

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

132

**CWP No. 9255 of 2019
Date of Decision : 8.4.2019**

Balwant

.....Petitioner

v.

Chief Canal Officer and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present : Mr. Ashok Arora, Advocate, for the petitioner

Mr. R.N. Lohan, Advocate, for the caveator

AUGUSTINE GEORGE MASIH, J. (Oral)

The petitioner has approached this Court praying for quashing of order dated 6.3.2019 (Annexure P-8), passed by the Chief Canal Officer, Bhakra Water Services Unit, Haryana Irrigation and Water Resources Department-respondent No. 1, order dated 13.8.2018 (Annexure P-6), passed by the Superintending Canal Officer, Bhakra Water Services Circle, Fatehabad-respondent No.2 and order dated 21.3.2018 (Annexure P-4), passed by the Divisional Canal Officer, Tohana Water Services Division-respondent No.3 respectively.

It is the contention of learned counsel for the petitioner that an earlier attempt made by the private respondents for splitting the RD-8500/L had failed upto this Court when CWP No. 12645 of 2009 titled as 'Ram Kishan and others v. Chief Canal Officer and others' stood dismissed on 16.7.2012 (Annexure P-11). He contends that the said aspect having attained finality upto this Court, fresh application for splitting the said outlet i.e. RD-8500/L could

not have been entertained by the authorities. His further contention is that the authorities below have not properly appreciated the fact that the irrigation, which has been governed from RD-8500/L is to the extent of 174% and, therefore, there is no necessity for splitting the said outlet and creating a new outlet for the private respondents. That apart from he asserts that order passed by the Chief Canal Officer is ex-parte as the counsel for the petitioner was not heard while passing the said order.

I have heard learned counsel for the petitioner and with his assistance gone through the record of the case as well as the impugned orders.

There is no dispute that the earlier effort on the part of the private respondents for splitting RD-8500/L had failed, as is apparent from the order dated 16.7.2012 passed by this Court in CWP No. 12645 of 2009 (Annexure P-11). Dismissal of the writ petition would not bar moving an application for the same relief after a considerable period has passed and the circumstances having changed. The reason for making this observation is that the supply of water from the canal to the beneficiaries varies with the passage of time. One of the basic reason could be that earlier the water course was newly laid down and therefore, there was no seepage of water and there was no loss thereof. Present is the case as is apparent from the order passed by the Chief Canal Officer dated 6.3.2019, where water-course is said to have been damaged and requires to be re-lined. Those facts having to be taken into consideration apart from the fact that the 174 percentage of irrigation of the land is not merely based upon the canal water, which is supplied but is in addition to the 21 numbers of tubewells which are being run by the co-sharers for irrigation of the land. That apart another aspect which has been highlighted in the impugned order is that

the water coming from the tubewells is saline and the advise of the Chaudhary Charan Singh Haryana Agricultural University, Hisar has been relied upon to conclude that the farmers have been advised not to operate tubewells at large scale and have also been advised to change the pattern of paddy crop.

These changed circumstances cannot be ignored merely because an earlier effort on the part of some co-sharers have failed. The changed circumstances give a fresh cause of action as it would be unthinkable that decision reached in a particular fact and circumstance of the case would be binding for all intents and purposes for all the parties, if and especially when it relates to irrigation of the land, which is dependent upon the water supply.

The Chief Canal officer in his order dated 6.3.2019 although, being in the absence of the counsel for the petitioner, has dealt with each and every aspect and all the pleas, which have been raised by the petitioner, who was an appellant therein, the details given therein clearly shows proper application of mind. All technical aspects which are required to be taken into consideration has been duly appreciated and commented upon to come to a conclusion with regard to the splitting of the outlet and sanctioning a new outlet. This Court is not in a position to comment in this regard especially with regard to the observations with reference to spot level of the area which has also been taken into consideration especially the feasibility on the technical ground. The reasoning which has been assigned as to why this recourse would be justified also cannot be faulted with. It has been mentioned that the water course were lined about 30 years back relatable to the existing RD-8500/L Simaini Minor, which is lying damaged at the site. It has further been mentioned that the water courses are required to be reconstructed under the

said policy and it would be the appropriate stage to decide the dispute between the parties. The water courses can be reconstructed at the site in the chak of the existing outlet as well as of the proposed outlet while deciding the line of the water course. These technical aspects also having been taken into consideration and the reasoning, which has been assigned, fully justify the passing of the impugned orders especially under the changed circumstances.

In view of the above, finding no merit in the present petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

8.4.2019

Ashwani

Speaking/Reasoned	:	Yes/No
Reportable	:	Yes/No