

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

**CWP No.20780 of 2014
Date of decision:07.03.2017**

Vikram

... Petitioner

Vs.

Chief Canal Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. R.N.Lohan, Advocate
for the petitioner.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. A.S.Gulati, Advocate, for
Mr. A.S.Sullar, Advocate
for respondent No.4.

AMIT RAWAL J. (Oral)

The petitioner is aggrieved of the impugned order dated 09.09.2014 (Annexure P-6) rendered by respondent No.1- Chief Canal Officer, Bhakra Water Services, Irrigation Department, Panchkula, whereby, without ascertaining the record, much less the spot, outlet has been sanctioned at RD 20060-L New Sinsar Minor, according to Mr. Lohan, without noticing the fact that there was no consolidation of water course or any other water proof under Section 2(15) of Haryana Canal and Drainage Act of 1974 (hereinafter referred to as "1974 Act"), i.e., by prescription or sanctioned one or by an agreement. Whereas, on the contrary, all the authorities below found the non-existence of water course but did not accept

the appeal of Sat Narain son of Birbal Puri and others.

Mr. R.N.Lohan, Advocate submits that all the authorities below found that the consolidation of water course is available at outlet RD 21100 and therefore, the outlet at RD 20060 be abolished. All the aforementioned facts have not been considered by the Chief Canal Officer, thus, there is gross illegality and perversity in the impugned order.

Mr. Sandeep Singh Mann, learned Senior Deputy Advocate General, Haryana appearing on behalf of the respondents-State submits that outlet at RD 20060 is close to the New Sinsar Minor and therefore, once it has been sanctioned, the water course would follow in due course and thus, the order under challenge is perfectly legal and justified.

In rebuttal, Mr. Lohan, Advocate submits that in case, the water course is required to be laid, it would be from the land of the society who had not been heard independently.

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

From the site plan, it is evident that there were two outlets 21100-L and 20060-L but water course is only connected to RD 21100- L. It is only in this aspect of the matter, the Divisional Canal Officer, vide order dated 05.09.2013 (Annexure P-3) ordered for abolition of outlet at RD 20060-L by maintaining RD 21100-L. The aforementioned order was assailed by the effected party on the premise that their fields could not be irrigated but the fact remains that even before the aforesaid exercise was done, there was no existence of any consolidated water course or under the

provisions of Section 2(15) of 1974 Act. All these factors were considered by the Divisional Canal Officer but the Chief Canal Officer has not taken into consideration the same while rendering the findings in the impugned order which read thus:-

“Arguments of the shareholders of both the parties made before the Court were considered. Khaka plan, revenue missal and decision of SCO/BWS Kaithal dated 27.12.2013 it reveals that the FSL at RD 20060-L New Sinsar Minor and at Rd 21100-L New Sinsar Minor, is almost the same. The FSL at RD 20060-L New Sinsar Minor is 747.35 which is higher than the FSL at RD 21100-L New Sinsar Minor i.e. 747.30. If the outlet is installed at RD 20060-L New Sinsar Minor then it will be near the middle of the chak and the farthest point of the chak will be near to this let-out than the outlet at Rd 21000-L New Sinsar Minor which will facilitate better irrigation of the fields. In view of above facts the appeal is accepted and outlet is sanctioned at Rd 20060-L New Sinsar Minor. Hence the decision of SCO dated 27.12.2013 is set aside.”

In my view, the aforementioned finding is totally out of the record and did not conform the legal position.

Resultantly, the impugned order dated 09.09.2014 is hereby set aside and the matter is remitted back to the Chief Canal Officer to decide the matter afresh keeping in view the observations made herein-above, particularly non-existence of the water course to the outlet RD 20060-L and

shall pass the order after affording the opportunity of hearing to the parties in a most reasonable and pragmatic manner within a period of four months from the date of receipt of a certified copy of this order. The parties are at liberty to raise all the pleas.

The parties through their counsel are directed to appear before the Chief Canal Officer on 03.04.2017.

According, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

March 07, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No