

CWP No.13001 of 2015

[1]

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

**CWP No.13001 of 2015
Date of decision:18.07.2017**

Sarwan and others ...Petitioners

Versus

The Divisional Canal Officer, Ghaggar and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

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

Mr. Gaurav Mohunta, AAG, Haryana.

Mr. Sandeep Punchhi, Advocate,
for respondent no.4.

Rakesh Kumar Jain, J.

The petitioners have prayed for issuance of a writ in the nature of *certiorari* to quash the order dated 22.01.2015 passed by the Chief Canal Officer.

In brief, father of respondent no.4, namely, Mani Ram and the petitioners filed an application for transfer of the area of 49.49/49.11 acres (hereinafter referred to as the "area in question") from the Chak of Outlet R.D.-92150-R, 129500-TL, Bani Disty. to the Chak of Outlet R.D.-92150, N.G.C. of village Bani, Tehsil Rania, District Sirsa. The application of the petitioners was dismissed by the Divisional Canal Officer on 17.02.2012, with the following observations:-

"Decision: The case was examined carefully. The undersigned has

gone through the report of Zilledar Rania and Sub Divisional Canal Officer, Ottu W/S Sub Division, Sirsa. The consent of the Divisional Canal Officer, Sirsa W/S Division, Sirsa. The khaka plan, the command statement attached with the case. The statement of the shareholders was also taken into consideration.

The site inspection reveals that the area to be transferred is high, if this area is transferred to the proposed source, then there will be heavy loss to the crops falling in low level area. The site inspection reveals that there is no capacity in the lined water-course, which has been lined by the CADA department. The water-course was already over flowing, if this area is transferred then there will be more over flow and it will destroy the crop of shareholders falling in low level area. More over the khaka plan and decision of the Divisional Canal Officer, Sirsa Lining Division No.3 MITC, Sirsa dated 12.10.2000 produced by the respondents shows that pucca water-course has been approved by MITC department upto Point 384/5X385/10 which reaches upto the holding of the applicants. More over there is no capacity in the channel also as reported by the Divisional Head Drafts Man (report attached). Hence keeping in view all the facts the demand of the applicants is not genuine hence rejected under section 18(2) of the Haryana Canal and Drainage Act, 29 of 1974. the applicants are advised to approach to the department for repair of their water-course. This decision is subject to modification by the Superintending Canal Officer, Bhakra Water Services Circle, Sirsa.

Decision be conveyed to all concerned share holders under rule.”

However, the Superintending Canal Officer reversed the order of the Divisional Canal Officer on 31.10.2012 by observing thus:-

“The area is not receiving irrigation from the existing source as evident from 3 year irrigation. The area of applicant is situated at a long distance from the existing source i.e. 129500-T.L., Bani Disty. and it is very near to the proposed source i.e. 92150/R, N.G.C. A lined watercourse is also touching to the field and their area can be better irrigated from outlet RD. 92150/R, N.G.C. Also the application of Sh. Bhoop Singh S/o Mani Ram

withdrawing his request for transfer of his area does not seem to be in the interest of better irrigation because lined watercourse from O/L RD. 92150/R, N.G.C. is touching to his fields.

Keeping in view above facts of the case, the demand of the appellants appear to be convincing and I find no reasons to declined the right demand of the appellant for better irrigation. Therefore, the appeal of the appellant is allowed and the decision of the lower court is set aside under Section 20(1) of the Haryana Canal & Drainage Act of 1974 in the interest of better irrigation.”

Aggrieved against the order of the Superintending Canal Officer, the private respondents filed an appeal before the Chief Canal Officer, who has reversed the order of the Superintending Canal Officer, vide his order dated 22.01.2015. The relevant observations made by the Chief Canal Officer are as under:-

“From the perusal of L-section of the water course of outlet RD 92150-R, it is observed that FSL of the water course at head is 629.62 and the FSL of water course in the field of respondents i 629.07. From the perusal of the level's marked in the khaka plan, it is observed that the natural surface level (NSL) of the area to be transferred varies from 630 to 631. Therefore, the observation of the Divisional Canal Officer that the area in question is at a higher level was found correct.

As the levels of area are higher than the full supply level of water course, the area cannot be irrigated from the existing lined water course of outlet RD 92150-R NGC. Therefore, the decision of Superintending Canal Officer dated 30.10.2012 transferring the area 50/49 acres area outlet RD 129500-tail Bani Disty. to outlet 92150-R NGC is set aside.”

Counsel for the petitioners, while referring to the khaka plan, has submitted that the land of the petitioners are not getting irrigation, therefore, it is submitted that the orders passed by the Divisional Canal Officer and the Chief Canal Officer are patently erroneous and illegal.

On the other hand, counsel for the respondents has submitted that the land of the petitioners is being properly irrigated from the outlet RD-129500-TL, Bani Disty., as has been observed by the Divisional Canal Officer.

I have heard learned counsel for the parties in detail and found that there is no error either in the order of the Divisional Canal Officer or the Chief Canal Officer and, thus, the present writ petition is found to be without any merit and is dismissed as such.

July 18, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No