

202

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 4797 of 2015

Date of Decision: February 14, 2020

Tarsem Singh and another

.....Petitioners

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. H.S. Dhandi, Advocate
for the petitioners

Mr. Vikas Mohan Gupta, Addl. A.G. Punjab

Mr. Vishal Rattan Lamba, Advocate
for respondents No. 4 and 5

Sudhir Mittal, J. (Oral)

The private respondents i.e. respondents No. 4 and 5 filed an application before the Divisional Canal Officer for conversion of certain uncommand area to command area. After hearing the parties concerned, the Divisional Canal Officer passed an order dated 22.09.1992 ordering conversion of 75 acres to command area. Out of this area, 32 acres were converted to flow command and 43 acres were converted to lift command. The order was, however, subject to confirmation by the Superintending Canal Officer. The Superintending Canal Officer partially confirmed the aforementioned order vide his order dated 24.03.1994. The order of the Divisional Canal Officer in respect of 32 acres only was confirmed. Aggrieved with the said decision, the petitioners as well as respondent No. 4 filed their respective writ petitions. During the pendency thereof, respondents No. 4 and 5 and others filed a fresh application dated 15.10.2009 in respect of the aforementioned 43 acres i.e. to convert the said area from

uncommand to command. Another application dated 05.02.2010 was filed by other persons for conversion of 15-16 acres of land from uncommand to command. Vide order dated 22.06.2011, learned Divisional Canal Officer allowed both the applications. An appeal was preferred by the petitioners against the said order which was dismissed by the Superintending Canal Officer vide order dated 04.02.2015. Hence, the present writ petition has been filed.

2. It also transpires that respondents No. 4 and 5 withdrew their earlier writ petition i.e. CWP No. 11927 of 1994 vide order dated 08.08.2014.

3. Learned counsel for the petitioners has submitted that the second application dated 15.10.2009 filed before the Divisional Canal Officer was not maintainable as in respect of the same subject matter the writ petition i.e. CWP No. 11927 of 1994 was already pending. Further, it has been submitted that before passing order dated 22.06.2011, the Divisional Canal Officer did not serve the petitioners and an order passed behind their backs is illegal. Moreover, the land of the private respondents is at a very high level and no khals are passing through it. Thus, it is physically not possible to convert the area to command area.

4. In response, learned counsel for respondents No. 4 and 5 submits that application dated 15.10.2009 was filed 17 years after the filing of earlier application. Meanwhile, the area of 43 acres, subject matter of the application, had been levelled and made amenable to canal irrigation. In the changed circumstances, a second application was maintainable and the same was not barred by the pendency of the earlier writ petition. Apart from that, it has been submitted that the petitioners had been heard by the Divisional Canal Officer while passing order dated 22.06.2011 and the Superintending Canal Officer has found as a matter of fact that the area in dispute has been levelled and is commandable. It will also not result in reducing the water at the tail. The said finding of fact has not been

shown to be erroneous or perverse.

5. A perusal of the pleadings and arguments of learned counsel for the parties show that the dispute in the present writ petition is regarding two separate areas of land, one measuring 43 acres and the other measuring 15-16 acres. Regarding the area measuring 43 acres, the Divisional Canal Officer had converted the same to command area vide his order dated 22.09.1992 but the said order was not confirmed by the Superintending Canal Officer. The writ petition of the private respondents i.e. CWP No. 11927 of 1994 was filed in this Court and on the date of filing of the second application i.e. 15.10.2009 the said writ petition was pending. Thus, the second application dated 15.10.2009 was not maintainable in law. If at all, the ground situation had undergone a change, the same should have been brought to the notice of this Court and permission should have been sought for filing a second application after withdrawing the writ petition.

6. So far as the second part of the dispute is concerned, order dated 04.02.2015 passed by the Superintending Canal Officer makes it abundantly clear that the report dated 04.06.2010 of the Zileदार as well as the command statement verified by the Junior Engineer had been relied upon for returning a finding of fact that the area could be converted to command area. Learned counsel for the petitioners has not been able to show that the said finding is perverse and, thus, I have no option but to uphold the said finding.

7. In view of the above, the writ petition is partly allowed. Order dated 04.02.2015 impugned in the writ petition pertaining to 43 acres of land is set aside. The parties shall, however, be at liberty to file a fresh application in respect of this area in accordance with law.

February 14, 2020

reena

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No