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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23859-2014

Date of decision : 26.04.2017

Rajbir and others

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Shailendra Mohan, Advocate
for the petitioners.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Ajit Sihag, Advocate
for respondent Nos.5 & 6.

AMIT RAWAL, J. (ORAL)

The present writ petition is directed against the order dated 12.09.2014 (Annexure P-4) passed by the respondent No.2/Chief Canal Officer, order dated 22.02.2010 (Annexure P-3) passed by the respondent No.3/Superintending Canal Officer and as well as order dated 23.10.2009 (Annexure P-2) of the Divisional Canal Officer, by accepting the demand of the private respondent(s) for transferring of their area measuring 21.32 acres from outlet RD103180/R Pabra Distributory to Outlet RD 9038/R Agroha Minor.

Mr. Shailender Mohan, learned counsel appearing on behalf of the petitioners submits that the private respondent(s) in order to harass and

humiliate the petitioners, moved an application for transferring of the area, aforementioned, from the outlet concerned, though the entire holding is measuring 43 acres, which is joint and had not been partitioned, yet they applied only for a piece of land measuring 21.32 acres. The impugned orders, under challenge, are not sustainable in the eyes of law as the private respondent(s) have been wielding influence upon the authorities. The orders do not stand on the touchstone of the 'application of mind' as no reasoning has been assigned. As per Canal Manual, in the chapter of adjustment of outlet, it has been specifically stated that the area measuring 10% of the chak if is transferred, then the outlet will be adjusted in the present outlet, in essence, if the area measuring 43 acres is transferred to the proposed source of the outlet will be adjusted and remodeled. The petitioner though had specifically asserted before the Canal authorities of having no objection when the whole area is transferred to the proposed outlet, so that, there will be adjustment of the outlet, but not in the manner and mode, as it is only regarding piece of land. No doubt the proposed source is near to the land, but that would not be a ground for transferring the outlet, because as per the evidence, the irrigation of the land of the private respondent is 176% and the total irrigation of the existing chak is 161%, which reflects that the private respondent(s) are getting better irrigation of their land. All these factors have not been taken care of, thus, urges this Court for setting aside the impugned orders, under challenge.

On the contrary, Mr. Ajit Sihag, learned counsel appearing on behalf of the private respondent Nos.5 and 6 submits that on submission of application, the case was investigated through Zileadar and Sub-Divisional

Canal Officer, who after detailed investigation and site inspection, recommended the case for transfer of 21.32 acres of land. Thereafter, the scheme was published and notice was also issued to the parties. All the authorities below found that the proposed outlet of transfer is close by to the land of the petitioner. Even the apprehension of the petitioners with regard to the reduction in the *wari*/turn of the water, is also misplaced as the size of the outlet would be remodeled corresponding to the proposed area after transfer of 21.32 acres of land. The Outlet RD-9038/R Agroha Minor is near to the field of the respondent(s) than the other outlet, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is no force and substance in the submissions of Mr. Shailendra Mohan, for, on going through the site plan (Annexure P-1), outlet No.RD-9038/R is very close by to the field of the private respondent(s), which is shown in the red colour, viz-a-viz Outlet RD103180/R Pabra Distributory, which is at far of place. This fact is not denied, even the petitioners have not denied the shifting of the entire land of 43 acres to the aforementioned land. Once, there is no denial to the entire land, there cannot be possible objection to the land as it was confirming to the capacity of the outlet. The authorities below being an Expert on this point, after examination of the record and site inspection, rightly found the area to be transferred being very close to the outlet No.RD-9038/R. All the provisions of law have been complied with. There cannot be a possible objection to the petitioners with regard to the shifting of the outlet.

Keeping in view the aforementioned fact, I do not find any

illegality and perversity in the impugned orders under challenge, much less, cannot be said to non-confirming to the provisions of law and fall within the realm of 'Judicial Review'. Accordingly, the same are upheld.

With the aforesaid observations, the present writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

26.04.2017
Yogesh Sharma

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