

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

**CWP No.19690 of 2014
Date of Decision.04.05.2017**

Tarsem Singh son of Sohan SinghPetitioner
Vs
Superintending Canal Officer and anotherRespondents

Present: Mr. Vikas Singh, Advocate
for the petitioner.

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

Mr. A.K. Chopra, Senior Advocate with
Mr. G.S. Bhandal, Advocate
for respondent No.2.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J.(ORAL)

The grievance of the petitioner in the present writ petition is to the impugned order dated 12.06.2014 (Annexure P-3/A) passed by Superintending Canal Officer (hereinafter called as “SCO”) whereby the appeal of the private respondent against the order dated 11.12.2013 of the Divisional Canal Officer (hereinafter called as “DCO”) by taking out 10 acres of land of the petitioner from outlet No.25865/L Zira Canal Minor and transferring/adding it to outlet No.29895/L Zira Canal Minor, has been set aside, in essence, application of the petitioner for shifting the outlet has been dismissed.

Mr. Vikas Singh, learned counsel appearing on behalf of the petitioner submits that the petitioner had been irrigating his land shown in the blue colour in the site plan (Annexure P-1) from outlet No.25865/L Zira Canal Minor which is about 16 acres away from the land of the petitioner and having faced the numerous difficulties/hardships, moved an application for shifting the aforementioned outlet to outlet No.29895/L. The Divisional

Canal Officer allowed the application but the Appellate Authority has erroneously set aside the order without meeting the reasons given by the DCO on the premise that if the land of the petitioner is transferred to outlet No.29865/L, more persons/share holders will also move similar applications.

He has drawn attention of the Court to the impugned order by submitting that though SCO, Sidhwan Canal Division, Ludhiana found that the transferred area less is less than 10% yet on conjectures and surmises has allowed the appeal, thus, urges this Court for setting aside the order under challenge.

On the contrary, Mr. A.K. Chopra, learned Senior Counsel assisted by Mr. G.S. Bhandal, Advocate appearing for respondent No.2 submits that the order of the DCO was most cryptic and unreasonable. The authorities are obligated to pass the order in a most reasonable and pragmatic manner. Having not adhered to the same, the SCO rightly set aside the order.

The petitioner had been irrigating the land for the last 30 years but no change in circumstances has been pointed out. The entire land of watercourse provided to the petitioner is in his cultivating possession. The petitioner has made a totally illegal demand for shifting the outlet. It is basically an attempt of giving undue enrichment. Even the order of the DCO regarding the consent is against the record. The Superintending Canal Officer also noticed the fact that for changing the outlet, a bridge has to be constructed. All these aspects weighed in the mind of the SCO while setting aside the order of DCO, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book. The exact site plan (Annexure P-1A) filed later on reveals that

the land of the petitioner shown in blue colour is close to outlet bearing

No.29895/L viz-a-viz outlet No.25865/L. No doubt there is a rasta adjoining to the land of the petitioner but other side there is canal, therefore, there is no need of building a bridge, as the outlet is close to the land of the petitioner. In fact, the outlet bearing No.29865/L is far away from the land of the petitioner i.e. approximately 16 acres.

No doubt the DCO has allegedly recorded the consent of other party but the equity comes in the way of the petitioner and rightly so, the DCO though not correctly written the order, but intended to shift the outlet. It is also a conceded position on record that the transferred area is less than 10% and therefore, there would be no deficiency in irrigation. The land of the petitioner is situated on left side of Annexure P-1/A. It is only when the increase is more than 10% then the outlet has to be re-modelled.

In my view, no prejudice would be caused to the respondent in drawing the water from outlet No.29895/L for irrigating their land which is less than that of the petitioner. The order of the SCO, in my view, based upon surmises, as he has taken into consideration a fact, which was not in existence like many other shareholders will move applications. Those applications could always be dealt with independently but cannot take away the right of the petitioner granted by DCO.

The order under challenge passed by the SCO is not sustainable in the eyes of law and hence set aside. The order of the DCO ordering shifting of the outlet is upheld with the aforementioned observations. Resultantly, the writ petition is allowed.

(AMIT RAWAL)
JUDGE

May 04, 2017
Pankaj*

Whether speaking/reasoned Yes

Whether reportable No