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

**CWP-7250-2000 (O&M)
Date of Decision: 06.08.2024**

Baljit Singh

....Petitioner

Versus

The Chief Canal Officer, Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. R.S. Bains, Senior Advocate assisted by
Mr. Tahar Singh, Advocate
for the petitioner.

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

HARSH BUNGER, J. (Oral)

1. Petitioner (Baljit Singh) has filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of Certiorari for setting aside the order dated 20.06.1994, passed by the learned District Canal Officer, Rohtak (Annexure P-1) and also the order dated 01.12.1999, passed by the learned Chief Canal Officer, Haryana (Annexure P-3).

1.1 A further prayer has been made seeking issuance of writ in the nature of Mandamus for directing respondents No.1 to 3 not to shift 6/6 acres of land of respondents No.4 to 7 from outlet No. RD 11847/R to outlet No. RD 9486/R Ismaila Rajwaha, Village Kalawar.

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2. Briefly, respondents No.4 to 7 being the shareholders of outlet No. RD 11847/R Ismaila Minor distributory sought to get their area of 6/6 acres transferred from outlet No. RD 11847/R to outlet No. RD 9486/R. The said transfer was sought on the plea that their area was not getting proper irrigation from the present outlet as the outlet was on the down stream and their area was on much higher level, therefore the flow of water is on the reverse side, on account of which they have to irrigate their fields with the help of *Jhalars*. It was claimed that if their area is transferred to outlet No. RD 9486/R, their field will get flow irrigation and the same would also be nearer to the outlet. It was further submitted that they were ready to bear the expenses incurred by the Government in shifting the outlet from RD 11847/R to RD 9486/R.

2.1 It appears that a scheme was prepared under the Haryana Canal and Drainage Act, 1974 (in short 'the 1974 Act') and the objections were invited after giving notice of 21 days. The statements of shareholders of outlet No. RD 9486/R Ismaila Minor, Karor and Village Bhambhewa were recorded, who stated that the area measuring 6/6 acres be not included in the chak of their outlet and in case the same was done, the same would reduce their water as the size of the outlet will not be increased. Some shareholders also objected that the area be not shifted to their outlet as they were not agreeable to the same.

3. The District Canal Officer, Rohtak after considering the site plan, scheme, contours and also the statements made by applicants-respondents No.4 to 7 and also the petitioner herein, concluded that the demand raised by respondents No.4 to 7 was justified in the interest of better and increased irrigation, accordingly, he permitted the transfer of

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area measuring 6/6 acres comprised in 113/9 equivalent to 44 *kanals* 7 *marlas* from the outlet No. RD 11847-R to outlet No. RD 9486/R Ismaila Minor under Section 18 (2) of the 1974 Act.

4. Being aggrieved against the aforesaid order (Annexure P-1), the present petitioner preferred an appeal before the Superintending Canal Officer, Rohtak, who vide its order dated 08.08.1995 (Annexure P-2) set aside the order passed by the learned District Canal Officer.

5. Feeling aggrieved against the aforesaid order dated 08.08.1995 (Annexure P-2), respondents No.4 to 7 preferred an appeal before the learned Chief Canal Officer, Haryana, who vide its order dated 01.12.1999 (Annexure P-3) allowed the appeal and set aside the order passed by the Superintending Canal Officer, Haryana by observing as under:

“Revenue missal, Khakha plan and other relevant record produced in the court examined. Arguments of both the parties heard and properly considered. The plea of the appellants that his 6/6 acres area is near to the chak of outlet RD 9486/R Ismaila Disty. and his irrigation will improve if this area is transferred from outlet RD 11847/R to 9486/R Ismaila Disty. has a merit. The Zilledar present at the time of hearing also confirmed the fact that the irrigation is less from the existing source. The plea of the respondents that their Wari will reduce and the levels of the lands are the same has no weight because the irrigation in 6/6 acres area of the appellant will certainly improve being near to the chak of outlet RD 9486/R Ismaila Disty. It seems that the opposition is only for the sake of opposition. Keeping the above facts in view the appeal of the appellant is accepted and S.C.O. YWS Circle, Rohtak decision dated 3.5.95 is set aside. Decision given on 1.12.99 and the parties be informed accordingly.”

6. In the aforementioned circumstances, the petitioner has filed the



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instant Writ Petition before this Court.

7. Learned counsel for the petitioner submits that the impugned orders are liable to be set aside being contrary to the provisions of law. It is submitted that the Divisional Canal Officer had prepared a defective scheme and no reasonable opportunity of hearing was afforded to all the share-holders. It is next submitted that the existing outlet at RD 11847/R is providing proper irrigation to all its share-holders and in case the area of the respondents No.4 to 7 is shifted to the new outlet- RD 9486/R then, the *warabandi* of all the share-holders would be adversely affected as the size of the outlet remains the same and therefore the irrigation prospect of the petitioner would be hampered. Accordingly, it is prayed that the impugned orders be set aside and appropriate direction be issued for not shifting 6/6 acres of land of respondents No.4 to 7 from outlet RD 11847/R to RD 9486/R.

8. On the other hand, learned State counsel has opposed the submissions made on behalf of the petitioner by submitting that the shifting of area of respondents No.4 to 7 has been allowed keeping in view the position existing at the spot and in the interest of better and increased irrigation. Therefore, it is submitted that no interference is required to be made in the impugned orders and prayer for dismissal of the Writ Petition has been made.

9. I have heard learned counsel for the respective parties and perused the paper book with their able assistance.

10. In the present case, it is borne out from the impugned order (Annexure P-1) that upon following the process, the shifting of the area from outlet RD 11847/R to RD 9486/R was ordered under Section 18 (2) of the



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1974 Act.

10.1 Further, from a perusal of the impugned order (Annexure P-1) it is apparent that the Canal Authorities have permitted shifting of 6/6 acres of land of respondents No.4 to 7 from outlet RD 11847/R to RD 9486/R, considering the following:

- (i) The existing outlet was in the downstream and the area of the respondents No.4 to 7 was on the higher level, therefore the flow of water was on the reverse side, on account of which, the fields were being irrigated with the help of *jhalars*.
- (ii) If the area of respondents No.4 to 7 is transferred to outlet RD 9486/R then, their fields will get flow irrigation and it will be nearer to the outlet.
- (iii) The demand raised by respondents No.4 to 7 was considered justified in the interest of better and increased irrigation.

10.2 Furthermore, before the Chief Canal Officer, the concerned *Zileदार* confirmed the fact that the irrigation to the area of respondents No.4 to 7 was less from the existing source.

10.3 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...”



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10.4 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...”

11. Considering the aforementioned facts and circumstances, once the canal authorities upon consideration of the matter and having examined all technical aspects and coming to a conclusion that shifting of area of respondents No.4 to 7 from outlet RD 11847/R to RD 9486/R 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 not been pointed out as to how the impugned orders are patently illegal or arbitrary. Therefore, the impugned orders cannot be faulted with.

12. In view of the above discussion, I do not find any merit in the present Writ Petition and the same is accordingly dismissed.

13. All pending application(s), if any, shall also stand closed.

06.08.2024

Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No