

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
227**

CWP No. 24219 of 2016

Date of decision: 16.09.2019

BHOOP SINGH AND OTHERS

...PETITIONERS

V/S

STATE OF HARYANA & ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.N.Pillania, Advocate,
for the petitioners.

Mr. Manish Dadwal, AAG, Haryana,
for respondents No. 1 to 4.

Mr. Gaurav Mohunta, Advocate,
and Ms. Preeti Aggarwal, Advocate,
for respondents No. 5, 7 and LR's of respondent No. 6.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 23.02.2016 (Annexure P-6) passed by the Chief Canal Officer/LCU, Haryana, whereby the revision petition preferred by the private respondents No. 5 to 7 has been accepted by setting aside the order passed by the Superintending Canal officer, Yamuna Water Services Circle, Rohtak as well as the Divisional Canal Officer, Water Resources Division, Rohtak, respondents No. 3 and 4 respectively.

It is the contention of the learned counsel for the petitioners that an application was moved by the petitioners for shifting some portion

of his land from RD 37060/R to RD 34877/R. The said application, on the basis of the report of the field staff, was accepted by the Divisional Canal Officer vide order dated 30.11.2012 (Annexure P-2). Appeal, which was preferred by the private respondents, was dismissed by the Superintending Canal Officer, YWS Circle, Rohtak vide order dated 26.07.2013 (Annexure P-3). Revision, thereafter, preferred before the Chief Canal Officer/LCU, Irrigation and W/R Department, Haryana, was also dismissed on 13.12.2013 (Annexure P-4). Writ petition was preferred by the private respondents before this Court i.e. CWP No. 3467 of 2014 which was allowed vide order dated 14.12.2015 (Annexure P-5) and directed the Chief Canal Officer to decide the matter afresh after taking into consideration the respective arguments raised by both the counsel for the parties. It is in pursuance to the remand order passed by this Court that the Chief Canal Officer, Haryana, Panchkula, has proceeded to pass an order dated 23.02.2016 (Annexure P-6) which is under challenge before this Court.

It is the contention of the learned counsel for the petitioners that the Chief Canal Officer has not taken into consideration the reports of the field staff and the recommendations made therein on the basis of which, the Divisional Canal Officer as well as the Superintending Canal Officer had passed well-reasoned orders. He contends that merely because the average irrigation of both the outlets appears to be almost the same, therefore, the transfer of the land has not been permitted from RD 37060/R to RD 34877/R Kahanaur Disty. His submission is that the Chief Canal Officer despite admitting the fact that the land of the petitioners, which is sought to be transferred, is touching the other land of the petitioners, has not allowed the application which had been moved. He, thus, contends that the

impugned order cannot sustain and deserves to be set aside.

On the other hand, learned counsel for the private respondents points out that the two pieces of land, which is owned by the petitioners, fall in different estates. By shifting the outlet from RD 37060/R to RD 34877/R, the effect thereof has not been taken into consideration as this would amount to providing land to an outlet which falls in a different estate from an outlet of a different estate which is not permissible. That apart, even the interest of the irrigation has been taken care of especially when there is almost equivalent average intensity for whole of the area which is the subject matter and is being irrigated by the respective outlets. In the given facts and circumstances of the case, the order, therefore, passed by the Chief Canal Officer is in accordance with law and does not call for any interference.

I have considered the submissions made by the learned counsel for the parties and considered the various aspects as have been argued and pointed out as also gone through the impugned orders but do not find myself in agreement with the counsel for the petitioners as the order, which has been passed by the Chief Canal Officer, is on appreciation of the true facts and circumstances.

It is not in dispute that the average irrigation under outlet No. RD 37060/R is 153% whereas under outlet No. RD 34877/R is 156%. If that be so, both the areas are irrigated at almost the same level. There is hardly any difference therein.

Another aspect, which has been pointed out by the counsel for the private respondents, which fact is not disputed, is that the two chaks of land owned by the petitioners fall in different estates and, therefore, cannot

have a common water course.

If that be so, the contention of the counsel for the petitioners cannot be accepted and is hereby rejected.

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

September 16, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No