

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

**CWP No.6010 of 2016
Date of decision:19.04.2017**

Hira Singh and others

... Petitioners

Vs.

Superintending Canal Engineer, Ferozepur
and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. J.S.Brar, Advocate
for the petitioners.

Ms. Monika Chhiber Sharma, DAG, Punjab.

Mr. R.K.Girdhar, Advocate
for respondent No.3.

AMIT RAWAL J.

The petitioners have sought the quashing of orders dated 30.10.2012 (Annexure P-5) and 22.01.2016 (Annexure P-10) rendered by respondent No.2 - Divisional Canal Officer, Harike Canal Division, Ferozepur and respondent No.1-Superintending Canal Engineer, Ferozepur Canal Circle, Ferozepur, respectively.

Mr. J.S.Brar, learned counsel for the petitioners submits that petitioners are shareholders of outlet no.201600-R Sirhind Feeder and for the purpose of irrigating their land at their own expenses, they have laid underground pipe about 2 ½ k.ms in length from this small size outlet. Respondent No.3 resident of village Baja Mararr submitted an application for transfer of his 7 acres land, i.e., 3 acre from chak outlet no.195185-R

and 4 acres from outlet no.202100-R Sirhind Feeder. The respondent No.2-Divisional Canal Officer, vide order dated 30.10.2012, without calling for the objections and hearing the petitioners, much less violated the provisions of Sections 30-A and 30-B of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as “1873 Act”) ordered for the transfer of area of respondent no.3 to outlet no.201600-R Sirhind Feeder by relying upon report of field staff.

An appeal preferred before the Superintending Canal Officer was also dismissed, vide order dated 13.03.2015 (Annexure P-7). The petitioners had approached this Court, vide CWP No.9791 of 2015 which was dismissed, vide order dated 18.05.2015 (Annexure P-8) and LPA bearing No.1315 of 2015 was preferred and the LPA Bench, vide order dated 20.10.2015 (Annexure P-9), in view of consensus having arrived at between the contesting parties, remanded the matter back to the Superintending Canal Officer by setting aside the order dated 16.03.2015 of SCO Ferozepur to consider the matter afresh and in accordance with law, the objections raised by the appellants with respect to shifting of area belonging to respondent no.3 to outlet no.201600RSF and Superintending Canal Officer, vide order dated 22.01.2016 (Annexure P-10) again reiterated the matter, therefore, the present writ petition. The impugned order dated 22.01.2016 (Annexure P-10) and that of 13.10.2012 (Annexure P-5) are not sustainable in the eyes of law, for, there is no compliance of provisions of Sections 30-A and 30-B of 1873 Act, in essence, petitioners have not been given any opportunity to file the objections. In this regard, he has drawn the attention of this Court to the provisions of Sections 30-A and

30-B of 1873 Act which read as under:-

“30-A. Preparation of draft scheme.-(1) *Notwithstanding anything contained to the contrary in the Act and subject to the rules prescribed by the State Govt. in this behalf the Divisional Canal Officer may on his own motion or on the application of a shareholder prepare a draft scheme to provide for all or any of the matters namely:-*

- (a) the construction, alternation, extension and alignment of any water-course or re-alignment of any existing water-course;*
- (b) re-allotment of areas served by one water-course to another;*
- (c) the lining of any water-course;*
- (cc)the occupation of land for the deposit of soil from water-course clearances;*
- (d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a water course.*

(2) Every scheme prepared under sub section(1) shall amongst other matters, set out the estimated cost thereof, the alignment of the proposed water course, or re-alignment of the existing water course, as the case may be, the site of the outlet, the particulars of the shareholders to be benefited and other persons who may be affected thereby and a sketch plan of the area proposed to be covered by the scheme.”

“30-B Publication of a scheme-(1) Every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions with respect thereof within 21 days of the publication.

(2) The Divisional Canal Officer may after considering the objections and suggestions, if any, approve, modify or reject scheme.

(3) The Superintending Canal Officer may suo motu within a period of thirty days from the date of publication under Section 30-C, or on application, by a person aggrieved by the approval, modification or rejection of the scheme, made within a like period, call for the record of the scheme from the Divisional Canal Officer and may, after examining the same, confirm the action taken by the Divisional Canal Officer or may, affording to the person affected an opportunity of being heard, approve or modify the scheme in such form as he may deem fit or may reject the same.”

No evidence has been placed on record to show whether the alleged scheme had been properly published in accordance with the Act and rules. The scheme can only be published only after inviting the objections and suggestions by affixing the property at conspicuous place of village. Because of denial of opportunity at the initial stage, the petitioners had been rendered remediless to project the case of objections with regard to shifting of land of the private respondents to the outlet aforementioned. The

compliance of the provisions of Sections 30-A and 30-B of 1873 Act, is sine qua non for approval of the scheme and thus, urges this Court for setting aside the orders under challenge by allowing the writ petition.

In support of his contention, he relies upon the following judgments:-

- i) Bhagwana vs. Divisional Canal Officer, Tohana Division and others 1969 PLJ 443;**
- ii) Bir Singh and others vs. State of Punjab and others 1974 PLJ 162 and**
- iii) Jaswinder Singh vs. Superintending Canal Officer, Sirhind Canal Circle, Ludhiana and others 2014(4) RCR (Civil) 892.**

The pith and substance in the aforementioned judgments is that there has to be compliance of the aforementioned provisions of law.

Ms. Monika Chhiber, learned Deputy Advocate General Haryana appearing on behalf of the respondents-State has filed reply in the Court today which is taken on record. In paragraph 3 of the written statement, it has been stated that prior to passing of the order dated 30.10.2012 (Annexure P-5), the Divisional Canal Officer had followed the proper procedure and enquiry to the application filed by respondent no.3 was got conducted from the Sub Divisional Officer, Sirhind Feeder, Sub Division, who further sought specific report from Zileadar, Jando Ke. Accordingly, Zileadar examined and visited the spot and got prepared the site plan of land from Halqa Patwari and also recorded the statements of concerned co-sharers and thereafter, submitted the case to the Sub

Divisional Officer for including the total land measuring 7/7 acres each in Mogha Burji No.201600-R Sirhind Feeder. Notice was also issued to all the concerned shareholders under Section 30-B(2) of 1983 Act and on hearing the objections of all the co-sharers and perusal of entire record, particularly site plan, statements of concerned persons, ordered for transfer of land.

As regards laying down two pipes to the extent of 2.5 k.m from Mogha Burji No.201600-R Sirhind Feeder by spending money from their own pocket, had been considered by the authorities on the premise that respondent no.3 has submitted an affidavit to the fact that he is ready to pay the expenditures to the petitioners. Even respondent no.1 also examined the command statement of the concerned J.E on record, which shows excess irrigation. The possibility of decrease in the supply of water to the agricultural land of the petitioners was also examined and found that it is only mis-apprehension.

Mr. Rajesh Girdhar, learned counsel appearing on behalf of respondent no.3 submits that plea taken by the petitioners of having not complied with the provisions of Sections, aforementioned is neither here nor there. Though the reply of the State, on construal, is indication of compliance of provisions of Section 30-B of 1983 Act but the fact remains that same very point was taken before Hon'ble Letters Patent Appeal Bench and after considering the aforementioned point, the Hon'ble LPA Bench remanded the matter back to the Superintending Canal Officer, therefore, the petitioners, at this stage cannot be permitted to take same very objection and thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties, appraised the paper

book and of the view that there is no force and merit in the submissions of Mr. J.S.Brar, for, (i) order of the Hon'ble Letters Patent Appeal Bench takes care of the grievance of the petitioners by raising all the possible objections before the Superintending Canal Officer. For the sake of brevity, operative part of the order reads as under:-

“Counsel for the appellants and counsel for the contesting respondent agree that as the appellants have not been granted adequate opportunity to put forth their objections, the order passed in the writ petition as well as order passed by the Superintending Canal Officer may be set aside and matter may be remitted to the Superintending Canal Officer for considering the appellant's objections relating to shifting of area belonging to respondent No.3 to outlet No.201600RSF, afresh and in accordance with law.

In view of the consensus between the contesting parties, the appeal is partly allowed, order dated 18.05.2015 passed in the writ petition and order dated 16.03.2015 passed by the Superintending Canal Officer, Ferozepur are set aside and the matter is remitted to the Superintending Canal Officer, Ferozepur to consider afresh and in accordance with law, the objections raised by the appellants with respect to shifting of area belonging to respondent No.3 to outlet No.201600RSF.

Parties are directed to appear before the Superintending Canal Officer, Ferozepur on 03.11.2015 who shall consider and

decide the matter within two months of the receipt of a certified copy of this order.”

The Superintending Canal Officer after considering the objection had upheld the order of Divisional Canal Officer in transferring the area.

Paragraph 3 of the written statement filed on behalf of respondents No.1 and 2 leaves no manner of doubt that procedure as envisaged under Sections 30-A and 30-B of 1983 Act, has been followed. For the sake of brevity, paragraphs 3 and 4 of written statement read as under:-

3. *That prior to passing of the order dated 30.10.2012 (Annexure P-5) by the respondent No.2 Divisional Canal Officer, proper procedure was followed and enquiry to the application filled by respondent No.3 was got conducted from the Sub Divisional Officer, Sirhind Feeder, Sub Division, who further sought specific report from Zildar, Jando Ke, Accordingly, the Zildar examined the spot; got prepared site plan of land from Halqa patwari; obtained concerned civil record and also recorded statements of the concerned co-sharers. On completion of the proceedings, the Zildar sent the case to Sub Divisional Officer for including of total land measuring 7/7 acres each in Mogha Burji No.201600-R Sirhind Feeder. Thereafter, Sub Divisional Officer examined the entire case and after getting included the command statement from concerned J.E., sent the case to the Divisional Canal Officer. After carefully perusing the record of the case,*

proper scheme under Section 30-A of the Canal Act was prepared for hearing of the case and same was published under Section 30-B(1) of the Canal Act. Notice was issued to all the concerned share holders under Section 30-B(2) of Canal Act for hearing of objections, upon which, respondent No.3/applicant of Outlet Burji No.195185/R as well as co-sharers of Outlet Burji No.201600/R Sirhind Feeder came present before the Divisional Canal Officer. After hearing both the parties and carefully perusing entire record including site plan, statements of concerned persons and by minutely examining the report of Sub Divisional Officer, respondent No.2 Divisional Canal Officer found that claim of respondent No.2 is substantiated from the site plan as well as the statements of the concerned co-sharers. Therefore, keeping in view the interest of irrigation and better production, respondent No.2 Divisional Canal Officer passed order dated 30.10.2012(Annexure P-5) and by taking action under Section 30-B(2) of Canal Act, approved the scheme to transfer total 7/7 acre area (i.e 3/3 acre from chak of Outlet Burji No.195185/R Sirhind Feeder and 4/4 acre from chak of Outlet Burjee No.202100/R Sirhind Feeder) and to add it in the chak of Outlet Burji No.201600/R Sirhind Feeder and also ordered that the applicants/respondent No.3 will bear the expenses incurred for dismantling and reconstruction of the outlets and arrangement of water courses, etc. will also be made by the

applicants themselves.

4. That while deciding the appeal filed by the present petitioners against aforesaid order dated 30.10.2012 (Annexure P-5), the respondent No.1 Superintending Canal Officer thoroughly examined and gone through the entire record including the site plan and after perusing the record, came to the conclusion that claim put forth by present petitioners is inadmissible. So far as the pleas taken the petitioners that the order dated 30.10.2012 has been passed in their absence and they were not heard as alleged, are concerned, it is submitted that the respondent No.1 Superintending Canal Officer thoroughly heard the present petitioners, where petitioners put forth their claim by raising plea that they have laid about 2.5 K.M. pipe from Mogha Burji No.201600/R, Sirhind Feeder by spending money from their own pocket. On other hand, respondent No.3 made contention by presenting his duly sworn affidavit that there situate his land measuring 6 acre 4 kanals included in the chak of RD No.201600-R, Sirhind Feeder and its underground pipe is having length of 4000 feet, which comes to 1 K.M. 236 Meter 18 acre 40 feet, according to which, he is ready to pay the due expenditures to present petitioners. The respondent No.1 also examined the command statement put by concerned J.E. on the record, which shows excess irrigation. According to the said command statement, water course providing irrigation to 3.00

acre of land from RD No.195185 is having length of 7200 feet and water course providing irrigation to 4.00 acre land from RD No.202100 is having length of 6000 feet, whereas length of proposed water course from RD No.201600-R to the land of respondent No.3 is about 300 feet and 5700 feet respectively, meaning thereby, length of water course on proposed Mogha from present Mogha falls short by 2700 feet and 300 feet and as such, due to shortage of length of water course from the proposed Mogha as compared to the present Moghas, it will increase the irrigation of land belonging to respondent No.3. The respondent No.1 also found that so far as the objection of the petitioners that inclusion of land measuring 7 acres each of respondent No.3 in proposed Mogha will result in decrease of their turns is concerned, though turns will decrease as per rules, but the same will be symbolic and will not result in any loss to the land belonging to the petitioners and on the basis of the law and facts brought on record, the respondent No.1 Superintending Canal Officer passed order dated 13.03.2015 (Annexure P-7) while acting in accordance with the provisions of Northern India Canal and Drainage Act, 8 of 1873 and Section 30-B(3) of Punjab Amendment Act, 23 of 1965, in the interest of better irrigation and increase in yield and upheld the order dated 30.10.2012 passed by Divisional Canal Officer. Even C.W.P. No.9791 of 2015 filed by petitioners against both the aforesaid orders was rightly dismissed by this

Hon'ble Court vide order dated 18th of May, 2015. ”

A perusal of the aforementioned paragraphs reveal that the State had complied with the provisions aforementioned, therefore, the judgments relied upon by Mr. J.S.Brar, would not be of any consequences. The same would apply, had there not been any adherence. Even otherwise, once the petitioners had been given any opportunity to agitate the case before the Superintending Canal Officer and having not succeeded by placing on record the positive material as to how and in what manner, they have been prejudiced on transferring of the land of private respondents to the outlet, i.e., whether decrease in supply of water or any other point, the impugned orders cannot be tinkered with in the absence of any illegality and perversity

For the reasons aforementioned, I do not find any illegality and perversity in the orders under challenge, much less the same cannot be said to be vitiated in law. No ground is made out for interference.

Accordingly, the writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

April 19, 2017

savita

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No