

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

CWP No.22399 of 2016 (O&M)

Date of decision : 15.02.2017

Balbir Singh and others

...Petitioners

Versus

Chief Canal Officer/BWS Haryana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Amarjit Markan, Advocate and
Mr. Kanwal Goyal, Advocate for the petitioners.

Mr. R.N. Lohan, Advocate for respondent Nos.4 and 5.

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

AMIT RAWAL, J. (Oral)

CM No.2054-CWP of 2017 & CM No.2055-CWP of 2017

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Replication to the written statement filed by respondent Nos.1 to 3 and 4 and 5 is taken on record, subject to all just exceptions.

Main case

The petitioners are aggrieved of the impugned order dated 22.09.2016 (Annexures P-1) of Chief Canal Officer, whereby the order of Superintending Canal Officer, setting aside the order of Divisional Canal Officer, has been set aside and challenging the order dated 16.03.2015

(Annexure P-3) rendered by Divisional Canal Officer and upheld by Chief Canal Officer.

He submits that water canal from the outlet RD 18500/L New Sainthly Minor was in existence since last 50 years and being approved by the Command Area Development Authority (CADA) and at no point of time, since existence of the aforementioned line water course, any plea of inconvenience was ever raised. The application by the respondent (Annexure P-5) submitted in the month of April 2014 by requesting the Divisional Canal Officer for irrigation that the existence of the outlet 18500/R 2-L only irrigates 115 to 116 killas, in essence, irrigation is less than statistics of Government and it has become very difficult to make both ends meet of the family, thus, requested to make a outlet i.e. pucca water course which is only 2 killa away. He has drawn the attention of this Court to the reasoning assigned by the Chief Canal Officer, which is totally alien to the contents of the application. For the sake of brevity, findings reads as under:-

“That the irrigation of existing outlet RD 18500/L New Sainthly Minor no doubt has been worked out as 171%. However, the main difficulty of the appellants is to bear the loss of destroying the standing crop on account of overflowing the water course at site and in case the head of the present outlet from RD 18500/L to outlet at RD 750/R 2-L Sainthly Minor is allowed to be shifted, both the site will be in the holding of the appellants and they will be able to save their crops from destroying the overflow of water course.

Revenue missal, connected record, including khaka plan have been perused. Arguments of both the parties have been considered at length. It is observed that the outlet has

been fixed in one corner of fields of the appellants. The demand of the appellants to shift the head of their outlet RD 18500/L New Sainthly Minor to outlet RD 750/R 2-L Sainthly Minor in his own fields seems to be justified. Although the existing watercourse in the chak of this outlet is lined at site but appellant has also given affidavit that he would line the watercourse at his own cost from point A to point B to link the already running lined water course before implementation of the scheme. It is observed that due to this construction of new watercourse length AB, there would be no loss to command of area in the downstream side. Hence the appeal of appellants being genuine is accepted and decision of Superintending Canal Officer, BWS Circle, Kaithal dated 28.04.2015 is set aside in the interest of irrigation.

Decision be conveyed to all concerned under the rules.”

He has also drawn the attention of this Court to the order of SDCO who had according to him rightly rejected the order of DCO by holding that irrigation from the outlet aforementioned is catering to 171%. Operation of the new minor canal, thus was not feasible. Reference has also been made to site plan Annexure P-4 to contend that by providing the new outlet for RD750/R A to B would result into 90 degree change in the course.

Per Contra Mr. R.N. Lohan, Advocate for respondent Nos.4 and 5 and Mr. Sandeep Singh Mann, Sr. DAG, Haryana submits that as per the site plan Annexure R-1 which is fairer copy of Annexure P-4, there is a cut on the land shown in green colour i.e. at the north of the outlet RD18500/L providing of new outlet RD 750/R 2-L would not take away the right of person as it has been carved out from the land of the petitioners. It is only matter of convenience because owing to the aforementioned cut, there was

extra flow of the water resulting into the particular piece of land was inundated with water.

He further submits that respondent had undertaken to provide cemented water course at point A to B and, therefore, no harm and prejudice would be caused to the petitioners. There is no illegality and perversity in the order and thus urges this Court for upholding the order under challenge.

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

Shorn of the facts noticed above and the findings recorded by the Chief Canal Officer and Superintendent Canal Officer, I am of the view that matter requires to be revisited/reprobed as written statement is conspicuously silent with regard to the curve as depicted in the site plan Annexure P-4. The factum of providing of cemented water course will also be looked into by the Chief Canal Officer.

The arguments raised on behalf of respondent qua overflowing is conspicuously absent in the application indicated above. This aspect has not been taken care of. Once water course was already in existence for the last so many years and nobody has raised the dispute, Chief Canal Officer being highest authority under the Haryana Canal Drainage Act was required to look into the matter in most pragmatic and reasonable manner. Thus, order under challenge is hereby set aside.

Matter is remitted back. Chief Canal Officer is directed to decide the case afresh by taking into consideration the observation indicated above, much less, submissions which the parties could make at the relevant point of time.

This Court is sanguine of the fact that decision thereon shall be taken preferably within a period of four months from the date of receipt of certified copy of the order.

With the aforementioned observations, present writ petition stands disposed of.

15.02.2017

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No