

130 **IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.26625 of 2019
Date of Decision: 30.09.2019**

Baldeep Singh and others

... Petitioners

Versus

**Superintending Canal Officer, Sirhind Canal Circle,
Ludhiana and others**

... Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present:- Mr.Ankit Midha, Advocate, for the petitioners.

AUGUSTINE GEORGE MASIH, J.(ORAL)

Notice of motion.

2. Mr. T.P.S. Chawla, DAG, Punjab accepts notice on behalf of respondents No.1 and 2-State and Mr. Sandeep Khunger, Advocate with Ms. Ramneek Kaur Sandhu, Advocate accepts notice on behalf of Caveator/respondent No.3.

3. Caveat stands discharged.

4. Challenge in this writ petition is to the order dated 26.06.2019 (Annexure P-8) passed by the Superintending Canal Officer, Sirhind Canal Circle, Ludhiana-respondent No.1 and the order dated 28.12.2018 (Annexure P-6) passed by Divisional Canal Officer, Bathinda Canal Division, Bathinda-respondent No.2, whereby the application moved by respondent No.3 - Sukhdev Singh S/o Ganda Singh has been accepted for transfer of the area from R.D.12012/T.R. to R.D.12012/T.F.

5. Learned counsel for the petitioners has referred to the order passed by the Superintending Canal Officer - respondent No.1 dated 26.06.2019 (Annexure P-8) to contend that the learned Superintending

Canal Officer has taken into consideration an area which was earlier being irrigated through RD12012-TF i.e. approximately 130 acres which have been converted into commercial and residential colony treating it to be non-command area without it being so declared as per law. On the basis of said aspect, the authority has proceeded to transfer the irrigation of applicant-respondent No.3 as per the prayer, from R.D.12012/T.R. to R.D.12012/T.F. He contends that without there being any order passed by the Competent Authority, converting an area from command to un-command, the said aspects could not have been taken into consideration by the Superintending Canal Officer while passing this order. He asserts that as per the information sought by the petitioner under the Right to Information Act as to whether the area, referred to above, which is under commercial and residential colony, has been declared as un-command area, the said information indicates clearly that till date, there is no such order passed by the Competent Authority. He asserts that the order passed by the Superintending Canal Officer, dated 26.06.2019 (Annexure P-8) is unsustainable on this score alone.

6. Learned counsel for the respondents has although tried to justify the order of the Divisional Canal Officer (DCO), Bathinda Canal Officer, Bathinda as well as Superintending Canal Officer (SCO), Sirhind Canal Circle, Ludhiana on various other grounds, which have also been challenged on the other aspects as well, but this Court does not intend to go into those aspects in the light of the fact that this Court after setting aside the order dated 26.06.2019 would remand the case back to the Superintending Canal Officer, Sirhind Canal Circle, Ludhiana -respondent No.1 for passing a fresh order ignoring the said aspect.

7. Learned counsel for the private respondents has sought to contend that the C.L.U. has been issued for the area in question i.e. approximately 130 acres and the construction has already been completed/commenced and, therefore, no water is being required for irrigation purposes for this area. But this aspect also cannot be taken into consideration in the light of the fact that till date, the said area has not been declared an uncommand area. Unless such an order has been passed by the Competent Authority, the said aspect cannot be taken into consideration by the Superintending Canal Officer while passing the impugned order.

8. In view of the above, the present petition is allowed and the impugned order dated 26.06.2019 (Annexure P-8) passed by Superintending Canal Officer, Sirhind Canal Circle, Ludhiana is hereby set aside.

9. The parties are directed to appear before the Superintending Canal Officer, Sirhind Canal Circle, Ludhiana on 24.10.2019. The Superintending Canal Officer, Sirhind Canal Circle, Ludhiana shall proceed and decide the appeal on merits on the basis of the grounds taken in the appeal and the submissions made by the parties in the light of the above observations. It is clarified that this Court has neither considered nor commented upon the merits of the case except for the area of approximately 130 acres of land which has been taken into consideration as non-command area wrongly for the reasons mentioned above.

30.09.2019

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**(AUGUSTINE GEORGE MASIH)
JUDGE**Whether speaking/reasoned
Whether ReportableYes/No
Yes/No