nos.1 and 2 having holding of 2 acres and 1 acre, have approached this Court. Once the other land owners of about 99 acres attached to outlet No.77008 are not affected, it appears that all other co-owners/co-sharers are seeking irrigation of their land, which is far away from the existing outlet. All the co-owners have made statements before the DCO which has been noticed in the order and have agreed for splitting up of the existing outlet. Even the SCO while deciding the appeal of the petitioners re-visited the spot on 15.01.2015 in the presence of JE, Zileadar and Canal Patwari and returned a finding that new outlet can be installed on a new position as per the decision of the DCO.

I cannot remain oblivious of the provisions referred to above by

Mr. Sidhu, as the case of the petitioners does not fall within any of the provisions, as draft of scheme under Section 30-A is in respect of following instances:-

- (i) the construction, alteration, extension and alignment of any watercourse or re-alignment of any existing watercourse;
- (ii) re-allotment of areas served by one watercourse to another;
- (iii) the lining of any watercourse;
- (iv) the occupation of land of the deposit of soil from watercourse clearances;

In the present case, same watercourse is being continued, however, only an outlet has been changed and the newly carved out outlet is much down below than the outlet of the petitioners. The petitioners would have a grievance in case splitting of the outlet done before the outlet of the petitioners.

For the reasons aforementioned, in my view, the orders are under challenge are perfectly legal and justified. No ground for interference is made out. The writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

March 17, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No