

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

CWP-8354-2019

Date of Decision: 18.08.2023

Manohar Lal (deceased though LRs) and others

..... Petitioners

Versus

Superintending Canal Officer and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Judgepreet Singh Warring, Advocate, for the petitioners.

Mr. Arun William, Assistant Advocate General, Punjab.

Mr. J.S. Grewal, Advocate for respondents No.3 to 5, 7 & 10.

Rajesh Bhardwaj, J.

Petitioners have approached this Court praying for quashing of order dated 03.07.2018 (Annexure P-9) passed by respondent No.1 and orders dated 31.10.2000/21.11.2000 (Annexure P-8) passed by respondent No.2, whereby transfer of area of the petitioner measuring 16.87 acres from the Chak of outlet No.134387/179289-L Lambi Rajbaha to outlet No.128289/173312-L Lambi Rajbaha was rejected illegally and further issuing direction to the official respondents to transfer the area of the petitioners of aforesaid land in order to safe guard the interest of maximum irrigation in view of the provisions of the Northern Indian Canal & Drainage Act, 1873 (for short, 'the Act') as the petitioners are ready to bear the expenses for arrangement of watercourse/underground water pipes which are required to link their fields with the watercourse of water outlet No.128289/173312-L Lambi Rajbaha.

It has been contended by learned counsel for the petitioner that petitioner No.1 moved an application before respondent No.2 for transferring his area from Chak of earlier outlet No.134387/179289-L

Lambi Rajbaha to proposed outlet No.128289/173312-L Lambi Rajbaha for smooth and proper irrigation. He submits that the said application was marked to SDO and further the SDO marked to the concerned Zileadar for investigation. He has submitted that Zileadar finding the demand a genuine one recommended for transfer of the area of the petitioners from Chak of earlier outlet No.134387/179289-L Lambi Rajbaha to proposed outlet No.128289/173312-L Lambi Rajbaha. He submits that the Sub Divisional Canal Officer got prepared command statement from the concerned Junior Engineer and scheme for the purpose also got published and thereafter recommended the case of the petitioners for transfer of their area from Chak of earlier Outlet No.134387/179289-L Lambi Rajbaha to proposed outlet No.128289/173312-L Lambi Rajbaha on the basis of command statement. He submits that however, respondent No.2-i.e. Divisional Canal Officer rejected the genuine demand of the petitioners vide orders dated 31.10.2000/21.11.2000 by overlooking the facts and circumstances and evidence on record ignoring the chakbandi. He has submitted that the view taken by respondent No.2 was totally based on presumptions and assumptions. He has submitted that aggrieved by the same, the petitioners filed appeal before respondent No.1-Superintending Canal Officer, however, Superintending Canal Officer also ignored the evidence on record and thus rejected the same vide impugned order dated 03.07.2018. It is submitted that the Sub Divisional Canal Officer got prepared command statement from the concerned Junior Engineer and the scheme for the purpose was also published as per the provisions of law. He has submitted that thereafter, Sub Divisional Canal Officer recommended the case of the petitioners for transfer of the area as prayed by them. The statements of the

parties were recorded by Sub Divisional Officer, but their demand was illegally rejected by respondent No.2-i.e. Divisional Canal Officer vide orders dated 31.10.2000/21.11.2000 and thereafter, appeal against the same was also illegally rejected by respondent No.1 vide impugned order dated 03.07.2018. He has submitted that the scheme of Northern Indian Canal and Drainage Act, 1873 is based on the interest of maximum irrigation, but the respondent-authorities have failed to consider the same. He submits that since the beginning the petitioners are ready to bear the expenses for the arrangement of the watercourse as per provisions as envisaged under the Northern Indian Canal and Drainage Act, but the same has been overlooked by the respondent-authorities. He has submitted that the land of the petitioners is at a higher level and thus, is not getting sufficient water for irrigation. He has submitted that the impugned orders are cryptic and non-speaking and thus, the same being unsustainable in the eyes of law, deserve to be set aside.

Learned counsel for respondents No.3 to 5, 7 & 10 has vehemently opposed the submissions made by learned counsel for the petitioners. He has submitted that though the land of the petitioners is at higher level but State has already taken care of the same and thus, has provided them a separate watercourse by installing the lift canal. He has invited attention of this Court to the map produced on record and has submitted that the petitioners are already getting sufficient water for their irrigation from a separate Nakka and thus submissions made regarding deficiency of water are totally against the facts and circumstances on record. He has submitted that total land of the petitioners is also less than the answering respondents and by raising this unreasonable demand, they are

trying to take the watercourse from the watercourse provided to the answering respondents. He has submitted that if the prayer of the petitioners is accepted then the answering respondents would suffer an irreparable loss as water required for the irrigation of their land could be seriously reduced and thus their cultivation would be seriously effected. He has submitted that the respondent-authorities have duly appreciated the submissions made by both the parties by giving concurrent findings and the demand raised by the petitioners was found to be against the facts and circumstances of the case and against the larger interest of both the parties. He has also submitted that the contentions raised by learned counsel for petitioners that they are ready to compensate the respondents, are also not acceptable to the respondents as the proposed watercourse would run from the land of the respondents and would open pandora's box and thus, it would be detrimental to the overall interest of all the affected parties. He has submitted that the impugned orders suffer from no illegality and thus, the present petition being without any merit, deserve to be dismissed.

Learned State counsel has also opposed the submissions made by learned counsel for the petitioners and has drawn the attention of this Court to the reply filed by way of affidavit of Mukhtiar Singh Rana, Divisional Canal Officer, Abohar Canal Division, Abohar. It has been submitted that on perusal of the scheme and after hearing the parties, arrangement of the watercourse was found difficult for the irrigation of the fields of the petitioners and appeal of the petitioners was also found without any merit. He submits that thus, there is no merit in the present petition and thus, the same deserves to be dismissed.

After hearing learned counsel for the parties and perusing the

record, it is apparent that prayer of the petitioners for transferring their area from Chak of earlier outlet No.134387/179289-L Lambi Rajbaha to proposed outlet No.128289/173312-L Lambi Rajbaha was marked to the Zileadar by the SDO for investigation. Finding the demand of the petitioners a genuine one, the Sub Divisional Canal Officer got prepared command statement from the concerned Junior Engineer and recommended the case of the petitioners for transfer of their area. However, respondent No.2-i.e. Divisional Canal Officer rejected demand of the petitioners vide orders dated 31.10.2000/21.11.2000 and further the appeal of the petitioners was also dismissed by respondent No.1-Superintending Canal Officer vide impugned order dated 03.07.2018. Though as per submissions made before this Court, scheme was formulated but the same was not found to be in the interest of all the parties. This Court at the time of preliminary hearing issued the notice to the other side primarily on the ground of equity where the petitioners had offered that they are ready to pay amount to the other share holders whose land would be utilized for the *Khal* and compensate them in the alternative, the petitioners are ready to bear expenses for the underground water pipes to be laid from the land of the other co-sharers. However, counsel for respondents No.3 to 5, 7 & 10 has opposed the same on equity as well as as on merits. The respondent-authorities have appreciated this fact also and found the prayer made not genuine one. As per record produced before this Court, the petitioners have been provided a separate *Nakka* for irrigation of the land and thus, prayer has been rejected by both the said authorities. As submitted before this Court, grievances of the petitioners were duly appreciated and found to be not true as per the law settled and overall interest of the parties.

In view of the above, this Court does not find any perversity in the findings arrived at by the respondent-authorities, thus, the present petition is hereby dismissed being devoid of any merit.

18.08.2023

sharmila

Whether Speaking/Reasoned

Whether Reportable

:

:

Yes/No

Yes/No

(RAJESH BHARDWAJ)

JUDGE