

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

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Civil Writ Petition No.12389 of 2019
Date of Decision: May 10th, 2019

Khushi Ram and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Amit Sheoran, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 20.02.2019 (Annexure P-3) passed by the Chief Canal Officer, Panchkula-respondent No.2, whereby the appeal preferred by the petitioners has been dismissed.

2. Briefly the facts are that prayer was made by the private respondents for transfer of area i.e. 59.12/58.06 acres from chak of outlet RD 31264/L to chak of outlet RD 36500/Tail Bhatla minor instead of providing a new minor at RD 35300/L Bhatla minor for the area in question, which request has been accepted after publication of scheme, which scheme was decided on 13.02.2018 by the Divisional Canal Officer, Hansi Water Services Division, Hansi. Appeal, which has been preferred by the petitioners stands dismissed by observing that no prejudice would be caused to the petitioners as additional water would be released in the minor as also at the site as the lined watercourse has the capacity to carry additional water.

3. It is the contention of learned counsel for the petitioners that the scheme which has been required to be published of the minor as per the Instructions dated 31.07.2017 (Annexure P-4) issued by the department which is based upon the judgment passed by this Court in

CWP No.14324 of 2017 dated 20.07.2017 has not been complied with. As a matter of fact, while finalising the scheme, only two shareholders had objected and approached the authorities and the scheme has to be published in the manner as was required to be as per Instructions dated 31.07.2017 (Annexure P-4) and, therefore, the scheme itself cannot sustain. Reliance upon the said scheme for upholding the transfer, therefore, cannot sustain and deserves to be set aside. That apart, he asserts that the petitioners are likely to be adversely affected because of the transfer of the additional land as their area at the tail end would be reduced leading to the loss of irrigation. Assertion has also been made that the lined watercourse falls between the two different villages and they are adjacent with the minor canal in between the two villages which may lead to certain tension between the parties. Rather, it has already started with registration of FIR of theft of water by the respondents and, therefore, the apprehension of the petitioners has come true. Assertion has thus been made for setting aside the impugned order by allowing the present writ petition.

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

5. It is not in dispute that initially a decision has been taken by the Divisional Canal Officer, Hansi Water Services Division, Hansi, on 13.02.2018, after following a process of publication of the scheme on the basis of which objections were called for from the persons, who are interested therein, although an assertion has been made that scheme has not been properly published as per the requirement of the Instructions dated 31.07.2017 (Annexure P-4). It has also been asserted by counsel for

the petitioners that there was no publication as a matter of fact, what to say of process of publication being carried out as per the Instructions dated 31.07.2017 but this Court does not find any justification to accept the said assertion of the petitioners. Both the authorities below have taken all aspects into consideration and have proceeded to decide the same. Nothing has been pointed out as is apparent from the orders passed by the Chief Canal Officer, Haryana Irrigation and Water Resources Department, Panchkula, which would substantiate the contention of the petitioners.

6. As regards the transfer of the land area is concerned which is a subject matter of the present writ petition, it is more of a technical aspect which has to be seen in the light of those circumstances and facts as have been found by the authorities. The basic purpose of the scheme was for transfer of 59.12/58.06 acres area of private respondents from chak of outlet RD 31264/L to chak of outlet RD 36500/Tail Bhatla minor which has been examined on the basis of technical grounds as well as the genuineness of the claim. The competent authority has taken into consideration the factum of there being irrigation of the area in question which has worked out as 191% in the chak of the existing outlet. However, keeping in view the 12 tubewells which are in operation for the purpose of irrigation but the said water having been not found to be suitable for the said purpose, the irrigation of area in question would be affected. It has also been taken into consideration that RD 31264/L Bhatla minor, from where the existing chak is being irrigated, is although on lined watercourse, however, the lining is 30 years old and is in a damaged condition leading to leakage and loss of water, whereas RD 36500/Tail Bhatla minor has been recently lined, therefore, there is no loss of water during the process of flow thereof.

The authorities have passed the order in the interest of the irrigation by giving better output which purpose would be served if the area is transferred.

7. As regards the objection of the petitioners that with the increase in area, there would be shortage of water for irrigation and there would be loss of irrigation as far as the petitioners are concerned, the same has been taken into consideration and found that it is without any basis. The said aspect has been taken into consideration and dealt with by observing as follows:-

“The objection of the appellants against inclusion the area of the respondents/applicants in the chak of their outlet at RD 36500/Tail Bhatla Minor is baseless as the discharge of each outlet is revised according to the Culture able Commanded Area of the outlet. In the present case, the discharge of the area in question will be 0.14 cusec. The discharge 0.14 cusec shall be reduced of the existing outlet at RD 31264/L Bhatna Minor and the same shall be added in the discharge of proposed outlet at RD 36500/Tail Bhatla Minor and thus question does not arise of causing any adverse affect on the irrigation to the area of tail outlet at RD 36500 Bhatla Minor. As far as accommodation of the extra discharge by the lined water course in the chak of proposed outlet at RD 36500/Tail Bhatla Minor is concerned, the lined water course in the chak of this outlet are fully capable to carry the extra discharge of the area in question without any hindrance.”

8 In view of the above, this Court does not find any merit in the present writ petition, which would call for interference by this Court in exercise of its extraordinary writ jurisdiction. The writ petition, therefore, stands dismissed.

May 10th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No