

CWP No.22500 of 2017

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

**CWP No.22500 of 2017  
Date of decision:07.11.2017**

Piara Singh and others ...Petitioners

Versus

Superintending Canal Officer and others ...Respondents

**Coram: Hon'ble Mr. Justice Rakesh Kumar Jain**

Present: Mr. Vijay Sharma, Advocate,  
for the petitioners.

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**Rakesh Kumar Jain, J.**

The petitioners have challenged the orders dated 18.08.2015 and 01.06.2016 passed by the Divisional Canal Officer, Mansa Division, IB Jawaharke and the order dated 24.04.2017 passed by the Superintending Canal Officer, Patiala Circle, IB Patiala.

In brief, private respondents no.3 to 8 filed an application to the Divisional Canal Officer to shift their land from outlet 44721/R Udat Branch to outlet 22461/TL Minor No.1 Udat Branch on the ground that they are at the tail end and are not getting adequate water supply. The said application was allowed by the Divisional Canal Officer by his order dated 18.12.2012. After two years of the said order, the private respondents filed an application dated 04.05.2015 for again shifting of their 560 acres of land from outlet 22461/TL Minor No.1 Udat Branch to outlet No.44721/R Udat Branch. The said application has been allowed by the Divisional Canal Officer on 18.08.2015. Aggrieved against that order, the petitioners filed an appeal before respondent

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no.1, which was allowed on 07.04.2016 and the case was remanded back to respondent no.2 with a direction to pass a speaking order after hearing both the parties. After remand, respondent no.2 passed the order in favour of the private respondents on 01.06.2016. Still aggrieved, the petitioners filed an appeal before respondent no.1, which was dismissed on 24.04.2017.

Learned counsel for the petitioners has, *inter alia*, argued that the land of the private respondents is near outlet 22461/TL Minor No.1 Udat Branch, which can be properly irrigated from that outlet. He further submitted that in the Mansa Division, the canal water allowance is 3.05 qusecs per 1000 acres and the private respondents have the CCA of 555 acres in outlet 22461/TL Minor No.1 Udat Branch, as such the water required for 555 acres land is  $3.05/1000 \times 555 = 1.69$  cusecs, whereas the discharge of 6.47 cusecs water is available at outlet 22461/TL Minor No.1 Udat Branch, from where the private respondents are getting canal water. He has referred to the copy of L-section and submitted that there is excess water in the existing outlet 22461/TL Minor No.1 Udat Branch. It is further submitted that the existing outlet 22461/TL Minor No.1 Udat Branch was got repaired/raised by the Canal Department in 2009 and ₹30,77,969/- were spent by the Government and if the impugned orders are implemented, then the existing outlet 22461/TL Minor No.1 Udat Branch would have to be closed and the head of the said outlet would be reduced, due to which FSL Minor No.1 would be decreased and the other remaining outlets of Minor No.1 would have to be re-designed, which would cause huge financial burden upon the State. It is also submitted that the Gross Area (GA) of outlet 44721/R Udat Branch is 1174 and the Cultural Command Area (CCA) is 812, whereas the proposed GA would be 1734 and

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the CCA would be 1367. It is submitted that there would be a difference of 550 acres from the present CCA and the proposed CCA as the present CCA is 812 and the proposed CCA would be 1367, whereas the present GA is 1174 and the proposed GA would be 1734. It is, thus, submitted that the impugned orders are patently illegal and deserve to be set aside.

I have heard learned counsel for the petitioners and perused the available record with his able assistance.

Respondent no.2, in his order dated 18.08.2015, has specifically recorded that he had perused the record, seen the report of the Field Staff, in which the Field Staff had recommended to shift 555 CCA from outlet 22461/TL Minor No.1 Udat Branch to outlet 44721/R Udat Branch. He has considered the comparative statements and heard the parties. It is recorded by him that earlier, the land of the private respondents was in outlet 44721/R Udat Branch and as the watercourses of outlet 44721/R Udat Branch were broken, the private respondents got their land shifted to outlet 22461/TL Minor No.1 Udat Branch but it was found that on that outlet, the water is coming less being on the tail end and since the department had laid down pucca underground pipes, therefore, the private respondents had requested for shifting of their land from outlet 22461/TL Minor No.1 Udat Branch to outlet 44721/R Udat Branch. Respondent no.2, thus, keeping in view the recommendations of the Field Staff and in the interest of better irrigation, sanctioned the scheme for shifting of 555/560 acres GA/CCA land from outlet 22461/TL Minor No.1 Udat Branch to outlet 44721/R Udat Branch holding that the private respondents would be responsible for laying bigger pipes, meaning thereby that they would bear the expenses of shifting the outlet. According to respondent

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no.2, after the shifting of the land of the private respondents, the position of the outlet(s) would be as under:-

| Sr. No. | Outelt<br>Burji/Rajwaha         | Village       | Present Area |      | Proposed Area |      |
|---------|---------------------------------|---------------|--------------|------|---------------|------|
|         |                                 |               | GA           | CCA  | GA            | CCA  |
| 1)      | 44721/R Udat Branch             | Nangal Kalan, | 1174         | 812  | 1665          | 1298 |
|         |                                 | Jawaharke,    | -            | -    | 32            | 32   |
|         |                                 | Nangal Khurd, | -            | -    | 28            | 28   |
|         |                                 | Barnala       | -            | -    | 09            | 09   |
|         |                                 | Total         | 1174         | 812  | 1734          | 1367 |
| 2)      | 22461/TL Minor No.1 Udat Branch | Nangal Kalan, | 491          | 486  | -             | -    |
|         |                                 | Jawaharke,    | 32           | 32   | -             | -    |
|         |                                 | Nangal Khurd, | 28           | 28   | -             | -    |
|         |                                 | Barnala       | 09           | 09   | -             | -    |
|         |                                 | Total         | 1734         | 1367 | 1734          | 1367 |

The order of respondent no.2 has been upheld by the Superintending Canal Officer, who had given a categorical finding against the petitioners in the following manner:-

“Order:- On 09.02.2017, case was received for hearing. Parties present were heard. File was perused. Site map seen. Field staff was consulted. Arguments of counsels were heard.

Divisional Canal Officer, vide order dated 18.12.2012, has ordered to shift the area of Sarovar Singh S/o Mohinder Singh etc. from outlet Burji 44721/Right Udat Branch. Later on, irrigation was not proper from this new outlet, therefore, those applicants represented to Divisional Canal Officer for shifting of their land to outlet Burji 44721/R Udat Branch. Ziledar and Sub Divisional Officer recommended to re-transfer the land and Divisional Canal Officer, vide order dated 18.08.2015, sanctioned the scheme for transferring this land again to outlet Burji 44721/R Udat Branch.

Piara Singh S/o Kunda Singh etc. filed appeal in the court of the Superintending Canal Officer, Patiala Circle, IB Patiala. Superintending Canal Officer, vide order dated 26.11.2015, remanded the case to the Divisional Canal Officer and directed to pass speaking order at the earliest, after issuing notice to both parties and considering the points raised by both parties and it should also be mentioned in order that as to what circumstances

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have changed at the spot, after the earlier order dated 18.12.2012, which necessitated passing of new order. Divisional Canal Officer again passed the order on 01.06.2016, in which it has been clarified that from outlet 22461/TL Minor No.1 Udat Branch, their land is not being properly irrigated. Regarding the change in circumstances, he has stated in his order that in earlier outlet 44721/R Udat Branch, the department of watercourses has laid down underground pipes at the places where the watercourses were broken. He has further clarified that after order dated 18.12.2012, some more land has been added to this outlet and the land which was at the high level and where the water was not reaching, that has been lowered down by digging earth and where the water used to break, at that place there is scheme for laying down underground pipes. Therefore, there will be no danger of breaking of water in the passage.

Although the Canal Officers do not have power to review their orders but in case, due to change of circumstances and new facts, order is required to be passed again, then it can be done in the interest of better irrigation. Hon'ble Punjab and Haryana High Court, in its decision titled as Hazari Lal vs. Superintending Canal Officer, 1985 RRR (P&H), has clarified that in case an order for better irrigation fails, then it is no reason that fresh order cannot be passed for better irrigation. Therefore, fresh order can be passed for better irrigation.

Vide order dated 18.12.2012, land was added to outlet no.22461/R Minor No.1 Udat Branch and the reason mentioned for the same is that the watercourses of outlet no.44721/R were broken. Field Staff has reported that after this order, their irrigation has decreased. Now the watercourses of outlet no.44721/R Udat Branch are to be reconstructed and in case before the reconstruction of watercourses, this land is shifted, then the watercourses can be constructed for that capacity. In the interest of better irrigation, the scheme for re-shifting 560/555 acres land of Nangal Kalan, Jawaharke Nangal Khurd and Barnala from outlet burji 22461/TL Minor No.1 Udat Branch, which was sanctioned by the Divisional Canal Officer vide his order dated 01.06.2016, in the interest of better irrigation, the order dated 01.06.2016 passed by the Divisional Canal Officer, Mansa Division, IB Jawaharke is

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upheld and the appeal of the appellants is dismissed. This order has been passed under Section 30-B (3) of the amended Northern India Canal & Drainage Act 8 of 1873 and it was reserved on 09.02.2017 i.e. date of hearing, therefore, concerned parties be informed.”

During the course of hearing, counsel for the petitioners was more emphatic on the issue that with the addition of 555/560 acres of land, the outlet 44721/R Udat Branch would not be able to bear the burden of 1367 CCA.

I am not in agreement with the argument raised by the petitioners because as per the chart, reproduced here-in-above, the present GA 1174 is being irrigated with CCA 812 and there is a difference of 362 acres, whereas if the proposed GA is increased to 1734 by adding the area of 560 acres, then the proposed CCA is also increased by 1367 and there would be a difference of 367 acres, meaning thereby there is hardly any difference between the present position and the proposed position and the argument of the petitioner that the CCA would remain the same, i.e. 812, is totally fallacious because as per the order of respondent no.2, the CCA would also increase from 812 to 1367.

Thus, in my considered opinion, there is hardly any reason for this Court to interfere in the well considered orders of the Canal Authorities and hence, the present writ petition is hereby dismissed, being denuded of any merit, though without any order as to costs.

**November 07, 2017**  
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**(Rakesh Kumar Jain)**  
**Judge**

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|------------------------------|--------|
| Whether speaking / reasoned: | Yes/No |
| Whether Reportable:          | Yes/No |