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

CWP No.4911 of 2016

Date of Decision: 30.11.2023

Jagdish Rai and others

..... Petitioners

Versus

**The Superintending Canal Officer, Ferozepur
Canal Circle, Ferozepur and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. C. M. Munjal, Advocate
for the petitioners.

Mr. Arun William, AAG, Punjab.

Mr. Sandeep Khunger, Advocate with
Mr. Saksham Khunder, Advocate
for respondents No.3 and 4.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for quashing the order dated 13.05.2015 (Annexure P-7) passed by respondent No.2 and order dated 30.06.2015 (Annexure P-8) again passed by respondent No.2 while amending the order dated 13.05.2015 and also for the quashment of order dated 04.02.2016 (Annexure P-9) passed by respondent No.1.

The present case arises from the facts that respondents No.3 & 4 filed the petition for transferring their land from the existing outlet No.14040-TL to the proposed outlet No.51225-R on the ground that their land from the existing outlet was not getting sufficient water and thus, for better irrigation, the same be transferred to the proposed outlet No.51225-

R. On filing the petition, necessary process was commenced and on receiving the requisite reports and inspecting the site, the same was found to be worth accepting. The Divisional Canal officer after hearing both the sides, accepted the demand of respondents No.3 & 4 vide his order dated 13.05.2015. Aggrieved by the same, the petitioners had filed an appeal before the learned Superintending Canal Officer, who after hearing both the sides, found no merit in the appeal filed and thus dismissed the same vide his order dated 04.02.2016 and thus, upheld the order passed by the learned Divisional Canal Officer. Aggrieved by the same, the petitioners are before this Court by way of filing the present petition.

Learned counsel for the petitioners has vehemently contended that the impugned orders passed by respondent No.1 & respondent No.2 are against the mandate of law and thus, deserve to be set aside. He submits that land of the petitioners was being irrigated from Outlet No.51225-R whereas that of respondents No.3 & 4 was being irrigated through Outlet No.14040-TL. He has submitted that system of irrigation for both the sides is continuously running from the last about 50 years and both the sides were getting the proper irrigation from their respective Outlets. He submits that respondents No.3 & 4 in order to harass the petitioners filed the petition with ulterior motive for transferring their land from their existing outlet No.14040-TL to outlet No.51225-R from which the petitioners were getting water. He has submitted that transfer of about 35 acres of land from the existing outlet of respondents No.3 & 4 is totally against the statutory provisions as this area is more than 10% of the total

existing area on the proposed outlet No.51225-R. He has submitted that respondent No.2 had started the proceedings in pursuance to the petition filed by respondents No.3 & 4 without issuing notice to the petitioners. He has submitted that no notice of the scheme framed was served upon the share holders. He has submitted that it is evident from the record that the proceedings were carried out at the back of the share holders. He has further submitted that distance of the land of respondents No.3 & 4 from the proposed outlet is more than the distance of their land from their existing outlet. Hence, he submits that the site plan prepared is totally wrong. He submits that distance of the water course from outlet No.14040-TL is shown in the site plan as 3696 feet and from the proposed outlet No.51225-R is 5907 feet. He submits that even the Divisional Canal Officer has specifically admitted that distance from the existing outlet No.14040-TL is 5060 feet and from the proposed outlet No.51225-R, the distance is 6820 feet. He submits that thus, it is evident that the scheme framed is totally contrary to the grievances raised by respondents No.3 & 4 for shifting their land from the existing outlet to the proposed outlet. He submits that the learned Divisional Canal Officer has failed to appreciate the same and thus, illegally accepted the petition filed by respondents No.3 & 4 vide impugned order dated 13.05.2015. He submits that aggrieved by the same, the petitioners filed an appeal before the Superintending Canal Officer. However, the learned Superintending Canal Officer as well miserably failed to appreciate the evidence on record and the law settled and thus, illegally dismissed the same vide impugned order dated

04.02.2016. He submits that the impugned orders being unsustainable in the eyes of law, deserve to be set aside.

Per contra, learned State counsel has opposed the submissions made by learned counsel for the petitioners. He submits that on receiving the petition filed by respondents No.3 & 4, the case was thoroughly investigated and reports from the technical authorities were received. He submits that on receiving the application, spot was inspected and the site plan was prepared. The record from the applicant i.e. respondent No.3 was summoned and statements of the concerned share holders were also recorded. He submits that case was sent to the Superintending Canal Officer with recommendation to the transfer of 34.64 acres of land to the proposed outlet No.51225-R. Inquiry was initiated by the Sub Divisional Officer and the command statement from the concerned JE was sought, who recommended the transfer of this land. On the completion of the case, the scheme was prepared which was published as per the provisions of Section 30B(3) of the Canal Act. He submits that case of respondents No.3 & 4 was found to be genuine and thus, the petition filed by them was accepted. He submits that area of land was mistakenly earlier mentioned as 25 acres and hence, the same was amended by way of amended slip vide order dated 30.06.2015 as the area to be transferred was 34.64 acres. He submits that the present petition being devoid of any merit deserves to be dismissed.

Concerned, Zileadar is also present in person in Court today, who submits that application filed by respondents No.3 and 4 was totally

in accordance with the provisions of law. A thorough investigation was conducted and the size of the proposed outlet has also increased. Thus, as per the statics available with them, the petitioners have suffered no loss to their irrigation and hence, action of the respondent-State suffers from no illegality.

Learned counsel for respondents No.3 & 4 has vehemently opposed the submissions made by learned counsel for the petitioners. He submits that the respondents filed the petition for transfer of their area from the existing outlet No.14040-TL to the proposed outlet No.51225-R for proper irrigation of their land. He submits that relevant reports were sought by the Divisional Canal officer from Zildar and the Sub Divisional Officer. He submits that after the spot inspection, both the Zildar as well as Sub Divisional Officer concurrently held that land belonging to the respondents would be better irrigated from the proposed outlet No.51225-R. He submits that before ordering the transfer of area by the Canal Authorities, a comparative command statement was also obtained from the concerned JE in order to compare the area in the existing and proposed outlets. He has drawn the attention of this Court to the comparative command statement, which is annexed with the reply as Annexure R-3/3. He submits that from the perusal of the command statement, it is evident that length of the water course is little more from the proposed outlet. However, the command available at the existing outlet bearing No.14040-TL is only 1.00 whereas the command from the outlet No.51225-R is 6.64 and thus, it is evident that the land of the respondents would be better

irrigated from the proposed outlet No.51225-R. He submits that the petitioners were duly heard and the scheme was duly published. He has relied upon the judgments passed by this Court in *Hazari vs. Superintending Canal Officer*, 1983 PLJ 274 and *Sahi Ram vs. Superintending Canal Officer*, 1993 PLJ 635. He further submits that the area of respondents No.3 & 4 has been shifted from the existing outlet to the proposed outlet after receiving the reports from the technical experts and the Writ Court would interfere in the order passed by the respondents authorities only in a situation when there is a palpable violation of any provisions of law. However, there being no perversity in the impugned orders passed, the present petition deserves to be dismissed being without any merit.

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

After hearing learned counsel for the parties and perusing the record, it is evident that respondents No.3 & 4 had filed the petition for transfer of their land from the existing outlet No.14040-TL to proposed outlet No.51225-R in order to get the better irrigation for their land. On filing of their petition, the grievances raised by respondents No.3 and 4 were duly investigated. The site was duly inspected. The reports from the concerned JE were also sought. The command statement from both the outlets were produced before the Authorities. Resultantly, the scheme was prepared, which was duly published. Both the sides were heard by the respondents authorities. It is evident from the perusal of the reports

submitted by the Technical experts i.e. the command statement that the FSL in the existing outlet i.e. 14040-TL was 614 whereas that in the proposed outlet No.51225-R was 619.99. So far as the command is concerned at the existing outlet, which was 1.00 and whereas the same was 6.64 at the proposed outlet. There was no substantial difference in the distance of the land from both the outlets. The total area transferred from the existing outlet to the proposed outlet was 34.64 acres whereas the total area existing on the proposed outlet was 635.41 acres, Thus, the area transferred was less than 10% of the area to the proposed outlet, thus, within the permissible limit as per the provisions of law.

In view of the submissions made by learned counsel for respondents No.3 & 4 and the judgments relied upon by him, the reports submitted by the Technical Experts, the order under challenge cannot be interfered with by this Court. The interest of the petitioners and that of respondents No.3 and 4 have been taken care of by the respondents authorities while passing the impugned orders.

Resultantly, this Court does not find any substantial violation of the relevant provisions of the law in the case in hand. Thus, in the considered opinion of this Court, the impugned orders suffer from no infirmity and hence, the present petition being devoid of any merit is hereby dismissed.

30.11.2023

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Whether speaking/reasoned

Whether reportable

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Yes/No
Yes/No

(RAJESH BHARDWAJ)

JUDGE