

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

CWP No.15606 of 2014

Date of Decision: 28.02.2018

Rajmal

....Petitioner

Versus

Chief Canal Officer/LCU and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Rupinder K. Thind, Advocate
for the petitioner.

Mr. S.S. Mann, Sr. D.A.G., Haryana.

Mr. S.S. Kharb, Advocate
for respondent No.4.

DAYA CHAUDHARY, J.

The prayer in the present petition is for quashing of impugned orders dated 02.07.2013 (Annexure P-6) and 30.06.2014 (Annexure P-13) passed by respondents No.2 and 1, respectively. A further prayer has also been made for issuance of a direction for upholding the order passed by respondent No.3, whereby, the area of the petitioner has been transferred from outlet RD 5500-R Kharkara minor to outlet RD 7435-R Kharkara minor of Village Bharan Tehsil Meham, District Rohtak.

Briefly, the facts of the case, as made out in the present petition, are that the petitioner moved an application before the Divisional Canal Officer, Rohtak W/S Division Rohtak for transfer of area 8/8 acre from outlet RD 5500-R Kharkara minor to outlet RD 7435-R Kharkara

minor of Village Bharan Tehsil Meham, District Rohtak. The case was investigated into by S.D.C.O Madina W/S Sub Division, Rohtak and the same was recommended for transfer of the area. Accordingly, the scheme was prepared and subsequently, the case was published. The statements of the parties were recorded and thereafter, the application filed by the petitioner was allowed. The request of the petitioner was accepted as prayed for in the application. The order passed by the Divisional Canal Officer was implemented and Form 'A' was prepared. The case was approved for adjustment of outlet by stating that the expenses were to be borne by the beneficiaries. Said order passed by the Divisional Canal Officer was challenged before the Superintending Canal Officer by way of filing appeal and the same was allowed vide order dated 02.07.2013 and the order passed by the Divisional Canal Officer was set aside. Thereafter, the petitioner filed an appeal before the Chief Canal Officer by raising certain grounds but the said appeal was also dismissed vide order dated 30.06.2014.

The petitioner has filed the present petition for setting aside orders passed on 02.07.2013 (Annexure P-6) and 30.06.2014 (Annexure P-13) passed by the Superintending Canal Officer and Chief Canal Officer, respectively.

Learned counsel for the petitioner submits that both the impugned orders have been passed without considering the grounds taken by the petitioner in his appeal and a wrong finding has been given. The appeal was rejected by mentioning that FSL available upon the existing outlet is higher and the demand of the petitioner was not genuine. Learned counsel for the petitioner also submits that the orders passed by both the authorities are non-speaking and no reasoning whatsoever has been given.

The Chief Canal Officer has uphold the order passed by the Superintending Canal Officer without giving any specific finding.

Learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner and submits that the petitioner has filed the luxury litigation as he is getting better irrigation of 8 acres of land from outlet RD 5500-R and no person from the other outlet has agreed. Neither any notice was given by Divisional Canal Officer nor any person was heard before passing of the order. It is also the argument of learned counsel for respondent No.4 that the answering respondent was not made party before the Divisional Canal Officer for the best reasons known to him. The affidavits which were given of some of the persons who were not the affected persons as they were not having warabandi on the said outlet, in dispute. Respondent no.4 was made party for the first time before the Chief Canal Officer. No person gave in writing that they had no objection with regard to outlet 7435-L. Petitioner himself took false signatures of few persons stating that they had no objection, whereas, none of the persons was issued any notice. The orders are well reasoned and were passed after hearing both the parties and after scrutinizing the revenue file.

Learned counsel for the respondent-State submits that the claim of the petitioner for transfer of his land from outlet RD-5500 R was rightly rejected and the orders passed by both the authorities below are well reasoned. The application was moved without having any reasonable cause. The findings have been recorded in the orders passed by both the appellate authorities and no interference is required. The adequate and proper opportunities were given to all the parties concerned and it cannot be said that the order is bad in law.

Heard the arguments of learned counsel for the parties and have also perused the impugned orders as well as other documents on the file.

The facts of the case are not disputed with regard to filing of application by the petitioner and thereafter, the orders passed by the Appellate authorities. Undisputedly, the petitioner moved an application before the Divisional Canal Officer for transfer of his area 8/8 acres land from outlet RD-5500-R to outlet RD 7435-R, which was investigated into by the Sub Divisional Canal Officer. The case was recommended for transfer of the area and accordingly, the scheme was prepared. It was done after recording the statements of the parties. Said request was made by the petitioner on the ground that his land is situated 13 killa away from outlet No.5500-R and 5 acres water course is kacha one, due to which, the irrigation was not done properly. Said order passed by the Divisional Canal Officer was also implemented and Form 'A' was prepared. The order passed on the application was challenged before the Superintending Canal Officer, Rohtak. The relevant portion of the order is reproduced as under :-

“Decision : Revenue Missal, site sketch and all the other relevant record produced in the court were examined and the arguments of the appellants as well as respondents were heard and properly considered. From the close perusal of site sketch and overall view of the case, it is observed that none of the shareholders of the entire outlet is in the favour of the inclusion of 8/8 acres area of the respondents in the chak of outlet R.D. 7435-R Kharkara Mr. Moreover, the outlet R.D. 5500-R Kharkara Mr. is on the upstream side and therefore the area of the respondent can easily irrigated. At the time of hearing, it was also observed that there is great resentment among the majority of the shareholders of outlet R.D. 7435-R Kharkara Mr. if the area of 8/8 acres of the respondent is

transferred to their outlet. As per decision of D.C.O. Rohtak W.S. Division, Rohtak, the demand regarding transfer of 8/8 acres area of the respondent was accepted only with the plea that there is no objection to any shareholder, whereas, in fact none of the shareholder is in the favour of the demand of the respondent regarding transfer of 8/8 acres area. The decision given by the D.C.O Rohtak, in favour of the respondent is based only on one plea that there is no objection to any shareholder regarding transfer of 8/8 acres, without mentioning any technical ground. In view of the facts stated above, the appeal of the appellants is accepted and the decision of D.C.O. Rohtak, W.S. Division, Rohtak dated 4.11.2011 is set aside. A Form may also be amended accordingly, if it has already been sanctioned as per decision of D.C.O Rohtak. D.C.O Rohtak is also advised to take appropriate action against the official who did not serve the notice to the appellants resulting into inconvenience to the shareholders and to this court also.”

Thereafter, the said order was challenged before the Chief Canal Officer by the petitioner and his appeal was dismissed vide order dated 30.06.2014. The relevant order is reproduced as under :-

“ Arguments of the appellant as well as of the respondents made before me were considered, khaka plan, the decision of SCO/YWS Circle, Rohtak dated 2.7.2013 and all of the relevant data of the case placed before the court were examined and it is observed that the spot levels of 8/8 acre area of the appellant are in the range of 722.47 to 722.51. The FSL at the head of outlet RD 5500-R Kharkra Minor is 723.60 whereas the FSL at the head of proposed outlet RD. 7435-R Khrakra Minor is 723.11 which shows that higher FSL is available from the existing outlet for the irrigation of the land in question as compared to the proposed

outlet. Moreover, there is no problem of watercourse to the land in question from the existing source.

As the full supply level at the head of the existing outlet RD.5500-R Kharkra Minor is higher than the proposed outlet RD. 7435-R Kharkra Minor therefore the demand of the appellant for transfer his 8/8 acre area from outlet RD.5500-R Kharkra Minor to outlet RD. 7435-R Kharkra Minor is not genuine. Hence I find no cogent reason to up-set the well reasoned decision dated 02.07.2013 passed by the SCO/YWS Circle, Rohtak so the same is upheld and the appeal of the appellant is dismissed.”

On perusal of both the orders passed by the Superintending Canal Officer as well as Chief Canal Officer, it has been observed that the claim of the petitioner was accepted only on the ground that there was no objection to any shareholder, whereas, none of the shareholders gave any affidavit. The Divisional Canal Officer has passed the order only on the ground that there was no objection to any shareholder regarding transfer of 8/8 acres area. The appeal filed by the petitioner before the Chief Canal Officer was dismissed by finding the order passed by the Superintending Canal Officer to be well reasoned. It is also apparent from the impugned orders that the Divisional Canal Officer passed the order on the basis of statements of some of the shareholders who were not having any objection in transfer of outlet RD 5500-R to RD 7435-R. The observations have been made in both the orders that the persons, who gave the affidavits or made the statements before the authorities below were not the persons, who were going to be affected as the affidavits/statements appear to be procured. It has also been mentioned that full supply level at the head of the existing outlet RD-5500-R Kharkra Minor was higher than the proposed outlet RD.

7435-R Kharkra Minor. A finding has also been recorded by the Superintending Canal Officer that none of the shareholders of the entire outlet was in favour of inclusion of 8/8 acres area of the petitioner in the chak of outlet R.D. 7435-R Kharkara minor. It has also been observed in the order that the majority of shareholders of outlet R.D. 7435-R were having resentment about the order passed by the Divisional Canal Officer whereas the order was passed only on the ground that the shareholders were having no objection in transfer of the outlet.

A perusal of said two orders as well as the order passed by the Divisional Canal Officer shows that nothing has been mentioned on merits as the said orders have been passed on the basis of statements of shareholders or affidavits of some of the persons, who were not shareholders.

Disputed facts cannot be considered by this Court and it is a matter of evidence as to whether the persons, who got recorded their statements or notices were issued to them and thereafter, they gave their affidavits or not. It can be verified by the Divisional Canal Officer. Both the authorities below i.e Superintending Canal Officer and the Chief Canal Officer have passed the order on the ground that the persons who made their statements were not the shareholders.

Accordingly, the present petition deserves to be allowed and impugned orders dated 02.07.2013 (Annexure P-6) and 30.06.2014 (Annexure P-13) passed by respondents No.2 and 1, respectively are set aside as the matter has not been decided on merits. The case is remanded back to the Divisional Canal Officer to reconsider and to decide afresh after affording adequate opportunity to all the parties concerned and also by

considering the respective merits of the case. The necessary decision be taken within a period of two months from the date of receipt of certified copy of the order.

28.02.2018
gurpreet

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No