

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 21545 of 2017
Date of decision : September 21, 2017

Sukhmander Singh and another

..... Petitioners

Versus

The Superintending Canal Officer, Sirhind Canal Circle, Ludhiana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Vivek Chauhan, Advocate
for the petitioners.

RAKESH KUMAR JAIN, J.

The petitioner has challenged the order of the Divisional Canal Officer dated 1.6.2016 and Superintending Canal Officer dated 1.6.2017.

The Superintending Canal Officer vide his order dated 11.2.2016 remanded the case to the Divisional Canal Officer, Faridkot observing thus:-

“ This court has found that the verdict dated 19.8.2015 which has been passed by Divisional Canal Officesr, Faridkot Canal Division, Faridkot that is not correct in accordance with the site situation. Therefore this case has been remanded to Divisional Canal Officer, Faridkot Canal Division, Faridkot and the instruction has been issued to him that after inspecting the site situation personally regarding this case, he may decide that the pipes installed in the portion of Outlet R D 8282-R

Khara Minor, as per size/design, these are capable or not for supplying the canal water to the area under transfer. Just after perusing this case as per the site situation on behalf of the technical aspects, order may be issued by showing the reasons so that no loss of the canal irrigation of any co-sharer may be caused.”

After remand, the Divisional Canal Officer the following order was passed:-

“Called the case. The applicant and the co-sharers of Outlet RD came present in the court. They only get the attendance marked, no written statements are recorded. The applicants prayed before the court that the order which had been passed on 19.8.2015 by the Divisional Officer, that is correct. According to the very same order, our area may be transferred. The respondents and their learned counsels made the objection that the Khals of the Outlet RD 8282-R Khara Minor are running through the underground pipes, on adding this area, the pipes have not to take the water. There will be loss to our water irrigation. Therefore, the area may not be transferred. Heard very carefully to the persons came present. Heard the argument/cross examination of the learned counsel. Hold the discussions for the very lengthy period. Kept the decision reserved for the scrutiny. Scrutinized the case in the afternoon. Perused the records placed in the case file. Illaqa Ziledar added the Technical information of the Land and Water Controlling Department, Punjab, of the underground pipes project of year 2013-14, with the Outlet 7160-R and 8282-R of Khara Minor. On perusing to which, it is known that the discharge of Outlet 7160-R Khara Minor is 1.31 Cusecs, to which the pipes of 500 M.M. radius are sanctioned. On the other side, the discharge of Outlet RD-8282-R of Khara Minor is 1.18 cusecs. The

pipes of 500 M.M. Radius are also sanctioned to it. Illaqa Zildar has also supported this in his report. A.R. Dhapai has also given the report that by adding the area 10 acre in the portion of Outlet RD 8282-R of Khara Minor, the pipes are capable for taking the water. The site situation of the case has already been seen on 19.7.2015 previously. Therefore, on perusing the abovesaid from the technical aspect, it has been found that by adding the 10.85 acre area in the portion of Outlet 8282-R of Khara Minor, the underground pipes of this Outlet RD can take the water easily. Therefore, keeping in view to the more canal water irrigation, splitting the area measuring 10.85 acre of the applicants from the portion of Outlet 11804-R of Khara Minor, adding in the portion of Outlet 8282-R of Khara Minor under Section 30-B(2) of North India Canal and Drainage Act, 8 -1873, Punjab Amendment Act 23-1965, has been approved. Being the decision kept reserved, the concerned persons may be informed as per rules.

By transferring the area, the situation of the areas will be as under:-

<i>S.No.</i>	<i>Outlet RD/Minor</i>	<i>Village</i>	<i>G.A.</i>	<i>C.C.A`</i>	<i>G.A</i>	<i>C.C.A</i>
1	11804-Khara Mai	Khara Bagh	470.13 031.75	448.57	459.28 031.75	437.72
2	8282-R Khara Minor	Khara Marad Kalan	265.24 119.81	265.24 119.81	276.09 119.81	276.09 119.81
			385.05	385.05	395.9	395.9
			855.18	833.62	855.18	833.62

At the time of preparing A Form, apart from the abovesaid, the amendment of the areas may be made with the latest approved form. The service of the notice has already been done as per rules.”

Aggrieved against the order dated 1.6.2016 the

Ludhiana which was also dismissed with the following order:-

“Upon hearing both the parties, after the discussions and on perusing the records available in the case file, this court has found that the area of the respondent party under transfer is not being irrigated by the canal water from Outlet RD 11804-R Khara Minor because the area under transfer is situated at far away from the Outlet RD and the length of the Khal is very much. Being the Khal old, this is broken from many places. Therefore, the canal water from the Outlet RD 11804-R Khara Minor reaches to the area of the respondent party just merely slightly. In the interest of more canal water irrigation and the crop product, splitting the area measuring 10.85 acre under the transfer from the Outlet RD 11804-R Khara Minor, adding this area in the portion of Outlet RD 8282-R Khara Minor, is justified. Therefore, the verdict of Divisional Canal Officer, Faridkot Canal Division, Faridkot dated 1.6.2016 is restored and the appeal of the appellant is dismissed. This verdict is passed under Section 30-B (3) of the Canal and Drainage Act 8, Year 1873.”

Learned counsel for the petitioner has argued that the orders passed by the Divisional Canal Officer and Superintending Canal Officer are illegal as the pipes were passing through their land.

I have heard learned counsel for the petitioner and after perusal of the record, am of the considered opinion that the remand order was only to the extent that the Divisional Canal Officer would inspect the site personally and would decide that the pipes installed in the portion of Outlet 8282-R of Khara Minor are as per size/design, would be capable or not for supplying the canal water to the area under transfer.

The Divisional Canal officer after remand has observed that by adding the area of 10.85 acre in the portion of Outlet 8282-R of Khara Minor, the underground pipes of this Outlet RD can take the water easily. The said order of the Divisional Canal Officer has been upheld by

the Superintending Canal Officer to which no interference is called for and hence the present petition is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

September 21, 2017
archana

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