

CWP-14699-2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14699-2016

Date of Decision: 10th May, 2019

Rajender

...Petitioner

Versus

The Chief Canal Officer, Bhakra Water Services, Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ramesh Goyat, Advocate
for the petitioner.

Mr. Pradeep Prakash Chahar, DAG, Haryana
for respondents No.1 to 4.

Mr. J.S. Thind, Advocate
for respondent No.5.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 30.05.2016/10.06.2016 (Annexure P-7) passed by the Chief Canal Officer, Bhakra Water Services, Haryana – respondent No.1 and order dated 26.11.2015 (Annexure P-6) passed by the Superintending Canal Officer, Bhakra Water Services Circle-I, Hisar – respondent No.2, vide which, revision petitions preferred by the petitioner have been dismissed.

2. Briefly, the facts are that petitioner – Rajender as well as respondent No.5 – Krishan Kumar are share-holders of outlet bearing No.RD-9225-R, Bir Minor of village Shekhpura, Tehsil Hansi, District

Hisar. As per warabandi, turn of the petitioner to irrigate his land is at Khata No.44 and that of respondent No.5 is at Khata No.45 i.e. immediately after the petitioner. Petitioner asserts that he is a small farmer having only $1\frac{1}{4}$ acre of land and the level of his holdings is about one and half feet higher than that of respondent No.5. Respondent No.5 being at the tail end of the watercourse got the residual (jhara) water to irrigate his holdings. Respondent No.5 made an application for changing of his turn of irrigation from Khata No.45 to Khata No.39/1. Petitioner filed objections to the same on 07.06.2014 by asserting that level of his holdings is one and half feet above than that of respondent No.5 and if the wari/turn of respondent No.5 is changed from Khata No.45 to Khata No.39/1, petitioner cannot irrigate his land although residual (jhara) water would be included in his share but since there is no filling time, he would be at loss. Other share-holders also appeared and objected to the request of respondent No.5 and prayed that the turn of all share-holders be kept intact for proper irrigation.

3. The Deputy Collector, Hansi Water Services Division, Hansi – respondent No.4 visited the spot and submitted his report that respondent No.5 was getting proper irrigation of his holdings and rejected the demand of respondent No.5 by dismissing his application on 25.08.2014 (Annexure P-4). An Appeal was preferred against the said order by respondent No.5 before the Divisional Canal Officer, Hansi Water Services Division, Hansi – respondent No.3, who dismissed the same vide order dated 13.03.2015 (Annexure P-5). Aggrieved by this order, revision petition was preferred by respondent No.5 before the Superintending Canal Officer, Bhakra Water

Services Circle-I, Hisar – respondent No.2, which revision petition was allowed vide order dated 26.11.2015 (Annexure P-6). It is asserted that the well-reasoned orders passed by the authorities below have been disturbed without considering the facts of the case as well as the statements of the share-holders including the site inspection report conducted by respondent No.4. Aggrieved petitioner filed a revision petition before the Chief Canal Officer, Bhakra Water Services, Haryana – respondent No.1 against the said order of respondent No.2 but the same has been dismissed vide order dated 30.05.2016/10.06.2016 (Annexure P-7), which has led the petitioner to file the present writ petition challenging both the orders dated 26.11.2015 (Annexure P-6) and dated 30.05.2016/10.06.2016 (Annexure P-7).

4. Counsel for the petitioner has asserted that despite objections raised by other share-holders including the petitioner, who are directly affected by the change of warabandi of respondent No.5 vide the impugned orders, the authorities have, in an arbitrary, illegal and unjustified manner, allowed the claim of respondent No.5. He asserts that there was no reason as to why the wari/turn of respondent No.5 was changed because he was getting proper irrigation and there was no hindrance as is apparent from the report of the Deputy Collector, Hansi Water Services Division, Hansi – respondent No.4, who had visited the site. He further asserts that because of shifting of the wari of respondent No.5, the time which was given for filling-up the watercourse because of the land of the petitioner being one and half feet above than that of respondent No.5, he would not be in a position to irrigate his land properly especially when the petitioner is a

small land-holder and has a limited time for the purpose of irrigation. He, therefore, prays that the impugned orders dated 26.11.2015 (Annexure P-6) and dated 30.05.2016/10.06.2016 (Annexure P-7) be set aside and that of the Divisional Canal Officer, Hansi Water Services Division, Hansi – respondent No.3 dated 13.03.2015 (Annexure P-5) and the Deputy Collector, Hansi Water Services Division, Hansi – respondent No.4, dated 25.08.2014 (Annexure P-4) restored.

5. On the other hand, learned counsel for respondent No.5 has asserted that the request for change of wari was made by respondent No.5 because from the running of watercourse, there are several curves i.e. seven bends, because of which, water was not properly available for irrigation of the land of respondent No.5. He had, therefore, made a request for change of his wari and changed watercourse from A to B as the alienation of A to B is straight and the running watercourse touches the holdings of this respondent without any bend. It is further asserted that no adverse effect has been caused to the land of the petitioner. In any case, he is getting the residual (jhara) water as he is now at the tail end of the watercourse and therefore, would be benefitted. Prayer has, thus, been made for dismissal of the writ petition.

6. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

7. The contention as raised by the learned counsel for the petitioner does not carry any weight as the primary aim and purpose of the

authorities under the Haryana Canal and Drainage Act is proper irrigation of the land of the share-holders. The intent is only to provide better irrigation facilities to the land-holders. Respondent No.5 because of the series of bends i.e. seven in number in the watercourse through which the water was being received by him, which is a khacha watercourse, irrigation was not proper. Further, the Deputy Collector has not given any details with regard to the quantum of water which has been received by respondent No.5 or the petitioner and has merely visited the spot and stated that respondent No.5 was getting adequate water. Respondents No.1 and 2 have looked into the matter and have taken a practical approach keeping in view the fact that the watercourse which is now being sought to be irrigated i.e. the land of respondent No.5 at Khata No.39/1 would be through a straight watercourse now, which would provide him adequate water keeping in view the fact the large land holdings of respondent No.5. Petitioner would not be prejudiced in any manner as residual (Jhara) water would come to his share, which was earlier being taken by respondent No.5. There is no change in timing of water at the allotted slot to the petitioner.

8. The factum that the land of the petitioner is at the higher level than that of respondent No.5 would not make any difference as the watercourse now reaches the land of the petitioner and culminates there, meaning thereby that the residual (jhara) water in any case falls in the share of the petitioner and there would be adequate water firstly to fill the watercourse and secondly to irrigate his land. Further, with regard to the higher level of the land of the petitioner in comparison with the land of

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respondent No.5 alone, who was at Wari No.45 and the petitioner at Wari No.44, nothing has come on record to even suggest, what to say of indicate, that the land of the petitioner is at the higher level than that of the other land-holder, who is getting water at Wari No.43.

9. None of the grounds which have been pressed into service by the petitioner is justified. The decision as taken by respondents No.1 and 2 vide orders dated 26.11.2015 (Annexure P-6) and dated 30.05.2016/10.06.2016 (Annexure P-7) does not call for any interference by this Court in exercise of its writ jurisdiction.

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

10th May, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No