

204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-4259-2020 (O/M)
Date of decision : 14.10.2024

Om Parkash and others Petitioners

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. S.S. Kharb, Advocate
for the petitioners.

Mr. Randhir Singh, Additional A.G. Haryana.

Mr. J.S. Thind, Advocate
for respondent No. 5.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Om Parkash and others) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 30.04.2018 (Annexure P-7), passed by learned Divisional Canal Officer, Rohtak (in short 'DCO'); order dated 25.07.2018 (Annexure P-8), passed by learned Superintending Canal Officer, Rohtak (in short 'DCO') and order dated 20.09.2019 (Annexure P-9), passed by learned Chief Canal Officer, Haryana (in short 'CCO'), whereby 8/8 acre land of respondent No. 5 has been transferred from outlet No. RD-5500-R Kharkara Minor to outlet No. RD-7435-R.

2. Briefly, respondent No. 5 (Raj Mal) submitted an application before the canal authorities regarding transfer of 8/8 acre of area from outlet No. RD-5500-R Kharkara Minor to outlet No. RD-7435-R

Kharkara Minor of village Baharan, Tehsil Meham, District Rohtak. The matter was got investigated from the field staff, who recommended the transfer of area. Accordingly, the scheme/notices were issued for publication. On 14.10.2011, the statements of the shareholders were recorded. Respondent No. 5 stated that the irrigation to his area from the existing outlet was very less, accordingly, his 8/8 acre land be transferred to the new outlet, as prayed for. He further stated that he shall pay the cost of adjustment of outlets and shall also arrange the water course for the proposed area. Some other shareholders of outlet RD-7435-R Kharkara Minor, namely, Shri Baljit Singh and Shri Raj Singh stated that they have no objection, if the area of respondent No. 5 is transferred to new outlet.

2.1 Learned DCO allowed the demand of respondent No. 5 and permitted transfer of 8/8 acre area to new outlet, vide order dated 04.11.2011 (Annexure P-1).

2.2 It appears that the aforesaid order dated 04.11.2011 (Annexure P-1) was challenged further in appeal/revision and ultimately, the matter came before this Court in CWP-15606-2014 at the instance of respondent No. 5-Raj Mal, which came to be allowed by this Court, vide order dated 28.02.2018, whereby the matter was remanded to learned DCO for fresh decision.

2.3 Upon remand, the demand of respondent No. 5 was again approved by learned DCO, vide his order dated 30.04.2018 (Annexure P-7). A further appeal filed by the petitioners before learned SCO was dismissed, vide order dated 25.07.2018 (Annexure P-8).

2.4 Thereafter, the petitioners preferred an appeal before learned CCO, however, the same was also dismissed, vide order dated 20.09.2019 (Annexure P-9). Hence, present civil writ petition.

3. During the course of arguments, learned counsel for petitioners has submitted that the canal authorities below have erred in law and facts in passing the impugned orders and permitting transfer of area of respondent No. 5 to new outlet. It is submitted that impugned orders have been passed on account of the fact that respondent No. 5 is politically well connected and also on account of party faction in the village. It is next submitted that respondent No. 5 was already getting proper irrigation from the existing outlet No. RD-5500-R Kharkara Minor and there was no occasion for transfer of his area to new outlet, especially when area of respondent No. 5 is at a lower level. Accordingly, it is submitted that the impugned orders be set aside.

4. Heard.

5. The matter has been examined by the canal authorities and learned CCO, while maintaining the order passed by learned DCO, permitting the transfer of 8/8 acre of area of respondent No. 5 to new outlet, vide order dated 20.09.2019 (Annexure P-9), has observed as under :-

“ The case was re-heard in deference to the directions the Hon'ble Punjab and Haryana High Court by the Divisional Canal Officer, Water Services Division, Rohtak and the area of the respondents was allowed to be transferred from the chak of outlet at RD-5500-R to the chak of outlet at RD-7435-R Kharkhara Minor by passing well reasoned speaking orders dated 30.04.2018. The

petitioners filed appeal before the Superintending Canal Officer, YWS Circle, Rohtak against the order dated 30.04.2018 passed by Divisional Canal Officer, Rohtak, W/S Division, Rohtak and the appeal filed by the appellants was also dismissed vide order dated 25.07.2018. Hence the present appeal.

The law prescribes that each cultivator has a legal right to get his area transferred from one source to other source where the chances of receiving irrigation are better. The respondents at present are applying water through kacha water course having length equal to six killas and most of the wari time (of respondent/s) is wasted in filling the kacha water course alone, leaving very less time for their fields to get irrigated. On the other hand a pucca water course is running at site in the chak of proposed outlet at RD 7435-R Kharkhara Minor touching the holding of the respondent party, making it eloquently apparent that the proposed source is a better proposition for irrigating the fields belonging to the respondents. Therefore this can be safely concluded that the area of the respondents measuring 8/8 acres area has been justly and rightly transferred from the chak of outlet at RD 5500-R to the chak of outlet at RD 7435-R Kharkhara Minor.

The main contention of the appellants before this Court is that the area of the respondents is at a level lower by four feet and the entire wari time of the succeeding shareholders will be consumed in filling up of the empty water course. The problem as explained by the appellant can be easily solved by constructing a pucca naka at the point of delivery in such a way that the normal full supply level of the water in the water course may not be disturbed. Therefore the objection made by the appellant against inclusion the area of the respondents is not sustainable on technical grounds.

In view of the facts as explained above, I find no cogent reason to disturb the decision pronounced by the Superintending Canal Officer, YWS Circle, Rohtak dated 25.07.2018. The appeal filed by the appellants is rejected.”

6. In my considered view, there are justified grounds for transfer of area of respondent No. 5 from the existing outlet to the new outlet at RD 7435-R Kharkara Minor. Even the point of concern raised by the petitioners that area of respondent No. 5 at a level lower by four feet and the entire wari time of succeeding shareholders will be consumed in filling up of the empty water course; has been addressed by observing that a pucca naka can be constructed at the point of delivery in such a way that the normal full supply level of water in the water course is not disturbed.

7. In ***Sham Sunder v. Superintending Canal Officer, Ferozepur, 2001(4) RCR (Civil) 35***; a Division Bench of this Court observed as under:-

“5. Even otherwise, we find no ground to interfere. The Canal Authorities are the best judges for the situation at the spot. If on a consideration of the matter it has been found that the fields of the petitioner can be properly irrigated from the existing outlet, this court cannot interfere in proceedings under Article 226 of the Constitution unless it is shown that the order is patently illegal and arbitrary. Nothing of the sort has been pointed out...”

8. In ***Mohinder Singh v. State of Punjab, 2012 (67) RCR (Civil) 760***; a Division Bench of this Court observed as under:-

“...We are of the opinion that the matter of transfer of an area from one outlet to another by the canal authorities

should be seldom interfered with in the writ jurisdiction, particularly when the canal authorities had taken the decision after hearing the interested parties and in the interest of better irrigation, and also considering that while making such transfer, the maximum land will be properly irrigated...”

9. In my considered view, once the canal authorities upon consideration of the matter and having examined all technical aspects have come to a conclusion that shifting of area of respondent No. 5 to a new outlet would be in the interest of better irrigation; it would not be in the fitness of things for this Court to substitute the said conclusion. Furthermore, it has also not been pointed out as to how the impugned orders are patently illegal or arbitrary.

10. In view of the above discussion, I see no reason to interfere with the impugned order(s) passed by the canal authorities under the Act, accordingly, the instant writ petition fails and the same is dismissed.

11. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

14.10.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No