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

CWP-19324-2013

Date of decision : 04.07.2017

Radha Rani and another

... Petitioner(s)

Versus

Divisional Canal Officer, Fatehabad Water Service
Division and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Amit Jain, Advocate
for the petitioners.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Shailendra Mohan, Advocate
for respondent Nos.4 to 30.

AMIT RAWAL, J. (ORAL)

The petitioners have sought the quashing of the impugned orders dated 25.05.2013 (Annexure P-5) passed by the Chief Canal Officer/respondent No.3, upholding the order dated 08.04.2013 passed by the Superintending Canal Officer/respondent No.2.

Mr. Amit Jain, learned counsel appearing on behalf of the petitioners submits that the matter pertains to the transfer of the area of 50.36/50.36 acres from the Chak of Outlet No.RD-82795-L, Munshiwala minor to Chak of Outlet No.48880/R, Sirsa Major Distributary, Tehsil and District Fatehabad. As per site plan (Annexure P-1), the area shown in red and blue colour pertains to petitioner Nos.1 & 2 and for seeking transfer of the aforementioned chak, moved an application by invoking the provisions

of Section 17 of the Haryana Canal and Drainage Act, 1974 (for short' the 1974 Act'), before the Divisional Canal Officer/respondent No.1 , on the premise that there is scarcity of canal water at tail-end of existing source, resultantly, their fields are not receiving canal water of their share. The aforementioned application of the petitioners was processed and investigated from Zileadar, Fatehabad-I & II, who submitted his report to the Sub-Divisional Canal Officer, Bhattu and Sub-Divisional Canal Officer, also affirmed the same by finding the demand of the petitioners to be genuine one. The reference has been made to the aforementioned report as Annexure P-2 (Collectively). On receipt of the case, respondent No.1 published the Draft Scheme under Section 18 (1) of the 1974 Act for inviting the objections and suggestions. Some of the shareholders chose to contest the claim of the petitioners, though, according to the shifting of the proposed transfer to the proposed shares, no right of any shareholders was going to be affected and moreover for shifting of outlet, notices were not required to to be given to the share-holders, as it is the officer, assesses the situation, after inspection of the record. However, Divisional Canal Officer vide order dated 03.09.2012 rejected the case of the petitioners without looking into the report of Zileadar and Sub-Divisional Canal Officer, much less, the need of the petitioners. The appeal preferred before the Superintending Canal Officer, vide order dated 08.04.2013, was accepted whereby it was finding that the irrigation figures of both the chaks revealed that better prospective is available on the proposed source as the average irrigation of the existing chak against 168% is 70% of the proposed one. Moreover the petitioners had undertaken to bear the expenditure of the adjustment of both the outlets. However, aggrieved of the aforementioned

order, the private respondent(s) preferred an appeal under Section 20(2) of the 1974 Act before the Chief Canal Officer and vide order dated 25.05.2013 (Annexure P-5), erroneously and fallaciously set aside the well reasoned order, which is not sustainable in the eyes of law, on the premise, that the order is bereft of the reference to the report of the Ziledar and the Sub-Divisional Canal Officer as the land of the petitioners is situated at far-away place i.e. 4 kilometers, it would be difficult to use the watercourse being lengthy one despite the fact that the petitioners had undertaken to incur the expenditure. The Chief Canal Officer also did not look into the average irrigation of 70% from the existing source as against 168% of the proposed one. It is, in this background of the matter, constrained to file the application, in fact, the appeal was not maintainable as no prejudice had been caused to the objectors.

He further submits that primary consideration of the canal authorities is to provide best possible irrigation to holding of each and every person. In fact the private respondent(s) for the sake of objections opposed the demand of the petitioners without any grievance, much less, only for wrecking personal vengeance. In support of his contentions, relied upon the following judgments:-

- 1) **"Rai Singh V/s State of Haryana" 2001 (4) RCR (Civil) 18**, that mere shifting of land from one outlet to another outlet does not itself prejudice the interest of the affected party.
- ii) **"Madan Lal V/s Gopi" 2001 (3) RCR (Civil) 313**, that Section 17(1) (c) of the 1974 Act do not envisage any provision for obtaining the consent of shareholders of proposed outlet.
- iii) Decision dated 18.10.2011 passed in **CWP No.11982 of**

2010 titled as "Roshal Lal and others V/s The Chief Canal Officer and others" to contend that after consideration of all the points raised herein, this Court remanded the matter.

iv) Decision dated 27.01.2015 passed in **CWP No.9668 of 1998 titled as "Gurdial Singh and others V/s Superintending Canal Officer, Ferozepur and others"**.

On the contrary, Mr. Shailender Mohan, learned counsel appearing on behalf of respondent Nos. 4 to 30 submits that no prejudice has been caused to the petitioners to invoke the extra-ordinary jurisdiction of this Hon'ble Court as the Chief Canal Officer has directed the concerned Canal Officer to ensure feeding of tail of Munshiwala Minor with its authorized Full Supply Discharge.

He also drew the attention of this Court to the site plan (Annexure P-1), to submit, that shifting from the existing outlet to proposed one is far away i.e. 4 kms away. In support of his contentions, relied upon the decision dated 11.04.2017 passed in **CWP No.15401 of 2013 titled as "Prithvi Singh V/s The Divisional Canal Officer"** to contend that on similar lines, this Court did not accept the ground of shifting of the outlet, thus, urged this Court for dismissal of the present writ petition as there is no illegality and perversity in the impugned order, under challenge.

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

Shorn of the facts as noticed above and the submissions of both the parties, I am of the view that the grievance of the petitioners represented by Mr. Jain, is not justified as the order of the Chief Canal Officer is

perfectly legal and justified.

It would be apt to reproduce the operative part of the order which reads thus:-

"Case heard and both the parties were informed that decision in this case will be conveyed later-on.

Decision: Arguments of the counsels of both parties and of the shareholders made before me were considered. Khaka Plan, the decision of SCO, BWS Circle No.II Hissar dated 08.04.2013 & all other relevant data of the case placed before the court were examined & it was observed that much higher Full Supply Level to the extent of 690-54 is available from the existing source of outlet at RD 82795-L Munshiwala Minor as compared to the F.S.L. which is on much lesser side i.e. 686-72 from proposed source of outlet at RD 48880-R Sirsa Major Disty. Moreover, it was observed that water course touching the fields of the respondents from existing and running at site whereas there is not link water course for irrigating the area in question from proposed source of outlet at RD 48880-R Sirsa Major Disty as it remains about 4 killas away & to arrange water course in such a length is very much difficult and lengthy process. The main reason for getting transferred 50.36/50.36 acres area by the respondents from the chak of outlet at RD 82795-L Minshiwala Minor to the chak of outlet at RD 82795-L Minshiwala Minor to the chak of outlet at RD 48880-R Sirsa Major Disty, as informed by the land owners to the court during hearing of the case, is that there is some shortage of canal water at tail of Munshiwala Minor and in case Full Supply Discharge at tail Munshiwala Minor is made available, then there should not be any difficulty for the landowners for irrigating their fields properly from the outlet of this minor. In case any shortage of canal water experienced by the

land owners for a short time, that should not be made basis for getting area transferred from one source to another source. The concerned canal officers have been directed to ensure feeding of tail of Munshiwala Minor with its authorized Full Supply Discharge.

In view of above, I find no justification for transferring 50.36/50.36 acres area from outlet RD 82795-L Munshiwala Minor to the chak of outlet at RD 48880-R Sirsa Major Disty as this will disturb the whole warabandi system also.

The appeal is accepted and decision dated 08.04.2013 of SCO BWS Circle No.II Hissar is set aside.

All concerned shareholders may be informed accordingly and immediately.

On perusal of the aforementioned observations, the grievance of the petitioners has been kept in abeyance as the Chief Canal Officer has been directed to ensure feeding of tail of Munshiwala Minor with its Authorized Full Supply Discharge. It was the prescribed grievance of the petitioner, as indicated in the application submitted before the Divisional Canal Officer. No doubt the Ziledar and the Sub-Divisional Canal Officer had given a report, much less, the petitioners also undertook to bear the expenditure, but the draft scheme cannot be prepared at the wish and whim of such applicant. The entire factors are required to be looked into. Even otherwise, applicants having good financial conditions, cannot seek shifting of a watercourse at their costs, resulting into, Mayhem. There is no dispute to the *ratio decidendi* culled out by the judgments cited supra, but the facts and circumstances of the each case, have to be examined. None of the grounds in the writ petition reveals as to how the Chief Canal Officer could

not have issued a directions for supplying the authorized full supply/discharge to the petitioners, in essence, the petitioners have failed to point out the inequity in such directions. The site plan (Annexure P-1) also shows that the proposed outlet is 4 kms away from the existing one. Mere reference to the irrigation of 70% viz-a-viz 168% would also not a ground for shifting the outlet. Apprehension and grievance of the petitioners has already been addressed to. In my view, it is not a case of interference by exercising the powers of 'Judicial Review' under Article 226 of the Constitution of India.

Keeping in view the aforementioned facts, the order of the Divisional Canal Officer and as well as the Chief Canal Officer are perfectly legal and justified as no ground is made out for interference. Accordingly, the same are upheld and the present writ petition stands dismissed.

04.07.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No