

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

(267)

CWP-9110-2023 (O&M)**Date of decision: - 18.05.2023****Balwinder Kaur and others****....Petitioners****Versus****State of Punjab and others****.....Respondents****CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Amandeep Singh Jawandha, Advocate,
for the petitioners.

Mr. Karan Puggal, DAG, Punjab
for respondent Nos.1 to 3.

Mr. Manu Rattan Bhardwaj, Advocate
and Mr. Anand Kumar, Advocate
for respondents No.4 to 12.

VIKAS BAHL, J. (ORAL)**CM-8481-CWP-2023**

1. Present application has been filed under Section 151 CPC for placing on record the affidavit of Malkit Singh/petitioner No.3 in compliance of the order dated 29.04.2023 passed by this Court.

2. For the reasons mentioned in the application, the same is allowed. The copy of affidavit of Malkit Singh/petitioner No.3 is taken on record.

CWP-9110-2023

1. This writ petition has been filed under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the impugned order dated 07.12.2022 (Annexure P-3) passed by respondent No.3 as well as the order dated 03.02.2023

(Annexure P-5) passed by respondent No.2 whereby the directions have been issued to the field staff to prepare the new proposal under Section 30-B of the Northern India Canal & Drainage Act, 1973 and to pass a fresh speaking order after hearing both the parties.

2. On 29.04.2023, this Court was pleased to pass the following order: -

“Learned counsel for the petitioners has submitted that neither there is any statement of the petitioners regarding their consent, nor their counsel consented to the passing of the impugned order dated 03.02.2023 (Annexure P-5).

Notice of motion for 18.05.2023.

Notice re: stay as well.

To be taken up at 1.45 PM.

On the asking of the Court, Mr. Rohit Ahuja, DAG, Punjab, appears & accepts notice on behalf of respondents No.1 to 3.

Liberty is granted to the petitioners to serve respondents No.4 to 12 through dasti process also.

In the meantime, the petitioners are directed to file an affidavit to the effect that they had not consented to the passing of the impugned order dated 03.02.2023 (P-5), within a period of two weeks from today. In case the said affidavit is found to be false, the present writ petition would be dismissed with costs.

April 29, 2023

**(VIKAS BAHL)
JUDGE”**

3. Learned counsel for the petitioners in pursuance of the above reproduced order filed an affidavit of Malkit Singh (petitioner No.3), in which, it has been stated in para No.3 that neither he nor his counsel had consented to the passing of the order dated 03.02.2023 (Annexure P-5). It is further stated that the order dated 03.02.2023 (Annexure P-5) has primarily been passed on the ground that the petitioners had consented to the passing of the said order, whereas, neither any such consent was given

by the petitioners nor the same has been recorded in the form of a statement or any written document. It is, thus, prayed that at any rate, the impugned order dated 03.02.2023 deserves to be set aside and the matter requires to be decided afresh.

4. Learned counsel appearing for respondents No.4 to 12 has submitted that the private respondents had a meritorious case and they would be able to support their pleas in case the matter is remanded to the Superintending Canal Officer, Patiala Circle IB, Patiala for fresh decision.

5. Learned State counsel appearing on behalf of respondents No.1 to 3 has submitted that the respondents-State has no objection in case the matter is decided afresh.

6. Keeping in view the above-said facts and circumstances, the the present writ petition is partly allowed and the impugned order dated 03.02.2023 (Annexure P-5) is set aside and the Superintending Canal Officer, Patiala Circle IB, Patiala-respondent No.2 is directed to decide the case i.e., bearing Appeal Case No.08/2023 afresh, as expeditiously as possible, in accordance with law and after hearing all the parties concerned.

7. It is made clear that this Court has not opined on the merits of the case and respondent No.2 would consider and decide the matter afresh, independently, in accordance with law.

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

May 18, 2023
naresh.k

(VIKAS BAHL)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No