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

CWP-7159-2014

Date of decision : 08.05.2017

Mahinder Singh

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ajit Sihag, Advocate
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Arjun Sheoran, Advocate
for respondent No.5.

AMIT RAWAL, J. (ORAL)

The petitioner-Mahinder Singh son of Sh. Om Parkash, has sought the quashing of the order dated 05.07.2013 (Annexure P-4) passed by the Chief Canal Officer/respondent No.2, whereby the orders dated 07.05.2013 (Annexure P-2) of the Superintending Canal Officer and 06.06.2012 (Annexure P-1) of the Divisional Canal Officer, have been set aside.

Mr. Ajit Sihag, learned counsel appearing on behalf of the petitioner submits that the petitioner and Darshan, having their land in Village Bhuna, are irrigating their land with the help of tube-well due to which the fertilization of land was decreasing and they moved an application for transfer of their 27.81 acres of land from O/L RD 6320/R, Nadhori Sub Minor to O/L RD 12275/L (Syphon) Nadhori Sub Minor, on

the premise, that they are ready to manage the watercourse themselves and bear the cost of adjustment of outlet as the present outlet is in the field of Mahavir and Subhash son of Bhagirath and in this regard, they have already lodged an FIR against the petitioner and his family members, due to which, they are apprehending of quarrel/conflict between them. Respondent No.5 is closely related to Mahavir and Subhash and just to harass the petitioner, he is opposing the transfer of area, whereas respondent No.5 had himself got his area transferred to same outlet i.e. RD 12275/L from other outlet for betterment of irrigation, which was vide order dated 10.03.2006 allowed by the Divisional Canal Officer. Om Parkash s/o Sunder filed an appeal against the aforementioned order, but the same was rejected. The petitioner along with other co-sharers moved an application. On receipt of the application, the matter was duly investigated by the Zilledar Buwan and after site inspection and recording the statement, found fit case for transfer of the area. Resultantly, a draft scheme under Section 18 (1) of the Haryana Canal and Drainage Act was prepared and notice was issued to the shareholders. The objections/suggestions were also heard and duly published by the concerned Canal Patwari. The learned Divisional Canal Officer after hearing the parties at length and perusing the revenue missal, found the demand of the petitioner to be genuine and allowed the application vide order dated 06.06.2012 (Annexure P-1). The appeal preferred against the same by respondent No.5 before the Superintending Canal Officer was dismissed. However, the Chief Canal Officer vide impugned order dated 05.07.2013 (Annexure P-4) allowed the appeal and hence the present writ petition.

He further submits that the order of the Chief Canal Officer is

unjust, illegal and lacks the reasoning. The alleged reasoning with regard to the no-water link is without appreciating the Parat Patwar i.e. record of the Jamaban of the Village Bhuna, which shows that hadbast No.63, land in Khasra No.1190 has been left reserved for watercourse and shown as gair mumkim in the consolidation process, therefore, there was no hitch for transfer the area on the outlet. Once the private respondent's area has already been allowed to be transferred with the special permission of Syphon by the Government, there was no need of special permission of Syphon for transferring the petitioner's area, thus, urges this Court for setting aside the orders under challenge.

Mr. Arjun Sheoran, learned counsel appearing on behalf of the respondent No.5 submits that the order of the Chief Canal Officer is perfectly legal and justified and based upon the factual and actual aspects of the matter. Both the outlets are equally situated and therefore, story of closeness is neither here and there. This fact is evident from the site plan (Annexure R-5/1). The petitioner are drawing excess of 62% authorized intensity of the irrigation which is 1 ½ time more, even the shareholders from the respondent's side had got the sanctioned and constructed Syphon on Outlet No.12275/L, at their own cost, and therefore, they have objected to include any area, 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. The reasoning assigned by the Chief Canal Officer while setting aside the orders of the Divisional Canal Officer and as well as Superintending Canal Officer has been in the following manner:-

- i) The respondent(s) are drawing 1 ½ time more water from the

existing outlet.

- ii) No link water for irrigating the fields of the respondent(s) is existing at the site from the proposed source of outlet No.RD 12275/L.
- iii) There will be a problem of running out of chak watercourses.
- iv) The watercourse of existing source of outlet at RD 6320-R Nadhori Sub Minor as well as of proposed, source of outlet at RD 12275-L (Syphon) Nadhori Sub Minor are lined at side, it will require remodeling.
- v) The shareholders of outlet No.12275/L were not willing to include any area.

While assigning the aforementioned reasoning, the Chief Canal Officer has failed to refer to a document i.e. Parat Patwar, noticed by the Superintendent Canal Officer and Divisional Canal Officer, which according to the aforementioned finding reveals that during consideration, the hadbast No.63, land in Khasra No.1190 has been left reserved for watercourse, thus, the finding of the Chief Canal Officer with regard to no link water is wholly fallacious and in absence of reference to the record. The closeness of the watercourse has also not been examined. Once respondent No.5 has already applied for shifting of outlet which has been allowed, the petitioner had also undertaken in the application to bear cost of remodeling. All these facts are required to be addressed, having failed to do so, I am of the view that the order of the Chief Canal Officer is not sustainable and liable to be set aside.

Resultantly, the impugned order dated 05.07.2013 (Annexure

P-4) passed by the Chief Canal Officer/respondent No.2, is hereby set aside

and the matter is remitted back to the Chief Canal Officer to decide the controversy afresh by taking into consideration the rival contentions of the parties, much less, record and in accordance with law.

Learned counsel for the parties/parties are directed to appear before the Chief Canal Officer/respondent No.2 on 25.05.2017.

Disposed of, accordingly.

08.05.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

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