

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

CWP No.11055 of 2012

Date of Decision: 13.11.2018

Lachhman Ram

.....Petitioner

Versus

Superintending Canal Officer, Ludhiana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Sandeep Khunger, Advocate for the petitioner.

Mr. T.P.S. Chawla, DAG, Punjab.

Mr. B.S. Sidhu, Advocate for respondent No.5.

TEJINDER SINGH DHINDSA J.

Petitioner has filed the instant writ petition impugning order dated 15.03.2012 (Annexure P-5) passed by the Superintending Canal Officer, Sirhind Canal Circle, Ludhiana.

Operative part of the impugned order reads in the following terms:-

“ After hearing both the parties, perusal of the relevant record and discussing the matter, this court, has found that the plea of the appellant that 0.15 minute time of turn of Khata No.32 got fixed by the respondent for newly sanctioned Nakka after 0-5 karams at point 1246-1396 is less, is not acceptable because by fixing 15 minute turn on the new sanctioned Nakka the watercourse shall not be filled to its full capacity. The demand of the appellant that the turn of water for Khata No.32 of the

respondent should be fixed on the new sanctioned Nakka which he got sanctioned 0.5 karams after the point at 1246-1396 is genuine. Therefore, by making amendment in the order dated 5.10.2011 passed by Divisional Canal Officer, Bathinda Canal Division, Bathinda, the turn of water for 3 acres of area is fixed on the Nakka got sanctioned by the respondent and the remaining turn of water is sanctioned to be shifted from Khata No.32. This order is passed under Section 68(6) of Canal & Drainage Act 8 of 1873.

Dated:15.3.2012

Place:Ludhiana

Sd/-

*Superintending Canal Officer
Sirhind Canal Circle, Ludhiana.*

Learned counsel representing the petitioner has argued that the impugned order lacks jurisdiction inasmuch as the same has been passed while entertaining an appeal preferred by the private respondent against the order passed by the Divisional Canal Officer, Bathinda Canal Division, Bathinda, whereas under Section 68 of the Northern India Canal & Drainage Act 1873 (hereinafter referred to as “the Act”), no appeal was maintainable against the order of the Divisional Canal Officer.

In furtherance of such submission it is contended that even under Rule 81 of the Northern India Canal and Drainage Rules, no appeal shall lie from any order except where an appeal is expressly allowed under the Act or by the Rules made thereunder.

It is further argued that the total land holding of the petitioner under Khata No.32 is of 16 kanals 0 marla in field No.1247 for which Nakka at point 'N' has been sanctioned in favour of the petitioner and as such the private respondents cannot press for relief to keep turn of water for

more than 15 minutes on the said Nakka. Learned counsel submits that the impugned order cannot sustain inasmuch as the petitioner has been directed to keep the turn of water of 03 acres whereas he is owner only to the extent of 16 kanals of land in Khata No.32.

Per contra learned State counsel as also learned counsel representing the private respondents have supported the impugned order and it is contended that the same has been passed as per ground situation.

I have heard learned counsel for the parties and have perused the pleadings on record.

Section 68 of the Act reads as follows:-

68. Power of Deputy Collector to order use or distribution of water and settlement of differences as to mutual rights and liabilities of persons interested in watercourse-(1) the Deputy Collector may, if in his opinion it is necessary so to do, pass an order as to the use of distribution of water from a water-course amongst persons in any estate or a group of estates or in any holding or group of holdings in such estate or estates:-

Provided that no such order shall be passed by the Deputy Collector without making an inquiry into the matter and without giving a notice, to all the persons interested that, on a day to be named in such notice, he shall proceed to enquire into the said matter.

(2) Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a watercourse, any such person may apply in writing to the Deputy Collector stating the matter in dispute.

(3) On the receipt of an application under sub-section (2), the Deputy Collector shall give notice to the other persons, interested that on a day to be named in such notice, he shall proceed to inquire into the same matter and after the enquiry he shall pass an order thereon.

(4) An order passed under Sub-section (1) or sub-section (3) as to the use or distribution of water for any crop sown or growing at the time when such order is made or with regard to the construction or maintenance of watercourse shall subject to an order passed on appeal or revision under sub-section (5) and (6), be final.

(5) An appeal shall lie to the Divisional Canal Officer against an order referred to in sub-section (4) within a period of thirty days from the date of such order.

(6) the Superintending Canal Officer, within whose jurisdiction the watercourse is situated, may, suo moto on or an application made in this behalf by an aggrieved person, revise an order passed in appeal by a Divisional Canal Officer under sub-section (5).

Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order.

(7) No order passed under this Section shall be liable to be called in question in any civil court.”

A bare reading of the provision reproduced hereinabove would clarify that under Section 68 (6), the Superintending Canal Officer, within whose jurisdiction the watercourse is situated, may “suo moto” or on an application made in such behalf by the aggrieved person can revise an order

passed in appeal by a Divisional Canal Officer. The Superintending Canal Officer as such could have been entertained a revision filed by the aggrieved person or even by exercising “suo moto” power alter or set aside the order passed by the Divisional Canal Officer.

In the facts of the present case, the private respondents aggrieved of the order passed by the Divisional Canal Officer had filed an application before the Superintending Canal Officer by captioning the same as an appeal. The same would not make any difference. Such application has been entertained and adjudicated upon by virtue of exercise of revisional powers vested with the Superintending Canal Officer under Section 68 (6) of the Act. The submission advanced by learned counsel as regards the impugned order lacking jurisdiction is without merit.

I find sufficient merit in the stand taken on behalf of the official respondent as also private respondents that wari of 03 acres at Khata No.32 has been kept instead of 15 minutes wari to make good the loss of private respondents. Reasoning adopted by the Superintending Canal Officer, while passing impugned order dated 15.03.2012 (Annexure P-5) is that by fixing 15 minutes turn/wari on the new sanctioned Nakka the watercourse shall not be filled to its full capacity. Accordingly, the order dated 05.10.2011, passed by the Divisional Canal Officer, Bhatinda Canal Division, Bhatinda, was amended and turn of water for 03 acres of area was fixed on the Nakka got sanctioned by the petitioner herein and the remaining turn of the water was sanctioned to be shifted from Khata No.32. The reasoning adopted by the Superintending Canal Officer is cogent and valid.

Learned counsel for the petitioner has not been able to demonstrate before this Court any loss of irrigation on account of passing

of the impugned order.

No basis for interference is made out.

Writ petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

November 13, 2018

shweta

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No