

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

**CWP No.2205 of 2015
Date of Decision:02.08.2017**

Gurcharan Singh and another

....Petitioners

Vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.J.S. Brar, Advocate,
for the petitioners.

Mr.Saurav Khurana, DAG, Punjab.

Mr.C.M. Munjal, Advocate,
for respondents No.4 to 9.

RAKESH KUMAR JAIN, J.

The private respondents made an application to respondent No.3 alleging that their area (agricultural land) is not properly being irrigated from outlet 23070-R Alamwala Rajbaha as it is lying at a long distance from the outlet and prayed that after splitting outlet 23070-R, a new outlet 24620-R Alamwala Rajbaha be sanctioned for an area of about 250/300 acres. The application was inquired into through the Zileदार Rupana, who opined that as per the site plan, prepared by the Halqa Patwari, it transpired that the outlet is installed on one side as per chakbandi due to which irrigation of Mustatil No.21-22-23, 35-36-37 is impossible and hence, the request of the right holders may be accepted and recommended the case to the SDO, Muktsar Canal Sub Division, Muktsar, who also recommended the case to the Divisional Canal Officer, Abohar Canal Division, Abohar that the area of the private respondents is

at a distance, water courses have been broken and shape of the area is being triangular and as per chakbandi outlet has been installed on one side. Thus it was observed that the Culturable Command Area (CCA) of 471.75 on RD 23070-R of village Phulewala can be split into RD 23070-R of CCA 132.48 and 24620-R of CCA 339.27. The Divisional Officer also prepared the scheme and asked for objections etc. as per the prescribed procedure and after hearing the objections, the Divisional Canal Officer passed the following order: -

“Objectors and their Ld. Counsel submitted that from present outlet, area of applicants is getting sufficient irrigation. In the event of shifting areas and installation of new outlet, area of their outlet will decrease. The water courses being outsized, flow of water will be lesser, as such their irrigation will suffer heavy loss. Therefore request to split outlet be rejected, published scheme be set aside. Command statement has been perused. Report of Ilaqa Zildar and Sub Divisional Officer, Muktsar has been perused. From perusal of site plan it is clear that area of applicants is at distance place from present outlet due to that it is difficult to maintain water course. From perusal of command statement irrigation of applicants from new proposed

outlet as compared to present outlet would be better. It makes clear from report of Ilaqa Zileadar and Sub Divisional Officer, Muktsar that by sanctioning proposed outlet, length of the water courses would be reduced and irrigation would be more. By splitting of outlet, irrigation from present outlet would not be affected. They have recommended that by splitting outlet 23070-R Rajbaha Alamwala, new outlet 24620-R Rajbaha Alamwala be sanctioned at burjee No.24020-R. Therefore request of applicants seems to be valid. Neither the objectors nor their Ld. Counsel has produced any solid proof nor have advanced any solid contention. Therefore their request is not acceptable. Because they argue that their outlet will be for less than 100 acre, but that would remain for 132.48 acres area, so keeping in view all these facts on the basis of report of Sub Divisional Officer, Muktsar dated 6.7.12 and command statement by finding concurrence with request of applicants, keeping in view more irrigation scheme published under Section 30-B(2) of the

Northern India Canal and Drainage Act 8 of 1873 amended 23 of 1965 is being allowed. Meaning thereby by splitting outlet 23070-R Alamwala Rajbaha, new outlet 24620-R Alamwala Rajbaha is being sanctioned for 339.27 acres area. From proposed outlet applicants would make arrangement of water courses on their own. Govt. expenses in dismantling and reconstructing of present outlet and of new outlet would be paid by applicants. This decision would be implemented after sanction of appropriate authority or after any appropriate change made in it. At the time of preparing A form area be taken from the last approved A form. This decision has been reversed. As per Rules both the parties be informed.”

The petitioners challenged the aforesaid order by way of appeal before the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur, which was also dismissed with the following observations: -

“Record annexed with the case has been perused minutely, site plan is also perused. Order dated 24.3.2014 passed by Hon’ble High Court and decision dated 3.8.2012 of DCO Abohar have also been considered.

After perusal of case undersigned found that appeal of appellants is not acceptable. Because they could not raise any solid argument in their favour and as per request of respondents their area as per site plan is at a distance of 10901 feet from the present outlet. So length of water course being more from present outlet, it is impossible for respondents to take care of water course. But from the proposed outlet No.24620-R Rajbaha Alamwala distance of their area is 9416 feet. Therefore area beign nearer from proposed outlet, it will enhance irrigation. By splitting of outlet no bad affect would be caused on irrigation of present outlet. So far argument of appellants that by splitting of outlet size of water courses would remain as earlier and water will lose its speed, this fact is also without any basis because by withdrawal of the area of respondents from this outlet, time of turn of area of appellants will also be more, by which, there would be no loss to the irrigation of their area. So on the basis of above said facts decision passed by Divisional Canal Officer, Abohar Canal

Division, Abohar being detailed one, undersigned also finds concurrence with decision of Divisional Canal Officer, Abohar Canal Division, Abohar.

Therefore keeping in view all the above said facts in the interest of proper irrigation and production of area of respondents in question, undersigned being in agreement with their request, dismiss appeal under Section 30-B(3) of the Northern India Canal and Drainage Act 8 of 1873 and Punjab Amendment Act 23 of 1965. Meaning thereby splitting outlet burjee 23070-R Alamwala Rajbaha new outlet at burjee No.24620-R Alamwala Rajbaha is sanctioned and decision dated 3.8.2012 passed by Divisional Canal Officer, Abohar Canal Division, Abohar is being upheld. This decision had been reserved. Therefore both the parties be made known of this decision. Decision written.”

Learned counsel for the petitioners has submitted that because of the splitting of the existing outlet, velocity of water would be decreased resulting into less irrigation to the field of the petitioners. He has also submitted that the scheme has not been framed and published in

terms of the provisions of the Northern India Canal Drainage Act, 1873 [for short 'the Act'] and the instructions have not been followed.

On the other hand, learned counsel for the respondents has submitted that the scheme was published after obtaining the reports from the Zileadar and Sub Divisional Officer and due procedure has been followed inasmuch as opportunity was given to all the right holders and after hearing them in detail the Divisional Canal Officer passed a reasoned order. It is also submitted that it is not the case of transfer of area which would reduce the irrigation to the petitioners but it is a case of splitting of the outlet and it is only an imagination of the petitioners that the irrigation would be reduced. It is also submitted that the instructions have been duly followed and especially there is no loss to be caused to the petitioners.

I have heard learned counsel for the parties in detail and also perused the available record with their able assistance from which it is apparent that the official respondents have followed the due procedure in terms of Section 30A of the Act and there would be hardly any loss to the petitioners much less on the ground of velocity of the water which may allegedly affect the irrigation. The findings recorded by both the Divisional Canal Officer and Superintending Canal Officer are perfectly justified and no interference of this Court is called for in the present petition and as such the same is hereby dismissed.

02.08.2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*