

**Sr.No.211**

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

**CWP No. 19732 of 2014  
Date of decision:4.07.2017**

**Surta and others**

**.....Petitioners**

**versus**

**Chief Canal Officer and others**

**.....Respondents**

**Coram: Hon'ble Mr.Justice Rakesh Kumar Jain**

**Present:** Mr. Jai Bhagwan Sharma, Advocate  
for the petitioners.

Mr. Saurav Mohunta, DAG, Haryana.

Mr. D.S.Malik, Advocate  
for respondent No. 4.

**Rakesh Kumar Jain, J.(Oral)**

Petitioners have challenged the validity of the order passed by the Chief Canal Officer, L.C.U. Irrigation & W.R.Department, Panckula dated 20.08.2014 by which order passed by the Superintending Canal Officer, Y.W.S.Circle, Rohtak dated 5.02.2014 has been reversed.

In short, respondent No. 4 filed an application for shifting of his area bearing 12/10 acres from outlet RD. 50390-R to RD.53947-R Butana Branch village Anchera Khurd Tehsil Safidon & Distt. Jind. On the said application, scheme was prepared by the Divisional Canal Officer, Gohana Water Services Division, Gohana. The present petitioners who are the residents of village Anchera Khurd and have their holdings at RD.53947-R filed objections to the proposed scheme of shifting of area of respondent No. 4. Those objections were rejected by the Divisional Canal

Officer vide order dated 11.10.2013 observing that the irrigation percentage of 12/10 acres area of respondent No. 4 is very poor through the existing source which is only 25% and is situated away from the existing head of outlet and is near to outlet R.D.53947-R where respondent No. 4 wanted to get his area shifted. He also observed that plea of respondents/petitioners herein that the outlet is small also has no weight because the size of outlet is calculated as per its C.C.A(Culturable Command Area). Consequently, the scheme regarding transfer was found genuine and justifiable and was approved in the interest of better irrigation subject to the condition that the cost of the adjustment of both the outlets shall be borne by the applicants/respondent No. 4 and water course if required shall also be arranged by him at their own level.

Aggrieved against that order, the petitioners filed the statutory appeal before the Superintending Canal Officer, Y.W.S., Circle Rohtak who had allowed the appeal observing that if the area is shifted as proposed then it would create great resentment amongst the shareholders of two villages. It was also observed that respondent No. 4 was asked that if he is ready to keep his area on the existing outlet then the Katcha water course in a length of 4 killas towards his fields can be lined under the provisions of the Canal Act. It was further observed that the full supply level of water of existing outlet R.D.50390-R Butana Branch is higher as such there is proper command on existing outlet also. Resultantly, the order of the Divisional Canal Officer was reversed. Now it was the turn of respondent No. 4 to file appeal in terms of Section 20(2) of Haryana Canal And Drainage Act 29 of 1974 before the Chief Canal Officer. The said appeal was allowed while

observing that the critical level of the land of respondent No. 4 is 755.37. The FSL of the watercourse available to the land in question from the outlet RD.50390-R is 755.30 and the land of the appellant is 23 Killa away from the existing outlet. It was also observed that the FSL of the lined watercourse of outlet RD.53947-R Butana Branch is 756.96 and the outlet is only 3½ killa away from the land of appellant which shows that higher FSL in the watercourse available to 12/10 acre land from the proposed outlet RD-53947-R Butana branch and there is better scope of maximum irrigation to the land of the appellant as compared to the existing outlet. It was further observed that in so far as the average canal irrigation from the existing and proposed outlet is concerned, it is 86% and 109% respectively meaning thereby that the percentage of irrigation on proposed outlet is higher than the existing outlet. It was also observed that one acre land of the appellant already existing in the chak of outlet RD 53947-R Butana branch which is connected with the existing lined watercourse and will form a common block of his holding.

Keeping in view the aforesaid facts and circumstances, the request made by respondent No. 4 was accepted and the order of the Superintending Canal Officer was set aside.

Aggrieved against the order of the Chief Canal Officer, the present petition has been filed.

Counsel for the petitioners has vehemently argued the shifting of the area from the existing outlet RD. 50390-R to RD.53947-R Butana Branch would effect their wari(turn of water) in respect of irrigation with the addition of more area to RD.53947-R.

On the other hand, counsel for the State has submitted that the area to be shifted is less than the CCA because the CCA of RD. 50390-R is 493 acres whereas of RD.53947-R is 483. It is also observed that for the purpose of better irrigation, flow of water in terms of cusec has been increased. As a result thereof, there would be no effect upon the irrigation prospects of the present petitioners. This has been so stated after taking instructions from Khel Singh, Zileadar present in the Court. Besides that Shri Malik, appearing on behalf of respondent No. 4 also submits that it is in the order of Chief Canal Officer that the average canal irrigation at the existing point i.e. RD. 50390-R was 86% whereas at RD.53947-R is 109%. It has also been explained in the order of Chief Canal Officer that the irrigation on the proposed outlet is higher than the existing outlet. It is also submitted by counsel for the respondent that since the size of the outlet has also been increased, therefore, with the addition of more acres to the new point would not going to effect the wari of the petitioners.

I have heard learned counsel for the petitioner and examined the available record. No doubt that with the shifting of new area the wari of the petitioners may have an adverse effect but with the finding recorded by the Chief Canal Officer that the irrigation at proposed outlet is much more than the irrigation at the existing RD.5093R and that the size of the outlet has also been increased for the purpose of more flow of water in terms of cusec, am of the considered opinion that shifting of area atleast to the extent of 12/10 acres of respondent No. 4 is not going to effect the wari of the petitioners.

Thus, with these observation, I approve the order passed by the

Chief Canal Officer and the present petition is hereby dismissed.

**4<sup>th</sup> July, 2017**

Shivani Kaushik

**[Rakesh Kumar Jain]**

**Judge**

|                                  |               |
|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether Reportable</i>        | <i>Yes/No</i> |