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

CWP-6972-2016

Date of decision : 21.03.2017

Ram Chander

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. S.K. Hooda, Advocate
for the petitioner.

Mr. Rajbir Singh, AAG, Haryana.

Mr. Sandeep Singla, Advocate
for respondent No.5.

AMIT RAWAL, J. (ORAL)

The petitioner-Ram Chander is aggrieved of the order dated 02.07.2013 (Annexure P-10) rendered by the Superintending Canal Officer/respondent No.3, order dated 11.08.2014 (Annexure P-11) of the Chief Canal Officer/respondent No.2 and seeking upholding of the order dated 04.12.2008 (Annexure P-4) and 22.06.2012 (Annexure P-9) passed by the Divisional Canal Officer, Rohtak/respondent No.4.

Mr. S.K. Hooda, learned counsel appearing on behalf of the petitioner submits that the petitioner is owner in possession of land bearing Rectangle No.50, Killa Nos.7, 8, 9 and 14 along with his brothers and respondent No.5 is also the owner of land in the aforementioned rectangle bearing Kill No.5/6. The petitioner and the private respondent(s) are

irrigating the land from outlet No.RD-68340 of Jasrana Minor and a permanent water course had been constructed for irrigation of the field which passes through dowel of Killa No.5/6 of Rectangle No.50 which fact is evident from the site plan (Annexure P-1). Earlier a *kacha* water course for irrigation of the land of the petitioner, was through field No.50//15/1, but the owner of the land of Killa No.50//15/1 dismantled the water course and constructed a room and thereafter, the petitioner was rendered without any water course. The petitioner moved an application for sanctioning of the watercourse 'AB' on the middle dowel of Killa No.5/6. The Divisional Canal Officer after hearing the concerned parties sanctioned the watercourse for irrigation of the field of the petitioner on the northern side of Killa No.50/6 in the middle dowel of Killa No.5/6 vide order dated 12.03.2008. Against the same, Inder Singh and Krishan Lal sons of Kali Ram, preferred an appeal before the Superintending Canal Officer, who vide order dated 19.11.2008 (Annexure P-2), dismissed the same. The aforementioned order was assailed before the Chief Canal Officer, who vide order dated 22.07.2009 (Annexure P-3), dismissed the same. Thereafter on account of final decision in the matter, the respondent(s)-Department started the proceedings for acquisition of the land of one karam width of the length of Killa No.50/6. Inder Singh contested the said proceedings through his counsel and after hearing both the parties, the Divisional Canal Officer ordered for acquisition of land of Mahender Singh in a width of one karam and ordered the petitioner to deposit a sum of ₹ 32,228/- as compensation which fact is evident from the order dated 04.12.2008 (Annexure P-4). Inder Singh, aggrieved against the orders passed by the Superintending Canal Officer and the Chief Canal Officer filed a petition bearing CWP-

13597 of 2009 before this Court, but the same was disposed of vide order dated 26.07.2011 (Annexure P-6) with a direction to consider the aspect of bifurcation of the land of the respondent No.6, namely, Inder Singh only, if he chose to file an application for seeking review of the order. Inder Singh/respondent No.6 did not file an application for review of the order passed by the Canal Authorities, therefore, on order of the acquisition of the land of respondent No.5 for construction of the water course 'AB' for irrigation of the land of the petitioner, the Divisional Canal Officer requested to the Deputy Commissioner, Rohtak to approve the mutation of the land, in question, vide letter dated 29.02.2012 (Annexure P-7). Respondent No.5, Mahender Singh, who was not a party in the writ petition, filed a civil suit bearing No.171 of 2012 for mandatory injunction and the interim application moved along with the same, vide order dated 11.09.2012 (Annexure P-8) was dismissed. However, respondent No.5 moved an application for review of the order of the Canal authorities for sanction of *khal* 'AB', though, he was not a party, much less, had not given any permission, but the said application was dismissed by the Divisional Canal Officer. Aggrieved against the same, respondent No. 5 was filed an appeal before the Superintending Canal Officer, who vide order dated 02.07.2013 (Annexure P-10), erroneously allowed the appeal and sanctioned a new water course 'XYA' on northern and western dower of Killa No.50/5 in a width of one karam without compensation instead of already sanctioned water course 'AB'. The appeal filed before the Chief Canal Officer had erroneously been dismissed vide order dated 11.08.2014 (Annexure P-11). The writ petition bearing No.5793 of 2015 against the aforementioned order was filed, but the same was dismissed as withdrawn with liberty to file

fresh one with better particulars and therefore, the present writ petition on the premise that respondent No.5 was not a party in the previous round of litigation and it was only respondent No.6, namely, Inder Singh was given an opportunity to file the review application.

He further submits that the proceedings for sanction of water course 'AB' had already been completed and finalized between the parties. There was no occasion for the Superintending Canal Officer to set aside the order of the Divisional Canal Officer dismissing the review application of Mahender Singh. The Canal Authorities have failed to appreciate that the length of sanctioned water course 'AB' was one killa, whereas the length of the new water course 'XYA' is two killas. Dismissal of the interim application by the trial Court is one of the factors which should have been the deciding factor of not accepting the appeal of the private respondent No.5. The impugned order reflects the alleged consent of the petitioner for new water course which is totally erroneous as no such consent was given, thus, urges this Court for setting aside the impugned orders, under challenge.

In the reply/written statement on behalf of respondent Nos. 1 to 4, it has been submitted that the writ petition is wholly misconceived and does not survive any cause of action as the authorities i.e. Chief Canal Officer/respondent No.2 and Superintending Canal Officer/respondent No.3, after hearing both the parties, much less, after site inspection, technical aspects and examination of the revenue records, rightly passed the impugned orders dated 11.08.2014 (Annexure P-11) and 02.07.2013 (Annexure P-10). The water course 'XYA' on the northern and western line of Rectangle and Killa No.50/5 instead on northern line of 50/6, which

actually bifurcated the land of respondent No.5, Mahender Singh, owner of Kill No.50/5 & 6 without compensation in the interest of better irrigation of the petitioner in the chak of outlet at RD 68630-R Jasrana minor, being technically more feasible and suitable, 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 and of the view that there is no merit and force in the submissions of Mr. S.K. Hooda, for, as per the site plan (Annexure P-1), the water course earlier sanctioned 'AB' and one 'XYA', does not reflect irrigation to the land of petitioner, much less, cannot be said to be a longer route, but the fact remains that it bifurcates the land of Mahender Singh. The filing of the review application by Mahender Singh was perfectly legal and justified as he was not afforded an opportunity while sanctioning the water course 'AB'. No harm and prejudice would be caused to the petitioner by providing the water course 'XYA' as the same has been sanctioned by taking into consideration spot inspection and all the relevant facts. Even the Superintending Canal Officer while hearing the appeal of the Mahender Singh inspected the site on 25.05.2013 in the presence of both the parties and revenue staff of the Revenue Department. An effort was made to resolve the issue with an amicable settlement and the alternative option suggested by the revenue staff was rightly accepted by the Superintending Canal Officer upheld by the Chief Canal Officer as the watercourse 'AB' bifurcates the Killa No.5/6 of Khasra No.50, whereas the providing of the water course on the line of Killa No.5 as per the concession given to Mahender Singh is perfectly legal and justified i.e. Killa No.50/5 on the norther dowel and through western dowel of the same killa upto the field of

the petitioner without compensation in the width of one karam throughout the length. If at all the petitioner had not given any consent, they could have moved an application for review of the order dated 02.07.2013 (Annexure P-10) of the Superintending Canal Officer. Having failed to do so, the proceedings of the Authorities are sacrosanct and cannot be tinkered with. The whole purpose is whether with providing of the water course, the land of the petitioner would remain irrigated or un-irrigated and the answer is it would be. The content *prima facie* on examination of the site plan appears to be an attempt to tire out one of the parties from the litigation, much less, settlement of ego/arrogance.

Keeping in view the aforementioned facts, I do not find any illegality and perversity in the impugned order dated 02.07.2013 (Annexure P-10) and order dated 11.08.2014 (Annexure P-11), much less, no ground is made out for interference as the same are based upon the revenue record and site inspection. Resultantly, the orders under challenge are upheld and the writ petition is dismissed.

21.03.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓
Whether speaking/reasoned **Yes/ No**

✓
Whether Reportable **Yes/ No**