

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(281)

CWP-2046-2023 (O&M)

Date of decision: - 24.05.2023

Raj Kumar and others

....Petitioners

Versus

Superintending Canal Officer and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE VIKAS BAHL

Present:- Mr. S.P.S. Tinna, Advocate, for the petitioners.

Mr. Karan Puggal, DAG, Punjab, for respondents No.1 and 2.

Mr. Sandeep Khunger, Advocate
and Mr. Peeyush Gagneja, Advocate,
for respondents No.3 to 7.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 11.11.2022 (Annexure P-8) passed by respondent No.1 and order dated 02.08.2022 (Annexure P-6) passed by respondent No.2 whereby respondents No.1 and 2 had ordered for the realignment of the watercourse in outlet No.67230/L, Southern Branch.

2. On 02.02.2023, after considering the arguments of learned counsel for the parties, this Court was pleased to pass the following order:-

“Inter alia, contends that under Section 30(A) of the Northern India Canal and Drainage Act, 1873 (for short 'the Act'), it is provided that in the case of construction, alteration, extension or alignment of any watercourse or realignment of any existing watercourse, a draft scheme is to be prepared. It is further contended that since the present case relates to realignment, thus, the provisions of Sections 30-A and 30-B of

*the Act would apply. It is submitted that as per provisions of Section 30-B of the Act, the publication is required to be done and for the purpose of the said publication, Rule 5(2) of the Act is to be applied. It is further submitted that one of the requirements of the rule is that the Lambardar concerned in all the affected villages has to, by the beat of drum, announce the places where the details of the scheme can be inspected and the acknowledgment of the Lambardar and his statement of having announced and given publicity is required to be recorded with the file of the scheme and the same shall be conclusive proof of such announcement. It is, inter alia, contended that apart from other illegalities, no such statement of the Lambardar is a part of the record and thus, no due publication of the scheme has been done. It is further stated that petitioners No.1 to 22 had no knowledge about the said scheme and thus, did not appear before the authorities. Further, reliance has also been made to pages 83-84 of the paper-book to show that the date fixed for hearing the persons with respect to the objections was, 22.09.2021 (there appears to be an overwriting on the same) and even signatures of several persons such as Ramandeep Singh and Dalip Ram have been taken on 21.09.2021 i.e., just a day before the hearing of the said objections and thus, no adequate time has been given to the general public to file objections. It is also submitted that the date on which service has been effected upon other persons has not even been mentioned at page 84 and thus, in the present case, no due opportunity has been granted to the petitioners and other villagers to object to the scheme. In support of his arguments, learned counsel for the petitioners has relied upon a judgment of a Co-ordinate Bench of this Court in **"Bhagwana Vs. Divisional Canal Officer, Tohana Division and others"**, reported as 1969 PLJ 443.*

Notice of motion for 19.05.2023.

On the asking of the Court, Mr. Ferry Sofat, Additional Advocate General, Punjab, appears & accepts notice on behalf of respondents No.1 and 2 and Mr. Peeush Gagneja, Advocate, appears and accepts notice on behalf of respondents No.3 to 7 and seek time to file their respective replies.

Reply, if any, be filed with the Registry, on or before the next date of hearing with an advance copy to learned counsel for the petitioners.

Status quo, as it exists today, shall be maintained till the next date of hearing.

(VIKAS BAHL)

*February 02, 2023**JUDGE*

3. Learned counsel appearing on behalf of respondents No.3 to 7 has very fairly submitted that the scheme in the present case has not been published in accordance with law and thus, the impugned orders cannot be sustained and has submitted that they have no objection in case the said impugned orders are set aside and the matter is remitted back to the Divisional Canal Officer/respondent No.2 for proceeding with the matter after the preparation of the draft scheme and after publishing the same in accordance with law.

4. Keeping in view the above-said facts and circumstances and also the facts which have been noticed in the above reproduced order dated 02.02.2023 as well as the fair stand taken by learned counsel for respondents No.3 to 7, the present writ petition is allowed and the impugned orders dated 11.11.2022 (Annexure P-8) as well as the order dated 02.08.2022 (Annexure P-6) are set aside and the matter is remitted back to the Divisional Canal Officer/respondent No.2 to proceed further in accordance with law from the stage of the draft scheme.

5. The parties are directed to appear before respondent No.2 on 31.05.2023.

6. Respondent No.2 is directed to decide the case after following the due procedure as expeditiously as possible.

7. Pending application, if any, stands disposed of in view of the above.

May 24, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No