

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

Sr. No.239

Civil Writ Petition No.20048 of 2017

Date of Decision : July 05, 2022

Krishan and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vijay Singh Kajla, Advocate,
for the petitioners.

Ms. Tanushree Gupta, DAG, Haryana,
for respondents No.1 to 4.

Mr. Ajit Sihag, Advocate,
for respondents No.5 to 7.

SUDHIR MITTAL, J. (ORAL)

Ramesh son of Ram Kumar (respondent No.5) submitted an application before the Divisional Canal Officer for transfer of 6.35 acres from outlet RD 26483-R, Jakhod Distributory to outlet RD 22260-R, Jakhod Distributory. In accordance with Section 17 of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as the Act), a draft scheme was prepared and notice thereof was issued on 25.04.2014. Thereafter, the scheme was published on 19.05.2014 by way of affixation at public places and munadi. Hearing was held on 27.05.2014 and the scheme was approved vide order dated 06.06.2014. Aggrieved, the petitioners challenged the order dated 06.06.2014 before the Superintending Canal Officer but failed. Revision filed before the Chief Canal Officer was also dismissed and thus CWP No.4717 of 2017 was filed. This writ petition was allowed vide order

dated 08.03.2017 and the matter was remitted to the Chief Canal Officer for a fresh decision as the order passed by him did not show application of mind. After remand, the revision petition has again been dismissed vide impugned order dated 22.05.2017 and thus, the present writ petition has been filed.

Learned counsel for the petitioners has submitted that Section 17 of the Act mandates preparation of a draft scheme in cases of transfer of land to another outlet. Section 18 thereof provides for publication for inviting objections and suggestions within 21 days of the publication. The scheme is to be approved, modified or rejected within 30 days of the time fixed for receipt of objections and suggestions unless the period is extended. In the present case, the record makes it clear that hearing was held eight days after the publication of the scheme. Thus, the mandatory provision of Section 18 of the Act has been violated. This objection was specifically raised before all the authorities below including the Chief Canal Officer but none of them has cared to take the same into consideration. Even after remand, this objection has not been taken into consideration. A mandatory provision of law having been violated the scheme deserves to be set aside.

Learned State counsel is unable to raise any argument as the facts are apparent on the record.

Learned counsel for respondents No.5 to 7 submits that munadi was conducted on 09.05.2014 as is evident from Annexure R-1. Annexure R-2 shows that a large number of shareholders had given their no objection to the scheme. Period of 21 days after publication is not mandatory. Under the circumstances, there is no illegality in the order of transfer. Reliance is

placed upon *Chandgi Ram & ors. vs. Chief Canal Officer, Haryana & ors.* **1988(2) RLR 416**. The writ petition has no merit and deserves to be dismissed.

Section 18 of the Act is reproduced below:

“18. Publication of Scheme. --

(1) Every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be prescribed for inviting objections and suggestions in respect thereof within twenty-one days of its publication.

(2) After considering such objections and suggestions, if any, the Divisional Canal Officer shall approve, modify or reject the scheme within thirty days of the time for the receipt of such objections and suggestions, unless this period is extended by the Superintending Canal Officer for good and sufficient reasons :

Provided that in the following cases, the prior approval of the Chief Canal Officer shall be obtained for allowing-

(a) a new outlet on a main canal or branch canal ;

(b) an outlet with discharge of less than 0.75 cusec. ”

Sub-section (1) provides that the scheme shall be published as soon as may be after its preparation and a period of 21 days is to be provided for inviting objections and suggestions.

Sub-section (2) prescribes that the scheme shall be approved, modified or rejected within 30 days of the receipt of objections and suggestion, unless the period is extended by the Superintending Canal Officer for good and sufficient reasons. The nature of the time limit prescribed in the Section came up for consideration in ***Chandgi Ram (supra)*** and it was held that the same was only directory in nature. So long as there was substantial compliance with the procedure prescribed for publication. The strict compliance with the time limit was not necessary.

A perusal of Annexure R-1 i.e. acknowledgment of publication of the scheme by the Lambardar of the village shows that the proposed scheme was published on 19.05.2014 in the presence of Patwari and Lambardar. Affixation was done in the Chopal and the scheme was also published through beat of drums. Thereafter, fourteen persons who were co-sharers of RD 22260-R got their statement recorded that they had no objection to the implementation of the proposed scheme. This shows that persons to be effected by the proposed scheme had knowledge thereof and this knowledge was acquired only on account of the publication. The mandatory requirement of Section 18 is publication of a draft scheme and this requirement has been fulfilled.

All the authorities below have found as a matter of fact that the transfer of the land of the private respondents is necessary in the interests of better irrigation. This finding has not been shown to be illegal or perverse in any manner.

After remand, the Chief Canal Officer has reconsidered the matter in accordance with law and no interference is called for.

The writ petition is accordingly dismissed.

July 05, 2021
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes