

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

CWP No.12295 of 2021

Date of Decision: 03.11.2023

Mandeep Singh and others

..... Petitioners

Versus

**Superintendent Canal Officer, Ferozepur Canal Circle,
Ferozepur and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Khunger, Advocate
for the petitioners.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. J. S. Warring, Advocate
for respondents No.3 to 15.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for quashing the order dated 14.02.2020 (Annexure P-8) passed by respondent No.2 and order dated 12.03.2021 (Annexure P-10) passed by respondent No.1, whereby respondent No.2 has ordered for transfer of 41.55 acres of area from outlet No.91480-L Arniwala Rajbaha to Outlet No.6855-R, Kundal Minor by passing totally cryptic and non speaking order without dealing with the contentions raised by the petitioners and the appeal filed by the petitioners has been dismissed by respondent No.1 without application of judicious mind and without dealing with the contentions so raised by the petitioners before respondent No.1.

It has been contended by learned counsel for the petitioners that one Suba Singh son of Balkar Singh submitted an application dated 22.08.2013 for transfer of his 17-18 acre of area from Outlet No.91480-L and inclusion of the same in Outlet No.6855-R Kundal Rajbaha. He submits that the Zileadar, Dharangwala recorded the statement of applicant and other share holders in which the area was mentioned as 22.81 acre. Scheme was prepared by the Divisional Canal Officer for transfer of 22.81 acres of area on 27.10.2014. Thereafter, the comparative command statement of both the Outlets was also got prepared. He submits that on perusal of the command statement, it is apparent that working head of the existed Outlet is 5.01 whereas the working head of the proposed Outlet is only 2.28. He submits that in view of the provisions of Section 30 of the Northern India Canal & Drainage Act, 1873, the scheme was required to be published by the Divisional Canal Officer by giving 21 days notice to the share holders but the same was not given to the shareholders. He further submits that during the pendency of the case before the Divisional Canal Officer, vide order dated 19.12.2017, request for addition of 5.74 acres was considered and thereafter, without any notice to the petitioners and other share holders, another scheme dated 20.11.2019 for transfer of 41.55 acres of area was issued by the Divisional Canal Officer. He submits that scheme dated 20.11.2019 was published without giving notice to all the share holders. He submits that the petitioners and other share holders filed their objections before the Divisional Canal Officer that Outlet No.6855-R Kundal Rajbaha is already bricklined and thus, they do

not have the additional capacity to load the additional water. He submits that it was objected by the petitioners that by inclusion of more area, the share holders would suffer loss of irrigation. He submits that the case was prepared for 23 acres whereas 17-18 acres more area was included which is against the scheme framed. He submits that the learned Divisional Canal Officer miserably failed to appreciate the objections filed by the petitioners and thus, illegally allowed the application filed vide order dated 14.02.2020. He submits that the learned Divisional Canal Officer illegally allowed the transfer of 41.55 acre of area by mentioning that according to the command statement, the area in question was fit for better irrigation from the proposed Outlet. He submits that the Divisional Canal Officer has failed to appreciate that as per the command statement, the working head of the existing outlet is more than the proposed outlet. He submits that aggrieved by the impugned order dated 14.02.2020 passed by the Divisional Canal Officer, the petitioners and other share holders filed an appeal before respondent No.1 i.e. Superintendent Canal Officer. The petitioners specifically reiterated their objections that the water course is bricklined and thus, capacity of the same cannot be increased further. It has been submitted that inclusion of additional area in the proposed outlet would reduce the water for irrigation for the petitioners' land. He further submits that in the light of command statement, the transfer of additional land to the proposed outlet would be totally detrimental but the learned Superintendent Canal Officer again miserably failed to appreciate the same and thus, illegally dismissed the same vide his impugned order dated

12.03.2021. He submits that both the impugned orders have been passed by ignoring the objections filed by the petitioners. To strengthen his arguments, he has relied upon “***Parampal Singh and others vs. The SCO and others***”, 2016(3) RCR (Civil) 665; “***Roshan Lal and others vs. Chief Canal Officer and others***”, 2011(10) RCR (Civil) 385; “***Manish Kumar and others vs. SCO and others***”, CWP No.22226 of 2019, decided on 30.08.2019 and “***Darshan Singh and others vs. SCO and others***”, CWP No.25499 of 2016, decided on 24.09.2019. He submits that the impugned orders being totally unsustainable in the eyes of law and the law settled, deserve to be set aside by remanding the case for decision afresh.

Per contra, learned counsel for respondents No.3 to 15 has vehemently opposed the submissions made by learned counsel for the petitioners. He has submitted that the petitioners have not approached this Court with clean hands. He has submitted that on submission of the application filed by respondent No.3, the respondents authorities carried out the proceedings as in accordance with the provisions of the Act. He submits that the petitioners were duly granted the opportunity through out the proceedings carried out. He submits that there is no question of 21 days as submitted by learned counsel for the petitioners as the scheme was approved after 72 days i.e. on 14.02.2020. He submits that the scheme was prepared in the presence of petitioners on 19.11.2019. He submits that notice under Section 30 of the Northern India Canal & Drainage Act, 1873 was issued to the petitioners and other share holders on 20.11.2019. He submits that the entire area i.e. 41.55 acre is well within

the chak of the proposed outlet No.6855-R and the length of the water course is almost $1/3^{\text{rd}}$ of the earlier water course. He submits that the respondents Authorities have perused the complete record and finding the demand raised by the respondents in the interest of better irrigation allowed the scheme in question and transferred the area measuring 41.55 acres which suffers from no illegality. He submits that the total area of 36.86 acres has been deleted and the said deleted area was below 10% of the total area. He submits that no A-Form etc. can be revised at any point of time and only 41.55 acres are to be included in the proposed outlet. He submits that Form A is also not going to be changed on account of inclusion of area below 10% of the total area and thus, the same is not going to adversely effect to any of the shareholders including the petitioners. He has drawn the attention of this Court to the site plan and has submitted that the length of water channel from the original outlet to the land of the respondents was 8206 feet whereas from the proposed outlet, the length of water course would be 4620 feet. It is apparent that demand of the respondents is genuine and for better irrigation. He further submits that as per the command statement, the FSL at the original outlet i.e.19480-L is 630.30 whereas the same at the proposed outlet i.e. RD-6855-R is 629.85 and thus, it is apparent that even in the FSL, there is no substantial variation. He submits that the impugned orders have been passed keeping in view the complete facts and circumstances and record of the case and thus, the same suffer from no infirmity. Hence, he submits that the petition being devoid of any merit deserves to be dismissed.

The Official, namely, Om Parkash, Zileadar is also present in person in Court today and has assisted the Court. He has submitted that area of the original land of the proposed outlet was 435.52 acre whereas the land transferred to this outlet is 41 acre, which is less than 10% of the area already being irrigated by the proposed outlet. He submits that as per provisions of the Punjab Land Manual, the area upto 10% of the land is permissible and thus, the authorities have committed no illegality in accepting the genuine demand of the respondents. He submits that the impugned orders have been passed totally in accordance with the provisions of the Act.

I have heard learned counsel for the parties and perused the material on record.

As evident from the record that one Suba Singh son of Balkar Singh submitted an application dated 22.08.2013 for transferring 17-18 acre of area from Outlet No.91480-L and inclusion of the same in Outlet No.6855-R Kundal Rajbaha. Scheme was formulated. The command statement was also prepared. Objections were invited from the shareholders and were dealt by the authorities. The precise submissions made by learned counsel for the petitioners is that the objections raised by the petitioners were not dealt with by respondents No.1 and 2 while passing the impugned orders. However, from perusal of the same, it is apparent that learned counsel for the parties were heard and record of the case like the statement etc. was perused. The authorities personally inspected the site as well. As has been deciphered from the facts of the

case that land of the respondents was at a length of 8206 feet from the original outlet of 91480-L whereas the same is at a distance of 4620 feet from the proposed outlet of RD-6855-R. From the command statement, it is apparent that the FSL at the original outlet is 633.30 whereas from the proposed outlet, the same is 629.85 and thus, there is no substantial difference between the same. Besides this, the original land which was irrigated at the proposed outlet was 435.52 acre and only 41 acre has been added to the same which is evidently less than 10% of the total area and the same is permissible as per the provisions of the Punjab Land Manual. Learned counsel for the petitioners has relied upon the law laid by this Court in *Parampal Singh’s case (supra)*; *Roshan Lal’s case (supra)*; *Manish Kumar’s case (supra)* and *Darshan Singh’s case (supra)*. However, in the considered opinion of this Court, this Court finds the same to be distinguishable on the facts and circumstances of the present case. Resultantly, keeping in view the overall facts and circumstances, this Court is of the considered opinion that the impugned orders suffer from no infirmity and hence, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

03.11.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No