

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

CWP-25906-2023

Decided on 17.11.2023

Mahaveer Bhadu and others

... Petitioners

Versus

Superintending Canal Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Surinder Pal Singh Tinna, Advocate, for the petitioners.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 06.01.2023 (Annexure P-4) passed by respondent No.2 and order dated 03.10.2023 (Annexure P-6) passed by respondent No.1, whereby, respondents No.1 and 2 have illegally and arbitrarily ordered for the conversion of area from un-command area to command area without following the procedure laid down under Section 20 and Rule 79(a) to 79(i) of the Northern India Canal and Drainage Act, 1873 (for short 'the Act') and Rules.

It has been contended by learned counsel for the petitioners that private respondents filed application dated 06.06.2016 before the authorities seeking conversion of an area from command area to un-command area in outlet No.86621-L, Ramsara Minor. He submits that respondents had given an undertaking that they would make the arrangement of watercourse at their own level. It is submitted that Zileadar and Sub Divisional Officer did not make any effort whatsoever regarding intimating the shareholders about the application submitted by the private respondents and reports were submitted by the Zileadar and SDO without associating the petitioners or any other affected shareholders.

He submits that without issuing notice to the petitioners, respondent No.2

decided the issues on 24.04.2017. He submits that aggrieved by the same, some of the shareholders including the petitioners filed an appeal in the Court of respondent No.1-i.e. Superintending Canal Officer. It is submitted that vide order dated 13.06.2018, respondent No.1 after hearing both the sides, remanded the case to respondent No.2 i.e. Divisional Canal Officer with a direction to conduct the spot inspection and pass a fresh order. It is submitted that respondent No.2 without taking into consideration the statutory provisions of Section 20 of the Act allowed the application filed by the private respondents by passing the impugned order dated 06.01.2023. He submits that respondent No.2 did not adhere to the provisions of Section 20 read with Rule 2(2) and Rule 79(a) to 79(i) of the Act. It is submitted that aggrieved by the order dated 06.01.2023, the petitioners filed an appeal before respondent No.1. He submits that respondent No.1 also fallen in error in not appreciating the provisions of Section 20 of the Act and thus, dismissed the appeal filed by the petitioners vide impugned order dated 03.10.2023. He has submitted that neither service was effected upon the petitioners nor any proclamation was made. It is submitted that 14 days notice was not given as stipulated under Section 20 of the Act. Learned counsel for the petitioners vehemently contended that as per the provisions of Section 20 of the Act, the authorities first have to make a watercourse and only then the irrigation water can be provided through the lift canal. He submits that thus, it was mandatory for the respondents to make water channel first and then application filed by the respondents could be considered, however, the same was done without adhering to the provisions of Section 20. He submits that as the water is to be granted through lift canal, irrigation of the petitioners and other co-sharers would be adversely affected.

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

Heard.

After hearing learned counsel for the petitioners and perusing the record, it is apparent that the private respondents filed an application seeking conversion of an area from command area to un-command area in outlet No.86621-L, Ramsara Minor through lift irrigation. On the application filed, notices were issued to the other side and case was investigated. Both the sides were heard by the Divisional Canal Officer. The site plan was perused and reports of the Zildar and SDO, Abhohar were also appreciated. The Sub Divisional Officer inspected the spot on 09.09.2022 and submitted the report. It was found that there was no arrangement of watercourse or underground pipeline for the irrigation of the area of the respondents. Thus, finding the application filed by the respondents in accordance with law, the same was allowed by the Divisional Canal Officer vide order dated 06.01.2023. It was specifically directed that the decision would be implemented at the spot after making arrangement of the watercourse or underground pipeline by the respondents. Aggrieved by the same, the petitioners filed an appeal before respondent No.1-Superintending Canal Officer. Both the sides were again heard and record was re-appreciated. Finding no merit in the appeal, the same was dismissed. However, it was specifically directed by the Superintending Canal Officer that the Divisional Canal Officer would implement the decision only after making arrangement of watercourse/underground pipelines by the respondents at their own level. Thus, it is apparent that the respondent-authorities have passed the impugned orders keeping in view the provisions of Section 20 of the Act. Thus, this Court does not find any infirmity in the

impugned orders passed by the respondent-authorities. Resultantly, the present petition is hereby dismissed.

However, it is being clarified that the learned Divisional Canal Officer would comply with the directions given by the Superintending Canal Officer regarding implementation of order only after arrangement of watercourse/underground pipeline are made by the private respondents at their own level.

(RAJESH BHARDWAJ)
JUDGE

17.11.2023
sharmila

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No