

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

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Civil Writ Petition No.5638 of 2019
Date of Decision: March 1st, 2019

Ram Kishan and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Raje Ram Kaushik, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 14.01.2019 (Annexure P-4) passed by the Chief Canal Officer, BWS Unit, Haryana Irrigation and Water Resources Department, in an appeal which has been preferred by the petitioners challenging the order dated 12.07.2018 passed by the Superintending Canal Officer, BWS Circle, Kaithal, whereby the application of private respondent No.5 has been allowed for providing a new outlet at RD 106500-R at Rajound Distributary, District Kaithal.

2. It is the contention of learned counsel for the petitioners that the private respondent herein had earlier filed an application for having a new outlet, which stood duly considered and rejected by the Chief Canal Officer, Haryana, vide order dated 17.08.1989 (Annexure P-2), which was challenged by respondents by filing CWP No.13137 of 1989 which was dismissed by the Division Bench of this Court on 01.02.1990 (Annexure P-3). He contends that the matter having attained finality till the High Court, the application of respondent No.5-Dalbir Singh cannot be accepted and a fresh outlet as has been prayed by respondent No.5, cannot be permitted to be given to him. His further contention is that the land of the petitioner is at the tail end and because of providing a new outlet to the private respondent, the irrigation of the petitioner would suffer as he would

not get water. He, thus, contends that the impugned order dated 14.01.2019 (Annexure P-4) passed by the Chief Canal Officer, BWS Unit, Haryana Irrigation and Water Resources Department, upholding the order dated 12.07.2018 passed by the Superintending Canal Officer, cannot sustain and deserves to be set aside.

3. I have considered the submissions made by learned counsel for the petitioners and with his assistance, have gone through the records of the case.

4. On perusal of the order dated 17.08.1989 (Annexure P-2) passed by the Chief Canal Officer, Haryana, as well as the judgment dated 01.02.1990 passed by this Court in CWP No.13137 of 1989, it is apparent that respondent No.5 was not a party to the said proceedings and, therefore, it cannot be said that it would bar his right to put forth his claim for a new outlet and, therefore, the order dated 17.08.1989 (Annexure P-2) passed by the Chief Canal Officer, Haryana or the judgment dated 01.02.1990 (Annexure P-3) as passed by this Court cannot be said to be applicable to him.

5. In any case, the said orders were passed in the year 1989 and 1990 respectively and with the change of circumstances i.e. after a period of almost 30 years, fresh application has been filed by Dalbir Singh seeking a fresh outlet, which on consideration by the competent authorities, who are expert in the field of assessing the requirement of landowners for irrigation purposes, have come to a conclusion that the purpose of irrigation would be better served by providing a new outlet to respondent No.5. Detailed reasons have been assigned by the Chief Canal Officer in order dated 14.01.2019 upholding the order passed by the

Superintending Canal Officer. The very purpose of having enacted the Haryana Canal and Drainage Act, 1974, is for providing best irrigation facilities to the farmers and, therefore, this is the right approach.

6. It has been said therein that Block Rajound, where the land of the petitioner falls, which is a subject matter of the present case, has been declared a dark zone area because of over extraction of underground water and now to reduce the dependence of the underground water, efforts are being made to distribute the supply of water through canal effectively and it is in this process that such a step has been taken as in the present case on an application of respondent No.5.

7. Apart from that, the Chief Canal Officer had taken into consideration the size of each of the outlet to be worked out on the basis of CCA area of the outlet and has also taken into consideration the sanctioned water allowance as per the Government instructions. Keeping that into consideration, the Chief Canal Officer has proceeded to uphold the order passed by the Superintending Canal Officer.

8. This Court does not find any illegality in the order dated 14.01.2019 (Annexure P-4) passed by the Chief Canal Officer-respondent No.2 which would call for any interference in the present writ petition.

9. Finding no merit in the present writ petition, the same stands dismissed.

March 1st, 2019

Puneet

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No