

CWP-2064-2016

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

CWP-2064-2016**Date of Decision: 20th February, 2020****Pritam Singh**

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Deepak Gupta, Advocate, for the petitioner.

Ms. Samina Dhir, D. A.G. Punjab, for respondents No. 1 to 3.

Mr. V.S. Mahal, Advocate, for respondent No.4.

SUDHIR MITTAL, J. (ORAL)

The petitioner had applied for transfer of 4.67 acres of land from outlet No.112910/L to outlet No.117335/L on the Kot Bhai distributary. The application was allowed by the Divisional Canal Officer, Bathinda Canal Division, Bathinda, vide order dated 29.07.2009 (Annexure P-1). The said order was challenged by respondent No.4 in appeal and the Superintendent Canal Officer, Sirhind Canal Circle, Ludhiana, vide order dated 02.11.2010 (Annexure P-2) allowed the same and remanded the case to the Divisional Canal Officer for a fresh decision. Thereafter, the Divisional Canal Officer, re-decided the case vide order dated 04.06.2014 (Annexure P-5) and allowed the transfer based upon the report dated 05.04.2011 (Annexure P-3) of Zileadar and recommendation dated 12.09.2011 (Annexure P-4) of Sub Divisional Officer, Teona Canal Sub Division, Gidderbaha. He found that the existing water-course to the land of the petitioner from outlet at RD No.112910/L is damaged, because of which

the land of the petitioner is not receiving adequate irrigation. The order of

the Divisional Canal Officer, has, however, been upset by the Superintending Canal Officer, on an appeal filed by respondent No.4.

Learned counsel for the petitioner submits that from the map/plan (Annexure P-7), it is evident that the land sought to be transferred is situated at a greater distance from the existing outlet RD No.112910/L and is very close to outlet No.117335/L. Thus, the transfer would facilitate irrigation of his land. Moreover, from report dated 05.04.2011 of the Zileadar, it is evident that the irrigation of the land already being irrigated through outlet No.117335/L will not be adversely effected. The recommendation dated 12.09.2011 of the Sub Divisional Officer, is also to the same effect. Thus, the order of the Superintending Canal Officer, is perverse as it is based upon an apprehension that the transfer of the land of the petitioner will result in strained relations between the residents of two villages.

Learned State counsel submits that the order of the Superintending Canal Officer, is not very happily worded. In the written statement, it has been specifically averred that transfer of additional land to outlet No.117335/L will impose a strain on it adversely affecting irrigation of the land presently being irrigated through the said outlet. Moreover, maintenance of the water-course is the responsibility of the residents and in case, the water-course has been damaged, the petitioner is to blame therefor. He can get the same repaired to increase the flow of water to his land. The transfer of the land of the petitioner to outlet No.117335/L is not technically feasible as it would adversely affect irrigation of the land being irrigated through the said outlet.

Having considered the rival submissions of the learned counsel for the parties, I am of the opinion that the Superintending Canal Officer, has failed to apply his mind to the issue in dispute. According to the

petitioner, the report of the Ziledar and the recommendations of the Sub Divisional Officer established that land being irrigated through outlet No.117335/L will not be adversely effected, whereas, according to the written statement of the State, it emerges that the irrigation of the said land would be adversely effected. The learned Superintending Canal Officer, has not properly considered this aspect of the matter and the issue being technical in nature needs to be decided by a person having technical knowledge.

Thus, the writ petition is allowed and the impugned order dated 05.08.2015 (Annexure P-6) passed by the Superintending Canal Officer, is hereby set aside. The matter is remanded to the Superintending Canal Officer for a fresh decision after hearing the parties and examining the core issue as mentioned hereinabove. The proceedings be completed within a period of six months from the date of receipt of certified copy of this order.

20th February, 2020
Nisha

(SUDHIR MITTAL)
JUDGE

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